



# Western Australian Industrial Gazette

PUBLISHED BY AUTHORITY

Sub-Part 8

WEDNESDAY, 27TH MAY, 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.

The Automotive, Food, Metals, Engineering, Printing and  
Kindred Industries Union of Workers—Western Australian  
Branch  
(Appellant)

and

Leighton Contractors Pty Ltd.  
(Respondent).

No. 55 of 1998.

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

23 April 1998.

*Reasons for Decision.*

### INTRODUCTION

THE PRESIDENT: This is an appeal against the decision of the Commission made at first instance by a single Commissioner. The appeal is brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act").

The amended grounds of appeal read as follows—

"The Commission (sic) erred in fact and in law in finding that time spent in travelling was incorporated in an allowance in that the Commission

- (A) Failed to adequately consider submissions on allowance.
- (B) The Commission failed to adequately consider the differences between allowance and wages.
- (C) The Commission failed to adequately consider the concept of time spent in travelling be paid as wages.

The Applicant seeks the decision to be quashed and that the question posed for the Commission be answered in the negative."

The decision was one whereby the Commission interpreted the terms of an award and of an industrial agreement pursuant to an application made under s.46 of the Act.

The agreement concerned is "Leighton Contractors Maintenance Personnel Agreement 1996—No AG 247 of 1996", 76 WAIG 4592 (hereinafter called "the agreement").

The award is the Metal Trades (General) Award No 13 of 1965 (hereinafter called "the award").

The parties were in dispute as to the interpretation of Schedule 2, Clause 2—Classification and Rates of Pay, of the agreement which reads —

#### "2. Allowances—

The only allowance payable in addition to the above pay rates are as follows—

- |                   |                                             |
|-------------------|---------------------------------------------|
| * Shift Allowance | * Leading Hand allowances as detailed above |
| * Overtime        | * Crane Allowance                           |

All allowances otherwise payable under the award are contemplated in the above hourly rates."

The "above pay rates" mentioned in the clause refer to the hourly rates fixed for various classifications of employee under the award.

The applicant (the abovenamed appellant) sought interpretation of the agreement "in respect of the applicability of the Metal Trades (General) Award", in particular, Clause 21 which read at the time of hearing by the Commission at first instance as follows—

#### "21.—DISTANT WORK

- (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 or shall pay the expenses reasonably incurred by the employee for board and lodging.
- (2) The provisions of subclause (1) of this clause do not apply with respect to any period during which the employee is absent from work without reasonable excuse and in such a case, where the board and lodging is supplied by the employer, the employer may deduct from moneys owing or which may become owing to the employee an amount equivalent to the value of that board and lodging for the period of the absence.
- (3) (a) The employer shall pay all reasonable expenses including fares, transport of tools, meals and, if necessary, suitable overnight accommodation incurred by an employee who is directed by the employer to proceed to work pursuant

to subclause (1) of this clause and who complies with such direction.

- (b) The employee shall be paid at ordinary rate of pay for the time up to a maximum of eight hours in any one day incurred in travelling pursuant to the employer's direction.
- (4) An employee, to whom the provisions of subclause (1) of this clause apply, shall be paid an allowance of \$23.10 for any weekend the employee returns home from the job, but only if—
- 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;
  - the employee is not required for work during that week-end;
  - the employee returns to the job on the first working day following the week-end; and
  - the employer does not provide, or offer to provide, suitable transport.
- (5) Where an employee, supplied with board and lodging by the employer, is required to live more than 800 metres from the job, the employee shall be provided with suitable transport to and from that job or be paid an allowance of \$10.20 per day, provided that where the time actually spent in travelling either to or from the job exceeds 20 minutes, that excess time shall be paid for at ordinary rates whether or not suitable transport is supplied by the employer."

#### BACKGROUND

The provisions of the agreement, of course, it was not in issue, applied to employees of the respondent who worked at the Paddington Gold Mine and other employees who worked at the Plutonic Gold Mine, which were mining operations conducted by the respondent.

The respondent performs mining operations at those mines. Employees at the Plutonic Gold Mine are employed on a "fly in—fly out" basis using a six weeks on, one week off work cycle. Accommodation for the employees is provided approximately three kilometres from the mine site.

At the Paddington Gold Mine site employees arrive each day by bus from the accommodation provided for them by the respondent at Boulder.

The travelling involved, as far as the Plutonic Gold Mine is concerned, was, at the material times, travel time of two hours from Perth to Plutonic by air and two hours return by air once every six weeks. The travelling concerned with the Paddington Gold Mine was, at the material times, travel time of forty minutes from the Boulder camp to the Paddington Mine site and forty minutes return daily, a total of eighty minutes per day.

The agreement provides in Clause 7 as follows—

"(1) This Agreement shall be read and interpreted wholly in conjunction with the Award by which the Company would be bound if not for this Agreement.

(2) Where there is any inconsistently (sic) between this Agreement and the parent award, this Agreement will prevail to the extent of any inconsistency."

What the agreement, therefore, provides is that the agreement prevails over the award to the extent of any inconsistency. That that clause means precisely that was not in issue.

It was common ground between the parties that the "parent award" was the Metal Trades (General) Award No 13 of 1965.

Another material provision of the agreement was Clause 14(3), which reads as follows—

"14.—Hours of Work

- Ordinary hours of work will be 38 hours per week.
- Employees rostered hours of work will be as agreed between the Company and the majority of employees affected.
- Employees will only be paid for actual hours of work authorised by the Company."

There was no submission that the interpretation by the Commission was not a decision for the purposes of s.49 of the Act.

#### ISSUES AND CONCLUSIONS

The question posed to the Commission was as follows—

"Do the provisions of Schedule 2—Classification and Rates of Pay of the Agreement: Subclause 2. Allowances: Preclude claims for payment under subclause (3)(b) of Clause 21—Distant Work of the Award and subclause (5) of Clause 21—Distant Work of the Award, insofar as that subclause applies to time actually spent in travel to and from the job in excess of 20 minutes, to employees covered by the agreement?"

The Commission answered the question posed in the affirmative.

The decision was not a discretionary decision, as such a decision is defined in Norbis v Norbis 65 ALR 12. The appeal is against a decision as to the interpretation and construction of clauses of an award and an industrial agreement. Those provisions, by virtue of Clause 7 of the agreement, prevail over the award to the extent of any inconsistency between the two.

The Commission correctly (see Appeal Book (hereinafter referred to as "AB") at page 7) applied the principles for the interpretation of awards as enunciated by the Industrial Appeal Court in Norwest Beef Industries and Another v Australian Meat Industry Employees Union (WA) (1984) 64 WAIG 2124 at page 2127 per Brinsden J and at page 2133 per Olney J (see also AEEFEU v Minister for Health 71 WAIG 2253 (IAC)).

The agreement in Schedule 2, Clause 1 prescribes rates of pay to be paid to employees in various classifications. Clause 2 clearly prescribes in effect that no other allowances than those prescribed in that clause are payable to employees because such allowances are "contemplated" in the hourly rates prescribed in the Schedule 2, Clause 1.

The appellant's argument was the employees were entitled to be paid the ordinary hourly rate for the time, up to a maximum of 8 hours in any one day, incurred in travelling pursuant to the employer's direction.

The claim was also made pursuant to Clause 21(5) of the award that payments made under Clause 21 were not "allowances" within the meaning of Schedule 2, Clause 2 of the agreement. The Commission at first instance relied on the discussion of the meaning of the term "allowance" by the Australian Industrial Relations Commission in the matter of the Finance Sector Union of Australia and Commonwealth Bank of Australia officers Award 1990 (Print P1297) (a decision of the Full Bench of the Commission delivered on 29 May 1997) (hereinafter called the "Commonwealth Bank case").

The Full Bench of the Australian Industrial Relations Commission in that matter relied upon the dicta of Latham CJ and Dixon J in Mutual Acceptance Company Limited v The Federal Commissioner of Taxation [1944] 69 CLR 389 (hereinafter referred to as the "Mutual Acceptance case").

The word "allowance" properly refers to an entitlement of an employee to a payment notionally distinct from the wage for a purpose connected with the employment relationship and particularly to compensate for some condition of or related to the work (see per the Full Bench in the Commonwealth Bank case (op cit)).

The meaning of "allowance" was also defined by the Full Bench of this Commission in ALHMWU v TPI 77 WAIG 1891 at page 1896 per Sharkey P, where it was held—

"Payment to an employee in addition to ordinary wage rate, usually as compensation for some particular disability or aspect of work (eg heat, cold, isolation)—usually expressed as monetary sum to be paid on hourly, daily or weekly rate—introduced in 1983 as national wage fixing principle and retained virtually unchanged in subsequent systems."

Although an allowance may form part of a salary or wage, (see Metropolitan Water Sewerage and Drainage Board v Histon and Others [1982] 2 NSWLR 720 (CA)) (an allowance for skill) an "allowance" is, by definition, not part of a wage to be paid under an award (see ALHMWU v TPI (op cit)). A wage has been defined as follows (see Fisher v TAB 77 WAIG 619 (FB))—

"Whenever a sum of money has these four characteristics—first, that it is paid for services rendered; secondly,

that it is paid under some contract or appointment; thirdly, that it is computed by time; and fourthly, that it is payable at a fixed time—I am inclined to think that it is a salary, and not the less so because it is liable to determination of the will of the payer, or that it is liable to deductions. I do not mean to say that it is a complete definition of a “salary”, or that it includes every kind of salary; but I think that, whenever these four circumstances concur, the payment is a salary.”

One, of course, should also be mindful of what Dixon J said in the Mutual Acceptance case at page 402, namely—

“‘Allowance’ is one of the many words which take their meaning from a context rather than affecting or controlling the meaning of other words of the context in which they occur. For, considered alone and at rest rather than at work with other words, it means the allowing of a thing or a thing allowed. It is only by its application that you discover the kind of thing in mind.”

The Commission at first instance accepted that the wording of Schedule 2, Clause 2 supports the proposition that, by the inclusion of overtime as an allowance, the parties to the agreement intended to give the word “allowances” its widest meaning. This view was held to be supported by the wording of Clause 14—Hours of Work of the agreement which provided that employees would only be paid for actual hours of work authorised by the Company (see Clause 14(3)).

The Commission, therefore, held that it would be inconsistent with that subclause to interpret Clause 21(3)(b) and 21(5) of the award as being wages and falling within the category of “authorised by the Company”. The Commission then went on to distinguish two authorities on other facts, namely, Police Association (SA) v Public Service Board (SA) 5 IR 105 and Federated Municipal & Shire Council Employees Union of Australia v Shire of Albany 32 IR 470 per French J.

The Commission then also went on to hold, based upon the meaning given to the expression “allowances” in the Commonwealth Bank case, which in turn gave to the word “allowances” the meaning given to such word in the Mutual Acceptance case, that the payments referred to in subclauses 21(3)(b) and 21(5) prescribed a form of allowance in the industrial sense. The Commission also held that the preclusion of those payments would be an outcome consistent with the intention of the parties.

#### CONCLUSIONS

I apply the same principles of interpretation to the awards and the agreement as applied by the Commission at first instance (see AB7-8).

An allowance was properly defined by the Commission, insofar as the Commission applied the definition of “allowances” contained in the Mutual Acceptance case, a meaning also attributed to it by the Full Bench of this Commission in the ALHMWU v TPI (op cit) case.

Clause 21(3)(b) prescribes that 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.

It is quite clear, having regard to the definitions to be applied above, that the amount prescribed is a payment, not part of a wage, not in the nature of a wage, as I have defined it above, payable as compensation for a particular aspect of work, namely travelling.

Similarly, Clause 21(5) provides compensation for time given in relation to travelling either to or from the job where the time exceeds 20 minutes. That, too, is a payment notionally distinct from a wage and payable as compensation for a particular aspect of work, namely travelling. That it takes that meaning from a context is clear. The amounts concerned are a thing or things allowed. They are not payments, in this case, within the meaning of “wage”, as I have defined it above.

There is no doubt that Schedule 2, Clause 2 prescribed, in plain words, that no allowances are payable to employees covered by the agreement except those allowances prescribed in Schedule 2, Clause 2.

The allowances are all absorbed, therefore, in the hourly rates, except insofar as they are separately provided for by Schedule 2, Clause 2.

Accordingly, if Clause 21(3)(b) and Clause 21(5) of the award prescribe the payment of allowances, then such allowances are not payable because of Schedule 2, Clause 2 of the agreement, which does not permit the payment of allowances, save those prescribed in that clause itself.

On the other hand, if they are not allowances, they are payments which do not apply because Clause 14(3) of the agreement does not allow for payment outside actual hours of work authorised by the Company, and the only hourly rates, in any event, are those prescribed by the agreement.

To make it clear, even if Clause 21(3)(b) and Clause 21(5) payments are not allowances but are wages, then they are absorbed by virtue of Clause 7 and Schedule 2, Clause 2 of the agreement in the hourly payments prescribed in Schedule 2, Clause 1.

The payments contemplated are clearly payments by way of allowances as defined. They are not within the exceptions contained in Schedule 2, Clause 2. They are, therefore, absorbed in the hourly payments prescribed in Schedule 2, Clause 1. They are not, therefore, payable under the award.

For those reasons, I would hold that the Commission did not err in its interpretation of Schedule 2, Clause 2 of the agreement.

I do not, of course, it being unnecessary to do so, comment on whether the payments in question, in any event, are payments which are or were required to be made under the terms of Clause 21.

For those reasons, I would dismiss the appeal.

CHIEF COMMISSIONER W S COLEMAN: I have read the reasons for decision of His Honour the President. I agree that the appeal should be dismissed and have nothing further to add.

COMMISSIONER A R BEECH: I have read the reasons for decision of His Honour the President. I agree and have nothing to add.

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

Order accordingly,

APPEARANCES: Mr G Sturman on behalf of the applicant  
Mr B F Shinnors (of Counsel), by leave, and with him Mr R Bathurst (of Counsel), by leave, on behalf of the respondent

#### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

(Appellant)

and

Leighton Contractors Pty Ltd

(Respondent).

No. 55 of 1998.

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

23 April 1998.

Order.

This matter having come on for hearing before the Full Bench on the 1st day of April 1998, and having heard Mr G Sturman, on behalf of the appellant and Mr B F Shinnors (of Counsel), by leave, and with him Mr R Bathurst (of Counsel), by leave, on behalf of the respondent, and the appellant having sought leave of the Full Bench to amend the grounds of appeal and there being no objection to such amendment, it is this day, the 23rd day of April 1998, ordered and directed by consent that leave be and is hereby granted to the appellant herein to amend the grounds of appeal by deleting the grounds of appeal filed

on the 12th day of January 1998 and substituting therefor the schedule headed "Amended Schedule in application 55 of 1998" filed herein on the 10th day of February 1998.

By the Full Bench,

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

(Appellant)

and

Leighton Contractors Pty Ltd

(Respondent).

No. 55 of 1998

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.

CHIEF COMMISSIONER W S COLEMAN.

COMMISSIONER A R BEECH.

23 April 1998.

*Order.*

This matter having come on for hearing before the Full Bench on the 1st day of April 1998, and having heard Mr G Sturman, on behalf of the appellant and Mr B F Shinnars (of Counsel), by leave, and with him Mr R Bathurst (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 23rd day of April 1998 wherein it was found that the appeal should be dismissed, it is this day, the 23rd day of April 1998, ordered that appeal No 55 of 1998 be and is hereby dismissed.

By the Full Bench,

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

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation, Industrial Union of  
Workers Perth

(Appellant)

and

Metropolitan Health Services Board

(Respondent).

No. 2416 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.

CHIEF COMMISSIONER W S COLEMAN.

COMMISSIONER J F GREGOR.

28 April 1998.

*Order.*

THIS matter having come on for hearing before the Full Bench on the 25th day of March 1998, and having heard Mr J A Long (of Counsel), by leave, on behalf of the appellant and Ms J H

Smith (of Counsel), by leave, on behalf of the respondent, wherein the hearing and determination of the appeal herein was adjourned by consent, and whereas the parties herein having filed a consent Minute of Proposed Order, seeking that the appeal be wholly discontinued and the Full Bench having determined pursuant to s.27(1)(a)(ii) and (iv) of the Industrial Relations Act 1979 (as amended) that it should refrain from hearing and determining appeal No 2416 of 1997, it is this day, the 28th day of April 1998, ordered and directed that the Full Bench refrain from hearing and determining the appeal herein upon the appellant and respondent having consented to discontinue appeal No 2416 of 1997.

By the Full Bench,

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation, Industrial Union of  
Workers Perth

(Appellant)

and

Metropolitan Health Services Board

(Respondent).

No. 2416 of 1997.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.

CHIEF COMMISSIONER W S COLEMAN.

COMMISSIONER J F GREGOR.

25 March 1998.

*Order.*

THIS matter having come on for hearing before the Full Bench on the 25th day of March 1998, and having heard Mr J A Long (of Counsel), by leave, on behalf of the appellant and Ms J H Smith (of Counsel), by leave, on behalf of the respondent, and the appellant having sought leave to have the hearing and determination of the appeal herein adjourned, 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 25th day of March 1998, ordered and directed by consent as follows:—

- (1) THAT the parties hereto file and serve written submissions within 14 days of the 25th day of March 1998.
- (2) THAT the hearing and determination of appeal No 2416 of 1997 be and is hereby adjourned to a date to be fixed.

By the Full Bench,

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Cain  
(Appellant)

and

Allan Graham Shuttleton

(Respondent).

Nos. 1246, 1247, 1248, 1249 and 1250 of 1995.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY.  
COMMISSIONER J F GREGOR.  
COMMISSIONER A R BEECH.

9 April 1998.

*Reasons for Decision.*

INTRODUCTION

THE PRESIDENT: The Full Bench heard Appeals Nos 1246 to 1250 of 1995 and upheld them, quashing the decisions of the Industrial Magistrates in Complaints Nos 80, 81 and 82 of 1995 and Complaints Nos 84 and 85 of 1995.

Those decisions were appealed against to the Industrial Appeal Court. The appeals were heard by that Court and orders were made on 2 April 1997 as follows, namely—

- “(1) Each of the five appeals be allowed.
- (2) The decision of the Full Bench to quash the decisions be set aside.
- (3) Matters otherwise before the Court be remitted to the Full Bench to be dealt with in accordance with this decision.
- (4) That there be liberty to apply.”

Counsel for both parties, when these appeals came back for hearing and determination by the Full Bench on 17 March 1998, agreed that the only matter to be dealt with by the Full Bench, arising from the appeals, was Ground 5 in appeal Nos 1246, 1247, 1948 of 1995 and Ground 4 in appeal Nos 1249 and 1250 of 1995, which read as follows—

“The learned magistrate erred in law in awarding the complainant costs in the amount of \$1,000 (or \$1,250) as the amount is unreasonable and therefore beyond the power granted the learned magistrate in section 151 of the Justices Act 1902.”

On each of Complaints Nos 80, 81 and 82 of 1995, on 19 October 1995, Her Worship, Ms A R Robbins, ordered that the defendant pay \$1,000.00 costs on each complaint, a total of \$3,000.00. On each of Complaints Nos 84 and 85 of 1995, on 18 October 1995, Her Worship, Mrs D E Bennett-Borlase, ordered that the defendant pay a total of \$2,500.00 costs, being \$1,250.00 on each charge.

Both Counsel submitted that the decision to order costs was made under s.151 of the Justices Act 1902 (as amended) (hereinafter referred to as “the Justices Act”). That section reads as follows—

“In all cases of summary convictions and orders, the justices making the same may, in their discretion, order by the conviction or order that the defendant shall pay to the complainant such costs as to them seem just and reasonable.”

The decisions were, of course, made in the Industrial Magistrate’s Court, which is a Court of record by prescription of s.81(2) of the Industrial Relations Act 1979 (as amended)(hereinafter called “the Act”).

In Australian Coal and Shale Employees’ Federation and Another v The Commonwealth and Others [1953] 94 CLR 621 at 627, Kitto J said—

“So, too, in my opinion, the exercise of the discretion to review a taxation of costs is subject to no narrower limitation than that which was stated by Bovill CJ and Brett J in Hill v Peel (1870) LR 5 CP 172—

“A very wide discretion must necessarily be left to the taxing officer, which must be exercised by him after a careful consideration of the particular circumstances of

each case; and where, after properly considering the matter, the master has arrived at a decision, it lies upon those who impeach his decision to satisfy the Court that he is wrong. Where principle is involved, the Court will always entertain the question, and if necessary, give directions to the master; but, where it is a question of whether the master has exercised his discretion properly, or it is only a question as to the amount to be allowed, the Court is generally unwilling to interfere with the judgment of its officer, whose peculiar province it is to investigate and judge each of the matters, unless there are strong grounds to shew that the officer is wrong in the judgment which he has formed.”

His Honour then went on to say at page 629—

“... but it will in general interfere only where the discretion appears not to have been exercised at all, or to have been exercised in a manner which is manifestly wrong; and where the question is one of amount only, will do so only in an extreme case.”

quoting from the judgment of Jordan CJ, with whom Harvey CJ in Eq and Street J agreed in Schweppes Ltd v Archer (1934) 34 SR(NSW) 178 at 183-184. (His Honour also considered wider principles of review of discretionary judgments or decisions, as manifested by, for example House v The King [1936] 55 CLR 499 a judgment often applied in this Commission.)

In Sundell v Queensland Housing Commission 94 CLR 531 at 533, Webb J held that, in default of the application of a wrong principle or a mistake having been made by the taxing officer, mere questions of the quantum of counsel’s fees, whether on brief, refresher fees or conference fees, are not open to review.

Since the Industrial Magistrate has cast upon her or him the duty to fix costs in the manner of a taxing master (but not according to the same principles, or requiring the same detailed attention) then those principles which I have quoted above apply. Indeed, Counsel for both parties agreed that those principles apply.

Some assistance can be derived from Carter v Coombe (1989) 154 LSJS 317 in considering the function of a Magistrate in fixing costs. That was a South Australian case dealing with the fixing of costs in the Magistrate’s Courts. There, the observation was made that a Bill of Costs of the type used in solicitor and client taxations is totally inappropriate and unacceptable in matters of summary jurisdiction. I would say that the same applies in the Industrial Magistrate’s Court in matters which might be said to be in its general jurisdiction or in kindred matters, such as this. I would make the same observation as was held in Carter v Coombe (op cit) and as is the practice generally in the Industrial Magistrate’s Court, where summary jurisdiction practice applies, the Court should make a general and discriminatory award of a lump sum by way of costs or on a party and party basis (see also Lansley v Knight; Ex Parte Murphy (1993) 113 ACTR 1).

It is and will be impracticable and undesirable for Magistrates to give precise reasons for fixing costs. It will also generally be undesirable (although there may be exceptions) and generally inappropriate for a Magistrate to tax a Bill of Costs. In summary jurisdiction or in kindred matters, the sort of assessment which occurred here and which is the practice in Magistrate’s Courts, where processes in summary justice or in similar matters, is most appropriate.

For those reasons, I am not persuaded, and, indeed, I would require to be persuaded that it is appropriate to adopt the Supreme Court Costs Scale 1991(as amended), or any percentage of that scale, in summary proceedings such as this, or proceedings such as this which, if not summary proceedings, are, to all intents and purposes, the same.

The submission for the appellant was that the complainant should be ordered to pay such costs as were just and reasonable and that the amount might be set by reference to Costs Scale 1991 under the Official Prosecutions (Defendants Costs) Act 1973 (WA) (hereinafter referred to as “Costs Scale 1991”). It was submitted that the Industrial Magistrates’ discretion had miscarried in assessing costs at the amount so assessed. For the respondent, it was submitted that the Industrial Magistrate’s Court’s jurisdiction was neither a summary jurisdiction nor was this a matter involving a claim for a defendant’s costs and accordingly, the Costs Scale 1991 (op cit) was not applicable.

The appellant attacked the decisions, too, on the basis that they offended the prescriptions for sound exercise of discretion referred to in *Australian Coal and Shale Employees' Federation and Another v The Commonwealth and Others* (op cit) at page 621. It was submitted, too, for the appellant, that the "information" provided to the learned Magistrates, upon which the amount of costs was assessed, was vague and insufficient and, therefore, that the exercise of discretion by the Industrial Magistrates was unsound. There was a submission that, in their decisions, Their Worships did not, as they should have, take into account the defendant's capacity to pay.

For the respondent, it was submitted that costs of \$1,000 per complaint and \$1,250 per complaint, respectively, were ordered as a reasonable exercise of the discretion of the Industrial Magistrate's Court, and after hearing Counsel for both sides. Further, the failure to enquire expressly into the means to pay costs did not necessarily mean that the exercise of the discretion miscarried (as to the necessity to make such an enquiry, see *Morgan v Biddle and Others* (unreported, Supreme Court of WA)(1980) SCL No 2845 of 1980 11 March 1980 per Wallace J).

It was submitted, too, for the respondent, that it was open, from the conduct of the proceedings, to assume that the appellant's legal fees were being paid by the TWU and that the appellant, therefore, had the means to pay costs. Further, *Barbarich v Lee* (1957) 59 WALR 11 at 13 was cited as authority for the proposition that an award of costs cannot be viewed as increasing the penalty against the appellant. I am not satisfied that it is authority for such a proposition.

The Industrial Magistrate's Court was exercising a prosecution jurisdiction, even though it is not specified as such in s.81C of the Act, in my opinion.

I agree that there is apparently no prescribed scale under the Justices Act or under any regulation thereunder which would meet such a case as this, and if there is, it has not been established. The absence of any such scale, however, where a person is entitled to an order for costs, should not act as a barrier to an order being made. (See *Klahn v Talbot* (unreported, Supreme Court of WA)(1995) SCL No 950628S 20 November 1995 per Rowland J at B page 2). By implication, of course, in applying a scale which did not statutorily apply but which, as Franklyn J observed in the same case at page 17, had been accepted and acted upon by both complainants and defendants, summary courts dealing with official prosecutions, appeal courts on appeal from summary courts and by the profession generally, a scale was applied which appropriately indicated the limits within which the discretion to order costs should be exercised; thus, it was appropriate that regard continue to be had to it for that purpose, whilst recognising that it could not bind the Court in the exercise of its discretion.

Pidgeon J in that case also considered that the use of the scale, although it had no standing under the Act, was an appropriate way to determine costs as the scale was consistent with an authorised witness scale.

I state the obvious when I say that this case did not involve the use of a witness scale, but that the Costs Scale 1991 is a scale which prescribes costs payable to practitioners as well. I am also satisfied that, whilst the use of the scale has those flaws, it provides a useful guide for the exercise of a discretion in fixing costs in matters such as this. (The scale could not, of course, bind the Court in the exercise of its discretion.) In saying that, I am fortified by what Their Honours said in *Klahn v Talbot* (op cit).

There is no doubt that the practices under the Justices Act apply because of regulation 3 of the Industrial Magistrate's Court Regulations 1985 (as amended). I say that because the jurisdiction exercised in these matters by the Industrial Magistrates was not exercised as either general or civil jurisdiction as those terms are defined in s.81 of the Act.

A reading of the transcript reveals that sufficient submissions were made to provide material on which the Industrial Magistrates, acting in part as taxing masters could assess costs, and these submissions included references to preparation, to time of hearing, to fees for Counsel, to numbers of complaints, etc.

In the light of my observations, (supra), there was no need for detailed reasons for reaching the decision as to costs reached by each Industrial Magistrate in these matters, and the reasons

provided are quite adequate. They are, indeed, also obvious from the quantum fixed in each case. The approach which I take is also the sort of approach taken in *Kellett v Buchanan* (1935) SASR 144. In that case it was held that the Magistrate hearing the case had sufficient material before him on which to fix an amount for witness fees and expenses. Whilst this was not a case involving fixing of witness fees and expenses, the principle is the same. There was sufficient material in the form of submissions and the Costs Scale of 1991 as a guide, to enable Their Worships to fix the amount of costs, in each case, as they did, even if there was no specific reference to the same.

There is nothing to indicate that the learned Industrial Magistrates inquired as to the means of the defendant to pay as the ratio decidendi in *Morgan v Biddle and Others* (op cit) might be said to require. However, I am not of the view that the failure to do so was fatal, having regard to the quantum ordered and having regard to the opportunity which existed for Counsel for the appellant to make submissions on that point.

There is a further reason why failure to follow what was decided in *Morgan v Biddle and Others* (op cit) did not represent a miscarriage of the Court's exercise of discretion. The principle was clearly expressed by the High Court in *Latoudis v Casey* (1990) 65 ALJR 151 where the majority heard and decided an appeal from the Full Court of the Supreme Court of Victoria concerning the criteria to be applied by a Court of summary jurisdiction in exercising a statutory discretion to award costs in criminal proceedings.

In that case the proceedings had terminated in favour of the defendant. However, the ratio decidendi of the case is binding on the Full Bench.

The provisions referred to in the Magistrates (Summary Proceedings) Act 1975 (Vic) and in the legislation of other States enabled the Court to order costs in favour of a complainant or defendant to pay such costs as the Court considers just and reasonable.

Mason CJ observed, at page 151, that the fact that separate provision was made for the two situations may well indicate a legislative appreciation that the exercise of each discretion may call for an examination of different considerations. However, that does not detract from the ratio of the majority reasons for judgment (per Mason CJ, Brennan and Dawson JJ)

That can be expressed as follows—

"Neither in civil nor in criminal proceedings are costs awarded in punishment of the successful party; they are compensatory in the sense of indemnifying the successful party against the expense the proceedings have imposed on him."

However, since the fundamental principle is that the order for costs is made as an indemnity then the ability of the defendant to pay could not subordinate the principle.

Whilst it may however, in terms of *Morgan v Biddle and Others* (op cit) be relevant to the question of whether an amount is reasonable and just and within the meaning of s.151 of the Justices Act 1902, but it will not alone be determinative where a defendant is concerned. In this case, it was a fair assumption that the respondent was employed by either the State or Federal "TWU" and that his own personal ability to pay was not the only consideration. However, no specific inquiry was made in this case as *Morgan v Biddle and Others* (op cit) requires nor was it a matter raised on behalf of the appellant.

Since the Full Bench is subject to appeal only to the Industrial Appeal Court consisting of three learned Judges of the Supreme Court, I would not, with respect, regard the Full Bench as bound by the Reasons for Judgement of a single judge of the Supreme Court. Such reasons would very often however be persuasive authority.

In any event, I would not regard the judgment of Wallace J in *Morgan v Biddle and Others* (op cit) as binding. Whilst in some cases a failure to inquire as to the ability of the defendant to pay might result in a miscarriage in the exercise of the discretion, it will not be the case where the amount(s) fixed is/are on the face of it as they were in these matters palpably just and reasonable within the meaning of s.151.

Further, I am not persuaded that, as a matter of principle, costs should be said to be part of the penalty. Even if they are, I cannot see that costs should be reduced as a sound exercise of discretion, because costs are awarded on the basis that the

successful party is entitled to be reimbursed as far as possible for the expense to which he/she/it has been put in prosecuting or defending the proceedings (see *R v Burt; ex parte Presburg* [1961] QB 625 and [1960] 1 All ER 424 (QBD)). To reduce the amount as an adjustment of penalty would not result in an order for a properly assessed amount of costs.

The amounts fixed were just and reasonable because they are not far removed from the amounts assessable under the Costs Scale 1991 nor was there apparent any indication of a misuse of the discretion as to warrant the Full Bench's interference. In any event, it was not established within the principle in *Australian Coal and Shale Employees' Federation and Another v The Commonwealth and Others* (op cit) that Their Worships were wrong. The matter involved fixing quantum and nothing has been said to persuade me that the Full Bench should interfere, I not being satisfied that the discretion was exercised in a manner which was manifestly wrong.

I am not persuaded, in any case, for those reasons, that the amount assessed for costs was assessed by any mistake, by any error in principle or that there was any part of the exercise of the discretion with which the Full Bench, should be persuaded that it should rightly interfere (see *House v The King* (op cit)).

I would dismiss the appeals.

#### DISMISSAL OF APPEALS AND COSTS APPLICATION

For the respondent, it was submitted that the appeals should be dismissed and the costs of the appeals should be borne by the appellant. I agree that the appeals should be dismissed as I have said above.

#### COSTS OF APPEALS

As to the application for costs of the appeals, I make the following observations.

These were appeals brought under s.84 of the Act, as against penalty and orders of an Industrial Magistrate's Court, including orders as to costs (see Act at s.84(1)).

By virtue of s.84(5), costs and proceedings under s.84 shall not be given to any party to the proceedings for the service of any legal practitioner or agent of that party unless, in the opinion of the Full Bench, the proceedings have been frivolously or vexatiously instituted or defended, as the case requires, by the other party. (As to what is frivolous or vexatious, see *ABLF v Clark and Another* (IAC) 76 WAIG 4).

It was not contended that these appeals were frivolous or vexatious, nor was it the case. There was nothing frivolous or vexatious about the appeals and the manner of their prosecution.

These were appeals which, although not made out, nonetheless required an important question of law to be decided, and were properly brought, properly argued and then decided. For those reasons, whilst I would dismiss the appeals, I would make no order as to costs.

COMMISSIONER J F GREGOR: These appeals originate from two hearings which occurred on the 18 and 19 October 1995 before two separate Industrial Magistrates involving complaints alleging breach of s.96E(1)(b) of the Industrial Relations Act, 1979. In disposing of those complaints the learned Magistrates both made awards of costs to the complainant. In the case of complaints Nos 84 and 95 of 1995 Her Worship, Ms D E Bennett-Borlase ordered that the defendant pay a cost of \$1,250 on each charge and on the 19 October Her Worship, Ms A R Robbins ordered that the defendant pay \$1,000 costs on each complaint. The matter now before the Full Bench is an appeal by the then defendant that both of the Magistrates erred in law in awarding the costs as the amount is unreasonable and for that reason is beyond the power granted the learned Magistrates in s.151 of the Justices Act, 1905.

Section 151 of the Justices Act, 1902 is as follows—

"In all cases of summary convictions and orders, the justices making the same may, in their discretion, order by the conviction or order that the defendant shall pay to the complainant such costs as to them seem just and reasonable."

The power of a Magistrate to award costs as it originates in s. 151 of the Justices Act is a discretionary power. A discretionary decision of that nature should not be overturned on appeal unless a clear error of principle is demonstrated. This

means that the role of the Full Bench is to review the Magistrates decisions from the viewpoint of deciding whether or not the tests that are set out in s.151 of the Justices Act have been applied. That is, did the Magistrates at first instance award an amount of costs which is just and reasonable. If the Full Bench decides that the amount it would award is different to those the Magistrates awarded, it will not act upon that difference if no clear error of principle has been shown to exist. In other words the Full Bench will not interfere if the Magistrates have properly executed s.151 of the Justices Act.

It was suggested by Counsel for the appellant that information before the Magistrates was vague and insufficient and this therefore deprived them of the opportunity to properly assess what was an appropriate sum in the circumstances. The transcript of the proceedings before the Magistrates shows that it not the case, they were more than aware of the number of witnesses that had been called. Additionally in the jurisdiction in which the Magistrates sit they continually hear cases of a similar genre and are therefore aware of the complexity of issues that arise. They are perfectly entitled to call into the measure their knowledge of the assessment of these types of costs. There is nothing which indicates that either of them were not in the position or did not have enough information to make an informed decision in relation to costs, which in my respectful view they have. For these appeals to be successful the appellant would have to establish that a clear error on the part of the Magistrates occurred. That has not been done so in effect the appeal is against the amount which was awarded. If that is correct, and I think it is, the appellant would have to establish that were exceptional reasons for this Full Bench to interfere. That has not been done and I would dismiss the appeals.

COMMISSIONER A R BEECH: In my view the appeals in this matter have not been made out. The assessment of costs by an Industrial Magistrate is an exercise of discretion. I accept that strong grounds need to be made out to show that the Industrial Magistrate was wrong in the costs awarded in the exercise of that discretion. It is the discretion of the Industrial Magistrate which is exercised and although I tend to the view that the amount ordered by way of costs is more than I might have awarded, the issue is whether the Industrial Magistrates erred in the exercise of their respective discretions. I am not satisfied in the circumstances of this case that it has been shown that the discretions have miscarried and accordingly the appeals must be dismissed.

THE PRESIDENT: For those reasons, the appeals are dismissed.

Order accordingly,

APPEARANCES: Mr P Williams (of Counsel), by leave, on behalf of the appellant Mr C Pruiti (of Counsel), by leave, on behalf of the respondent.

#### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Cain  
(Appellant)

and

Allan Graham Shuttleton  
(Respondent).

(Nos. 1246, 1247, 1248, 1249 and 1250 of 1995.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY.  
COMMISSIONER J F GREGOR.  
COMMISSIONER A R BEECH.

9 April 1998.

*Order.*

These matters having come on for hearing before the Full Bench on the 17th day of March 1998, and having heard Mr P Williams (of Counsel), by leave, on behalf of the appellant

and Mr C Pruiti (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matters, and reasons for decision being delivered on the 9th day of April 1998 wherein it was found that the appeals should be dismissed, it is this day, the 9th day of April 1998, ordered that appeals Nos 1246, 1247, 1248, 1249 and 1250 of 1995 be and are hereby dismissed.

By the Full Bench,

[L.S.]

(Sgd.) P.J. SHARKEY,  
President.

## FULL BENCH— Proceedings for enforcement of Act—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Glenda Harris  
Applicant

and

Ermanno Ottorino De Campo  
Respondent.

No 2336 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
COMMISSIONER C B PARKS.

23 February 1998.

### *Reasons for Decision.*

THE PRESIDENT: These are the unanimous Reasons for Decision of the Full Bench. This is an application by the applicant, Glenda Harris, an Industrial Inspector as defined in s.7 of the Industrial Relations Act 1979 (as amended)(hereinafter called "the Act"), properly made under s.84A of the Act.

By the application, the applicant seeks the enforcement of s.102 of the Act. The particulars of the application contained four separate allegations of a contravention or failure to comply with s.102.

For convenience, we reproduce hereunder the schedule of particulars to the application containing the allegations of breach.

#### "Schedule.

(1) On 5 June 1997 at 35 Cheriton Street, Perth, Mr Ermanno Ottorino De Campo failed to produce for examination a record as defined by Section 98(7) namely time and wages records for the period July 1990 until 14 November 1996 that relate to Mr Mark William Kramar, a former employee, contrary to Section 102(1)(a) of the Industrial Relations Act 1979 when requested by letter on 27 May, 1997 and orally on 5 June 1997 by Mr Peter Healy, Industrial Inspector.

(2) On 23 June 1997 Mr Ermanno Ottorino De Campo failed to produce for examination a record as defined by Section 98(7) namely time and wages records for the period July 1990 until 14 November 1996 that relate to Mr Mark William Kramar, a former employee, contrary to Section 102(1)(a) of the Industrial Relations Act 1979 when requested by Ms Angie Young, Industrial Inspector, by letter on 16 June 1997.

(3) On 10 October 1997 Mr Ermanno Ottorino De Campo failed to produce for examination a record as defined by Section 98(7) namely time and wages records for the period 27 May 1997 until 12 September 1997 that relate to Mr Helmut Posch, a former employee, contrary to Section 102(1)(a) of the Industrial Relations Act 1979 when requested by Ms Glenda Harris, A/Senior Industrial Inspector, by a letter on 1 October 1997 and a facsimile on 6 October 1997 and 9 October 1997.

(4) On 5 June 1997 at 35 Cheriton Street, Perth, Mr Ermanno Ottorino De Campo resisted and obstructed Mr Peter Healy, Industrial Inspector, and Ms Angie Young, Industrial Inspector, in the performance of their duty under Section 98(3) of the Act, contrary to Section 102(2)(a) of the Industrial Relations Act 1979."

The application was opposed by the respondent.

We then refer to a number of relevant sections of the Act. Industrial Inspectors, as defined, may be appointed under and subject to Part 3 of the Public Sector Management Act 1994, for the purposes of securing the observance of the provisions of the Act and of awards, industrial agreements and orders in force under the Act (see s.98(1)).

Industrial Inspectors are required to perform such duties and make such investigations, and reports in relation to the observance of the provisions of the Act, the regulations, and of any award, industrial agreement or order, as the Minister directs.(see s.98(2))

The Minister has generally directed Industrial Inspectors in this regard (see exhibit 2).

S.98(3) prescribes a number of powers which it confers on inspectors for the purposes of carrying out their functions under the Act.

Most relevantly, s.98(3)(e) and (f) provide respectively as follows—

- “(e) by notice in writing or orally require a person having the control of, or access to, a record, whether kept in an industrial location entered by him under this subsection or elsewhere, to produce, exhibit, send or deliver that record for his examination in accordance with that requirement;
- (f) examine, and seize or retain or take extracts from or copies of, any record produced, exhibited, sent or delivered for his inspection in compliance with a requirement made under this subsection;”

A "record" is defined by s.98(7) as follows—

““record” means any thing or process on or by which information is recorded or preserved or by means of which a meaning can be conveyed by any means in a visible or recoverable form, whether or not the assistance of some electronic, electrical, mechanical, chemical or other machine or process is required to convey that information or meaning.”

S.102(1)(a) prescribes that a person shall not, being lawfully required to do so, fail to produce or exhibit or allow to be examined, a record as defined by s.98(7).

S.102(2)(a) prescribes that a person shall not "resist or obstruct a person in the performance of a duty imposed or the exercise of a power conferred by or under this Act".

#### THE FACTS

The Full Bench heard evidence for the applicant from Mr Peter Lalor Healy, Ms Angie Catherine Young and Ms Glenda Louise Harris. For the respondent, only Mr Ermanno Ottorino De Campo, the respondent, gave evidence.

The applicant is a duly appointed Industrial Inspector.

The respondent, Ermanno Ottorino De Campo, carries on business under the name of De Campo Bakery, which is a business name (see exhibit 3) and is a director of another company, De Campo Holdings Pty Ltd, a duly incorporated company (see exhibit 4), with a number of other persons. He is and was, at all material times, one of those persons.

On 24 April 1997, a written complaint was made by a Mr Mark William Kramar, a former employee of De Campo Bakery, with the Department of Labour and Productivity, and in particular the Industrial Inspectors (see exhibit 5).

By the complaint, Mr Kramar alleged that he was not paid the pro rata annual leave to which he was entitled under the applicable award, the Breadcarters' (Metropolitan) Award No 35 of 1963, when he gave notice to terminate his employment, and in fact, terminated it.

Following that complaint, and as a result of it, Mr Peter Lalor Healy, a duly appointed Industrial Inspector, who gave evidence in these proceedings, wrote a letter to the respondent dated 28 May, 1997 (see exhibit 6) requiring the respondent to produce the time and wages record of the employers for the

period of Mr Kramar's employment, from July 1990 until April 1997, required to be kept under Clause 18 of the award (in fact, a time and wages record is required to be kept under Clause 18). This notice was given, as we find, pursuant to s.98(1)(e) of the Act.

Mr Healy, also, by the notice to the respondent in the same letter, advised that he would attend the premises at 35 Cheriton Street, Perth, the premises of the De Campo Bakery on 5 June 1997, to inspect and examine those records.

Mr Healy also advised in the same letter that he intended to question the respondent concerning the complaint of Mr Kramar.

On 5 June 1997, as notified in advance, Mr Healy, with another Industrial Inspector, Ms Angie Catherine Young, attended at the abovementioned premises of De Campo Bakery at 3.00 pm. There, the inspectors met the respondent and interviewed him.

The inspectors mentioned the nature of the complaint. The respondent informed the inspectors that Mr Kramar was not entitled to a pro rata annual leave payment because he had not given sufficient notice.

The respondent produced a time and wages record relating to Mr Kramar's employment, but for the period from the week ending 15 November 1996 to the week ending 4 April 1997 (see exhibit 7 (copy extract)). Mr Healy said that the record was deficient in that it did not have starting and finishing times of work each day.

Mr Healy asked the respondent to provide a photocopy of that record and the balance of the records. According to Mr Healy and Ms Young, the respondent said that that was impossible and he did not produce them. The inspectors also asked for copies of all the time and wages records relating to Mr Kramar's employment since 1990. The respondent, according to the inspectors, said that that was impossible and told Ms Young and Mr Healy to "get stuffed".

The respondent agreed in evidence that it was impossible, reiterated that it was still impossible, and agreed that he had refused to provide the records back to 1990, because he was not disposed to spend the time to find them. He also agreed that he told Mr Healy and Ms Young to "get stuffed". By saying "get stuffed", the respondent said he meant that he was not prepared to produce the records. Indeed, he said in evidence that he was not prepared to produce the records, even if given time to do so.

It was clear, also, that the respondent had informed the inspectors that Mr Kramar had not given sufficient notice of his intention to terminate the contract, even though the notice given by Mr Kramar was the notice required by Clause 16 of the award, namely one week.

The respondent repeated that opinion in evidence. We find that the respondent refused to photocopy one set of records or produce the other records, despite being requested to do so.

It was alleged in evidence by Ms Young and Mr Healy that the respondent had ordered them off the premises and ushered them out. Mr Healy said that the respondent's manner was threatening and he became aggressive in tone, inviting them to take him to court.

We accept that the respondent was angry and raised his voice, much as he did, a great deal, in the witness box, when he was giving evidence. We also accept that he made it clear that he wanted them off the premises, and told them to go. On his own evidence, he invited them to go. Indeed, his attitude, as expressed in the witness box, was that he resented what the inspectors were doing.

The inspectors left when the respondent told them to go. When they left, they had not received answers to questions asked of the respondent and had other questions to put to him. We so find.

On 16 June 1997, Ms Young sent a notice to the respondent, requesting the time and wages records relating to Mr Kramar's employment for the period July 1990 to April 1997. The production of these documents was required by 23 June 1997 (see exhibit 9). The evidence was that the documents were required to be produced because of proposed proceedings in the Magistrates' Court.

On 18 June 1997, the respondent forwarded, by facsimile communication, a copy of time and wages records relating to

Mr Kramar's employment, but only for the period 15 November 1996 to 1 April 1997. However, he failed to produce, and still refuses to produce, records for the period July 1990 until 15 November 1996.

As we have said, those records have still not been produced, and in fact, the respondent expressly declines to produce them.

Indeed, the respondent said in evidence that he offered to photocopy the current time and wages record. He said that he told the inspectors that he had no time to give them the records for seven years. He said in evidence that he did not know how long it would take to get the records for seven years, although they are on the premises.

There was a complaint by another former employee, Mr Helmut Posch, made to the Industrial Inspectors on 26 September 1997, alleging that he had not been paid the annual leave entitlements, which the employer was bound to pay him, pursuant to the applicable award (see exhibit 11).

The applicant, then Acting Senior Industrial Inspector, but in any event, an Industrial Inspector, allocated herself to investigate the complaint which related to obligations prescribed by Clause 14 of the award.

On 1, 6 and 9 October 1997, she requested copies of time and wages records for the period 27 May 1997 until 12 September 1997 relating to Mr Posch's employment and other information (see exhibits 14 and 15). The notices, forwarded to the respondent, and received by him, required that the records be produced by 10 October 1997 (see exhibit 12).

The respondent forwarded to the applicant a facsimile communication dated 3 September 1997 in the course of which he confirmed Mr Posch's starting and finishing dates. He made allegations about Mr Posch's conduct and denied that any income was owing to Mr Posch and said "Let this be the end of the matter".

The respondent has failed to provide the records as requested, and refuses to do so, even though such records must and are and were kept, on the evidence, at De Campo Bakery.

We had the advantage of seeing the witnesses give their evidence. Wherever the evidence of the respondent is in conflict with that of the witnesses for the applicant, we are satisfied, and find that the applicant's witnesses' evidence revealed by them that the wages records requested were not produced, nor will the respondent produce them now.

We are satisfied, on the balance of probabilities, (and indeed we would be satisfied beyond reasonable doubt) and find that—

1. That the applicant and the other Industrial Inspectors who gave evidence were Industrial Inspectors within the meaning of the Act, duly appointed and empowered to act on the Minister's direction given under s.98(2) of the Act.
2. That the inspectors were investigating alleged breaches of an award and acted within power in so doing (see *McCorry v Constantinou* (1991) 71 WAIG 2769 and *Curran v Thomas Borthwick & Sons (Pacific) Ltd* (1990) 33 IR 6.
4. We are also satisfied and find on the facts as we found, that a notice to produce or send records for examination, as defined, was given within the meaning of s.98 and s.102, that it was made to the respondent by an Industrial Inspector in each case, that such request was part of a proper investigation of allegations of breaches of the applicable award, and that the respondent, on his own admission, failed to comply with the requests on the three occasions, as alleged, and still refuses to comply.
5. We are satisfied that such notices were given to the respondent by the inspector.
6. We are satisfied and find that the refusals relate to time and wages records alleged to be required to be kept in relation to the employment of two former employees of De Campo Bakery under the award.
7. We are satisfied and find that the respondent was in control of or had access to such records.
8. We are satisfied and find that the records, the subject of these proceedings, were records as defined in s.98(3) and (7) of the Act.

9. We are satisfied that the respondent was lawfully required to produce a record as defined in s.98(3) to be produced, or allowed to be examined.

We find the breaches as alleged in paragraphs 1, 2 and 3 of the Schedule to the application herein to have been proven.

#### RESISTING OR OBSTRUCTING

The applicant must establish, on the balance of probabilities, that the respondent resisted or obstructed an inspector or inspectors acting in the performance of a duty imposed by or in the exercise of a power conferred under the Act. For the reasons which we have already found, it is quite clear that the inspector or inspectors were so acting.

The meaning of "resist and obstruct" is to be interpreted in the context of the nature of the exercise of power or performance of duty said to have been resisted or obstructed (see *Curran v Thomas Borthwick & Sons*(op cit) at page 20 per Gray J).

A person resists or obstructs a person where that person frustrates the first person's attempt to exercise a power or perform a duty.

Where the conduct of the second person makes the exercise of the power or performance of a duty substantially more difficult, then there is a resisting or obstructing (see *Plunkett v Kraemer* [1934] SASR 124 at 127 per Napier J and *McCorry v Constantinou*(op cit) at page 2771).

A person resists or obstructs a person in the exercise of a power or the performance of a duty where that person's conduct delays the exercise of that power or the performance of that duty (see *Elrick v Terjesen* [1948] VLR 184 at 187 per Herring CJ and *Ansett Transport Industries (Operations) Pty Limited v AFAP* (1991) 38 IR 282 at 289 per Ryan and Heerey JJ).

Where a person is alleged to have resisted or obstructed another person in the exercise of a power or the performance of a duty by the second, under the Act, it is not necessary to prove that the person alleged to have obstructed or resisted knew that the person was attempting or authorised to exercise a power or perform a duty under the Act (see *R v Reynhoudt* (1962) 107 CLR 381; *Bonder v Howell* [1984] WAR 76).

When Industrial Inspectors, jointly engaged in the performance of their duty, are ordered to leave premises, this can amount to hindering or obstructing (see *Curran v Thomas Borthwick & Sons*(op cit) at page 23 per Gray J).

The power to inspect and examine carries with it, without specific mention, every power and every control, the denial of which would render the grant of that power ineffective (see *D'Emden v Pedder* (1904) 1 CLR 91). For example, the wilful taking away of the thing sought to be inspected amounts to an obstruction of the officer seeking to inspect it.

The power to inspect and examine has implicit within it the authority to detain or take such thing to be inspected for sufficient time so as to permit the inspection and examination to continue.

The basic element in relation to obstruction is the purposeful act of making it more difficult for a law enforcement officer to do that which he is employed to do, provided that he is acting in good faith (see *Goddard v Collins* 55 LGRA at 57 per Nathan J).

In this case, in ordering the inspectors from the premises, in effectively preventing them taking or having access to copies of some records and in refusing to produce others, the respondent committed, on 5 June 1997, the purposeful act of making it more difficult for the inspectors to do that which they are employed and empowered to do. The denial of their power to inspect and examine and the interruption of their attempt to examine constituted obstruction and resistance and were elements of a purposeful act of making it more difficult for them to do their duty.

It was submitted that the direction to leave the premises, given by the respondent to the inspectors, constituted hindering or obstruction within the principles laid down in those authorities. We are satisfied that it was.

We find all of the alleged breaches proven. Indeed, we are satisfied and find on the balance of probabilities (and would find beyond reasonable doubt if it were necessary, which it is not) that the respondent resisted or obstructed Angie Catherine Young and Peter Lalor Healy in the performance of their duty under s.98(3) of the Act, contrary to s.102(2)(a).

We would list the application to hear submissions pursuant to s.84A(4)(a) and s.84A(5), and any other relevant submissions.

APPEARANCES: Mr N Monahan (of Counsel), by leave, on behalf of the applicant

Mr J N Uphill, as agent, on behalf of the respondent

#### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Glenda Harris  
Appellant

and

Ermanno Ottorino De Campo  
Respondent.

No 2336 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
COMMISSIONER C B PARKS.

22 April 1998.

#### *Reasons for Decision.*

THE PRESIDENT: These are the unanimous Reasons for Decision of the Full Bench. This matter came on before the Full Bench on 3 April 1998. Written submissions were filed which were developed by Mr Monahan (of Counsel) for the applicant, and Mr Uphill, as agent for the respondent, before us.

The Full Bench was dealing with four separate findings of breach of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act") found to have been proven, in our Reasons for Decision issued on 23 February 1998.

In dealing with the application, the Full Bench was required to have regard to the seriousness of the contraventions or failures to comply, and any undertakings that may be given as to future conduct.

There was no evidence of any other applications of breach or failure to comply under s.84A having been proven against the respondent. There was no undertaking given to the Full Bench as to the respondent's future conduct.

It was not disputed that the respondent, Mr De Campo, was an employer, which he clearly was and that, if a pecuniary penalty were imposed, the maximum which could be imposed is \$2,000 (see s.84A(5)(a)(ii)).

The breaches were serious in that there were four of them, that they involved vehement and clear defiance of requests and quite deliberate and clear refusals by the respondent to comply with his obligations under the Act.

The breaches also involved quite flagrant refusals to comply with requests made by public officers carrying out their duty under an Act of Parliament.

It is fair to observe, too, that these breaches were committed against the background of forthcoming proceedings against the respondent in the Industrial Magistrates Court.

It was submitted to us by Mr Uphill that two of the breaches so found were in fact one and the same, but that was not submitted before the Full Bench found the allegations proven. There were a number of other matters submitted to be relevant, in mitigation, including Mr De Campo's ethnic background. We take those into account, as we have the oral and written submissions made on behalf of the applicant and of the respondent.

However, the circumstances of this case are somewhat serious. There were four proven allegations of refusal to comply with the Act, or of contravention thereof. These were point blank refusals. They were separate, even if one allegation related to the same subject matter and was made on two occasions. The requests made have still not been complied with. The fact that the Industrial Magistrate's proceedings have been completed does not obliterate that fact.

There was and is no undertaking by the respondent to amend his conduct in the future and no remorse shown, though his "offences" are quite serious. That seriousness is required to be marked in the imposition of penalty.

Against that are the matters submitted by Mr Uphill, and the fact that the respondent had not previously "offended".

For the reasons which we have mentioned above, a caution or a penalty near the bottom of the scale would not mark the seriousness of the breaches committed by the respondent or reflect the necessary deterrent element. On the other hand, Mr De Campo's personal situation and the absence of any proof of previous contraventions or failure to comply would not merit the maximum penalty or a penalty near the maximum.

For those reasons, each breach merited a penalty somewhat removed from the minimum. Accordingly, the penalty of \$500.00 in each instance was imposed, making a total of \$2,000.00. No order for costs was sought.

There was an application for an order that the respondent be granted time within which to pay any pecuniary penalty. The basis on which this application was made was that, recently, the Industrial Magistrate had imposed a substantial penalty upon the respondent in the order of \$20,000.00. However, there was no evidence of any inability to pay the amount or the amounts which the Full Bench might impose by way of penalty and no evidence of any real hardship which might result from a short period within which payment of the penalty should occur, being fixed.

The Full Bench, therefore, allowed the respondent fourteen days within which to pay the amount of the penalty fixed by the Full Bench.

APPEARANCES: Mr N Monahan (of Counsel), by leave, on behalf of the applicant

Mr J N Uphill, as agent, on behalf of the respondent

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Glenda Harris  
Applicant

and

Ermanno Ottorino De Campo  
Respondent.

No 2336 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
COMMISSIONER C B PARKS.

3 April 1998.

*Order.*

This matter having come on for hearing before the Full Bench on the 27th day of January 1998, and having heard Mr N Monahan (of Counsel), by leave, on behalf of the applicant and Mr J Uphill, as agent, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 23rd day of February 1998, wherein it was found that the four alleged breaches were proven, and having come on for hearing of submissions pursuant to s.84A(4)(a) and s.84A(5) of the Industrial Relations Act 1979 (as amended) ("the Act"), and any other relevant submissions on the 3rd day of April 1998, and having heard Mr N Monahan (of Counsel), by leave, on behalf of the applicant and Mr J Uphill, as agent, on behalf of the respondent and the Full Bench having determined that supplementary reasons for decision will issue at a future date, it is this day, the 3rd day of April 1998, ordered and declared as follows—

- (1) THAT the allegation that on the 5th day of June 1997, at 35 Cheriton Street, Perth, Ermanno Ottorino De Campo failed to produce for examination a record as defined by Section 98(7) of the Act, namely time and wages records for the period July 1990 until the 14th day of November 1996, that relate to Mark

William Kramar, a former employee, contrary to Section 102(1)(a) of the Act, when requested by letter on the 27th day of May 1997, and orally on the 5th day of June 1997, by Peter Lalor Healy, Industrial Inspector, is proven.

- (2) THAT the allegation that on the 23rd day of June 1997, Ermanno Ottorino De Campo failed to produce for examination a record as defined by Section 98(7) of the Act, namely time and wages records for the period July 1990 until the 14th day of November 1996, that relate to Mark William Kramar, a former employee, contrary to Section 102(1)(a) of the Act, when requested by Angie Catherine Young, Industrial Inspector, by letter on the 16th day of June 1997, is proven.
- (3) THAT the allegation that on the 10th day of October 1997, Ermanno Ottorino De Campo failed to produce for examination a record as defined by Section 98(7) of the Act, namely time and wages records for the period 27th day of May 1997, until the 12th day of September 1997, that relate to Helmut Posch, a former employee, contrary to Section 102(1)(a) of the Act, when requested by Glenda Louise Harris, A/Senior Industrial Inspector, by a letter on the 1st day of October 1997, and a facsimile on the 6th day of October 1997, and 9th day of October 1997, is proven.
- (4) THAT the allegation that on the 5th day of June 1997, at 35 Cheriton Street, Perth, Ermanno Ottorino De Campo resisted and obstructed Peter Lalor Healy, Industrial Inspector and Angie Catherine Young, Industrial Inspector, in the performance of their duty under Section 98(3) of the Act, contrary to Section 102(2)(a) of the Act, is proven.
- (5) THAT in relation to each such breach so proven, the Full Bench imposes upon the respondent, Ermanno Ottorino De Campo, a penalty of \$500.00 and orders that the said total sum of \$2,000.00 be paid to the Registrar within 14 days of the 3rd day of April 1998.

By the Full Bench

[L.S.]

(Sgd.) P. J. SHARKEY,  
President.

**FULL BENCH—  
Unions—Application for Orders  
under Section 72A—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No 1401 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH.

24 October 1997.

*Reasons for Decision.*

THE PRESIDENT: At the conclusion of the evidence for the applicant organisation ((ie) the applicant organisation's case), Mr Schapper (of Counsel) for the applicant organisation made application for an order that the Registrar conduct a secret ballot of employees of RGC Mineral Sands Ltd Capel (hereinafter referred to as "RGC") to ascertain the wishes of

those employees as to industrial representation by the applicant organisation or The Australian Workers' Union, West Australian Branch, Industrial Union of Workers (hereinafter referred to as "the AWU").

The application was made orally, but was evidenced by a minute of proposed order which was handed to the Full Bench, with copies being provided to the s.72A(5) "parties".

The form of the questions to be put in the ballot were to be ascertained by the operation of the orders made, if such orders were made.

Mr Schapper submitted that it was within power to make such an order, and, in fact, that the power, in particular, was conferred by s.26(1)(b) and s.27(1)(v) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

Further, it was submitted that this was important evidence for the purpose of resolving the question what the RGC's employees' preference was between the applicant organisation and the AWU.

The Full Bench had, of course, heard evidence of the membership and non-membership of various organisations at the RGC site. It is fair to say that there will be further evidence on that issue.

It was submitted that the matter would involve the Full Bench informing itself, as it was entitled to do, in a satisfactory and democratic way.

The application was opposed by Counsel for RGC and by Counsel for the AWU.

Mr Schapper, for the applicant organisation, submitted as follows—

- (1) That there ought to be an independently conducted secret ballot of all relevant persons to be completed before the resumption of the hearing of these proceedings on Monday, 1 December 1997.
- (2) That there are provisions in the Act for the taking of secret ballots.
- (3) That it can then be ascertained on the basis of material which "is as far as possible accurate" what the employees want.
- (4) That his client embraced this concept consistent with the concept of the applicant organisation being a democratically run organisation.

I now summarise the submissions made on behalf of the AWU, RGC and The Australian Mines and Metals Association Incorporated, who were accorded the right to be heard in these proceedings. These were as follows—

- (1) The application ignores the separate membership "requirements" of each of the employee organisations concerned.
- (2) An order in the terms sought would effect "claimed" members of the applicant organisation, AWU members, employees in other organisations, and persons ineligible to be members of either organisation.
- (3) The result would add little because there is evidence already of current membership and that evidence tells the Commission already what the membership numbers are.
- (4) Employee preferences should be "weighed up".
- (5) The ballot would be an expensive operation.
- (6) There is no power to order a secret ballot because—
  - (a) S.72A of the Act provides no such power.
  - (b) Where the Act intends that a secret ballot occur, it expressly says so (see s.55(4) and s.69 of the Act).
  - (c) If there is no express authority in the Act, there is no authority in the Act and no power to direct the Registrar under s.94 of the Act.
  - (d) S.26(1)(b) of the Act is a procedural provision only which gives the Commission the ability to inform itself "in relation to the manner in which a hearing is conducted". S.26(1)(b) gives no power to make orders of this type.
  - (e) S.27(1)(v) of the Act is merely procedural and gives no power to make such an order.

- (7) Employee preference is one of many factors in this matter and can be weighed in many ways.
- (8) What the order ought to be would be difficult to determine.
- (9) Even if a ballot were to be conducted, this should be done after all of the evidence is heard.

#### POWER

I deal firstly with the question of whether there is power to make such an order.

Firstly, there is no express power in the Full Bench under s.72A of the Act to make such an order.

Secondly, I refer to s.26(1)(b) of the Act. That reads as follows—

"In the exercise of its jurisdiction under this Act the Commission —

- (a) ...
- (b) shall not be bound by any rules of evidence, but may inform itself on any matter in such a way as it thinks just;"

I agree that that provision confers on the Full Bench and on the Commission a power to inform itself upon matters relevant to its decision (see *Adamaou v Director General of Social Security (1985) 3 AAR 321*). This, in my opinion, means that material which the Commission (in this case the Full Bench) is entitled to use in proceedings before it when the Commission is specifically exempted from being bound by the rules of evidence.

The sort of evidence which can be obtained as a result of the Commission informing itself as it sees fit includes, but is not restricted to, bar table statements in certain circumstances, documents, expert evidence, evidence obtained on inspection, and hearsay evidence. (However, that power is conditioned by s.26(3) of the Act).

However, the order sought here is not restricted to the Commission informing itself. The Full Bench is being asked to order that a number of employees, some of whom are not witnesses (at least yet), some of whom might not be called, and some of whom might have no interest in such a ballot or no eligibility to join any organisation, vote in a secret ballot, the result of which is to be obtained in the normal manner. The making of such an order would be an act which goes beyond the Full Bench merely informing itself. It sets in train a process which only exists under the Act where it is expressly provided for. It is significant that there is specific express power to conduct secret ballots in the Act in s.55(4)(c)(ii) and s.69, and that neither s.26(1)(b) or s.72A confer such a power. Indeed, s.26(1)(b) has more of a procedural than a substantive flavour to it. Whilst, in my opinion, the Commission's powers are wide, they do not run to ordering secret ballots in s.72A applications, at least on the arguments which I heard upon this application. I would, I think, expect to see that Parliament had expressly conferred this power.

I am not persuaded that s.26(1)(b), read in the context of the whole of the Act, confers a power on the Full Bench to make an order as is applied for here that the Registrar conduct a secret ballot, particularly in the terms of the order sought.

As to s.27(1)(v) of the Act, that provision was considered by the Industrial Appeal Court in *RRIA v FEDFU 67 WAIG 315 (IAC)*. That case is authority for the following propositions. S.27(1)(v) is a catch-all for the matters which have not been expressly included in s.27(1). It is not, however, to be read in isolation but in the context of the specific powers which precede it (see *RRIA v FEDFU (op cit) (IAC)*).

S.27(1)(v) is a machinery provision which does not confer on the Full Bench in a s.72A application the power to order a secret ballot as applied for.

I should add, however, that s.66 of the Act might well include such a power vested in the President because of the special nature of s.66, but I am not required to make any judgment on that here.

I would also add that in its present form the order sought would be incompetent in that the President cannot exercise jurisdiction apart from the Full Bench of which he is a member in matters where the Full Bench has jurisdiction.

I would also add that a direction to the Registrar to conduct the ballot is one which can only be made where the Act

authorises the Commission to do so. It is not clear to me that the Commission has the power to direct the Registrar to order a secret ballot in the circumstances of this case. I am not therefore persuaded, on the arguments put to me, that the Full Bench has the power to make the orders sought.

#### THE MERITS

There is some evidence that membership of the applicant organisation and the AWU is already before the Commission. There is evidence, too, that a number of employees belong to no organisation of employees. None of these have so far been called to give evidence.

There are different eligibility clauses for the two organisations of employees involved in these proceedings. There is evidence so far that some employees are eligible to or belong to other organisations of employees. In my opinion, a ballot which was conducted amongst persons other than those eligible to join the applicant organisation or the AWU would be too wide and not sufficient proof of relevant employee preference. The framing of the questions to be asked also create some practical difficulty.

In my opinion, employee preferences and why they hold such preferences are thus far, in this case, best dealt with in open court where proper assessment of witnesses can be made. There is, in any event, so far, direct evidence of preference in the form of existing members, and there is something in the argument that it is not necessary to go further than evidence given viva voce or in current documents to that effect.

Of course, whether employees who to date have not been called to give evidence or whose organisations or who themselves have not been heard or sought to be heard on the application proper ought to be heard on this application before any order is made is a relevant question which might require answering. I must, however, say that I do not agree that the exercise, were it to occur, would be necessarily expensive.

I do, however, see little relevance in the ballot of non-relevant employees and have some difficulty on the same grounds with a ballot which encompasses persons who have not become members. It may well be that those matters will be addressed by further argument and by submissions and evidence in the course of these proceedings which would allay those reservations.

Suffice it to say that I am not persuaded that the equity, good conscience and substantial merits lie with the applicant organisation upon this particular application. Even if I were wrong in that, I would agree with Mr Lucev (of Counsel) that the ballot take place after all the evidence has been heard.

COMMISSIONER J F GREGOR: On the broad premise that a factor in determining whether an order should issue in this matter are the preferences and wishes of the employees concerned, the applicant union asks that the Full Bench order a secret ballot. This, according to Mr Schapper, would provide a mechanism independent of all parties whereby, as reliably as possible, the wishes of the employees can be determined. He conceded in putting the motion that what is to be done with those wishes, how they are to be treated and the weight to be given to them are matters for further argument.

It is argued in support of the application for an order for a secret ballot that the Full Bench has power to do so in s.26(1)(b) of the Industrial Relations Act, 1979 (the Act). In general terms s.26(1)(b) provides that in the exercise of its jurisdiction under the Act the Commission shall not be bound by any rules of evidence but may inform itself on any matter in such a way as it thinks just. Mr Schapper also calls in aid s.27(1)(v) which he described as a very broad power which allows the Commission to give directions and deal with all such other things as are necessary or expedient for the expeditious and just hearing and determination matter and which of itself clearly renders the application within the jurisdiction of the Commission.

Mr Lucev who appeared for RGC told the Commission there was simply no power to conduct a ballot in a way suggested by the applicant. Section 72A, under which these proceedings are mounted, provides no power. Where the Act intends that there is to be a secret ballot there are specific provisions. Ss.55 and 69 are examples. Mr Lucev argues that s.26(1)(b) is a procedural provision which confers on the Commission the ability to inform itself in relation to the manner in which a

hearing is being conducted but it gives no power to issue orders of the type sought here nor does s.27(1)(v). The RGC through Mr Lucev also opposed the issue of the orders sought on the grounds of merit. I do not need to canvass those arguments here other than to note the observation of Mr Lucev that if there is power then the appropriate time to conduct a ballot would be after the Commission has heard evidence. That is at the end of the hearing not part way through it.

My response to the application is that there is clearly no express power in the Full Bench under s.72A to make the orders sought. One would need to seek a source of power in other sections of the Act. On examination one can see that there is express power to conduct secret ballots contained in Ss.55 and 69. Because there are those specific powers and such a power is not included in s.72A one is entitled to the view that the parliament has specifically restricted the conduct of secret ballots to the circumstances which are contemplated in either s.55 or 69. If the Full Bench can issue an order at all it must be under some general power.

Insofar as s.27(1)(v) is concerned the power of the Commission to act to make orders under that Section was subject to examination by the Industrial Appeal Court in *Robe River Iron Associates v. The Federated Engine Drivers and Fireman's Union of Workers of Western Australia* (1987) 67 WAIG 315. In that decision the learned Justices found that there was no justification in giving s.27(1)(v) any wider construction other than as a machinery provision. In short, according to Kennedy J., s.27(1) is concerned with the method by which the Commission exercises jurisdiction already conferred on it, it does not confer substantive jurisdiction. Applying that reasoning to this case it is clear there is no substantive jurisdiction to order a secret ballot under proceedings involving s.72A. The only circumstances where there is substantive jurisdiction under this Act to conduct secret ballots, at present, is via s.55 and s.69. I see s.26(1)(b) as in the same category providing nothing more than a procedural pathway which gives the ability for the Commission to inform itself in relation to the manner in which a hearing is being conducted. It is procedural in the same sense as s.27(1)(v) and it would not support an order of the nature requested here.

An examination of the Workplace Relations Act, 1996 (WR Act) which provides for creation of enterprise unions at s.118 will give weight to the interpretation I place on s.72. In the WR Act the parameters by which the making of an order can be made are substantially wider than in the Act. In s.118A there is an express notation included after subparagraph 2(d) in the following terms—

*'Under s.135 the Commission may order that a vote of members of the organisation concerned in the dispute be taken by secret ballot for the purpose of finding out their attitudes to the dispute.'*

Reference to use of s.135 to provide for secret ballots to take into account the preference of employees make it clear that such preference is a statutory factor to be considered. The WR Act provides at s.135 that the Australian Industrial Relations Commission (AIRC) is empowered to order a secret ballot to determine the preferences of union employees pursuant to an application for exclusive coverage by an organisation. This is separate to the right of an applicant organisation under s.136 to make an application for a secret ballot. Sections 137-140 refer to the procedure and consideration of results of secret ballots. I draw attention to the provisions because it is my view that the AIRC does not need to assess the merit of holding a secret ballot to determine the preference of employees as there is statutory obligation and procedure in place that clearly defines the powers of the AIRC. In this Commission, s.72A is confined and the factors to be taken into account are those that have been established by the Full Bench in its consideration of s.72 matters in the past. For instance, those matters which have been described by His Honour the President to be relevant in his Reasons for Decision in *Hospital Salaried Officers Association of Australia Union of Workers (applicant) 1996 WAIG 1671 (HSOA Case)*. The criteria that have been established in the HSOA Case are not statutory. The WR Act establishes a set of procedures to which the AIRC is obliged to have regard in dealing with applications under s.118A of the WR Act. That is not the situation here. It is clear that if the State Legislature wished to codify the detail of the procedure to be adopted under s.72A it would have provided for secret

ballots. Instead the section in subpart 2 merely creates the right for applications for exclusion to be made and the rest of the section leaves the matter free to the Full Bench to hear and determine the matter, subsection 4 providing that upon application under subsection 2 the Full Bench may make one or more orders and may make any such order subject to any condition or limitations. For these reasons I conclude there is no power in the Act under s.72 or any other section to make the orders sought.

As to the merits of the matter, in view of my finding on power I do not intend to canvass my opinion fully. I observe that because of the present state of evidence concerning union membership and the potential difficulty of drawing conclusions from that evidence unless there is some clarity gained from further proceedings, that it might not be harmful for the Full Bench to know the view of the workforce generally. However, there are some difficulties in conducting secret ballots. The best evidence the Commission can obtain in this matter to assist it in reaching a conclusion is through the direct evidence of persons involved and called by the parties for that purpose. If there were a secret ballot it should take place after all of that evidence has been heard.

Finally, in any event I would not accept the order in the form proposed. My position on the lack of power of the Full Bench to make the order proposed is unequivocal and it is unnecessary that I comment further on the form of any order.

COMMISSIONER A.R. BEECH: At the conclusion of the case for the applicant Union, Mr Schapper requested an order from the Full Bench directing the Registrar to conduct a secret ballot of the employees sought to be covered by this application for the purpose of determining their preference regarding union coverage as between the CMETSWU and the AWU. I indicated my preparedness to grant such an order and I now publish my reasons for that conclusion.

The application before the Commission is an application pursuant to section 72A of the *Industrial Relations Act, 1979*. The application is brought by the CMETSWU for the purpose of seeking an order giving that union coverage over certain employees at RGC Mineral Sands Capel to the exclusion of the AWU. That necessarily involves the Full Bench exercising its discretion as to whether or not such an order would be granted. In the exercise of its discretion the Full Bench will take into account a number of factors. It is unarguable that the preferences of the employees whose rights will be affected by an order pursuant to section 72A is very much a relevant factor (re *HSOA v. CSA* (1996) 76 WAIG 1673 at 1691). That is not to say that that factor is of itself the determining factor.

I observe that the significance of that factor is recognised by the CMETSWU, the AWU and also by RGC. The CMETSWU has been at great pains to show that it is a substantial majority of the employees of RGC which has approached it to represent them. Mr Schapper's submission was that there are approximately 45 employees affected by the application and that the CMETSWU has 23 members on site compared to 7 or 8 AWU members. If the cross-examination of the CMETSWU's witnesses by the AWU is an indication of its position, the AWU takes issue with the numbers of employees, when they joined and whether their membership in financial or unfinancial. I anticipate therefore that each union will refer to the numbers of members each has on site to assist in demonstrating employee preference. The numbers of members is seen as the measure of the preferences of the employees. Indeed, the Full Bench has already been told that by the AWU that the numbers are becoming "more balanced". I also anticipate that the numbers of members and, for example, whether those members have had the CMETSWU rules explained to them is a matter seen as important by RGC. The issue of employee preference is therefore one of contention.

However the numbers of members of a union at any given point in time will tell only a part of the preferences of the employees at RGC. The membership of a given union at any point in time is something of a moving target. As new members enrol and existing members resign, the membership of a union at any given point in time may differ from the membership at a different point in time. Exhibit 20 is a demonstration of this. However, showing actual membership is only part of demonstrating employee preference. An employee may have a preference for a particular union without joining it. The reasons for a person joining or not joining a union may be

quite personal to the individual. I think that the Full Bench, and indeed both unions and RGC, would be greatly assisted by the information which would be provided regarding all employee preferences from the democratic process of a secret ballot conducted by an independent person. Indeed, I was somewhat taken aback at the opposition to the suggestion from the AWU and RGC.

To my way of thinking, for employees to express their preference, whether or not they are indeed actually members, financial or otherwise, of one union or the other by way of secret ballot would provide the Full Bench with relevant additional information on this issue. It may even reduce the reliance seemingly placed in these proceedings upon the numbers of persons either enrolled or not enrolled as the case may be and the minutiae of each employee's enrolment. For those reasons, I regard the suggestion of a secret ballot as a most sensible suggestion.

I also have very little doubt regarding the power of the Full Bench to direct the Registrar to hold a secret ballot. As Mr Schapper has quite correctly observed, the Commission is not bound by any rules of evidence but may inform itself on any matter in such a way as it thinks just. In this particular case, the matter is the preference of the employees of RGC Pty Ltd as to union representation. Accordingly, the Commission, constituted in this case by the Full Bench, may inform itself on that matter in a way that it thinks just. Provided that the Full Bench is of the opinion that a secret ballot is a just way of informing itself of that matter then the power exists in s.26(1)(b) for it to inform itself in that way. It is able to direct the Registrar accordingly. The Registrar is an officer of the Commission and the duties of officers of the Commission shall be as prescribed and as directed by the Commission.

I am aware that I am in the minority in holding the view that the power exists to order a secret ballot. Therefore, the Full Bench will not be directing the Registrar to conduct a secret ballot. I therefore do not propose on this occasion to comment on the precise form of the order I would issue. However, I remain of the view, for the reasons I have expressed, that a secret ballot conducted by an independent person of the employees sought to be covered by this application for the purpose of determining their preference regarding union coverage as between the CMETSWU and the AWU is a matter to which the applicant union, the AWU, and even RGC should give every consideration themselves.

THE PRESIDENT: For those reasons, the application for an order for a secret ballot is dismissed.

Order accordingly

Appearances: Mr D H Schapper (of Counsel), by leave, on behalf of the applicant organisation.

Ms C Bahemia (of Counsel), by leave, on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

Mr A D Lucev (of Counsel), by leave, on behalf of RGC Mineral Sands Ltd Capel.

Mr A Power (of Counsel), by leave, on behalf of The Australian Mines and Metals Association Incorporated.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Construction, Mining, Energy, Timbervyards, Sawmills and  
Woodworkers Union of Australia—Western Australian  
Branch  
Applicant.

No 1401 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH.

24 October 1997.

Order.

This matter having come on for hearing before the Full Bench on the 14th, 15th and 16th days of October 1997, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of

the applicant organisation, Ms C Bohemia (of Counsel), by leave, on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr AD Lucev (of Counsel), by leave, on behalf of RGC Mineral Sands Ltd Capel, and Mr A Power (of Counsel), by leave, on behalf of The Australian Mines and Metals Association Incorporated, and the applicant organisation having made an application for an order for a secret ballot of employees of RGC Mineral Sands Ltd Capel, and the Full Bench having dismissed the said application, and reasons for decision being delivered on the 24th day of October 1997, it is this day, the 24th day of October 1997, ordered that the application by the applicant organisation for an order for such secret ballot be and is hereby dismissed.

By the Full Bench

[L.S.]

(Sgd.) P. J. SHARKEY,  
President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No 1401 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH.

9 April 1998.

*Reasons for Decision.*

INTRODUCTION

THE PRESIDENT: On 18 February 1998, after a hearing which commenced on 14 October 1997, and continued on 15 October, 16 October, 1 December and 2 December 1997, the applicant organisation, the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as "the CMETSWU") sought and was given leave to discontinue its application, the subject of these proceedings, and brought under s.72A of the Industrial Relations Act 1979 (as amended)(hereinafter called "the Act").

The application was brought under s.72A by the CMETSWU, having been filed on 4 August 1997. Particularised, the application sought the right to represent the employees of RGC Mineral Sands Limited (hereinafter called "RGC") employed at RGC Capel mine and plant to the exclusion of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers (hereinafter called "the AWU").

The application was duly published in the Western Australian Industrial Gazette (hereinafter referred to as "WAIG") at 77 WAIG 2145. By application filed 6 October 1997, RGC "(sought) leave to be heard as a person with a sufficient interest under s.72A(5) of the Act" on a number of expressed bases.

A similar application was filed on behalf of The Australian Mines and Metals Association Incorporated (hereinafter called "the AMM") on 7 October 1997.

A similar amended application was filed on behalf of the AWU on 15 October 1997.

On 14 October 1997, these applications were heard and granted. The appropriate directions have not issued, but will soon issue in written form in accordance with s.34 and s.35(1) of the Act.

On 18 February 1998, when the Full Bench determined, the application having been discontinued, that it would refrain from further hearing the application, RGC was given liberty to apply on the question of costs. RGC now applies for an order for costs, pursuant to s.27(1)(c), naming the applicant, CMETSWU, as respondent.

The AWU and AMM have not applied for an order for costs and they did not appear, nor were they represented on this application.

On 20 March 1998, we heard the application for costs, which was opposed by the CMETSWU.

The first question which arose was whether there was jurisdiction and/or in the Commission to make an order for costs upon this application. The section under which the application for costs is made is, as I have said, s.27(1)(c) which reads as follows—

"27(1) Except as otherwise provided in this Act, the Commission may, in relation to any matter before it—

...

(c) order any party to the matter to pay to any other party such costs and expenses including expenses of witnesses as are specified in the order, but so that no costs shall be allowed for the services of any legal practitioner, or agent;"

S.27(1)(d) reads as follows—

"(d) proceed to hear and determine the matter or any part thereof in the absence of any party thereto who has been duly summoned to appear or duly served with notice of the proceedings;"

S.27(1)(k) reads as follows—

"(k) permit the intervention, on such terms as it thinks fit, of any person who, in the opinion of the Commission has a sufficient interest in the matter;"

It is noteworthy that that provision is contained in the same subsection as is s.27(1)(j) which reads as follows—

"(j) direct parties to be struck out or persons to be joined;"

It is to be noted that costs can only be ordered in favour of a party. It follows that only a party may make an application for costs. The word "party" is not defined in the Act. It is noteworthy that there is no provision for an order for costs in favour of an intervener.

It is to be noted, however, that pursuant to s.29B, but subject to s.27(1)(j) the parties to the proceedings before the Commission shall be—

- (a) The claimant or applicant by whom or which the proceedings were initiated; and
- (b) The other persons, bodies, organizations or associations upon whom or which a copy of the claim or application is served.

It is noteworthy, too, that s.31(1) prescribes that in the context of representation in the Commission—

"Any party to proceedings before the Commission, and any other person or body permitted by or under this Act to intervene or to be heard in proceedings before the Commission, may appear ....."

Further, s.31(1)(c)(i) authorises, inter alia, representation by a legal practitioner where

"(i) that party, person or body, or any of the other parties, persons or bodies permitted to intervene or be heard, is the Council, the Chamber, the Mines and Metals Association, the Minister or the Minister of the Commonwealth administering the Department of the Commonwealth that has the administration of the Commonwealth Act; or"

Both those provisions prescribe a distinct recognition of the difference which exists throughout the Act between parties, interveners and persons permitted to be heard, the latter two categories of participants depending on the Commission's leave, (see also objectors who are in similar case).

S.55(2)(c) refers to objectors as well as applicants. Objectors, in order to participate in the proceedings, must establish that they have sufficient interest to be heard. S.90 permits appeals by parties and interveners, as separate categories. S.49 does likewise (see s.49(3)). What that indicates is that parties and interveners are different categories of participant under the Act. Parties, it will be noted, become parties by virtue of service of process by or on behalf of an applicant or claimant who is, because she/he/it is an applicant, a party (see s.29B(b)).

Under s.72A, there is no prescription for a claim to be made against another person. There is a prescription for an application to be made which makes the applicant a party. No leave is required for the applicant to participate in proceedings under s.72A. However, there is a specific prescription, as there is in s.55, as to how notice of the application is to be given to

persons. It is notice given at large to inform a wide class of persons, i.e. those who will read the WAIG and those who will be informed of its contents, of the application. It is not the limited form of notice given by the service of a document on a limited number of named parties.

Service by the applicant does not entitle a person to participate in proceedings under s.72A, any more than it would under s.55(2). Service itself is a nullity if it purports to be effected under those sections.

What occurs is this. The notice in the WAIG, which is the publication of the application, is a mandatory precondition to a s.72A application being heard. The notice must be published at least 30 days before the date of hearing of the application. The Full Bench must not hear the application (see s.72A(3)) until the notice is published and 30 days have elapsed thereafter.

The Full Bench may then make one or more of the orders applied for whether subject to any condition or limitation or not (see s.72A(4)).

However, there is another provision which specifically prohibits the Full Bench making an order under s.72A. That provision is s.72A(5), which reads as follows—

“72A. (5) The Full Bench shall not make any order described in subsection (2) without giving persons who, in the opinion of the Full Bench, have a sufficient interest in the matter an opportunity of being heard.”

The effect of s.72A(5) is that the Full Bench may not make an order described in s.72A(2) without giving a person or persons who, in the opinion of the Full Bench, have a sufficient interest in the matter an opportunity to be heard.

Such a person or persons do not participate because they are served or because they have seen the application published in the WAIG. Such a person or persons can only participate because the Full Bench forms an opinion that the person concerned has sufficient interest in the matter. If the Full Bench forms that opinion, then that person must be given an opportunity to be heard. That opportunity may result in very limited participation or very wide participation. Such a person is not heard as of right, as a party would be. Such a person (or persons) does not have any right to be heard because of service, but because the Full Bench forms an opinion that the person has sufficient interest.

That is a similar requirement to the s.72A requirement to be fulfilled before a person is given a right to intervene under s.27(1)(k) or to object under s.55(2). It is noteworthy that an intervener is not entitled to claim costs.

It is relevant that there is no specific provision for a person given a right under s.72A(5) to be heard to claim costs. A person with a right to be heard is not a party.

In *Re Western Australian Industrial Relations Commission; Ex parte Confederation of Western Australian Industry (Inc)* (1992) 6 WAR 555 at 569-570, Murray J held that a person afforded an opportunity to be heard in relation to the making of a general order under s.51 could not apply to become a party because s.29B(a) could not apply to s.51 proceedings, which were proceedings instituted by the Commission of its own motion. That is not the case with s.72A, but the manner of institution of the proceedings and the limited access of persons to participate in proceedings which depend upon the Commission's opinion, erects the same kind of obstacle.

A party does not become a party, within the meaning of s.27(1)(c), because the President uses the loose phrase “interested parties” from the Bench. Further, that was not the phrase applied to the other persons who were found to have been found to have sufficient interest to be heard.

Indeed, from s.29B, it seems to me that to be a party, the proceedings in the Commission would have to be proceedings *inter partes*. S.72A proceedings are not such proceedings.

It was not submitted that RGC was entitled to costs otherwise than under s.27(1)(c), nor could be. It was not submitted that it was otherwise provided in the Act than in s.27(1)(c). It is noteworthy that an intervener is not entitled to claim costs. It is noteworthy that neither an intervener nor, in my opinion, a person given a right to be heard under s.72A could seek to speak to the minutes under s.35 (see *ABEU v FCU and Others* 70 WAIG 2086 per Brinsden J), because both are something less than a party.

As I have demonstrated above, s.72A has its own particular and express prescription as to how persons other than the applicant can participate in s.72A proceedings. Accordingly, RGC was not a party to these proceedings. There is no prescription which enables an award of costs to be made to a person who is given leave to be heard under s.72A.

S.27(1)(c) empowers an award of costs to parties only and not to interveners and a fortiori not to persons who establish sufficient interest to be heard under s.72A. As the Full Bench observed in *HSOA and CSA 76 WAIG 1672 (FB)*, if the legislation had intended persons who established that they had a right to be heard as interveners, it would have said so. It did not. The same observation can be made as to persons applying to be heard under s.72A.

I do not think that the rule *generalia specialibus non derogant* applies in this instance, because s.27(c) and s.29 are not general provisions. S.27(1)(c) is a specific provision relating to parties, as is s.29B, and s.72A(5) is a specific provision relating to persons who may participate in s.72A proceedings if they establish sufficient interest and only then.

S.27(1)(c) does not, nor does the Act anywhere empower the Full Bench to order costs upon the application of a person who has established a right to be heard. Further, as I have observed, such a person is not a party, nor is an intervener a party.

There are four categories of participants in proceedings under the Act. These are parties, interveners, objectors and persons who establish that they have a right to be heard.

The difference between some of those categories was referred to by the Full Bench in *HSOA and CSA* (op cit) (see too *TWU and ALHMWU 76 WAIG 4877 (FB)*). S.27(1)(c) specifically and exclusively empowers the Commission to order costs upon the application of parties. If it had intended that the other categories of participant to whom I have referred should have that benefit, then the legislature would have said so.

For all those reasons, there is no power in the Full Bench to grant this application. It should, accordingly, be dismissed.

#### MERIT

The second ground on which the application was made was on the ground of merit.

It was submitted that the application by the CMETSWU was made without reasonable cause and in circumstances where the evidence did not support the application. It was submitted, too, that it is within the discretionary powers of the Full Bench to make a costs order and the Full Bench should exercise its discretion in favour of RGC.

It was also submitted that the CMETSWU could have and should have notified the “parties” and the Full Bench of its intention to withdraw the application at the earliest opportunity, and this it did not do.

Further, it was submitted, the CMETSWU's conduct was such that it might be taken into account in awarding costs.

It was correctly submitted that the award of costs is a matter within the discretion of the Full Bench (see s.27(1)(c)). Obviously, too, as was submitted, s.26 governs the exercise of that discretion (see *Brailey v Mendex Pty Ltd* 73 WAIG 26 at 27 and *Carroll Realty v Chambers* 76 WAIG 1656 at 1657).

As was correctly submitted, the discretion to be exercised by the Commission under the Act is not restricted in the manner in which the discretion of the Federal Commission is in dealing with similar questions under the Workplace Relations Act 1996 (Cth). Authorities relating to the exercise of that Commission's discretion on costs questions are not of great assistance.

There were cited to us a number of cases in which this Commission made orders as to costs. In general, the Commission has, over the years, pursuant to the rule which the Commission applies not ordered costs except in an extreme case. Such a point of view advances the objects of the Act as being conducive to the provision of a cheap means of resolving disputes (see s.6(c)).

However, it was submitted on behalf of RGC, that a proper exercise of the Full Bench's discretion warranted orders being made. We did not entertain the matters raised in paragraphs 7.1 and 7.2 in support of this submission. That is because the Full Bench had dismissed an application to dismiss this application under s.27(1) and, as a result, this matter remained to be determined on the merits.

Accordingly, it was premature to argue that there was no reasonable cause for the application or that the grounds of the application had not been substantiated, because that remained to be determined.

There was another head of submission. That was that costs were thrown away because there was a late notice given of the intention to discontinue. That submission was based on the following facts—

The application was part heard on 14—16 October and 1—2 December 1997. It was further listed for hearing on 19—20 February and 19—20 March 1998.

On 10 February 1998, RGC publicly announced its intention to close its Capel mine in about June 2000. The CFMEU and the CMETSWU knew of this on that day. On 13 February 1998, the CMETSWU brought an application in the Commission to vary the relevant award, the Mineral Sands Award 1991. The complaint of the RGC was that, notwithstanding the CMETSWU's knowledge of the closure and its application to vary the award, RGC's solicitors were only notified at 3.48 pm on Wednesday, 18 February 1998 of the CMETSWU's intention to withdraw its application, that is, the day before the matter was sought to be discontinued.

It was asserted from the bar table, on behalf of the CMETSWU, that a final decision to discontinue this application was not made until the morning of 18 February 1998. This was because it was not a decision able to be readily made, i.e. whether to abandon the investment so far made in this application and proceed by way of an application to vary the award, or whether to continue with this application. Those facts were not disputed.

It is quite feasible that reaching such a decision might take a few days and RGC had some notice, as a result of the filing of the application to vary the award, that the "litigation" might take another course. Further, the final decision was made within eight days of the RGC's announcement of impending closure. I do not think, therefore, that RGC can criticise the CMETSWU for delay in reaching a decision to discontinue and notify RGC about it.

I am not persuaded that the policy of the Commission to award costs only in extreme cases should be departed from, nor am I persuaded that these events constitute an extreme case (see *Brailey v Mendex Pty Ltd* (op cit)) meriting an award of costs upon the application of RGC. Further, nothing has been said, nor has it so persuaded me (indeed, it was not so submitted) that the Full Bench should depart from this policy in this case.

The allegations concerning the conduct of the CMETSWU are not relevant to the question of whether costs should be awarded.

I take into account that these proceedings were brought and the applicant for costs, RGC, put to the costs of participating when the CMETSWU terminated the proceedings which were brought.

Given the circumstances in which the termination occurred, and the facts asserted by Mr Schapper, it is clear that the CMETSWU's decision to discontinue was, at least in part, caused by the action of RGC, namely its announcement as to the future of its operation.

Proper consideration of s.26(1)(a) and (c) and the application of the principle in *Brailey v Mendex Pty Ltd* (op cit) would lead to the dismissal of the application for costs by RGC, even if it were competent, which it is not.

I would also add that to interpret the statute, as I have done, attributing the ordinary and plain meaning to the words and reading the relevant sections in the context of the whole of the statute does not result in ambiguity or absurdity, nor does in doing so result in a construction inconsonant with the meaning and purpose of the statute as a whole. (See *AEEFEU v Minister for Health* 71 WAIG 2253 (IAC) and *Cooper Brookes (Wollongong) Pty Ltd v FCT* (1981) 35 ALR 151).

For those reasons, I would dismiss the application.

#### COSTS OF THIS APPLICATION

The applicant organisation sought the costs of the application by RGC for costs. However, the application was not, within the principle in *Brailey v Mendex Pty Ltd* (op cit), one which I am persuaded should be granted, even were the application competent, which it is not. Further, I am of the opinion that no

power exists to order RGC to pay the CMETSWU's costs. S.27(1)(c) empowers the Commission to order any party to pay "costs and expenses" to any other party and RGC was never a party. I would dismiss that application.

COMMISSIONER J F GREGOR: On the 20 March 1998 the Full Bench heard submissions from RGC Mineral Sands Limited (RCG) that it ought be awarded costs upon the discontinuation of this matter.

The matter before the Full Bench originated with an application by the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch (CMETU) under s.72A of the Industrial Relations Act, 1979 (the Act). That section refers to coverage of employee organisations. An organisation is defined within the section and it, or an employer or the Minister can apply to the Full Bench to obtain exclusive representation of a particular class or group of employee employed in an enterprise or alternatively seek an Order that an organisation does not have such rights or that the organisation does not have the right to represent the industrial interests of particular class or group of employees employed in an enterprise who are eligible for membership of the organisation.

The Full Bench is not to hear such an application before it is published in the Industrial Gazette and 30 days have expired since the date of publication. The Full Bench is not make any order without giving persons who, in its opinion, have sufficient interest in the matter an opportunity to be heard.

When the proceedings commenced on the 14 October RGC appeared and, pursuant to s.72A(5), was given the opportunity to be heard. This action by the Full Bench did not make RGC a party to the proceedings. Section 72A is one of the sections under the Act which is not inter partes. Under s.27(1)(c) the Commission may order any party to a matter to pay to any other party such costs and expenses including the expenses of the witness as specified in the Order, but there are to be no costs allowed for services of any legal practitioner. Clearly those provisions relate to inter partes matters. They are designed to cover the situation where parties can be compulsorily required to take part in matters before the Commission and that is not the circumstance with proceedings under s.72A. Shortly put there is power for the Commission to award costs to parties to matters. Section 72A is not a section which creates inter partes involvement, the powers vested in the Commission by s.27(1)(c) are not enlivened in these circumstances, therefore the Commission has no jurisdiction to make an award of costs sought.

The policy of the Commission, as expounded in decisions of the Full Bench, is that only in extreme cases will there be an award of costs. In this instance what is suggested by RGC is because there was what it alleges to be late notice of discontinuance after it had announced the closure of its mine, that creates the circumstance where the Commission should award it the costs for the whole of the proceedings which took place in October and December 1997. I cannot see how it was illegitimate for the applicant union to discontinue the proceedings when it found out the mine was to close. The Union was entitled to consider its options. The time it took was not inordinate given the nature of these proceedings. It does not create the situation where it could be said that there were extreme circumstances which justify the award of costs against it.

I would dismiss the application for costs first on the grounds of jurisdiction and if I am wrong concerning the jurisdiction upon the tests to be applied there is no merit in any event.

COMMISSIONER A R BEECH: I have had the advantage of reading in advance the Reasons of His Honour the President and Gregor C. I too agree that the applications should be dismissed and I have nothing to add.

THE PRESIDENT: For those reasons, the applications are dismissed.

Order accordingly

APPEARANCES: Mr D H Schapper (of Counsel), by leave, on behalf of the applicant organisation

Mr D Heldsinger (of Counsel), by leave, on behalf of RGC Mineral Sands Ltd

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No 1401 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH.

9 April 1998.

*Order.*

This matter having come on for hearing of an application pursuant to s.27(1)(c) of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act") before the Full Bench on the 20th day of March 1998, and having heard Mr D. H. Schapper (of Counsel), by leave, on behalf of the applicant organisation and Mr D Heldsinger (of Counsel), by leave, on behalf of RGC Mineral Sands Ltd, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 9th day of April 1998, it is this day, the 9th day of April 1998, ordered and directed as follows—

- (1) THAT the application pursuant to s.27(1)(c) of the Act filed on the 26th day of February 1998 by RGC Mineral Sands Ltd be and is hereby dismissed.
- (2) THAT the oral application by the applicant organisation pursuant to s.27(1)(c) of the Act be and is hereby dismissed.

By the Full Bench

[L.S.]

(Sgd.) P. J. SHARKEY,  
President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No 1401 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH.

4 December 1997.

*Order.*

This matter having come on for hearing before the Full Bench on the 1st and 2nd days of December 1997, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the applicant organisation, Ms C Bahemia (of Counsel), by leave, on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr A D Lucev (of Counsel), by leave, on behalf of RGC Mineral Sands Ltd Capel, and Mr A Power (of Counsel), by leave, on behalf of The Australian Mines and Metals Association Incorporated, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 4th day of December 1997, ordered and directed as follows—

- (1) THAT all witnesses to be called give evidence in chief by written statements to be filed and served 14 days before the 19th day of February 1998.
- (2) THAT the opening statement of Counsel for RGC Mineral Sands Ltd Capel be filed and served 14 days before the 19th day of February 1998.
- (3) THAT this matter be and is hereby adjourned for further hearing and determination to 9.00 am on Thursday, the 19th day of February 1998 and Friday, the 20th day of February 1998.

- (4) THAT this matter be listed for a further two days to be fixed after consultation with the President's Associate, such listing to be the subject of notification by a notice of hearing of the dates and times so fixed.

By the Full Bench

[L.S.]

(Sgd.) P. J. SHARKEY,  
President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No 1401 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH.

19 February 1998.

*Order.*

This matter having come on for hearing before the Full Bench on the 19th day of February 1998, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the applicant organisation, Mr M Llewellyn on behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr A D Lucev (of Counsel), by leave, on behalf of RGC Mineral Sands Ltd Capel (hereinafter referred to as "RGC"), and Mr A Power (of Counsel), by leave, on behalf of The Australian Mines and Metals Association Incorporated, and the applicant organisation having sought leave to discontinue the application, and the Full Bench having determined therefor, pursuant to s.27(1)(a)(ii) and (iv) of the Industrial Relations Act 1979 (as amended), that it refrain from further hearing or determining the matter, upon the applicant organisation having advised its discontinuance of the application and whereas Counsel for RGC sought liberty to apply pursuant to s.27(1)(c), it is this day, the 19th day of February 1998, ordered and directed as follows—

- (1) THAT the Full Bench refrain from further hearing and determining application No. 1401 of 1997 herein..
- (2) THAT there be liberty to the abovenamed RGC to apply on the question of costs provided that the said RGC give notice in writing of its intention to apply to the applicant organisation or its representatives and to the other persons represented herein and to the Commission, within 7 days of the 19th day of February 1998.

By the Full Bench

[L.S.]

(Sgd.) P. J. SHARKEY,  
President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

No 1401 of 1997.

BEFORE THE FULL BENCH  
HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH.

9 April 1998.

*Order.*

This matter having come on for hearing before the Full Bench on the 14th, 15th and 16th days of October 1997 and 1st and 2nd days of December 1997, and having heard Mr D H

Schapper (of Counsel), by leave, on behalf of the applicant organisation, Ms C Bahemia (of Counsel), by leave, behalf of The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, Mr A D Lucev (of Counsel), by leave, on behalf of RGC Mineral Sands Ltd and Mr A Power (of Counsel), by leave, on behalf of The Australian Mines and Metals Association Incorporated, and the Full Bench having on the 14th day of October 1997, determined that The Australian Workers' Union, West Australian Branch, Industrial Union of Workers, RGC Mineral Sands Ltd and The Australian Mines and Metals Association Incorporated had sufficient interest to be heard in relation to the application herein pursuant to s.72A(5) of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act"), and the Full Bench having on the 1st day of December 1997, determined that the application by The Australian Workers' Union, West Australian Branch, Industrial Union of Workers pursuant to s.27(1)(a) of the Act be dismissed, it is this day, the 9th day of April 1998, declared and ordered as follows—

- (1) THAT the Full Bench was satisfied, pursuant to the said determination of the Full Bench, that The Australian Workers' Union, West Australian Branch, Industrial Union of Workers and The Australian Mines and Metals Association Incorporated and RGC Mineral Sands Ltd had sufficient interest to be heard in relation to application No 1401 of 1997 herein pursuant to s.72A(5) of the Act.
- (2) THAT the application filed on 28th day of November 1997 by the Australian Workers Union, WA Branch, Industrial Union of Workers pursuant to s.27(1)(a) of the Act, pursuant to the said determination of the Full Bench, be and is hereby dismissed.

By the Full Bench

[L.S.]

(Sgd.) P. J. SHARKEY,  
President.

## COMMISSION IN COURT SESSION— Matters dealt with—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Education Department of Western Australia

No. CR 168 of 1996.

Cleaners and Caretakers (Government) Award, 1975

No. 32 of 1975.

Gardeners (Government) Award, No. A 16 of 1983.

COMMISSION IN COURT SESSION,  
CHIEF COMMISSIONER W.S. COLEMAN.  
COMMISSIONER J.F. GREGOR.  
COMMISSIONER A.R. BEECH.

2 April 1998.

*Reasons for Decision.*

COMMISSION IN COURT SESSION: The Applicant, the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, seeks to increase wages for all members employed as cleaners or gardeners by the Hon. Minister for Education by 21% in accordance with Section 2—Enterprise Bargaining Statement of Principles—August, 1996 (76 WAIG 3368 at 3369).

The matter comes before the Commission in Court Session following a break down in negotiations to consummate an enterprise agreement. It is not referred with the agreement of the parties as the Respondent maintains the view that negotiations should continue. In adopting this position the Hon. Minister for Education "objects to and opposes the claim". On this premise it is submitted that the Commission in Court Session should desist from arbitrating the claim but in the event that it does, there should not be a wage increase.

The Chamber of Commerce and Industry of Western Australia, the Hon. Minister for Labour Relations and the Trades and Labour Council made submissions on the implication of the Wage Fixing Principles generally and the Special Case Principle in particular.

In summary the Chamber supported by the Minister submitted the following observations—

- With the focus of the wage fixing system on enterprise bargaining the Commission should be reluctant to arbitrate.
- In the first instance the Commission in Court Session must satisfy itself that there is no possibility of further negotiation between the parties which could result in an enterprise agreement. It is insufficient that the Commission constituted as a single Commissioner in the first instance when conference proceedings were undertaken pursuant to Section 44 of the Act considered that further conciliation was unavailing. The Commission in Court Session must now conclude that for itself before embarking on a determination of the claim under Section 2—Enterprise Bargaining, Statement of Principles—August, 1996 (op. cit.).
- The three arbitrated safety net adjustments amounting to \$24.00 are fully absorbable against any arising increase from this claim.
- As the Special Case requirements are to be met under Section 2—Enterprise Bargaining, Statement of Principles—August, 1996 (op cit), the Commission must establish the terms of the award safety net. Consistent with this and the thrust of Structural Efficiency, the award should be varied for the Minimum Rates Adjustment.
- The Applicant must establish the actual implementation of efficiencies commensurate with the wage increase being sought. In this respect it is noted that the increase being claimed is identical for both classifications. Enterprise specific arrangements must be established on a firm base.
- Particular attention must be paid to the potential for flow-on, particularly into the area of employment covered by the Contract Cleaners (Ministry of Education) Award.
- The outcome of this claim will be a variation to the Award.
- Arbitrated Safety Adjustments incorporated into the Award are fully absorbable against the claim.

In endorsing these submissions the Hon. Minister emphasises that the Commission must ensure that—

- the process of structural efficiency continues;
- that productivity outcomes must be identified and measured;
- the public interest is served by an adherence to the Wage Fixing Principles;
- absorption of Arbitrated Safety Net Adjustments and a return to each of the parties (employees, employer and government) should be achieved if the claim is at all successful; and
- in determining the claim the Commission should be mindful of negotiations between the parties in endeavouring to ensure that the matter is resolved on terms that could reasonably have been agreed to between them.

The Trades and Labor Council accepts that with enterprise bargaining as the focus of the Wage Fixing System the Commission should be reluctant to arbitrate. However, in promoting

enterprise agreements the Wage Fixing Principles should not frustrate or in any way derogate from the Industrial Relations Act. Disputes must be addressed within the terms of the Act and arbitrated if necessary, consistent with Section 32 and Section 44 of the Act. In the circumstances of this claim an order is being sought pursuant to Section 44 of the Act. It will not, in the Council's view, result in an award variation. Under the terms of the Wage Fixing Principles the outcome of the claim is not absorbable against the \$24.00 per week arbitrated safety net adjustments. However, it is accepted by the Council that there should not be any "double dipping" as far as payments for productivity outcomes are concerned. As to the character of the Cleaners and Caretakers (Government) Award, the Council notes that it is a minimum rates award (see Full Bench Matter No. 965 of 1993 [74 WAIG 38]) and that the Order being sought would be subject to review after six months. The opportunity may present for the minimum rates adjustment to be undertaken during the review period. It should be recognised that this matter is being arbitrated against a background of protracted enterprise bargaining negotiations and the move by Government to privatise school cleaning services. As to the claim itself the Council notes—

- A wage increase should be commensurate with the productivity outcome.
- Structural efficiency requirements are met under the terms of the Wage Fixing Principles when safety net adjustments have been awarded.
- There is no formula under the Principles which directs the basis upon which the rewards of productivity increases are to be "split" between employees, employers and government.
- The concern about "flow-on" in the context of arbitration under the Enterprise Bargaining Principle misapprehends the nature of a Special Case.

Consistent with the Wage Fixing Principles and the Act, the Commission in Court Session satisfied itself that the possibility of a conciliated outcome to the claim was exhausted. Following negotiations between the parties and a series of conferences in the Commission, the claim remained for a wage increase of 21%. This continues to be met with opposition and the position from the Hon. Minister for Education that there should not be any wage increase at all. The Hon. Minister does not agree that the matter should be arbitrated.

In the absence of the Hon. Minister for Education agreeing to any wage increase based on productivity gains arising from what it sees as initiatives implemented since 1993, the Applicant Union finds itself in the position of—

- now having to demonstrate the extent of productivity outcomes for cleaners and gardeners when it accepted the Department's initiatives for change albeit that that was done under the threat to job security of its members.
- facing opposition to the claim which is tantamount to a rejection of any productivity increase when there has been public acknowledgment in the Parliament by the Hon. Minister that productivity has increased by 30%.
- seeing the opportunity to reach a settlement frustrated by what it sees as an artificial limitation imposed on the extent to which "past productivity improvements can be recognised by Government under enterprise bargaining".

In advocating its claim the Applicant Union submits that—

- The application covers low paid employees. Since 1991 the only wage increases have been from arbitrated safety net adjustments.
- The application meets the Special Case requirements under the Wage Fixing Principles in that—
  - (i) it is the only avenue by which the dispute between the parties can be determined.
  - (ii) as a matter of equity and consistent with the Wage Fixing System, employees should be properly rewarded for productivity gains. The circumstances under which cleaners and gardeners have sought to establish an enterprise bargain should be compared with outcomes

and commitments required from other groups within the enterprise ie teachers, public servants and other teaching support staff. An increase in productivity for cleaners and gardeners has been recognised in negotiations with the Department and by the Minister.

- (iii) it will promote and facilitate further enterprise bargaining and structural efficiency.
- (iv) here, where it is submitted there has been a failure to genuinely bargain, the Special Case is the only avenue for recourse.

The negotiations on the enterprise bargaining agreement were conducted with an assurance of job security. That commitment has been breached.

- (v) as low paid employees, cleaners and gardeners have been discriminated against. The Special Case provisions under the Wage Fixing System affords them protection. In the main the workforce comprises women, sole parents and those seeking to supplement low incomes.
- (vi) resolution of the claim under as a Special Case is consistent with the terms of Section 6 and Section 26 of the Act.

- The claim for a 21% increase for cleaners and gardeners should not be offset by any of the arbitrated safety net adjustments. Structural initiatives undertaken pursuant to those increases have been quite separate from the productivity outcomes implemented by the Department. The outcome of a Special Case is not an agreement nor a consent award variation.
- In the alternative the absorption of the \$8.00 per week adjustments would result in a wage increase of 15%.
- A 21% wage increase recognises a return of 9% to the employer. The productivity dividend and the wage outcome are accommodated under a general productivity improvement since 1992-1993 of 30%.
- The special circumstances of the claim justify a retrospective date of operation for the increases. It should apply from 22 May, 1997.
- In general terms this claim has arisen from an increase in the areas cleaned by the day labour workforce from 186 square metres per cleaner per hour to 256 square metres in 1992 and a subsequent increase of 25% of this rate over the next several years. With respect to gardeners the application of the "gardening formula" in 1993 is claimed to have generated productivity improvements to a comparable level. Significant multi-skilling, charges to work practices, more efficient ground watering programmes and the operation and maintenance of new equipment and machines have contributed to higher levels of efficient ground watering programmes and the operation and maintenance of new equipment and machines have contributed to higher levels of efficiency and productivity.

Changes to work arrangements for cleaners and gardeners go beyond a reduction in FTE's or the number of people employed. Furthermore, the Applicant Union is committed to the implementation of further productivity initiatives. The contribution of both groups of employees to the productivity outcome of 30% increase is claimed to be comparable.

In light of statements made by the Hon. Minister for Education to Parliament in September 1993 about productivity improvements in the Department's cleaning services, the Applicant Union claims that the onus is on the Respondent to reveal the cost associated with meeting the claim in these proceedings. It is submitted that the issue here is the recognition that should be ascribed to productivity outcomes.

It is claimed that the recognition given to changes which increased productivity by 30% have not been translated into wage outcomes and that the

Respondent continues to refuse to accept that this should be taken into account when an enterprise bargaining was being negotiated. It is this that attracts Special Case consideration.

- In the circumstances under which the Applicant Union sought to negotiate on enterprise bargaining, it is submitted it is little wonder that the Cleaners and Caretakers (Government) Award was not varied for the Minimum Rates Adjustment. Priority was given to preserving jobs in an environment of significant change. The responsibility to undertake the Minimum Rates Adjustment did not rest solely with the Union, it was also the Hon. Minister's responsibility.

Through evidence presented by Ms Jackson, the Assistant Secretary of the Union, the Commission was taken through the chronology of events that culminated in the break down in negotiations to secure an enterprise agreement.

- Enterprise bargaining had commenced in 1991 under initiatives introduced by the Government. All Unions with members employed in the Education Department were represented in a single bargaining unit.
- In February 1993 a campaign was mounted by the Union to retain day labour cleaning and gardening services.
- With the election of a new government early in 1993, the policy on enterprise bargaining was reviewed. This was seen by the Union to be done within the context of initiatives to introduce Workplace Agreements.
- From notes now available the Ministry of Education was, by July, 1993, in a position to implement a strategy for rationalising cleaning and gardening services. The objectives were—

#### “2.2 Cleaning

To enhance the productivity efficiency of the day labour workforce by 30% in one year based on increasing the cleaning rate from 186m<sup>2</sup>/hr to 250m<sup>2</sup>/hr (internal cleaning allocation).  
Implications—

- The project will save 330 FTE when fully implemented
- The project should save a gross \$3.5 million in its first year, with \$7.0 million per annum thereafter.

#### 2.2.2 Gardening

To implement the new gardening formula in all Ministry sites.

Implications—

- The project will save 150 FTEs when fully implemented
- The project should save a gross \$1.5 million in its first year with \$3.5 million per annum thereafter”

(Exhibit C: Cleaning and Gardening Rationalisation Project Background Paper for the Ministry Corporate Executive)

- The “Industrial Relations Strategy” attached to Exhibit C prepared by the Employee Relations Division of the Ministry of Education identified that the preferred option was for “a productive and efficient day labour workforce”. Contract labour was not the preferred option.

(Industrial Relations Strategy Cleaning and Gardening Executive Discussions—Exhibit C).

- On 29 August, 1995 the Hon. Minister for Education informed the Legislative Council Standing Committee on Estimates and Financial Operation that:

“The Government has gone through all the activities of the Education Department and sought to contract out where appropriate and put the savings so effected into other education related activities. For example, with the cleaning of schools, a 30% increase in

productivity has been achieved by the day labour workforce. That was brought about by comparing its performance with the private sector which is operating in some schools. That saving of around \$10M a year has been returned to the Education budget for other education related activities.”

(Hansard Legislative Council Tuesday, 29 August, 1995, page 70)

- The Minister's Statement was reiterated to the Legislative Council Estimates Committee on 29 September, 1993—

“I have referred already also to cleaning and gardening. That is, a significant cost factor in the Education Budget. We have sought to increase the productivity of our employees in that areas by about 30% which will bring them up to the level of productivity required by the private sector. The voluntary redundancy process will provide significant savings in due course. Once the redundancy process has been finalised, savings will be in the vicinity of about \$10M a year.”

(Hansard Legislative Council Estimate 29 September, 1993, page 48—Exhibit C)

- At the first meeting of the Cleaning and Gardening Project Reference Group in September, 1993 an enterprise bargaining agreement with a 4% wage increase was proposed by Ministry of Education officers. This was unacceptable to the Union. It was seen to include the loss of approximately 1100 jobs and a 30% productivity improvement together with contracting out arrangements.
- Intense negotiations were undertaken under a deadline of 20 October 1993. On 18 October the Union was advised that the Executive of the Ministry of Education had endorsed an enterprise bargaining package with a 6½% wage increase. The Union understood that two days later, the offer was withdrawn at the direction of the Government.

The Union's position was that there was no prospect of implementing an agreement, including initiatives to secure a 30% increase in productivity without an accompanying wage increase. The Government's position expressed through the Chief Executive Officer of the Ministry of Education was that there would be no wage increase to accompany these efficiency measures. Furthermore, that the Government would honour the commitment to reduce the size of the workforce on a voluntary basis and to retain the special severance offer subject to the implementation of—

- a cleaning formula based on 250m<sup>2</sup>/hr;
- implementation of the revised gardening formula; and
- operational flexibility to ensure smooth implementation of the formula.

(Exhibit Book 1—Attachment 17)

- Conference proceedings ensued in the Commission and an Order issued pursuant to Section 44 (6)(ba) of the Act on 5 November, 1993—

“(1) THAT the parties confer with a view of implementing efficient work practices by mutual agreement independently of any wage adjustment;

(2) THAT the Respondent refrain from implementing the changed work practices referred to in its letter to the Applicant dated the 2nd day of October, 1993, before midnight on the 15th day of November, 1993;

(3) THAT the Respondent refrain from taking any steps to prejudice the continued employment of those employed by the Respondent as school gardeners or school cleaners by reason only of their failure to agree on or before the 15th day of November, 1993 to changes in work

practices proposed by the Respondent in its letter to the Applicant dated the 2nd day of November, 1993;

(Exhibit book 1—Attachment 28)

- The Union asserts that notwithstanding the terms of the Order, the Ministry pursued the implementation of efficiency initiatives with little or no reference to the Union.

It was submitted that the Union went so far as to propose the implementation of a draft agreement without any wage increase but which included a consultative process. This was rejected. The Union maintains that its members continued to support the introduction of change to cleaning and gardening services in order to achieve the retention of the day labour workforce. (Transcript pp 146-149).

- In December 1993 the Ministry of Education advised its employees that the project team charged with the responsibility of rationalising cleaning and gardening services had confirmed the following key elements of change—

- “retention of day labour cleaners and gardeners;
- increased productivity competitive with private sector;
- the offer of a voluntary severance package;
- voluntary redundancy and no sackings.”

(Exhibit Book 1—Attachment 43)

- Although the Union continued to seek to negotiate an enterprise agreement during 1994 the focus of attention remained on retaining the day labour workforce. The Ministry of Education implemented the changes during 1994 that had been identified under its rationalisation programme. (Transcript p 152).
- In April, 1995 the Minister for Education informed the Union that he was now ready to discuss “proposals for the improvement of services related to education delivery on a basis that provides opportunity for salary gains within national wage-fixing guidelines and the Structural Efficiency Principles of the State Industrial Relations Commission”. The Minister explained that a key element of the Government’s approach would be a “minimum 5% pay increase, achieved through an Enterprise Agreement and negotiated with your Union”. It was a “pre-condition of negotiations with the Union that an application to the Australian Industrial Relations Commission must be withdrawn for the duration of negotiations and for the duration of any agreement struck between the parties. (Exhibit Book 1—Attachment 46).
- The Union rejected the conditions imposed by the Minister for Education. It understood the offer to talk about enterprise bargaining to be predicated on further efficiencies and not to give consideration to initiatives implemented in 1993 and 1994 (Transcript pp 154-155).
- The pre-conditions concerning the discontinuance of the Federal Award application was removed by the Minister so that negotiations could commence. (Exhibit Book 1—Attachment 48).
- The Union’s position on negotiations required a commitment from the Minister to a timetable for discussions to complete an enterprise bargain and that wage increases provided recognition of productivity measures implemented by members to date. (Exhibit Book 1—Attachment 49).
- On 1 May 1995 negotiations were conducted in the Australian Industrial Relations Commission. They were wider than the interests of cleaners and gardeners. The Department’s position was that a wage increase of 5% was available.
- The Union came to hear of initiatives being taken to implement further reforms in the cleaning service through “contracting out”. In October 1995 the

Union filed an application in the Federal Commission. The Union asserts that at that time the Minister’s representative indicated that no definite decision had been made. However, some days later there was a public announcement that over the next year 160 schools would be cleaned under contract. The Union’s strategy was to fight against “contracting out” and to protect the re-deployment and redundancy provisions for its members. Industrial action was taken late in 1995. Some contracts were let in December 1995 and more during 1996. The Union estimates that in all 1100 employees were made redundant. (Transcript p160).

- On Monday, 19 February, 1996 the Education Department of Western Australia presented the Union with a proposed enterprise bargaining agreement. The Union submits that although there was no specific wage increase, the terms proposed three adjustments over the duration of the agreement (18 months). The first of these payments was to compensate members for “past productivity” increases. The Union informed its members that the proposal included the following conditions as payment of the second and third increases—

- an increase in the area to be cleaned by each employee. The Department proposed that the area to be covered would then be 400m<sup>2</sup>.
- multi-skilling of cleaning and gardening duties in remote schools.
- that some current duties being performed by cleaners be “transferred to other providers” i.e. contracted out or done by volunteers eg lawn edges, clean-up verandahs and covered assembly areas sweeping hard surfaces and pruning and tree lopping.
- agreement to further reductions in gardeners hours and/or numbers because of reticulation.
- the implementation of the gardening formula in all schools.
- award variations to change RDO entitlements of gardeners, annualise the 17½% holiday pay loading, incorporate all allowances into the base rate and provide for greater flexibility of working hours.

The Union’s recommendation to its members was for an immediate 15% wage increase be demanded of Government “in recognition of past productivity and to demonstrate their good faith in the bargaining process” (Exhibit Book 1—Attachment 59).

- On 26 March 1996 the Department offered the Union a “structured wage increase to cleaners and gardeners of 9%”. This included the two arbitrated safety net adjustments of \$8.00 per week. The increase comprised—
- “4% reflecting the two \$8.00 per week safety net increases already granted to reflect past productivity;
- 1% additional for past productivity payable immediately on registration; and
- 4% on the basis of 2% nine months after registration with a further 2% nine months after the first instalment contingent upon the attainment of agreed productivity increases”.

(Exhibit Book 1—Attachment 60)

- This offer was rejected outright as “it is an affront to the Union and its members when having regard to the recognition by all parties of past productivity improvement of up to 30%”. The Union called on the Minister for Education to direct his representatives to “enter into genuine enterprise bargaining negotiations” (Exhibit Book 1—Attachment 60).
- The Union acknowledges that its members had set their sights on a 15% pay rise. This had been the figure settled on with respect to the teachers and that similar amounts were likely for Government officers and public sector staff employed within the Education Department. (Transcript p 161)

- Enterprise bargaining negotiations were undertaken through a consultative structure similar to that which had been established in 1993. However, the Union's concerns about progress were communicated to the Minister for Education in March 1996. In June, 1996 the Union considered that negotiations had stalled. In a letter to the Minister dated 5 June, 1996 the Union states—

“The Education Department officers have indicated that the Union's claim of 12-14% is far in excess of negotiating constraints approved by the Cabinet Sub-Committee on Labour Relations. The Union has been advised that the Department may consider a quantum of 10.3%. It is also understood that any increase in excess of this may lead to the Government deciding to further contract out day labour schools”

(Exhibit Book 1—Attachment 66)

The Union sought to have these constraints withdrawn and to have the negotiations completed by 30 June, 1996.

- On 11 June 1996 the Project Manager, Facilities and Services advised—

“Unfortunately, the Department is unable to agree to the sum requested by the Union (12-14%).

In view of the Government agreeing to the third \$8.00 increase to cleaning and gardening staff, the Department has no other option but to discount the previous offer of 9.5% by approximately 2%. Effectively the Department is now offering 7.5% to accommodate proposed productivity improvements to be realised in an Enterprise Bargaining Agreement over a term to be agreed.

The Department has examined the possibility of absorbing the toilet cleaning allowance into the base weekly wage. This, in effect equates to another 1%. Additionally, the annualisation of the leave loading could also realise a further 1.3% increase. Together with the productivity improvement, this represents a wage incentive of about 10%. The Department is still open to discuss an increase in this incentive through conditions trade-off.

The final offer will require approval by the Cabinet Sub-Committee on Labour Relations.”

(Exhibit Book 1—Attachment 68).

- Arising from proceedings in the Commission on 12 June 1996 it was suggested to the parties that—

“(1) That the parties provide the Commission with sufficient information to allow the Commission to issue a Recommendation on the value of past productivity; or

(2) That the parties conclude an agreement for a short term on the issues other than past productivity. This would have the advantage to the Respondent of introducing the agreed current productivity measures and would have the advantage for the applicant's members that an agreement would be able to be concluded and an increase paid. The balance of the union's claim would then be able to be further negotiated and, if necessary, the Commission would be available to assist the parties”

(Exhibit Book 1—Attachment 69)

- This proposal was unacceptable to the Department and its preferred position was to “continue negotiations with the Union to bring this matter to a satisfactory resolution without recourse to arbitration”. (Exhibit Book 1—Attachment 70).
- On 27 June 1996 the Department put forward its “final pay offer” on a “without prejudice” basis. In summary, this was a 12% increase for cleaners and a 10% increase for gardeners over an 18 month period (Exhibit Book 1—Attachment 72).

- The Union's response was an offer to settle an enterprise bargaining agreement on the following terms—

“1. A minimum 3% wage increase based on past productivity.

2. The Union acknowledges but disagrees with Department's position that 6% has already been paid for past productivity by three Arbitrated Safety Net Adjustments to the relevant Awards. The Department's position in no way restricts the Union's claim for a further increase based on past productivity.

3. The Union will have its claim for a further past productivity payment referred to the Chief Commissioner as a special case under the wage fixing principles.

4. The Union agrees to a 6½% increase for future productivity initiatives but all initiatives will be the subject of negotiation during the term of the agreement.

5. The term of the agreement to be 12 months with a payment of 6½% (3% past productivity and 3½% for future productivity initiatives) from 1 July 1996.

6. A 3% wage increase for future productivity initiatives from January 1, 1997.”

(Exhibit Book 1—Attachment 73)

- Following further conference proceedings the Commission was advised that the Department understood that the Union would agree to an enterprise agreement on the basis of—

- 6% for past productivity from 1 July 1996;
- 1½% from 1 December, 1996 for a commitment to negotiate cleaning and gardening reform; and
- negotiation of productivity improvements and other reforms for implementation after the duration of the 12 month agreement.

This was unacceptable to the Department and the counter-offer of 9½% increase for both cleaners and gardeners spread over the first 12 months of an 18 month agreement, effective from 1 July, 1996 was to remain open until 4.00pm on Friday, 5 July, 1996.

Further, the Department advised that if the offer was not accepted within the time frame specified, it would be withdrawn in total and the Department would “consider all options to deliver a much needed wage increase for school cleaners and gardeners, and to continue the cleaning and gardening reform agenda”. (Exhibit Book 1—Attachment 76).

- Under the auspices of the Commission, negotiations continued and a revised offer on a “without prejudice” basis was submitted by the Department on 16 July, 1996 for consideration by the Union under a revised timeframe. In summary, the offer provided—

“Salary Increase—

- a 6% increase for both cleaners and gardeners in recognition for future productivity to be realised through initiatives specified.
- the first payment of 3% to be paid with effect from 1 July 1996 (Subject to Government approval) and the second payment of 3% paid six months later.
- the term of the Agreement would be 12 months.

Cleaning—

- Review of Staffing formula to realise an increase in internal cleaning from 250m<sup>2</sup> per hour to 315m<sup>2</sup> per hour;
- Introduction of outcomes based cleaning.
- Universal application of the staffing formula for cleaning.
- More flexible staffing structure for work schedules.

- Variation to award conditions to enhance efficiency and effectiveness and to cater for the special needs of the Department and cleaners in remote and isolated areas.

Gardening—

- Installation of automatic reticulation in all schools and a review of the staffing formula for gardening.
- The application of improved gardening techniques.
- Universal application of the staffing formula for gardening.
- Combining gardening and non-gardening duties in special circumstances.
- Transfer of some functions to other providers, for example, tree lopping/removal and major pruning.
- Variation to award conditions to enhance efficiency and effectiveness and to cater for the special needs of the Department and gardening in remote and isolated areas.

Past Productivity—

The Department confirms that Government policy and its own position on past productivity is for the matter to be finalised as a part of this agreement. However in view of the parties' inability to reach agreement on this issue the Department proposed separating past productivity from these negotiations.

As this position is inconsistent with the concept of enterprise bargaining and Government policy, specific Government approval is required.

Whilst recognising the Union's right to apply to the Commission to have past productivity arbitrated as a "Special Case" in accordance with current wage fixing principles, the Department remains willing to continue to discuss this matter."

(Exhibit Book 1—Attachment 78)

- The Union sought clarification of the offer. It notes that approval of the offer was not forthcoming and the opportunity from the negotiations was not endorsed by the Government.

The Union's view continued to be that past productivity had to be finalised for the purpose of enterprise bargaining agreement as members were unwilling to look at any future implementation of significant change (Exhibit Book 1—Attachment 79 and Transcript p 169).

- As a result of discussions in conference proceedings before the Commission a way forward was developed for agreement. This involved—
  - the determination of a wage increase for past productivity as a Special Case.
  - the parties conferring on the issue of future productivity initiatives with a view to finalising an Enterprise Agreement on a timetable to be set.
  - discussion by the parties forthwith to conclude a 6% enterprise bargaining agreement for productivity initiatives. Pursuant to this the Union would put a proposal to the Department by 12 noon, 25 July 1996. The Department would then prepare a proposal for the Cabinet Sub Committee for 1 August 1996. An operative date of 1 July 1996, would be sought. The agreement would have a 12 month term.

EDUCATION DEPARTMENT OF  
WESTERN AUSTRALIA

ENTERPRISE BARGAINING AGREEMENT

The Education Department of Western Australia -and- The Australian Liquor, Hospitality and Miscellaneous

Workers Union, Miscellaneous Workers Division, Western Australian Branch agree—

1. THAT the quantum of wage increase for past productivity be referred for hearing and determination and the parties request that it be dealt with by the CICS as a Special Case.
2. THAT the parties confer on the issue of future productivity initiatives with a view to finalising an Enterprise Agreement
3. THAT the parties agree that an Enterprise Bargaining Agreement be concluded for 6% for productivity initiatives to be discussed forthwith. The union undertakes to put a proposal to the Department by 12 noon 25 July 1996. The Department undertakes to prepare a proposal for Cabinet Sub Committee for 1 August 1996.
4. THAT the parties seek to preserve the operative date 1 July, 1996.
5. THAT the term of the agreement be for twelve months.

Signed.....

Education Department of Western Australia

Signed.....

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

(Exhibit Book 1—Attachment 80)

- The Government approved an enterprise bargaining package. The proposal included the following payments—
  - “15.1 In recognition of the initiatives contained in this Agreement, employees will receive an initial wage increase of 6% from the first pay period on or after the date of the registration of this Agreement by the Commission.
  - 15.2 An increase of 4% payable six months later, contingent upon substantial progress towards agreed reform targets (see Appendix 2); and,
  - 15.3 A cash payment to cleaners and gardeners of \$200 for full-time employees, and a pro-rata payment for employees who are part-time, and/or started work with the Department after 1 July 1996, to be paid on registration of the Agreement.”

(Exhibit Book 1—Attachment 85)

The proposal identified that past productivity of cleaners and gardeners was recognised in the Agreement. In particular the following was noted—

- The Cleaning Staffing Formula would be reviewed to achieve the agreed productivity level of 315 square metres of internal area per hour for a cleaner.
- Gardening efficiencies will be achieved through—
  - review of multiskilling/ handyperson duties;
  - continued implementation of reticulation and system maintenance training and water conservation techniques;
  - focus on environmental issues—improved gardening and horticulture training and water conservation techniques;
  - implementation of a continuous improvement programme; and
  - review of work practices and methods to reduce cost of workers' compensation and implementation of occupational health & safety programmes.

The parties were to commit to vary award conditions where they agree that it was necessary for the successful implementation of reforms and to achieve agreed targets. Where, as a result of reforms, employees become redundant, the provisions

of the Redundancy, Redeployment and Retraining Award would apply. (Exhibit Book 1 Attachment 85)

- The proposal was put to a ballot of Union members and rejected. However, in advice to the Director General on 10 October 1996 the Union expressed the view that enterprise bargaining negotiations could be concluded in the near future. The outcome would be submitted to another ballot. It was notified that the gardeners had voted in favour of the Enterprise Bargaining Agreement and had no concerns which needed to be addressed. (Exhibit book 1 Attachment 86).
- A second ballot was conducted following receipt of information on the terms of the proposed agreement from the Director General. On 8 November the Union advised the Director General that—
  - (1) The gardeners have endorsed the enterprise bargaining agreement and it is requested that you agree to immediate ratification of the Agreement with respect to these workers.
  - (2) Cleaners have overwhelmingly rejected the Enterprise Bargaining Agreement.”

In that advice the Union went on to express concern about what it saw as the “continued avoidance by the Government to provide a commitment to the maintenance of day labour cleaning and this uncertainty has and will continue to have a major impact on cleaners and their working lives” (Exhibit Book 1—Attachment 89).

- On 28 November, the Director General advised the Union that the request for the immediate registration of a separate agreement for gardeners could not be granted. The increase for both groups of employees was to be funded primarily through the savings realised through cleaning reforms. One could not be progressed without the other.
- The matter was again referred to the Commission and in a letter dated 29 November 1996 the Union advised the Director General that the claim was for a 21% wage increase for all Education Department employees covered by the Cleaners and Caretakers (Government) Award and the Gardeners (Government) Award. Furthermore, the Union advised that a request had been forwarded to the Commission for a hearing and determination of the claim as a Special Case. (Exhibit Book 1—Attachment 95).
- Early in 1997 the Minister for Education released the “Survey of Cleaning System” prepared by Dr Deschamp in December 1994. The Union submits that the three major findings of the study were that there had been savings through contract cleaning, that there had been a decline in the quality of cleaning and that the principals in schools cleaned by day labour were highly satisfied and those in the schools cleaned by contract were less than satisfied with the standard of cleaning.

The Union understands that the Government is committed to extending the contracting out arrangements for cleaning schools and as far as gardening services are concerned it believes that particular tasks, for example, tree pruning will be contracted out. (Transcript p 177).

In opposing the claim and objecting to any increase at all the Respondent argues that—

- The claim does not satisfy the Special Case Principles. The reforms upon which productivity outcomes are sought must be separately identified for cleaners and gardener “any wage increase awarded through arbitration must be based on the actual implementation of efficiencies designed to effect real gains in productivity” (76 WAIG 3368 at 3372).

The increase of 21% is not in the public interest. That increase would impact on the Department’s budget by \$8M for 1996/97. There has not been any allocation for that “kind of cost” and it could only be met by reducing educational services.

An increase of 21% has the potential flow on implications within the public sector and the private sector.

Success in this claim would be used in other cases, public and private.

Public schools are cleaned by a combination of contract cleaners and a day labour workforce. While there will always be a core of day labour employees an increase in their wages will be the source of concern as they will be paid more than employees paid under the Contract Cleaners (Ministry of Education) Award for doing the same work.

The situation is exacerbated when it is appreciated that contract cleaners are required to cover 400m<sup>2</sup>—450m<sup>2</sup> compared with 250m<sup>2</sup> of floor space for day labour employees’.

The increase sought does nothing to enhance structural efficiency. It will not lead to greater flexibility or efficiency in the industry. It will discriminate against those who are employed by contract cleaners. Furthermore, it is likely to lead to wage adjustments elsewhere in the cleaning industry. Indeed, applications have been lodged for 30% increases in the Contract Cleaning (Ministry of Education) Award, No. 5 of 1981 (Application No. 596 of 1997).

- Under the Enterprise Bargaining Principle the Commission must identify the productivity gains for both cleaners and gardeners. The Respondent submits that the onus is on the Applicant Union to justify the quantum of the increases and the basis upon which it can be recognised for cleaners and gardeners separately. It is submitted that this onus has not been discharged. The 21% claimed is an arbitrary increase. The only justification is the reference to a 30% increase in productivity by the Hon. Minister in proceedings before Parliament (Refer to Exhibit A). That reference was particular to cleaners. Nothing has been presented for gardeners. Furthermore, the Applicant Union has failed to properly address the absorption of the three \$8.00 per week safety net adjustments.
- In seeking to gain an increase of the same magnitude for gardeners and cleaners the Applicant Union has failed to recognise that reforms in these two areas of the Department’s services had a different genesis.

Cleaning reforms were introduced in 1993 to bring these services into line with those being provided by contract cleaners engaged by the Department. If that could have been maintained, it is submitted that there would have been an argument to retain day labour services.

Reforms to gardening came about under the implementation of the “gardening formula”. This was generated under an initiative in the “second tier” wage increase. The Union opposed the application of the formula.

It is acknowledged that reforms in both areas resulted in a reduction in staff members. The savings in “gross labour costs” for cleaning was 20.5%. For gardening it was 15.1%.

These estimates do not take into account the implementation costs, severance payments and investment in new equipment. However, when the absorption of the arbitrated safety net adjustments is taken into account under the productivity sharing formula followed in the public sector, then the one third of the gross labour cost available for cleaners has been paid under the arbitrated safety net adjustments (i.e. 20.5% divided equally between government, the Department and the employees (6.8% each). An adjustment of \$8.00 per week equates to approximately 2% wage increase (i.e.  $3 \times \$8 = 6\%$ ).

Similarly with gardeners. In their case the arbitrated safety net adjustments exceed the one third share in gross labour costs savings of 15.1%.

- There is no substance in the allegation that the Department has not bargained in “good faith”. Steps were taken to ensure that there was consultation with all parties on the reforms being implemented

(Exhibit DofE 2). Despite the Union's rejection of an offer in 1993 the Department indicated its willingness to continue to negotiate (Letter from CEO dated 9 November 1993—Exhibit DofE 3). Draft Agreements were tendered for negotiation (Exhibit DofE 4). In the year prior to this matter being arbitrated the Department met with the Applicant Union 24 times. The Department has never broken off negotiations since 1995. The Government has been committed to granting a wage increase and has never refused to negotiate. Offers made by the Department have been consistent with the terms offered to other public sector employees. It has been the intransigence of the Applicant Union in refusing to accept future productivity initiatives which has caused the break down in negotiations.

- It is inappropriate to use the “30% increase in floor space” achieved by cleaners as a measure of an increase in productivity. The increase reflects the internal floor area for standard classrooms. Different rates have to apply throughout a school. External areas and specialist classrooms might need less time. Gymnasiums may need a higher allocation. An increase in floor space cleaned has not flowed to all work sites. “Minimum hours” provisions under the Award has prevented this. Furthermore, there are special needs at some schools and the increase has not been applied to remote schools. Finally, there are a number of allowances which impinge on the “30% increase”. Time has to be allowed for supervision and rubbish collection.
- The “30% increase” in cleaning floor space is irrelevant for the purpose of assessing the productivity outcome for gardeners. The reforms implemented under the gardening formula went to allocating a “fair and equitable amount of time” to gardening and maintaining the landscape at each school. This took into account the allocation of time for irrigating turfed areas and duties during peak summer conditions. The reforms involved an assessment and implementation of automated watering systems.

Arising from the review under the implementation of the formula only 50% of schools had their gardening time reduced.

The gardening reforms were used to ensure equity in work loads in various locations. It was not a productivity driven exercise.

- The use of “... labour productivity is the best indicator in terms of establishing a measure of productivity. Now that's labour reduction productivity ...”. (Transcript p 256). It is simply the staff reduction over the staff level expressed as a percentage. As noted previously the increase of 20.5% for cleaners and 15.1% for gardeners does not include any implementation costs.
- Consistent with government policy, any productivity outcome should be shared under a “three way split”. This was the case under the Government-CSA Framework Agreement (76 WAIG 911). It was the principle upon which the TLC-Government enterprise bargain was entered into in 1991.

While it is acknowledged that there is no strict formula to be applied, there must be an incentive for the Government and the public sector employer to enter into negotiations.

- In rejecting the claim, the Respondent also opposes the submission that consideration be given to retrospectivity should all or any of the claim succeed.
- At all times the Union has had carriage of the matter. It could have sought to have the issue of past productivity arbitrated at any time. It chose not to. Initiatives for adjournment came from the Applicant. The Respondent has not been responsible for any delays.
- The reference to “contracting out” by the Applicant has been a “red herring”. Contracting out “has not

affected the past productivity question of these people ... it may require jobs to disappear but it certainly does not affect the jobs that remain”. Transcript p 261)

Although this matter comes before the Commission under section 44(9) of the Act it makes a lot of sense to follow the course submitted on behalf of the Minister for Labour Relations that the matter should be determined on the basis of section 32(7) of the Act. In other words in deciding the matter by arbitration the Commission should endeavour to ensure that it is resolved on terms that could reasonably have been agreed between the parties in the first instance or by conciliation. In *RRIA v AWU* (1987) 67 WAIG 320 at 322 Brinsden J. notes section 32(7) adds little to section 26(1)(a) of the Act but contemplates a case which is susceptible to resolution by negotiation or conciliation resulting in the acceptance of terms for settlement of a dispute, for example, a dispute over the size of a pay rise. His Honour also endorsed the view that section 32(7) is really an expression of legislative policy or an exhortation.

In the context of this matter where the Wage Fixing Principles impose tests and limitations on the accessibility of wage increases, it is well to remember that section 26 of the Act is not displaced. Clearly, the Applicant Union and Respondent accept this. Considerable effort was made to show the bona fides of the respective positions they had taken over the long period of negotiations so that the substantial merits of their case could be recognised. The link between the intent of Section 32(7), Section 26(1)(a) and the Enterprise Bargaining Principle is strengthened when it is appreciated that the thrust of the Wage Fixing System is directed at promoting the approach that parties take responsibility for negotiating wage outcomes at an enterprise level. When negotiations break down and it is necessary for the Commission to arbitrate, the history of negotiations, the reasonableness of the respective positions and the integrity of the stances taken in negotiations go to the substantial merits of the case and the determination of an outcome which could reasonably have been agreed between the parties in the first instance. Within the statutory framework in which the Wage Fixing System operates, the issues to be considered in arbitrating under the Enterprise Bargaining Principle extend beyond matters identified as—

- public interest;
- flow-on;
- the continued implementation at the enterprise level of structural efficiency initiatives; and
- that any wage increase must be based on the actual implementation of efficiency increases designed to effect real gains in productivity.

The case attracts the full scope of consideration of issues under Section 26 of the Act.

Through its Assistant Secretary, the Applicant Union presented evidence designed to establish that—

- the Education Department (formerly the Ministry of Education) had not bargained in good faith.
- the Department did not adhere to Government Policy in its negotiations with the Union. It failed to countenance past productivity improvements to the extent that is permissible and applied an artificial limitation of 2% or 4%.
- the Department frustrated attempts to negotiate an agreement which was reasonable having regard to changes that had already taken place by insisting on further efficiency measures. It was unreasonable to impose further demands without recognising past achievements.
- offers were made and withdrawn while jobs were being cut. The Department was driven by a philosophical commitment to “contracting out” cleaning services despite evidence of the high level of satisfaction with the performance of the day labour workforce. By its actions the Department had destabilised the workforce and undermined the enterprise bargaining process.
- the Department's continuing failure to properly recognise past productivity achievements was in

contradiction of the statement to the Parliament by the Hon. Minister for Education that there had been a 30% increase in productivity.

- the Department failed to treat cleaners and gardeners equitably. It negotiated other agreements with sectors of its workforce and refused to recognise the contribution made by the lowest paid in its workforce.
- by insisting on further efficiency initiatives before an agreement was concluded the Department was effectively cutting more jobs. This was a breach of the undertaking on job security.

As far as the Department is concerned, the enterprise bargaining was conducted in good faith in that—

- it honoured its commitment to job security within the time limit it had indicated;
- offers being presented to the Union were stated to be “subject to Government approval”. This was recognised in negotiations.
- recognition was given to past productivity but that alone is insufficient to sustain an enterprise bargain and it was necessary for further initiatives to be implemented.
- at all times the Department kept the Applicant Union informed of changes and through the consultative process enabled representatives to participate. Despite this, the Union was reactionary.
- the Union refused to accept any productivity outcomes and could not use the changes to cleaning services as the basis upon which gardeners could enjoy the same level of increase. The particular contribution of each group had to be ascertained.

We consider that the statement that there had been a 30% increase in productivity albeit that it is put in the context of bringing day labour cleaning services up to the level of the private sector, had a detrimental effect on negotiations between the parties. It gave rise to an expectation which was based not on equalling the cleaning capacity of private cleaners but meeting demands in addition to those already being provided and for which there was a high level of satisfaction. It has been the Department's responsibility to manage cleaning services. If inefficient practices had been allowed to flourish it was management's fault, not the cleaners. Changes which involved the actual implementation of efficiencies designed to effect real gains in productivity must be considered in enterprise bargaining. There may be some discounting in recognition that some changes merely address inappropriate work practices. However, in failing to properly address the changes that had occurred in the day labour cleaning services the Department's stance was prejudicial to the negotiations for an enterprise agreement. In this respect the position was ostensibly contrary to the Wage Fixing Principles and Government Policy (see Exhibit Book 3 “Workplace Bargaining in the W.A. Sector” May 1995). The position taken on the day labour cleaning workforce appears to be at odds with that which applied to other groups within the Department's employment. Teachers, administrative and clerical staff and other support groups were able to negotiate within the framework of past productivity outcomes.

This observation about the Department's performance must be balanced against the Union's attitude to the implementation of changes to enhance productivity. It appears that while some initiatives were agreed to, the Union's reluctance to implement them gave rise for concern. The parties became embroiled in a stand-off. If the Department did not give full recognition to past performance increases, the Union would not be party to the implementation of other initiatives necessary, in the Department's view, for there to be an enterprise agreement!

From these issues two things are clear. First, past productivity is to be considered. It is not limited other than to the extent that it has already been recognised in some other way, for example, under changes to work value. There is no limit that restricts the extent to which it can be recognised. Second, when the process of enterprise bargaining breaks down and the Commission is required to arbitrate without the agreement of the parties, the outcome will not result in a static position upon which there will be no further changes. The outcome, consistent with on-going structural efficiency will include prospective

changes which the parties could have reasonably agreed to themselves in negotiations or in conciliation. This is consistent with what was said by the Commission in Court Session in the Statement in the matter *CSA v. Department of Mineral and Energy* ((1996) 76 WAIG 2135). It also reflects the requirements for the Commission to review its order no sooner than six months after the determination.

The position concerning gardeners is different from that of cleaners. There was no datum point of private operations from which management could measure the productivity outcome arising from reforms implemented in 1993. Attempts by the Union in November 1996 to have a separate agreement registered for this group of employees following their endorsement of a proposal by ballot met a cautious response.

The cost of the “package” for cleaners and gardeners was to be met primarily through savings realised under cleaning reforms. However, now that the matter is being arbitrated, the Department is no longer interested in maintaining the link. It sees this group of employees having to stand, or fall, on productivity outcomes particular to their operations. Against this is the evidence of Mr Power, Project Manager Cleaning and Gardening Project. From his experience as a Principal, cleaners and gardeners are considered to be members of the same workforce in schools. However, by keeping the two groups linked in negotiations, Mr Power believes cleaners have been disadvantaged. The most compelling reason for gardeners to be linked with cleaners for the purpose of an outcome from these proceedings would be the prospect of some development for multi-skilling under structural efficiency. In the absence of this it would seem that gardeners are to be regarded separately under the Wage Fixing Principles.

Evidence presented by the Applicant Union, through Mr Wilson, the gardener at Nollamara Primary School sought to explain how under the rationalisation programme a higher standard of gardening services had been achieved. Mr Wilson's particular experience involved multi-skilling, the implementation of a more efficient ground watering programme and changes in work practices to ensure that health and safety issues are addressed in all aspects of performance. His experience in implementing the programme has been that he believes he is working “25% harder”. In addition to meeting the demands of the programme he has to respond to the directions of the Principal and other teachers at the school. Additional work can be caused by vandalism and maintenance of the car park. These can impact on the demands of meeting the programme. Mr Wilson is critical of what he understands to be a reduction in gardeners' hours at some other schools. He believes this has put additional pressure on gardeners and reduced the standard of services in those instances.

Mr Gilchrist, Co-ordinator of Gardening—Property Services Section was emphatic in his assessment that there had been an increase in the work value of gardeners' duties. The gardening programme was developed in 1990, with implementation commencing in 1993 and being finalised in March 1995 in all schools (except remote community schools). It has, in his view, seen a greater level of responsibility devolving on gardeners. They have a greater involvement with the school community in developing budgets and programmes, in administering contractors' attendances and being part of technology projects where school grounds are considered an extension of the classroom. While not all gardeners are involved to the same extent the Department encourages these developments. These are initiatives to give gardeners greater job satisfaction and therefore more fulfilling employment. Mr Gilchrist was reluctant to be drawn on productivity outcomes preferring to confine his assessment of changes to an increase in work value. The gardening formula establishes a datum upon which performance can be measured. It is interesting to note that the impetus for developing the programme came from the Union's concern that gardening resources varied from school to school and a criteria needed to be developed. It is apparent that seen in the wider context of structural reform the gardening programme has made a significant contribution to the efficient allocation of resources and the standard of gardening services.

Mrs Seghezzi, formerly head cleaner at Kewdale High School conveyed the pride that she and her colleagues had in the service they provided as members of the day labour cleaning workforce. Of course, there was the incentive to become more

efficient when jobs were under threat, however, as employees of the Department there was a commitment to the school community that extended beyond the attaining a set area of cleaning each day. This was also the case with cleaners from Beaumaris Primary School where Mrs Taylor was head cleaner.

Cleaners at Kewdale High School were able to accommodate the demands to increase internal cleaning to 250m<sup>2</sup> per hour with ease. Whereas, that was not the experience at Beaumaris Primary School. Team cleaning enabled the new productivity levels to be achieved with reduced numbers of cleaners. This led Mrs Seghezzi to concede that Kewdale High School may have been overstaffed. The logistics of the Beaumaris Primary School appear to be somewhat different. Demountable classrooms, walk ways and four teaching blocks meant that cleaning hours had to be increased following the rationalisation programme. The 30% increase in internal cleaning per hour felt like a 90% increase in work load to Mrs Taylor.

The evidence presented from Mrs Seghezzi and Mrs Taylor prompts us to question the effectiveness of management within the Department in the years up to 1990 when efficiencies were then finally developed. The working party on which Mrs Seghezzi served drew on the experience of those directly involved in cleaning services. It is regretted that the exercise was not undertaken earlier in an environment different from that in which redundancies were being considered.

Within the context of the Wage Fixing System, there is no doubt that the implementation of a new cleaning formula achieved a level of efficiency designed to effect real gains in productivity. This was realised with or without team cleaning but with restructured work practices, an investment in new equipment and better supervision and training.

From the evidence presented by Mr Plowman, Co-Ordinator—Cleaning Services it is noted that the cleaning formula has not yet been implemented in all schools serviced by the day labour work force. There are still 180 "off site" pre-primary centres and 29 remote schools unaffected by the application of the formula. Similarly, 25 "class three" schools with only 2 hours of cleaning and a significant number of country schools have not been brought within the formula. The implication of this is that the 30% increase in internal floor space being cleaned by the day labour work force is inaccurate. However, it is Mr Plowman's assessment that cleaners are now 20% more efficient than they were in 1993. Furthermore, but for other work practices, the day labour cleaning service would be even more efficient. In Mr Plowman's view an extrapolation cannot be made from the increase in internal area cleaned from 186m<sup>2</sup> to 252m<sup>2</sup> to identify an increase in efficiency. The measure based on that factor does not comprehend the variables that impinge on cleaning requirements undertaken in the various areas within schools, for example, toilets, libraries, gymnasiums, covered external areas etc. This opinion was supported by Mr Power, Project Manager, Cleaning and Gardening Project. There is no such thing as the standard class room. In his assessment one third of schools have not been affected by the cleaning formula. However, the rationalisation project achieved its efficiency targets in the first half of 1994. The savings were measured as 12,774 hours of cleaning time. This translated to 320 FTE's and an annual salary saving of \$6.7M (See Education Department Exhibit 8).

Returning to gardening services, Mr Power submits that with the implementation of that formula by the end of March 1995, staffing levels were reduced by about 110 FTE representing an annual salary saving of about \$3M (See Education Department Exhibit 8).

Mr Power explains that the "gross productivity" outcome is ascertained by reference to the reduction in staffing level from before the cleaning and gardening programmes were implemented to their completion. On this basis the following increases were realised—

"Cleaning:

<u>Staffing Reductions</u>		<u>100</u>
Staffing Level	x	1
<u>320</u>		<u>100</u>
1564	x	1
20.5% Gross Productivity		
(i.e. Employee Share = 6.8%)		

Gardeners:

<u>Staffing Reductions</u>		<u>100</u>
Staffing Level	x	1
<u>110</u>		<u>100</u>
725	x	1
15.1% Gross Productivity		
(i.e. Employee Share = 5%)		

This does not take into account the cost of the implementation of the reforms and the effect of the new equipment and work practices. The need to scientifically calculate the net productive achievements has never been required".

(See Education Dept. Exhibit 8)

From the calculation of the employees' share of gross productivity, (i.e. one third of the percentage realised) the Department has deducted the three arbitrated safety net adjustments of \$8.00 on the basis that these equate to approximately 2% each. Mr Power conceded that this calculation of gross productivity was never conveyed to the Union. However, he believes this method of ascertaining the productivity outcome is consistent with Government policy and guidelines on the matter. The amount put on the negotiating table for past productivity by the Department was 2%.

It is to be noted that if an enterprise agreement could have been entered into early in 1995 (by then implementation of the gardening formula and the cleaning programme were well advanced) the ability of the Department to argue to deduct a notional 2% from past productivity outcomes because of arbitrated safety net adjustments would have been limited. All of those adjustments had not flowed at the award level at that time.

Mr Power participated in enterprise bargaining with the Applicant Union. He takes offence at the claim that negotiations were not conducted in good faith. He believes that cleaners and gardeners deserved a wage increase.

Mr Power presented us with the only estimate of a productivity outcome arising from the two matters which form the basis of the claim. The Applicant Union preferred to rely on the Statement by the Hon. Minister for Education in 1993 that there had been a "30% increase in productivity" registered by cleaners. It did, however, call Associate Professor Petridis, an economist at Murdoch University. He noted the state of the Western Australian and the national economies and the impact of a 21% wage outcome for this group of employees in terms of employment and inflation.

Associate Professor Petridis notes that there are a number of models for measuring productivity. All of them are unreliable! In his view the usual way of assessing labour productivity is to "take the output in the activity concerned and divide it through by the number of hours they work...". Service industries are notoriously difficult to measure. In those cases the concept of "total factor productivity" is sometimes used. This takes into account the performance of labour, capital and management. Professor Petridis acknowledges that labour savings could be used to measure the productivity outcome.

Although he cautions that the quality of work being measured would have to remain constant, an elaboration of this model would take into account the organisational practice and the cost and dividend derived from training, improved work methods and new technologies.

The Department of Productivity and Labour Relations publication "Productivity Measurement for Workplace Bargaining (No. 9, January, 1994) sets out a number of approaches which may be used for measuring productivity (Exhibit Book 3). These include, the Programme Logic Model and the Oregon Objective Matrix. No evidence was presented on the application of these approaches nor examples of where they have been used in public sector employment in this State.

We do not accept that a 30% increase in the internal cleaning rate of cleaners directly translates to an equivalent increase in productivity for cleaners and gardeners. Nor do we consider that a 30% increase in productivity should equate to a 21% wage increase and 9% dividend to Government.

In the absence of any other evidence the Commission accepts that the approach used by Mr Power provides an overview of changes in productivity with the implementation of the gardening formula and cleaning programme (15% and 20.5%

respectively). It is noted that costs associated in the implementation of these initiatives and redundancy payments have not been included. Similarly, however, the approach does not seek to address the additional outcomes arising from devolved responsibility that gardeners have accepted, their contributions to school and community programmes and the environment created at schools with higher standards of gardening. For cleaners there is the training and flexibility as members of units who can undertake all facets of cleaning duties within the school. It does not comprehend the level of satisfaction registered by schools and their on-going commitment to the school community. In an era of Local Area Planning and the need for schools to compete to attract students and teachers, cleaning and gardening services make an important contribution to an environment which projects the school community's values and the professionalism of the services it offers students. So much is clear from the evidence presented by witnesses from both parties to this matter.

However, as previously noted, a productivity outcome cannot be isolated from the on-going programme of structural reform with respect to matters to which commitments have already been given and to matters which could reasonably have been agreed to in negotiations or conciliation.

A cursory review of undertakings given pursuant to Structural Reform identifies among other things the following—

- (a) An objective to achieve a flexible work force through the removal of artificial barriers.
- (b) A strategy to introduce a performance management system with progression for annual increments based on an outcome under this rather than by automatic progression.
- (c) A commitment to new organisational structures to improve efficiency and consultation at the workplace.
- (d) Absorption and rationalisation of allowances.
- (e) A mutually satisfactory arrangement in relation to the payment of toilet allowances.

(Exhibit 3—Miscellaneous Workers (Government) Memorandum of Agreement Award Restructuring 1989).

- (f) Completion of a skills analysis and audit.
- (g) On-going commitment to establishing new work patterns where appropriate.
- (l) Establishment of a career structure based on skills levels.
  - (i) Establishment of a Performance Management System.
  - (j) Enhanced flexibility of working patterns and arrangements to—
    - (i) allow part time employees to work outside their normal rostered hours without the payment of penalties.
    - (ii) enable employment on a fixed term basis.
    - (iii) extend hours for part-time employees at ordinary rates.
    - (iv) change the method of payment of a toilet allowance to cleaners.
    - (v) opening and closing allowance.

(Exhibit Book 2—Miscellaneous Workers (Government) Memorandum of Agreement Award Restructuring Increase 1990)

- (k) Preparation of an Audit of Implementation of Issues under the 4% Second Tier and 1989 Structural Efficiency Principle Agreements.

(Exhibit Book 3—Agreement between the WA Government and Trades and Labor Council on a framework for implementing Accord MK VI in the W.A. Public Sector.)

- (l) Principles (for an Enterprise Bargaining Agreement)
 

The Department is committed to providing a sound, flexible and efficient education system aimed at providing students with the necessary skills, competencies and confidence to be able to successfully participate in, and contribute to, today's society. Essential to this commitment is the Department's obligation to constantly evaluate its performance, to

establish initiatives, and to implement changes that take into account the changing needs of its students, the requirements and expectations of the community and accountability at the school level.

This Enterprise Bargaining Agreement reflects the Department's obligation to fulfil those commitments and is consistent with the Government's policy of increasing effectiveness and efficiency through improved flexibility and productivity.

To progress the objectives contained herein within cleaning and gardening services, the following procedural steps will occur—

- commitments to assist the implementation of an agreement will be made by the parties to the Agreement;
- a consultative structure established to oversee implementation of improved work methods; and,
- monitoring of performance to ensure that the implementation of improved work methods is constantly reviewed and, where necessary, altered by agreement between the parties.

(Exhibit Book 1—Attachment 85. Proposal dated August 1996.)

Subject to satisfying the Enterprise Bargaining Principle an outcome of these proceedings which would recognise past productivity increases would also have to accommodate a review of the above matters and

- (a) a review of the Cleaning Formula to achieve a productivity level of 315m<sup>2</sup> of internal area per hour per cleaner in accordance with a revised formula;
- (b) the reassessment of gardening services to review multiskilling/handyman duties, the continued implementation of reticulation and system maintenance and water conservation techniques; and
- (c) the implementation of a continuous improvement programme and a review of work practices and methods to reduce cost of workers' compensation and implementation of occupational health and safety programmes.

In determining this application the requirements of the Wage Fixing Principles and in particular Section 2—Enterprise Bargaining cannot be considered in isolation from Section 26 of the Act. On the basis that the Applicant Union has discharged the onus of showing that there has been productivity improvements which can be recognised, the Commission is satisfied that there is substantial merit in the case. This does not depend on any finding that the Respondent negotiated in bad faith indeed the negotiating process under enterprise bargaining showed that a stand-off developed through the attitude of both parties. However it is a matter of equity and public interest that the dispute be resolved in a manner consistent with the Wage Fixing Principles. Having regard to the constraints imposed by the Wage Fixing System to do otherwise would be perverse. It was put to us that the failure to negotiate an enterprise agreement should not be rewarded with a favourable arbitrated outcome. If the merit of the case has been established, it would be contrary to good conscience not to do so. The Principles of Wage Fixation are an expression of public interest and in meeting the terms of the Enterprise Bargaining Principle that requirement is fulfilled.

The spectre of "flow-on" attracted concern from a number of quarters. The danger of an award variation which could flow to the Contract Cleaners (Ministry of Education) Award precipitated anxiety particularly when a claim for wage increase of 30% has already been lodged. As the Principles make clear the Order which issues from these proceedings establishes an enterprise outcome. It does not follow that an award will be varied albeit that the award covering day labour cleaners is enterprise specific. The Order sits apart from the award. Its operation is to be revised no sooner than 6 months from the date of issue. It may be extended, it may be cancelled. Optimistically it may be replaced with the registration of an industrial agreement under section 41 of the Act. What is certain is that the award will not be varied. If the features which are recognised in this matter become a permanent

characteristic of the duties of employment of cleaners and gardeners and attempts are made for the award wage rate to reflect this, the Minimum Rates Adjustment would secure the proper relationship at that level between employees in the private and public sectors. Work value would establish the relationship not nexus through osmosis.

It is noted that the issue of flow-on was not raised if anything was granted to gardeners. The Commission is satisfied that there is no possibility of that occurring.

The continuing application of the gardening formula and the cleaning programme by the Education Department ensures that initiatives commenced under the rationalisation programme are entrenched in the work practices of these employees. The terms of the Order to be reviewed in six months make it clear that the process of ongoing reform continues within the scope of previous undertakings and initiatives that could have reasonably been agreed to.

In giving qualified acceptance to the measurement of the productivity outcome for cleaners and gardeners determined by the Education Department, the Commission is not bound by the "three way split" usually followed in the public sector when agreements are reached. The Commission is mindful of the savings Government has already achieved through the rationalisation programme for cleaners and gardeners. It appreciates that implementation and redundancy costs have not been included. However the savings established under a reduced and more productive workforce are not a "one-off event". Already considerable funds have, in accordance with the policy statement, been reinvested in education. Now is the time to reinvest in these employees. In determining that cleaners should receive an increase under an Order pursuant to the Enterprise Bargaining Principle of 13% and gardeners the same amount, the Commission is satisfied that this is based on the actual implementation of past productivity initiatives and those initiatives which are expressed in the terms of the Order to ensure the continuing process of structural reform. Failure to maintain these past and future initiatives will see the percentage reviewed downwards.

The 13% adjustment under the Order accommodates a return to the Respondent apart from savings already achieved under the implementation of the rationalisation programme in the period from 1993, in the case of cleaning services and 1995 with the gardening formula. Furthermore as those programmes are the base upon which the component of past productivity is recognised, the extension of the rationalisation programme to other schools and pre-primary centres presents the opportunity for additional savings. Prospective structural reforms included in the package are also a return to the Respondent and cannot be counted again in any renegotiated enterprise bargain.

While it is acknowledged that the measurement of the past productivity component of the increase is different for cleaners and gardeners, the experience in structural efficiency reviews and enterprise bargaining negotiations shows that these two groups of employees have been considered together. Within the organisational structure of the Education Department they come within the one area of management. That rationalisation project was developed and administered within that unit. Evidence shows that at schools the cleaners and gardeners work as part of the team under the Principal's/Registrar's control. Importantly, under enterprise bargaining initiatives the interface between the work of the two groups in external covered areas was raised. The potential to develop multiskilling and flexibility in the day labour work force will be enhanced with the two groups continuing to be part of the one bargaining unit. We note the position of the Hon. Minister for Education was to treat these employees as members of the one unit for the purpose of enterprise bargaining negotiations. The position can be reviewed under the terms of the Order to see if the continuing relationship is worthwhile.

We think that it is important to note that the process of enterprise bargaining that separates those charged with the responsibility for managing the cleaning and gardeners services from those who are required to implement the changes leads to inequities. The success of the rationalisation programme under the Cleaning and Services Project was due to the partnership between management and the workforce. Indeed it was the new management personnel who appear to

have reinvigorated the services even in an uncertain environment. It is an anomaly for the managers to be covered by an enterprise agreement which is removed from the direct outcome of the operation for which they are responsible. Enterprise Bargaining is directed at workplace, award coverage should not detract for that focus.

From the overview of the economy by the Treasury Department ["Western Australian Economic Summary" (Summer 1998)] the outlook for the Western Australian economy looks buoyant. The Commission notes that the pace of growth in the State's domestic economy (State Final Demand) strengthened in the second half of 1997 and grew by 3.3% in the year to September 1997 (up from 1.1% in the year to June 1997). Economic activity in this State continues to accelerate ahead of the national average. Moderate growth in consumer spending in the second half of 1997 is expected to be sustained. Employment grew by 0.6% in the December 1997 quarter sustaining the gains of 1.6% growth in the previous quarter. The labour market in Western Australia continues to outperform the rest of the nation. Inflation appears to have troughed in 1997.

It is noted that a further increase in the internal cleaning rate could lead to a reduction in working hours for part time cleaners. Indeed this was an issue confronted by the Applicant Union when it pursued its wage claim under an enterprise agreement. The interests of persons immediately concerned is a matter to which the Commission has had regard. On balance we believe that in equity the Order that issues reflects the merit of the case. The outcome cannot be deferred out of concern that it may precipitate further contracting out of cleaning services or that it precipitates a reorganisation of gardening services. Those are the uncertainties that have existed for some time. This decision will not change it.

We are satisfied that the Special Case requirements of the Enterprise Bargaining Principle have been met; that on the basis of equity, good conscience and the substantial merits of the case recognition must be given to the outcome of efficiencies introduced in the cleaning and gardening services; and to ensure the process of structural reform continues, that commitments previously given and initiatives which could reasonably have been agreed to are implemented.

In the context of the Enterprise Bargaining Principle and the circumstances of this matter, we do not consider that the safety net has to be affirmed or that the Minimum Rates adjustment process completed. The nature of the Order and the review that is necessary makes it clear that this is not an award process. However, if, as we explained, the argument for recognition of past productivity had been pursued as a change in work value, that may have been different.

The determination of the claim to take into account past productivity outcomes and future structural efficiency initiatives does not necessarily attract absorption of all the arbitrated safety net adjustments. It is noted that enterprise bargaining negotiations foundered to some extent on the way that those award increases were to be dealt with. Having regard to the circumstances of this case, the merit of the claim and issues of equity, our determination reflects absorption of only one arbitrated safety net adjustment. This is considered appropriate having regard to the period in which some structural efficiency initiatives have been in place and the way in which other groups were dealt with in the Education Department.

Finally, there is the question of operative date. This matter was concluded in July, 1997. However, the history of negotiations goes back many years. It was submitted to us that the special circumstances of the matter deserve recognition. We infer this to be the Applicant Union's assertion that the Respondent failed to negotiate in good faith. While we have rejected that argument it is nevertheless of concern that in an atmosphere of rationalisation and "down-sizing" the Department did not identify the productivity outcomes it had ascertained as a result of the implementation of the cleaning programme and gardening formula. That information, viewed objectively, may have broken the dead-lock. On the other hand, by steadfastly maintaining that nothing else could be implemented to further enhance efficiency until past productivity had been resolved, the Union had placed itself in a position where arbitration was its only resource. That avenue was not availed of until late in the day.

When all of these circumstances are considered it appears to us that these lower paid employees have been treated somewhat differently from other members of the workforce in the Department. Witnesses attested to the fact that they deserved an increase. We have established the basis upon which that can be ordered. Consistent with the scope of the Act and the Principles which require the actual implementation of efficiencies designed to effect real gains in productivity, we are satisfied that this was occurring by the time the hearing of the claim concluded. On this basis and the other special circumstances, the operative date is fixed at the first pay period commencing on and from 1 August, 1997.

The Minutes of the Proposed Order give effect to this decision.

Appearances: Ms S. Jackson and later Mr N. Whitehead on behalf of Applicant Union and subsequently representing the Trades and Labor Council of Western Australia.

Mr G. Edwards on behalf of the Respondent.

Ms V. Zupanovich with Ms Hall on behalf of the Minister for Labour Relations.

Mr G. Bull on behalf of the Chamber of Commerce and Industry of Western Australia.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

The Honourable Minister for Education

No. CR 168 of 1996.

Cleaners and Caretakers (Government) Award, 1975

No. 32 of 1975.

Gardeners (Government) Award, No. A 16 of 1983.

COMMISSION IN COURT SESSION,  
CHIEF COMMISSIONER W.S. COLEMAN.

COMMISSIONER J.F. GREGOR.

COMMISSIONER A.R. BEECH.

20 April 1998.

*Order.*

HAVING heard Mr N. Whitehead on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch, Mr G. Edwards on behalf of the Hon. Minister for Education, Ms S. Jackson and Mr Whitehead on behalf of the Trades and Labor Council of Western Australia, Ms V. Zupanovich with Ms Hall on behalf of the Minister for Labour Relations and Mr G. Bull on behalf of the Chamber of Commerce and Industry of Western Australia;

AND then having heard Ms D. MacTiernan and with her Mr N. Whitehead of behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Mr A. Hastie and with him Mr R. Jones on behalf of the Hon. Minister for Education, the Commission having determined an increase in wage rates which takes into account matters set out in the decision, now makes clear that the increase of 13% is the adjustment to wage rates without any further absorption;

AND HEREBY ORDERS pursuant to the Industrial Relations Act, 1979 and in accordance with the Wage Fixing Principles the following—

- (1) THAT without varying the awards wage rates of Cleaners and Gardeners employed by the Education Department under the Cleaners and Caretakers (Government) Award, 1975, No. 32 of 1975 and the Gardeners (Government) Award, No. A 16 of 1983 respectively be increased by 13% as shown in the attached Schedules with effect from the first pay

period commencing on and from the 1st day of August, 1997 pursuant to this Order; and

- (2) WITH the objective of concluding an Enterprise Bargaining Agreement before the review of this Order under paragraph (5), the parties are to continue the process of structural reform by considering, but without being limited to, the following—
  - (a) Implementing a productivity level of 315m<sup>2</sup> of internal cleaning area per hour per cleaner in accordance with a revised formula;
  - (b) Achieving a flexible work force through the removal of artificial barriers.
  - (c) Committing to new organisational structures to improve efficiency and consultation at the workplace.
  - (d) Absorption and rationalisation of allowances.
  - (e) A mutually satisfactory arrangements in relation to the payment of toilet allowances.
  - (f) Completion of a skills analysis and audit.
  - (g) On-going commitment to establishing new work patterns where appropriate.
  - (h) Establishment of a career structure based on skills levels.
  - (i) Establishment of a Performance Management System.
  - (j) Enhanced flexibility of working patterns and arrangements to—
    - (i) allow part time employees to work outside their normal rostered hours without the payment of penalties.
    - (ii) enable employment on a fixed term basis.
    - (iii) extend hours for part-time employees at ordinary rates.
    - (iv) opening and closing allowance.
  - (k) Preparation of an Audit of Implementation of Issues under the 4% Second Tier and 1989 Structural Efficiency Principle Agreements.
  - (l) Re-affirm the commitment—

The Department is committed to providing a sound, flexible and efficient education system aimed at providing students with the necessary skills, competencies and confidence to be able to successfully participate in, and contribute to, today's society. Essential to this commitment is the Department's obligation to constantly evaluate its performance, to establish initiatives, and to implement changes that take into account the changing needs of its students, the requirements and expectations of the community and accountability at the school level.

Recognising the Department's obligation to fulfil those commitments consistent with the Government's policy of increasing effectiveness and efficiency through improved flexibility and productivity.

To progress the objectives within cleaning and gardening services, by following procedural steps which will ensure—

- commitments to assist the implementation of an agreement will be made by the parties;
- a consultative structure to oversee implementation of improved work methods; and,
- monitoring of performance to ensure that the implementation of improved work methods is constantly reviewed and, where necessary, altered by agreement between the parties.

- (3) THAT the parties to this Order are to—
- continue the reassessment of gardening services to review multi-skilling/handyman duties, the continued implementation of reticulation and system maintenance and water conservation techniques;
  - implement a continuous improvement programme and a review of work practices and methods to reduce cost of workers' compensation and implementation of occupational health and safety programmes;
  - investigate the possibility for combining gardening and non-gardening duties in special circumstances including multi-skilling of cleaning and gardening duties in remote schools; and
  - consider, with a view to implementing, award variations to enhance efficiency and effectiveness and to cater for the special needs of the Department and gardening in remote and isolated areas.
- (4) Nothing in this Order prevents the continuing application of the rationalisation plan under the cleaning programme and gardening formula by the Department.
- (5) In accordance with the terms of the Enterprise Bargaining Principle the Commission will review the situation established by this Order no less than six months from the date of the Order.

By the Commission in Court Session,

(Sgd.) W.S. COLEMAN,

[L.S.] Chief Commissioner.

#### SCHEDULE A

The minimum week rate of wage payable from 1 August, 1997 to 13 November 1997 to employees covered by this order shall be as follows—

	Base Rate	Arbitrated Safety Net Adjustments	Minimum Award Wage
	\$	\$	\$
(a) Cleaners			
<u>Level One</u>			
12 months of employment	418.20	24.00	442.20
<u>Level Two</u>			
1st year of employment	422.70	24.00	446.70
2nd year of employment	426.50	24.00	450.50
3rd year of employment and thereafter	430.10	24.00	454.10
<u>Level Three</u>			
Cleaner in Charge (of one to six employees)			
1st year of employment	430.50	24.00	454.50
2nd year of employment	435.00	24.00	459.00
3rd year of employment and thereafter	439.80	24.00	463.80
<u>Level Four</u>			
Cleaner in Charge (of seven to ten employees inclusive)			
Caretaker of Schools (employing seven to ten employees inclusive)			
1st year of employment	440.90	24.00	464.90
2nd year of employment	445.00	24.00	469.00
3rd year of employment and thereafter	449.70	24.00	473.70
<u>Level Five</u>			
Cleaner in Charge (of eleven or more employees)			
Caretakers of Schools (employing eleven or more employees)			
1st year of employment	454.50	24.00	478.50
2nd year of employment	458.80	24.00	482.80
3rd year of employment and thereafter	463.20	24.00	487.20

(b) Gardeners			
<u>Level One</u>			
Nil			
<u>Level Two</u>			
Assistant Gardener/Handyperson			
1st year of employment	429.70	24.00	453.70
2nd year of employment	433.50	24.00	457.50
3rd year of employment and thereafter	437.00	24.00	461.00
<u>Level Three</u>			
Gardener/Handyperson			
Gardener/Pool Maintenance Officer			
1st year of employment	437.40	24.00	461.40
2nd year of employment	441.90	24.00	465.90
3rd year of employment and thereafter	446.70	24.00	470.70
<u>Level Four</u>			
Gardener/Ride on Mower Operator/Handyperson			
1st year of employment	447.90	24.00	471.90
2nd year of employment	452.00	24.00	476.00
3rd year of employment and thereafter	456.70	24.00	480.70
<u>Level Five</u>			
Senior Gardener/Handyperson			
Senior Gardener/Pool Maintenance Officer Handyperson (Belmont SHS)			
1st year of employment	461.50	24.00	485.50
2nd year of employment	465.80	24.00	489.80
3rd year of employment and thereafter	470.10	24.00	494.10
<u>Level Six</u>			
Horticulturist (Certificated)			
1st year of employment	496.50	24.00	520.50
2nd year of employment	502.50	24.00	526.50
3rd year of employment and thereafter	507.50	24.00	531.50

(c) The rates of pay in this award include the three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Case Decision, the December 1994 State Wage Decision and the March 1996 State Wage Case Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

#### SCHEDULE B

The minimum week rate of wage payable to employees from 14 November 1997 covered by this order shall be as follows—

	Base Rate	Arbitrated Safety Net Adjustments	Minimum Award Wage
	\$	\$	\$
(a) Cleaners			
<u>Level One</u>			
Comprehends to the following classes of work			
Cleaner for initial 12 months of employment	418.20	34.00	452.20
<u>Level Two</u>			
Comprehends to the following classes of work			
1st year of employment	422.70	34.00	456.70
2nd year of employment	426.50	34.00	460.50
3rd year of employment and thereafter	430.10	34.00	464.10
<u>Level Three</u>			
Comprehends to the following classes of work			
Cleaner in Charge (of one to six employees inclusive)			
Home Economics Assistant			
1st year of employment	430.50	34.00	464.50
2nd year of employment	435.00	34.00	469.00
3rd year of employment and thereafter	439.80	34.00	473.80

Level Four

Comprehends to the following classes of work  
 Cleaner in Charge (of seven to ten employees inclusive)  
 Caretaker of Schools (employing seven to ten employees inclusive)

1st year of employment	440.90	34.00	474.90
2nd year of employment	445.00	34.00	479.00
3rd year of employment and thereafter	449.70	34.00	483.70

Level Five

Comprehends to the following classes of work  
 Cleaner in Charge (of eleven or more employees)  
 Caretaker of Schools (employing eleven or more employees)

1st year of employment	454.50	34.00	488.50
2nd year of employment	458.80	34.00	492.80
3rd year of employment and thereafter	463.20	34.00	497.20

(b) GardenersLevel One

Nil

Level Two

Assistant Gardener/Handyperson

1st year of employment	429.70	34.00	463.70
2nd year of employment	433.50	34.00	467.50
3rd year of employment and thereafter	437.00	34.00	471.00

Level Three

Gardener/Handyperson

Gardener/Pool Maintenance Officer

1st year of employment	437.40	34.00	471.40
2nd year of employment	441.90	34.00	475.90
3rd year of employment and thereafter	446.70	34.00	480.70

Level Four

Gardener/Ride on Mower Operator/Handyperson

1st year of employment	447.90	34.00	481.90
2nd year of employment	452.00	34.00	486.00
3rd year of employment and thereafter	456.70	34.00	490.70

Level Five

Senior Gardener/Handyperson

Senior Gardener/Pool Maintenance Officer Handyperson  
 (Belmont SHS)

1st year of employment	461.50	34.00	495.50
2nd year of employment	465.80	34.00	499.80
3rd year of employment and thereafter	470.10	34.00	504.10

Level Six

Horticulturist (Certificated)

1st year of employment	496.50	34.00	530.50
2nd year of employment	502.50	34.00	536.50
3rd year of employment and thereafter	507.50	24.00	541.50

(c) The rates of pay in this award include the three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Case Decision, the December 1994 State Wage Decision and the March 1996 State Wage Case Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

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 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 \$10.00 per week.

---

WESTERN AUSTRALIAN  
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Royal Perth Hospital and Others.

No. P 62 of 1994.

Hospital Salaried Officers' Award 1968  
 No. 39 of 1968.

COMMISSION IN COURT SESSION

COMMISSIONER J F GREGOR

COMMISSIONER S A CAWLEY

COMMISSIONER A R BEECH.

1 May 1998.

*Further Reasons for Decision.*

A speaking to the minutes of order was held in relation to Matter No. P 62 of 1994 at the request of the Hospital Salaried Officers Association of Western Australia (Union of Workers). The submissions then put by Mr Panizza largely went to the concerns of that union that employers affected, through inadvertence, ignorance or design, would act so as to exclude the union from legitimately representing the interests of its members in salary packaging. The union sought significant changes to the order to expressly identify the union's role and rights. In particular our attention was drawn to the possibility that the reference to "employee" in subclause (3) of the new Clause 44.—Salary Packaging might be interpreted in workplaces to preclude a union from making such a request to an employer on behalf of a member or members. The union says this likely will be interpreted by management in the workplaces bound by the award as excluding the union from any role.

Such an interpretation would be wrong. There is no question that any employee seeking to raise a request for salary packaging may do so through a relevant registered union; in this case the union party to the award. Such a request would have the same legitimacy as any direct request by an employee. Any management which diminished or denied the legitimacy of such a request because it is made by a union would, at least, raise serious questions about its competence. Should the legitimate standing of the union in representing the interests of members in salary packaging to management prove to be compromised in practice by recalcitrant management then that would warrant speedy relief.

However, having considered carefully the union's submissions we are unanimously of the view that the proposed variations to the order go beyond the purpose of a speaking to the minutes and in some respects would see the union with a pre-emptive role at odds with our conclusions in this matter. Accordingly we do not intend to amend the proposed order.

The order as proposed will now issue to finalise this claim.

---

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Royal Perth Hospital and Others.

No. P 62 of 1994.

Hospital Salaried Officers' Award 1968

No. 39 of 1968.

COMMISSION IN COURT SESSION

COMMISSIONER J F GREGOR

COMMISSIONER S A CAWLEY

COMMISSIONER A R BEECH.

1 May 1998.

*Order.*

HAVING heard Mr C Panizza on behalf of the applicant and Ms J Smith (of counsel) on behalf of the respondents now therefore the Commission in Court Session pursuant to the powers conferred by the Industrial Relations Act, 1979 hereby orders —

THAT the Hospital Salaried Officers' Award 1968 No. 39 of 1968 as amended be further varied in accordance with the following schedule with effect on and from the 13th day of March 1998.

For the Commission in Court Session,

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

SCHEDULE

1. Clause 2.—Arrangement: Immediately following “43. Flexibility Agreements” in this clause, insert:

44. Salary Packaging

2. Clause 43.—Flexibility Agreements: Immediately following this clause, insert a new clause as per the following:

44.—SALARY PACKAGING

- (1) For the purposes of this award “salary packaging” shall mean an arrangement whereby the wage or salary benefit arising under a contract of employment is reduced, with another or other benefits to the value of the replaced salary being substituted and due to the employee.
- (2) An employer and employee bound by this award may enter into a salary packaging arrangement subject to the following —
  - (a) The employer shall take all reasonable steps to ensure that any salary package complies with taxation and other relevant laws;
  - (b)
    - (i) The employer shall record the arrangement at the time it is entered into, and provide a copy to the employee before the arrangement comes into effect;
    - (ii) The record shall include details of the employee's classification and salary level applying immediately prior to the salary packaging, coming into effect, and the details of the package;
  - (c) The value of any agreed salary package, viewed objectively, shall not be less than the value of entitlements under this award which would otherwise apply;
  - (d) The value of any agreed salary package, viewed objectively, shall not be greater than the value of the contractual benefits which would otherwise be due to the employee;
- (3) An employer shall not unreasonably withhold agreement to salary packaging on request from an employee.

- (4) In the event of a dispute involving —
  - (a) refusal by an employer to discuss after having received a request for salary packaging; and/or
  - (b) a claim by an employee or the union party to this award that an employer is unreasonably refusing to enter into a salary packaging arrangement with its employee/s;

such dispute may be determined under the Industrial Relations Act, 1979 as amended.

**PRESIDENT—  
Matters dealt with—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hamersley Iron Pty Limited  
(Applicant)

and

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

No 698 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

6 May 1998.

*Reasons for Decision.*

INTRODUCTION

THE PRESIDENT: This is an application by the abovenamed applicant brought under s.49(11) of the Industrial Relations Act 1979 (as amended)(hereinafter called “the Act”) for a stay of the operation of the whole of the decision of the Commission constituted by a single Commissioner.

I am satisfied that an appeal (Appeal No 688 of 1998) has been instituted under s.49(11) of the Act by the applicant and that the applicant, as the appellant against the decision of the Commission at first instance and as a party to the proceedings at first instance, has sufficient interest to make this application.

THE DECISION.

On 6 April 1998, in matter No CR370 of 1997, the Commission made a declaration that a decision of the applicant herein to transfer three employees to “day work”, effective on 22 December 1997, was unfair.

Further, by the decision, the Commission ordered that the applicant rescind its decision to transfer the employees and restore them to the position they were in prior to the transfer, and apply to the employees the terms and conditions which would have applied had the transfers not been made.

BACKGROUND

The applicant is and was engaged in iron ore mining and processing in the Pilbara region. It transports ore from mine sites at places such as Paraburdoo and Tom Price to a port at Dampier. To do this, it employs and has employed a number of employees including a number employed as locomotive drivers. Their employment is and was regulated by the Iron Ore Production and Processing (Hamersley Iron Pty Limited) Award 1987 (hereinafter referred as “the award”).

The three employees that were the subject of proceedings at first instance were Mr D Daniel, Mr N Benardi and Mr C Shaw. They were and are based at Dampier. All three had been employed as locomotive drivers for lengthy periods; 24 years, 17 years and 13 years respectively. All had been employed until December 1997 as locomotive drivers on mainline work. That, as I understand it, involves driving trains up and down

the main lines from the mines to Dampier and return and involved shift work. They were paid at about \$80,000 per year.

These drivers were given notice by the applicant in December 1997 that they were transferred to "day work" from "shift work". The work involves what is called "yard work", that is, work in the yard at Dampier shunting and doing other work at the depot. It is paid at about \$40,000 per year but, in any event, at a significantly lower rate.

These employees were employed under the award as distinct from other drivers called "staff" drivers, who were and are employed by the applicant under workplace agreements.

Since the transfer, as I understand it, the three drivers have been paid as if they were still performing mainline duties and until this matter was decided by the Commission at first instance.

There had been a dispute between the parties to this application because, as I understand it, the applicant had changed the train schedule but not the rostered time on duty of the three employees mentioned above, so that they were not rostered on duty when trains were due to operate.

There were matters of arbitration of the roster dispute before Beech C commencing in February 1997 (see the reference to these matters in the Reasons for Decision of the Commission at first instance) and there were further related matters before Beech C at various times during the course of 1997.

The Commission, as I have said, found that the transfer was unfair and rescinded them.

Those matters of fact are, as I understand it, not in dispute and constitute the background to the proceedings.

No evidence was adduced on oath or affidavit. Some letters were tendered as exhibits by Mr Schapper (of Counsel) for the respondent without objection (exhibits 1, 2 and 3).

#### PRINCIPLES

The principles which apply to the determination of applications for a stay are well established (see *CSA v WA Centre for Pathology and Medical Research and Another* (1995) 76 WAIG 60 and *Gawooleng Dawang Inc v Lupton and Others* (1992) 72 WAIG 1310).

The applicant must establish that the discretion of the Commission should be exercised in its favour, that there is a serious issue to be tried, and that the balance of convenience lies with the applicant.

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

At the centre of such considerations is the principle that a successful "litigant" should not be lightly deprived of the fruits of his or her "litigation".

#### SUBMISSIONS AND ISSUES

I should observe, however, that it was conceded by Mr Schapper, on behalf of the respondent, that there was a serious issue to be tried.

The only question was whether the applicant had established that the balance of convenience lay with it.

For the applicant, it was submitted that the applicant had given an undertaking to pay the award drivers (the subject drivers were award drivers) as if they had been performing shift work, and not at the substantially lesser rate applicable to non-shift or yard drivers; and to include the period of operation of any stay, that is, if the appeal were unsuccessful.

Further, it was submitted that no substantial detriment would be suffered by the respondent and its members if the appeal were dismissed, because the drivers would receive pay pending the determination of the appeal.

It was submitted that the applicant would suffer detriment if the order were not stayed, because the award drivers would not perform mainline work in the absence of a roster which coincides with the train schedule and there is no immediate prospect that such a roster will be created in the future, particularly because a decision in relation to the change in roster is subject to appeal.

Further, it was submitted that during the period, before the appeal is heard and determined, the award drivers would not be able to perform substantive mainline work because of the differences between the hours of duty prescribed by the

rosters and the times of operation of trains prescribed by the train schedules.

It was submitted, too, that amounts paid for wages, to which it was subsequently determined upon a successful appeal that the employees were not entitled, could not be recovered or might be recoverable only with embarrassment or difficulty because the three drivers were employees.

The amounts to be recovered would be the difference in wages between shift or mainline employees' wages and yard or daytime employees' wages.

I should add that Mr Ellis (of Counsel) submitted, on behalf of the applicant, that the amount payable as the difference between the two levels of wages could be directed to be paid into a trust account, the proceeds of which could be distributed to the employees or the applicant, depending on the result of the appeal.

In his submissions on behalf of the respondent, Mr Schapper submitted that there was shift work available for the employees because, under Clause 5, Shift Work, where an engineman is rostered to perform local work (yard work), the company may vary the roster to a mainline changeover job or the roster may be varied to a mainline job involving booking off at an away depot (see Clause 5(4)(e) and (f)).

Mr Schapper also laid emphasis on the fact that the award was a consent award, and that under Prevention of Disputes Clause 1(2)(f)(i) to (iii) of the award, it was provided that where a major change, (such as this roster change was, on his submission) was sought to be introduced and objected to, then the status quo was to be maintained pending resolution under procedures prescribed in the award or by arbitration by the Commission, the matter of change being an industrial matter.

He also laid emphasis on Clause 5, Shift Work, and the requirement in that clause that the existing locomotive crew roster shall continue until a new roster is agreed between the parties or, in the event of disagreement, determined by the Commission (see Clause 5(1)(c)).

The submission, as I understood it, was that because the transfer of the employees had been found to be unfair and contrary to the award's provisions, the balance of convenience and the equity and good conscience lay with the respondent and its members.

In similar context was the reference by Mr Schapper to an undertaking given in the course of conciliation and/or arbitration by Freehill Hollingdale and Page on behalf of the applicant herein by letter dated 19 December 1997, written to Mr Schapper's instructing solicitors.

The undertaking was as follows—

"If the WAIRC orders that your client's(sic) must be transferred from day work to shift work Hamersley irrevocably undertakes to pay your client's(sic) as if they had been performing shift work since 22 December 1997.

Our client agrees that this letter may be pleaded in any court."

This undertaking was given in proceedings before Commissioner Beech, where the respondent had sought an interim order that the transfer to "day work" not be effected before the hearing and determination of the respondent's claim that that transfer was unfair.

The undertaking, by its terms, as I read it, is an undertaking given to the Commission on behalf of the applicant that, if an order were made transferring the three drivers from day work to shift work, then the applicant irrevocably undertook to pay them as if they had been performing shift work from 22 December 1997 to the date of the order.

I do not read the undertaking as having a life beyond 6 April 1998, except for the purposes of enforcement.

Mr Schapper also drew my attention to the fact that the application, the subject of the order appealed against, was filed on 12 December 1997. Clearly, the dispute over the change in roster has lasted a great deal longer than that.

#### CONCLUSIONS

A number of assertions were made from the bar table which were either irrelevant or were challenged as facts. A number of submissions were made as to the conduct of the applicant, which were not relevant.

What is at the heart of the application is this. The three

employees have, since 22 December 1997, been unable to work as mainline drivers. As a result, they have suffered for over four months a substantial loss in earnings, particularly since they had all been mainline drivers in the past, and, it would seem, for substantial lengths of time. Further, they are deprived of their jobs as mainline drivers. They have different jobs and, if the wage is an indicator, jobs of inferior status.

Further, they have an order based on a finding that their transfer in their jobs was unfair to remedy the situation. The applicant says, and it is correct, that if there is no stay and the applicant is successful on appeal, it will be paying incomes out which it will have to recover from the employees. That is so.

However, I am unable to find that that would cause great inconvenience, or alternatively, that that was probable has been established. These are longstanding employees and there is no evidence that they will refuse to repay, that they will not remain in the applicant's employment, or that recovery from them will be difficult or impossible.

In any event, in my opinion, the balance of convenience lies with the respondent's members who have been deprived of longstanding positions as mainline drivers, who have been deprived of their wage as such for a lesser wage, and whose deprivation has occurred over a significant period of time (four months at least), and who have been subjected to uncertainty by the dispute about rosters for even longer.

I am not persuaded, on all of the evidence, that their interests should be subordinated to that of the applicant, which can still recover any overpaid amount. Even more cogently, under the award, in any event, the applicant can make use of the services of the three drivers under Clause 5 in mainline driving capacities, notwithstanding the roster changes (see Clause 5 and the provisions to which I have referred above). To make use of their services as mainline drivers at mainline wages means that the applicant would suffer no loss any way.

If that is not the case, it has not been established otherwise to my satisfaction. The balance of convenience does not lie with the applicant. Alternatively, the applicant has not established that it does.

As to the submission that I should direct the monies to be paid into a trust account, that, in this case, merely puts the inconvenience for the drivers on a different basis. They are still deprived of the fruits of their litigation and, by implication, restoration to their mainline driver positions. The fruits of "litigation" should not, on the evidence, be denied to the respondent and its members.

For all of those reasons, I am satisfied that the equity, good conscience and the substantial merits of the application lie with the respondent. Alternatively, the applicant has not established that they lie with it. I will dismiss the application.

Order accordingly

APPEARANCES: Mr D S Ellis (of Counsel), by leave, and with him Mr R D Allen (of Counsel), by leave on behalf of the applicant

Mr D H Schapper (of Counsel), by leave, on behalf of the respondent

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hamersley Iron Pty Limited  
(Applicant)

and

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

No. 698 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

6 May 1998.

Order.

This matter having come on for hearing before me on the 5th day of May 1998, and having heard Mr D S Ellis (of Counsel), by leave, and with him Mr R D Allen (of Counsel), by

leave, on behalf of the applicant and Mr D H Schapper (of Counsel), by leave, on behalf of the respondent, and having reserved my decision and reasons for decision being delivered on the 6th day of May 1998, wherein it was found that the application should be dismissed, it is this day, the 6th day of May 1998, ordered that application No 698 of 1998 be and is hereby dismissed.

[L.S.]

(Sgd.) P.J. SHARKEY,  
President.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rosemarie Bannon  
Applicant

and

State School Teachers' Union of WA (Inc) and Brian  
Lindberg  
Respondents.

No 1823 of 1996.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

8 April 1998.

*Reasons for Decision.*

THE PRESIDENT: This matter came on for hearing before me on 30 January 1998 for directions in relation to a number of outstanding matters which arose out of the hearing of this application.

I gave a number of directions, one of which was that written submissions be filed on behalf of the respondents by 3 March 1998. The other was that the applicant should file and serve her outline of submissions by 1 April 1998. The respondents' solicitors filed their submissions on 3 March 1998. The applicant has not filed her submissions to date and I assume that she does not propose to do so. Accordingly, I now propose to determine these matters.

At the directions hearing, the applicant sought to bring a "new" allegation of contempt against the respondents in relation to an article entitled "Trio leave union with a huge legal bill" (see MFIB).

The application was an oral one of which only oral particulars were given.

The President has the same power to punish contempt as the Supreme Court of this State (see s.92(1) and s.92(4) of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act").

Those sub-sections provide as follows—

"92. (1) The Court has the same power to punish contempts of its power and authority as has the Supreme Court in respect of contempts of Court, and without prejudicing the generality of the power, where the Court considers that a contempt may be appropriately punished by a fine, it may inflict a fine.

92. (4) The President, in the exercise of the jurisdiction conferred on him by this Act and when presiding on the Full Bench or sitting or acting alone, has and may exercise like powers as are conferred on the Court by this section."

(The Court is defined in s.7 of the Act as "the Western Australian Industrial Appeal Court continued and constituted under this Act".)

This article was published after I had heard and determined application No 1823 of 1996 and issued orders on 19

December 1997 which determined such application by dismissing the same.

This was not a matter left for me to hear and determine by my express direction as were the other matters mentioned on 30 January 1997.

I would observe as follows—

- (1) The President has the same power as the Supreme Court which is a superior court of record to punish contempt.
- (2) The power to punish acts calculated to interfere with the course of justice does give rise to criminal contempt (see R v Lovelady: Ex parte Attorney General for Western Australia [1982] WAR 65 at 66-67 and 69).  
(Civil contempt arises, for example, when undertakings given in the course of proceedings are breached or orders made by the Court are disobeyed.)
- (3) All proceedings for contempt are criminal in nature and the allegations must be proved beyond reasonable doubt (see Witham v Holloway [1955] 183 CLR 525 at 534 and 548).
- (4) The contempt here alleged relates to contempt by publication.
- (5) The legislation does not disclose a legislative intention to dispense with the requirement that a person should not be punished for a statutory offence of contempt unless the particular offence charged has been distinctly identified and he/she has been given an adequate opportunity to answer the charge (see MacGroarty v Clauson (1989) 167 CLR 251 applied in R v Eades (No 1) (1991) 6 WAR 402).

The applicant has not, it is true, stated what is said constitutes the contempt. The contempt has not been sufficiently and distinctly identified so that the respondents might answer it. Even if I were wrong in reaching that decision, then the article must be established to be material which, looked at objectively, has a real and definite tendency to interfere with the due administration of justice in a particular proceeding, the actual intent or purpose behind it not being a material consideration.

The report was a report of the result of the hearing upon determination of this application, including a report of the cost of the proceedings and some observations as to findings made by the Commission, constituted by the President, and expressed in the Reasons for Decision which were published by the Commission.

True, the article contained some criticism of the applicant because of the cost of the proceedings. I do not say that an attempt to deter persons making applications under s.66 by referring to the cost to an organisation of such proceedings may not be properly criticisable. (Grounds for criticism are not evidence of contempt.) However, I see nothing in this article which has been established to me, upon a fair reading of the article, to have any tendency to interfere with the due administration of justice, or which might be said to scandalise the Commission as constituted by the President.

I would dismiss the application, which was oral, made seemingly without notice and not particularised on that basis, even if it is not a matter brought before me when I am functus officio, which I might well be.

#### OTHER MATTERS

(1) A number of other matters involving two allegations by the respondents that contempt was committed by a Mr John Charles Bartley and one of contempt by Mr Alan Calhoun (see Transcript (hereinafter referred to as "TR") at page 3 of the 30th January 1988) were withdrawn by the respondents.

There were a number of other matters, however, which were raised before me on 30 January 1998.

These were—

- (a) The non-attendance of Ms Mary Franklyn as a witness on 16 April 1997.
- (b) The alleged non-attendance by Ms Sue Rodway and Mr Chad Sexton-Finck as witnesses on and/or after 15 July, 1997 (see TR 638 of the 15th July 1997).

Ms Bannon did not want to pursue the matter of Ms Franklyn, who in the end, allegedly did not attend in response to a summons to witness and give evidence.

She did, however, want to submit that Mr Sexton-Finck, even though he later did attend and did give evidence, was in contempt. She also submitted that the non appearance on and after 15 July 1997 by Ms Sue Rodway constituted contempt and wanted her "dealt with".

Mr Shanahan (of Counsel) for the respondents, advised me that he had no instructions to act for Mr Sexton-Finck or Ms Rodway.

He did, however, say that the question whether they would receive legal assistance from the SSTUWA was being considered. I indicated, though, that I would give consideration to these matters and to what I ought to do in relation to Mr Sexton-Finck and Ms Rodway, if anything. I reserved that question for my decision.

(2) Another matter which arose related to Exhibit 92, a copy of the Western Teacher of April 1997 containing an article on page 3 entitled "Funds Challenge".

There were a number of submissions made concerning the article, the relevant part of the article reads as follows—

"SSTU internal matters have dominated a court in the WA Industrial Commission for the past two weeks.

Members Rosemarie Bannon and Allan Calhoun are challenging the union's decision to fund Chad Sexton-Finck's defamation action against them.

Bannon and Calhoun were represented by former Western Teacher editor, John Bartley, who called almost 30 witnesses.

The matter had its genesis last year in the paper's Editorial Committee.

Bannon and Calhoun want the SSTU to give them equal funding to defend the action, or withdraw Sexton-Finck's funding."

It was submitted that these statements were, in fact, very brief statements of fact by Mr Shanahan.

Ms Bannon, as well as adopting as her submissions statements contained in an affidavit sworn by Mr John Charles Bartley and filed on 17 April 1997, submitted that she was being defamed by that article.

Of course, the question of whether she is or was being defamed or not is not a matter for me.

In my opinion, however, even if the allegations of contempt were properly particularised so as to identify the contempt, which they were not, on a fair reading of the article, one could only say that it appears to be nothing more than a brief description of events in Court to date and could not be rightly said to represent a contempt. I would find accordingly.

As to the non-attendance of Ms Franklyn, (even if the service upon her was valid, a question which I have not yet determined) that matter was not pursued by the applicant and I do not feel it necessary to take the matter further.

These matters, therefore, came before me finally in January and April of 1998.

In the meantime, Mr Sexton-Finck had attended court and given evidence on behalf of the applicant. I am not, therefore, of the opinion that I should punish him on this occasion.

As to Ms Sue Rodway, I was informed on 10 October 1997 that she had gone overseas. On the face of it, that would seem to be a matter requiring my intervention.

However, the applicant closed her case in any event, nor did she apply to extend the time within which I should hear Ms Rodway's evidence. Further, as Ms Bannon conceded, there was a question as to whether the summons to witness had been validly served, which she did not deal with.

On the face of it, the declaration of service of Mr Alan Philip Calhoun made on 25 March 1997 and filed in the Commission, whilst it evidences personal service on Ms Rodway on 24 March 1997, contains no evidence of there being tendered to her at the time of service sufficient money to enable her to travel between her place of residence or employment and the place of hearing mentioned in the summons (see Regulation 83(5)).

In the absence of such evidence, I cannot conclude that service was valid.

I will not, therefore, take any further action.

All of those matters were the subject of applications before me. For all of those reasons; I will dismiss the applications.

Order accordingly

Appearances: Ms R Bannon on her own behalf as applicant  
Mr C Shanahan (of Counsel), by leave, on behalf of the respondents

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rosemarie Bannon  
Applicant

and

State School Teachers' Union of WA (Inc) and Brian  
Lindberg  
Respondents

No 1823 of 1996.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

30 January 1998.

*Order.*

This matter having come on for a directions hearing before me on the 30th day of January 1998, and having heard Ms R Bannon on her own behalf as applicant and Mr C Shanahan (of Counsel), by leave, on behalf of the respondents, and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended) ("the Act"), it is this day, the 30th day of January 1998, ordered and directed as follows—

- (1) THAT leave be and is hereby granted to the respondents herein to file and serve written submissions as to the nature of the Article headed "Trio leave union with a huge legal bill" on pages 1 and 2 of the Western Teacher Volume 27 Number 1, January 1998 "MFIB" by 3 March 1998.
- (2) THAT leave be and is hereby granted to the applicant herein to file and serve written submissions in reply by 1 April 1998.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rosemarie Bannon  
Applicant

and

State School Teachers' Union of WA (Inc) and Brian  
Lindberg  
Respondents.

No 1823 of 1996.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

8 April 1998.

*Order.*

This matter having come on for hearing before me on the 30th day of January 1998 for directions in relation to a number of outstanding matters which arose out of the hearing of this

application, and having heard Ms R Bannon on her own behalf as applicant and Mr C Shanahan (of Counsel), by leave, on behalf of the respondents, and having reserved my decision on those matters, and having ordered that written submissions be filed and served by the applicant and the respondents in relation to the article entitled "Trio leave union with a huge legal bill" in the Western Teacher Volume 27, Number 1 of January 1998, and reasons for decision being delivered on the 8th day of April 1998, it is this day, the 8th day of April 1998, ordered and directed as follows—

- (1) THAT the oral application by the applicant herein that the respondents herein be punished for contempt in relation to an article published in the Western Teacher Volume 27, Number 1 of January 1998, entitled "Trio leave union with a huge legal bill" be and is hereby dismissed.
- (2) THAT similar oral applications against Chad Sexton-Finck and Susan Rodway for alleged failure to attend in answer to summonses to witnesses addressed to them be and are hereby dismissed.
- (3) THAT a similar oral application against the respondents herein in relation to an article published in the Western Teacher in Volume 26, Number 4 of April 1997 entitled "Funds challenge" be and is hereby dismissed.

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

## CEREMONIAL ADDRESSES—

CEREMONIAL ADDRESSES  
BEFORE THE  
WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION

A SPECIAL SITTING OF  
THE FULL BENCH  
Speeches of Welcome

to

COMMISSIONER S J KENNER

Wednesday, 25 March 1998

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
SENIOR COMMISSIONER G L FIELDING  
COMMISSIONER J F GREGOR  
COMMISSIONER A R BEECH  
COMMISSIONER P E SCOTT  
COMMISSIONER S J KENNER.

DR N BLAIN represented the Government of Western Australia and appeared on behalf of the Minister for Labour Relations, Planning, Heritage

MR T ADAMS appeared for the Australian Mines and Metals Association

MR B McCARTHY appeared for the Chamber of Commerce and Industry of Western Australia

THE PRESIDENT: This is a special sitting of the Full Bench of the Commission to welcome Commissioner Stephen John Kenner as a member of this Commission, he having been sworn in on the 24th March, 1998 by the Acting Chief Justice.

On behalf of the Commission, it pleases me to say that it is fitting that such a large and representative gathering is present this morning for this special sitting. It gives me great pleasure, also, to, on behalf of my colleagues of the Commission and myself to welcome, in particular, Commissioner Kenner's wife, Michelle; to welcome other friends of his; to welcome distinguished guests, and all others who have been able to be present on this important occasion.

I have endeavoured to make a number of finds of primary fact in relation to Commissioner Kenner's career and I note that if there are any errors of fact, they are not correctable on this occasion by any superior tribunal.

The Commissioner was born in New Zealand in 1958 and came to Australia in 1980. He is aged a mature 39 years. He graduated with a Bachelor of Arts degree from the University of Western Australia in 1983 and a Masters Degree in Industrial Relations in 1986. In 1982 and 1983, he was employed in the industrial relations field. From 1984 to 1991, he was a consultant advocate with the Confederation of WA Industry (now the Chamber of Commerce and Industry of Western Australia) save for a period when he was Director of Labour Relations for an individual employer and was also, but not simultaneously, overseas studying the development of employee participation in the private sector on a study grant in the United Kingdom, Switzerland and Sweden.

He was a senior industrial advocate with the Chamber from 1988 to 1990 when he left to join the firm of Mallesons, Solicitors. He graduated with a degree of Bachelor of Laws in 1992 from the University of Western Australia, was admitted to practice as a legal practitioner of the Supreme Court of Western Australia on the 3rd August, 1993 and became a partner, with the benefits and detriments of partnership, in Mallesons in 1996. I speak generally of partnerships, not of that particular partnership obviously.

At Mallesons, he practised in the fields of employment law, occupational health and safety and kindred areas, both in this jurisdiction and in the Federal jurisdiction. He found time, too, to engage also in some general litigation and appeared in a number of courts including the Supreme Court of this state and the Federal Court of Australia.

His talents were recognised by his being given responsibility for the day to day operation of the Perth workplace and employment relations section of the firm's practice, and he joins this Commission from that area of endeavour.

He is a person who has been both a experienced advocate and consultant in the industrial relations field and subsequently a legal practitioner in the same field. He has also distinguished himself by his academic achievements which I have outlined above. His experience and achievements, both as a legal practitioner and as an advocate and consultant in the industrial relations field, and his academic ability will be, together with his personality which is well known to all of us, a welcome addition to this Commission.

I should add that, given the substantial increase in the work of the Commission over recent times, the appointment of a Commissioner to replace Commissioner George, recently retired, is a more than welcome one. I do know that, for some time before the Commissioner was due to join us, that the Chief Commissioner was anticipating his arrival on the scene and projecting listings. So, I should say that there will not be any lack of duty for Commissioner Kenner.

On behalf of all of my colleagues of the Commission, I formally welcome Commissioner Kenner. His commission confers upon him the office of Commissioner and I quote, "to have, hold, exercise and enjoy". I am sure that he will, having been so directed, enjoy his term of office as a member of the Commission. We wish him well in his occupation of the office of the Commission for the future. Are there any motions? Mr Adams, I think.

PRESIDENT: Thank you, Mr Adams. Mr McCarthy?

MR Mc CARTHY: Your Honour, Chief Commissioner, Senior Commissioner, Commissioner Kenner and your colleague commissioners, when I look at this bench I see three lawyers in a row holding the centre, previous employers' representatives at the extreme left and the extreme right, and previous government and trade union representatives somewhere in between.

Today is, I guess—beginning of the day and the ending of the day is somewhat of a contrast for me because this morning as the beginning of the day, I'm here representing the Chamber, employers generally and my colleagues and Steve's ex-colleagues, recognising that his addition to the commission will enhance the role and reputation of the commission, whereas this evening I am debating at the Industrial Relations Society on how wages should be fixed where it will probably

come as no surprise to this bench and to others; where I will be arguing that the role of the commission should be diminished rather than increased.

I think Commissioner Kenner brings a very, very essential element to this commission; that essential element being the breadth of experience that the commissioner holds. From his family, from having a proud father who I know personally to being a proud father and husband, from his studies from going from arts to industrial relations to law, and I know he did it hard. It wasn't an easy ride for the commissioner. He did a lot of it part time, he did all of it himself and most of it in a country not of his birth or with his family surrounding him.

In his work life he has also had a breadth of experience; a breadth that I don't think many people know intimately of. He started, I think, before his individual working life, with his family and his father and family's company in a small business in New Zealand. I think that brings an experience that I think will be welcome by employers, particularly small business employers, to this Bench. It brings an experience of the shop floor ranging from being a bus driver to a bar attendant to a storeman.

He brings, I think, a wealth of experience; that he gained at the Confederation of Western Australian Industry in two stints of employment he had with us, representing a diverse range of employers from the manufacturing sector the primary sector, the coal mining industry, the gold mining industry and one thing was common in my experience from Steve's service with the Chamber that whoever he represented, he gained their respect and my impression was whoever was opposing him, he gained their respect and whoever he appeared before, he gained the Bench's respect.

Whilst he was with us, he also was involved in a range of quite important cases; notably a case on maternity leave where, from recollection, he dealt with the issue of compulsory confinement periods. He also dealt with what we saw as a very important case, together with two other colleagues at that time, Colin Barnett and David Jones, in what we call the junior workers case of 1985 or 1986.

It is a sense of *deja vu*, I suppose, when I picked up the Financial Review this morning and there was there an article on youth unemployment which that case dealt primarily with and the observation made in that article some 12 or 13 years later that industrial tribunals throughout this land have had somewhat of an incapacity to come to grips with the economics of the training and labour market with youth. I would hope that Steve brings some further understanding to the commission of the economics of training.

He has also represented employers in some other forums; notably in 1985, Steve was selected to be a representative at the inaugural Queen Elizabeth II Jubilee Trust. That is a trust that establishes a forum for young people to come together to canvas various issues and they are subjected quite heavily over a period of, I think, a week to a range of views and a range of issues and the experience they gain by that, I am sure, is well valued by them.

To illustrate, I suppose, the range of the views, I think the first session in that forum that Steve attended had Bill Kely. It was back in 1985, so Bill Kely, probably appropriate, talking on the role of government and in the very same session, John Stone talking on practical suggestions for improvement. I hope Steve brings more of John Stone to the Bench than he does of Bill Kely.

From our point, we—and I personally—recognise that Steve has been appointed truly and uncompromisingly on his own merit and we wish you well in your further career in this tribunal. I think I am entitled, given our relationship, to offer you some gratuitous advice and that gratuitous advice is "Don't let your elevation create your isolation". Thank you, Mr President.

PRESIDENT: Thank you, Mr McCarthy. Commissioner Kenner?

KENNER C: Thank you, Mr President, Chief Commissioner. Senior Commissioner Commissioners, advocates at the bar table, family, former colleagues, colleagues, and friends. Firstly, thank you, Mr President for your most gracious and kind words of welcome and your good wishes on my appointment. Thank you also to my colleagues on the bench and the

staff of the commission as they have already made me feel most welcome with my appointment.

I should say that I feel very honoured and privileged to be before you today on the occasion of my formal welcoming ceremony to the bench of the commission: To those at the bar table, to Mr McCarthy and to Mr Adams, I thank you for your kind words in relation to my career to date. In particular, a long association with the Chamber of Commerce as it now is, the Confederation as it then was, with Mr McCarthy and I thank him for his very kind remarks about my career and observations about my achievements.

I also should say that in latter years in legal practice, I met and worked with very many fine people and I am glad to see that many of those are here today and I thank you for taking time to be here.

I am also very pleased to see my wife, Michelle, here and also to experience with me this welcoming ceremony and that is certainly very good for me personally and I thank her for the support she has provided to me during the course of my career to date.

I am also very pleased to see a large number of my friends here today and thank them for the time and effort they have taken in coming to the commission for the ceremony.

Turning to my role, I am very much looking forward to my role on the commission and to the challenges and demands that it will no doubt place upon me in a variety of ways. In taking up the appointment to the bench, I should say that I am very aware of my obligations under the statute and I will endeavour to discharge those obligations to the very, very best of my ability.

In particular, I am aware of my responsibilities to act according to equity, good conscience and the substantial merits of the case; to have regard to those parties directly concerned; to have regard for the wider community and, where relevant, to have regard for the State of Western Australia.

As with previous occasions of welcoming ceremonies of members of the tribunal, I note there have been comments made and observations about changing times. I should say I am mindful of the changing times in which labour relations exists presently and has undergone in the last number of years and, indeed, the challenges that those pose to me as a member of the commission in the discharge of my duties.

I would like to conclude by saying a very sincere thank you to all of those who are here today who have taken the time out of their busy schedules to share this welcome experience of my appointment to the bench. I greatly appreciate it. I greatly appreciate the sentiments of goodwill from those at the bar table and I look forward to seeing many of you again in the future. Thank you, Mr President.

PRESIDENT: Yes, thank you very much, Commissioner. Now, I think we ought to do something unusual. I note that Dr Blain is now with us and I think that it would be fitting, notwithstanding that Commissioner Kenner has spoken, that Dr Blain be invited to speak, so if you would be so kind, Dr Blain, although it is a little irregular, I think it is appropriate nonetheless that you do so. However, I do not want those busy and assiduous students of procedure to think that there is a precedent created whereby members at the bar table have a right of reply to the Commission. Thank you. Dr Blain?

DR BLAINE: Your Honour, thank you very much for the special privilege you have granted me and my sincere apologies on late arrival. It was only due to a fire alarm in Central Park and I couldn't in and had to circle the block a number of times to get a parking spot.

I appear today on behalf of the Honourable Graham Kierath, the Minister for Labour Relations, and I have unfortunately, he cannot be here due to a prior commitment and he regrets that very much. Nevertheless, I have much pleasure in passing on the congratulations of the minister to Commissioner Kenner on his appointment as a new commissioner to the Western Australian Industrial Relations Commission.

I, too, am delighted to see his appointment and note that he does have significant industrial relations experience and also significant industrial law experience and, for these reasons, I am sure that he will be a valuable contributor to the commission. Mr Kenner possesses a Master of Industrial Relations degree from the University of Western Australia and, to my

knowledge, that is the first occasion on which a person that has that degree has been appointed to the commission.

On behalf of the minister, I would like to wish the commissioner well in what will be a challenging position and I have no doubt that he will earn the respect of those that deal with him. Thank you very much.

PRESIDENT: Thank you, Dr Blain. Of course, the Commission makes its decision after it has heard all the submissions. That procedure should not be departed from and I would invite Commissioner Kenner, should he wish to say anything further, so to do.

KENNER C: Thank you, Mr President. Thank you, Dr Blain, for your very kind words and submissions on behalf of the minister. I greatly appreciate those submissions and, once again, I thank very sincerely all those at the bar table for their submissions and welcoming remarks to my appointment. Thank you.

PRESIDENT: That concludes these proceedings and we will stand adjourned.

## AWARDS/AGREEMENTS— Application for—

**ALBANY HEALTH SERVICE (ENGINEERING  
DEPARTMENT) ENTERPRISE BARGAINING  
AGREEMENT 1998.**  
No. AG 47 of 1998.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Albany Health Service Board

and

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

and

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

and

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

and

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

and

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

No. AG 47 of 1998.

9 April 1998.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 47 OF 1998

HAVING heard Ms K.C. Morgan on behalf of the first named party, Mr G.C. Sturman on behalf of the second named party, Mr J. Murie on behalf of the fourth and sixth named parties and Ms J. Harrison on behalf of the third and fifth named parties; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

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

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

THAT the agreement titled the Albany Health Service (Engineering Department) Enterprise Bargaining Agreement 1998, filed in the Commission on 20 March 1998 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

[L.S.] (Sgd.) C. B. PARKS,  
Commissioner.

## AGREEMENT

### ALBANY HEALTH SERVICE (ENGINEERING DEPARTMENT) ENTERPRISE BARGAINING AGREEMENT 1998

#### 1.—TITLE

This Agreement shall be known as the Albany Health Service (Engineering Department) Enterprise Bargaining Agreement, 1998.

#### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope and Parties Bound
4. Relationship to Parent Awards
5. Aims and Objectives of the Agreement
6. Joint Consultative Committee
7. Dispute Settlement Procedure
8. Key Performance Indicators
9. Wages
10. Hours of Work
11. Commuted Allowances
12. Terms of the Agreement
13. Agreement not to be used as a Precedent
14. No Extra Claims
15. Framework and Principles for Further Productivity Bargaining
16. Signatories to the Agreement
  - Schedule A Rates of Pay
  - Schedule B Commuted Allowances
  - Appendix 1 Past Productivity
  - Appendix 2 Future Productivity

#### 3.—SCOPE AND PARTIES BOUND

3.1 This Agreement shall be binding on the Board of Management of the Albany Health Service and all employees engaged in the Engineering Department of the Albany Health Service covered by the unions detailed in sub clause 3 of this clause.

3.2 The estimated number of employees bound by this Agreement at the time of registration is 21 employees.

3.3 This Agreement shall be binding on the following unions—

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

Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia.

Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers.

Plumbers Gasfitters Employees Union of Australia, WA Branch

Western Australian Builders Labourers, Plasterers and Painters Union of Workers

3.4 The parties to this Agreement shall be the Board of Management of the Albany Health Service and the Unions listed in subclause 3 of this clause.

#### 4.—RELATIONSHIP TO PARENT AWARDS

4.1 This Agreement is to be read in conjunction with the following Awards—

Building Trades (Government) Award  
Engineering Trades (Government) Award  
Engine Drivers (Government) Award  
Miscellaneous Government Conditions and Allowances Award

4.2 Where this Agreement is inconsistent with the provisions of those Awards, the Agreement shall take precedent to the extent of any inconsistencies.

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

5.1 The parties agree that the objectives of this Agreement are to—

- (a) improve the productivity and efficiency of Albany Health Service;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Albany 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 for a wage increase to employees based upon the achievement of improved productivity and efficiency.

5.2 By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Albany Health Service and its clients and the Government on behalf of the community;
- (b) ensuring that Albany 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 Albany Health Service operates as effectively, efficiently and competitively as possible.

5.3 The Unions specified in subclause 3.3 and the Albany 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 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 as well as simply activity based;
  - (v) provides the processes, structures, rights and obligations which are essential to ensure that the full capacity for innovation 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 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 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, Albany Health Service is committed to facilitating and encouraging the participation and commitment of employees.

#### 6.—JOINT CONSULTATIVE COMMITTEE (JCC)

The management of the Albany Health Service is committed to consultation with employees in relation to decisions affecting employees, their work and working environment and to the improvement of communications, information sharing and consultation within the workplace.

To facilitate this consultation a Joint Consultative Committee will be established to—

- a. To provide a forum for management to consult with employees on issues affecting them;
- b. To provide a forum for employees to raise issues and matters of concern for management consideration;
- c. To improve management/employee relations so that the needs of the customers, management and employees are satisfied in a cost effective manner;
- d. To increase employee contributions in the decision making process particularly in the areas of job design, skill information, training and the work environment.
- e. To deal with issues arising from the implementation of this Agreement.

Details of the composition and operation of the Joint Consultative Committee will be agreed between the parties within one month of the Registration of this Agreement.

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

7.1 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.

7.2 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) may provide advice to Albany Health Service in an attempt to resolve the matter.

7.3 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 Union to which the Employee involved belongs from intervening to assist in the process—

- (a) The matter is to be discussed between the employee and his immediate supervisor.
- (b) If the matter is unresolved the matter is to be discussed between the Union employee representative and the employer representative and an attempt made to resolve the matter;
- (c) If the matter is unable to be resolved through discussions between the Union employee representative and the Albany Health Service representative, the matter

is to be discussed between the employee representative and the General Manager of the Albany 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;

- (d) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (e) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Union Office, or the General Manager of the Albany Health Service (or his/her nominee) of the existence of a dispute or disagreement;
- (f) The Union Office and the General Manager of the Albany 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.

7.4 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.

#### 8.—KEY PERFORMANCE INDICATORS

The parties have agreed to the following continuous quality improvement initiatives and productivity measurement monitoring program—

- 8.1 The parties have agreed that the measurement and monitoring of productivity improvements is important because it provides feedback to the parties on performance.
- 8.2 The parties have agreed that the Engineering Department employees will develop a proactive, involved and whole of job approach to all tasks undertaken. This will require the ongoing development and use of the initiatives contained in Appendix 1 and the implementation of the initiatives contained in Appendix 2.
- 8.3 The parties have agreed to develop key performance indicators which will reflect real and demonstrable improvements in efficiency and flexibility by the 31 August, 1998.
- 8.4 The JCC will ensure implementation of the initiatives identified in Appendix 2 immediately following the approval of this Agreement.

#### 9.—WAGES

9.1 The wage rates prior to the registration of this Agreement are shown in Column 1 of Schedule A.

9.2 From the date of registration of this Agreement wages will increase by 7.5% to the rate shown in Column 2 of Schedule A in recognition of the implementation of the initiatives listed in Appendix 1.

9.3 A second wage increase of up to 3.5 % will be paid nine months after the date of registration of this Agreement subject to the development of key performance indicators and the identification and implementation of productivity improvement initiatives which have achieved further productivity improvements to justify the proposed quantum of this increase. The rates payable under this sub clause are shown in Column 3 of Schedule A.

9.4 Apprentices employed by the Albany Health Service will be paid the percentage specified in the relevant Award of either the C 10 Engineering Trade or the C4 Building Trade rate payable under this Agreement.

## 10.—HOURS OF WORK

*Staff employed under the Building Trades (Government) Award and the Engineering Trades (Government) Award.*

## 10.1 Standard hours

It is agreed that the development of flexible working hours will take into consideration customer needs, business efficiency and where practicable, the preference of employees subject to the provisions of this clause.

## 10.2 Consultation

In determining any variation in hours, the Health Service will consult with the Employee.

## 10.3 Hours of Work

- (a) The ordinary hours of work will be 76 hours per fortnight with the actual hours of work being 80 hours per fortnight, 8 hours per day, with 0.4 hours each day accruing as an entitlement to take the twentieth day in each cycle as a rostered day off;
- (b) The flexibility to vary ordinary hours to a minimum of 4 hours and a maximum of 12 hours, exclusive of meal breaks, on any given day is available to meet operational requirements and individual employee needs. This provision will operate on a mutual agreement basis as per the provisions of sub clause 10.2 and 10.5.

## 10.4 Span of Hours

Ordinary hours may be worked in the span from 6.00 am to 6.00 pm Monday to Friday.

## 10.5 Starting and Finishing Times

Starting and finishing times will be flexible and responsive to customer needs and other operational requirements as determined by the Health Service.

However the normal start and finish times shall be 7.30 am and 4.00 pm unless otherwise mutually agreed.

## 10.6 Meal Breaks

- (a) Ordinary hours of service will be consecutive except for an unpaid meal break of not less than 30 minutes and not more than one hour.
- (b) Subject to (c), the time and length of a meal break may be altered by the Health Service to meet operational requirements.
- (c) The Employee will not be required to work for more than 6 hours without a meal break, except in an emergency situation, when the Employee will take a meal break as soon as is possible after the emergency situation.

## 10.7 Hours Worked in Excess of Ordinary Hours

- (a) Where the employer requires the employee to work hours in excess of the actual hours described in sub clause (3)(a) of this clause or outside of the span of hours described in sub clause (4) of this clause payment will be at over time rates. Overtime may be taken as either paid overtime or time off in lieu at overtime rates as agreed between the parties prior to the overtime being worked.
- (b) Where the additional hours as described in subclause 10.7 (a) are worked to meet the needs of the employee the hours worked will be credited as ordinary hours worked to be taken as time off in lieu at a time agreed between the parties prior to the additional hours being worked.

*Staff employed under the Engine Drivers Award (Hospital Plant Operators)*

10.8 Accrued Days Off may be paid out by agreement between the parties.

## 11.—COMMUTED ALLOWANCES

11.1 Except where specifically excluded in this clause all allowances are replaced by a single commuted allowance for each trade detailed in Schedule B. Column 4 of Schedule B represents the estimated value of allowances prior to the commencement of this Agreement, Column 5 is the rate payable from the date of registration of this Agreement and Column 6 is the rate payable in conjunction with the payment of the wage increase detailed in Clause 9.3. This allowance will be paid on a fortnightly basis including during periods of leave.

11.2 The commuted allowance for Hospital Plant Operators does not include annual leave loading which will be dealt with as per the Award.

11.3 The commuted allowance referred to above does not include payments for leading allowance and licence allowances paid to individual specified employees.

11.4 The provisions of this clause do not apply to apprentices.

11.5 Annual Leave Loading for leave accrued prior to the commencement of this Agreement will be paid out in the first pay after the Registration of the Agreement.

## 12.—TERM OF THE AGREEMENT

The term of this Agreement will be 18 months from the date of registration.

## 13.—AGREEMENT NOT TO BE USED AS A PRECEDENT

This Agreement stands alone and will not be used by any of the parties as a precedent for Agreements elsewhere.

## 14.—NO EXTRA CLAIMS

It is a condition of this Agreement that the parties will not make any further claims with respect to wages and conditions during the term of the Agreement unless they are consistent with the Wages fixing Principles of the WA Industrial Relations Commission.

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

15.1 (a) Following the receipt of a request from the Unions listed in subclause 3.3 of this Agreement to negotiate an amendment to this Agreement with Albany Health Service, a representative from Albany Health Service will meet with a representative from the unions 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 Albany 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 Albany 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.

15.2 In negotiating further wage increases in return for productivity improvements, the parties will 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 Albany 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 Albany 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 Albany 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 Albany 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 Albany Health Service and the Unions 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 Albany Health Service can be returned to the employees.

**(c) Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Albany 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.

**16.—SIGNATORIES TO THE AGREEMENT**

The common seal of the Albany Health Service was affixed by the authority of the Board in the presence of:

(signed by John Simpson)      (Board Member)  
(signed by H Sharp OAM)      (Board Member)  
*common seal affixed*

26.2.1998 (Date)  
(signed by W Game)      *common seal affixed*

On behalf of the Communication, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

19-3-98 (Date)  
(signed by J McDonald)      *common seal affixed*

On behalf of the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch

17th March 1998 (Date)  
(signed by J Sharp-Collett)      *common seal affixed*

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

19 March 1998 (Date)  
(signed by K Reynolds)      *common seal affixed*

On behalf of the Western Australian Builders Labourers, Plasterers and Painters Union of Workers

17th March 1998 (Date)  
 19 March 1998

On behalf of the Plumbers and Gasfitters Union of Australia, WA Branch

(signed by W Deakin) (Date) *common seal affixed*

**SCHEDULE A**

**RATES OF PAY**

	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	Weekly Rate including 3ASNA	Weekly Rate including 3ASNA plus 7.5%	Weekly Rate* including 3ASNA plus 7.5% plus up to 3.5%
<b>Engineering Trades</b>			
C 10	460.00	494.50	up to 511.81
C 9	481.60	517.72	up to 535.84
C 8	503.60	541.37	up to 560.32
C 7	525.10	564.48	up to 584.24
C 6	569.00	611.68	up to 633.08
C 5	590.80	635.11	up to 657.34
<b>Building Trades</b>			
C 4	453.60	487.62	up to 504.69
C 5	475.10	510.73	up to 528.61
C 6	496.60	533.85	up to 552.53
C 7	518.00	556.85	up to 576.34
C 8	539.50	579.96	up to 600.26
C 9	561.00	603.08	up to 624.18
<b>Engine Drivers</b>			
C 12A	405.30	435.70	up to 450.95
C 11A	423.20	454.94	up to 470.86
C 10	441.20	474.29	up to 490.89
C 9	472.40	507.83	up to 525.60

\* Payment of the second increase is subject to the development of key performance indicators and the identification and implementation of productivity initiatives which have achieved further productivity improvements to justify the quantum of the increase.

**SCHEDULE B**

**Commuted Allowances**

**Engineering Trades**

	<b>Column 4</b>	<b>Column 5</b>	<b>Column 6</b>
<b>Fitters</b>			
C 10	\$46.89	\$ 47.36	\$ 47.59
C 9	\$47.18	\$ 47.67	\$ 47.91
C 8	\$47.48	\$ 47.99	\$ 48.24
C 7	\$47.77	\$ 48.30	\$ 48.56
C 6	\$48.36	\$ 48.93	\$ 49.22
C 5	\$48.65	\$ 49.25	\$ 49.55
<b>Electrician</b>			
C 10	\$60.09	\$ 60.56	\$ 60.79
C 9	\$60.38	\$ 60.87	\$ 61.11
C 8	\$60.68	\$ 61.19	\$ 61.44
C 7	\$60.97	\$ 61.50	\$ 61.76
C 6	\$61.56	\$ 62.13	\$ 62.42
C 5	\$61.85	\$ 62.45	\$ 62.75
<b>Building Trades</b>			
<b>Plumbers</b>			
C 4	\$70.06	\$70.51	\$70.74
C 5	\$70.35	\$70.83	\$71.07
C 6	\$70.64	\$71.14	\$71.39
C 7	\$70.92	\$71.45	\$71.71
C 8	\$71.21	\$71.76	\$72.03
C 9	\$71.50	\$72.07	\$72.35
<b>Carpenters</b>			
C 4	\$55.81	\$ 56.26	\$ 56.49
C 5	\$56.10	\$ 56.58	\$ 56.82
C 6	\$56.39	\$ 56.89	\$ 57.14
C 7	\$56.67	\$ 57.20	\$ 57.46
C 8	\$56.96	\$ 57.51	\$ 57.78
C 9	\$57.25	\$ 57.82	\$ 58.10
<b>Painters</b>			
C 4	\$53.97	\$ 54.42	\$ 54.65
C 5	\$54.26	\$ 54.74	\$ 54.98
C 6	\$54.55	\$ 55.05	\$ 55.30
C 7	\$54.83	\$ 55.36	\$ 55.62
C 8	\$55.12	\$ 55.67	\$ 55.94
C 9	\$55.41	\$ 55.98	\$ 56.26

	Column 4	Column 5	Column 6
<b>Engine Drivers</b>			
C 12A	\$ 183.94	\$ 212.29	\$ 218.99
C 11A	\$ 183.94	\$ 212.29	\$ 218.99
C 10	\$ 183.94	\$ 212.29	\$ 218.99
C 9	\$ 183.94	\$ 212.29	\$ 218.99

#### Appendix 1

##### Past Productivity Gains

1. Use of mobile work benches.
2. Tradespeople maintaining cleanliness of work site.
3. Tradespeople being trained in and undertaking the erection of mobile scaffolding.
4. Following a system of programmed preventative maintenance.
5. Team coordination with other trades on projects.
6. Improvement in work efficiency needed in maintaining Mt. Barker Hospital with an actual loss in manpower.
7. Reorganisation of the workshop for altered job structure e.g. Boiler Attendants becoming Plant Operators to facilitate limited attendance boilers and taking on additional duties—
  - Assistant Fire Officer during day shift or Fire Officer if the Engineer is absent.
  - Testing of fire boards weekly.
  - Fire alarm zone isolations for all trades
  - External and internal security of hospital, Spencer Lodge, Dental Clinical and Community Mental Health.
  - Assisting with jobs of an engineering nature.
8. Communicating directly with all customers and other relevant parties.
9. Use of pagers by Maintenance staff.
10. Each trade preparing quotes for their own areas.
11. Multiskilling in all trades.
  - e.g. Plumber—tiling, backflow, water efficiency.
  - Carpenter—Tiling, gyprock work, concrete work, designing and fitting metal hand and safety rails.
  - Painters—scaffolding, spray painting, fibreglass work, making own paint pots.
  - Fitters—concreting, building construction work, boiler refractory work
  - Electricians—Bio-medical electronic work, installation and commissioning of computer cabling.
12. Implementation of computerised maintenance and record keeping in the electrical and plumbing areas.
13. Source, locate and order parts and materials required in each individual trade area.
14. Liaise with outside company sales representatives to keep abreast of prices and new equipment.

#### Appendix 2

##### Future Productivity Improvements

1. The implementation of the principle of commuted allowances for workshop employees.
2. The introduction of quality improvement systems.
3. Improved performance appraisals.
4. Increased use of pagers by having apprentices on page.
5. Increased use of multiskilling.
6. The Committee will develop a clause formalising existing arrangements for staff availability in accordance with the current practice.
7. Review of planned maintenance system.
8. Increased responsibility for the planning and coordination of projects.
9. Introduction of labour saving measures such as steam trap testing devices.
10. Taking on the painting of Mt. Barker and Denmark Hospitals.

11. Afternoon tea break to be traded off for an increase in pay while still allowing refreshment to be taken at work station if convenient.

12. Annual Leave excess to requirements to be paid out by negotiation between individual employees and the hospital.

13. Annual Leave may be taken in single days.

14. The introduction of improved technology such as computer controlled maintenance systems, portable appliance testing and backflow valve maintenance systems.

15. Commitment to and active participation in optimising energy and other utility usage and costs including reducing usage and costs where possible and practical.

#### ALLSTATE LANDSCAPE CONTRACTORS P.L. INDUSTRIAL AGREEMENT. No. AG 28 of 1998.

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, Timbryards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Allstate Landscape Contractors Pty Ltd.

No. AG 28 of 1998.

Allstate Landscape Contractors P.L. Industrial Agreement.

COMMISSIONER P E SCOTT.

30 April 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 Allstate Landscape Contractors P.L. Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

(Sgd.) P.E. SCOTT,

Commissioner.

[L.S.]

#### WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Allstate Landscape Contractors P.L. Industrial Agreement.

2.—ARRANGEMENT

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

19. Drug and Alcohol, Safety and Rehabilitation Program
20. Income Protection
21. No Extra Claims

Appendix A—Wage Rates

Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

Appendix C—Site Allowance

### 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 Allstate Landscape Contractors Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

### 4.—APPLICATION

This Agreement shall be binding upon the Company, the 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 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 and allowances 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

Subject to the provisions of 49C of the Act the Company will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme, or other relevant fund, 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 calendar 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.—INCOME PROTECTION

The company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated through the ACTU Insurance Broking Pty Limited (ACN. 069 795 875).

#### 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.

Signed for and on behalf of:

The Unions: **BLPPU** Signed Common Seal  
Date: 23/2/98

Signed

**WITNESS**

**CMETU** Signed Common Seal

Date: 23/2/98

Signed

**WITNESS**

The Company: **Common Seal** Signed

Date: 18/2/98

M SHEPPARD

**PRINT NAME**

Signed

**WITNESS**

#### APPENDIX A—WAGE RATES

	Date of Signing	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
Labourer Group 1	16.01	16.47	16.92	17.15
Labourer Group 2	15.47	15.90	16.34	16.56
Labourer Group 3	15.05	15.48	15.90	16.12
Plaster, Fixer	16.64	17.11	17.58	17.82

	Date of Signing	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
Painter, Glazier	16.27	16.73	17.19	17.42
Signwriter	16.62	17.09	17.56	17.80
Carpenter	16.75	17.22	17.70	17.93
Bricklayer	16.58	17.05	17.52	17.75
Refractory Bricklayer	19.04	19.58	20.12	20.38
Stonemason	16.75	17.22	17.70	17.93
Rooftiler	16.45	16.92	17.38	17.62
Marker/Setter Out	17.24	17.72	18.21	18.46
Special Class T	17.46	17.95	18.45	18.69

#### APPRENTICE RATES

	Date of Signing	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
<b>Plasterer, Fixer</b>				
Year 1	6.99	7.18	7.38	7.48
Year 2 (1/3)	9.16	9.42	9.68	9.81
Year 3 (2/3)	12.49	12.84	13.19	13.37
Year 4 (3/3)	14.65	15.06	15.48	15.69
<b>Painter, Glazier</b>				
Year 1 (.5/3/5)	6.84	7.03	7.22	7.32
Year 2 (1/3), (1.5/3.5)	8.95	9.20	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.20	12.55	12.89	13.06
Year 4 (3/3), (3.5/3.5)	14.32	14.73	15.13	15.33
<b>Signwriter</b>				
Year 1 (.5/3/5)	6.99	7.18	7.38	7.48
Year 2 (1/3, 1.5/3.5)	9.14	9.40	9.65	9.78
Year 3 (2/3, 2.5/3.5)	12.47	12.82	13.17	13.35
Year 4 (3/3, 3.5/3.5)	14.63	15.04	15.46	15.66
<b>Carpenter</b>				
Year 1	7.04	7.24	7.44	7.54
Year 2 (1/3)	9.21	9.47	9.73	9.86
Year 3 (2/3)	12.56	12.92	13.27	13.45
Year 4 (3/3)	14.73	15.15	15.57	15.78
<b>Bricklayer</b>				
Year 1	6.96	7.16	7.36	7.46
Year 2 (1/3)	9.12	9.37	9.63	9.76
Year 3 (2/3)	12.43	12.79	13.14	13.31
Year 4 (3/3)	14.59	15.00	15.41	15.62
<b>Stonemason</b>				
Year 1	7.04	7.24	7.44	7.54
Year 2 (1/3)	9.21	9.47	9.73	9.86
Year 3 (2/3)	12.56	12.92	13.27	13.45
Year 4 (3/3)	14.73	15.15	15.57	15.78
<b>Rooftiler</b>				
6 months	9.38	9.65	9.91	10.04
2nd 6 months	10.31	10.61	10.90	11.04
Year 2	12.05	12.39	12.73	12.90
Year 3	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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- The decision on a person's 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.
- 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 contractor 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.

—————

**ASSOCIATED CORROSION CONTROL  
INDUSTRIAL AGREEMENT.**

No. AG 375 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

Associated Corrosion Control Pty Ltd.

No. AG 375 of 1997.

COMMISSIONER P E SCOTT.

7 April 1998.

*Order.*

WHEREAS this is an application for the registration of an agreement pursuant section 41 of the Industrial Relations Act, 1979; and

WHEREAS on the 12th day of March 1998 the Commission convened a hearing for the purpose of dealing with the application; and

WHEREAS the Commission has considered the submissions of the parties and is satisfied that the Agreement contains those provisions which such agreements are required by the Act to contain, and that there is no impediment to its registration;

NOW THEREFORE, having heard Mr G Giffard on behalf of the Applicants and Ms A Young and later Mr K Dwyer 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 Associated Corrosion Control Industrial Agreement in the terms of the following schedule be registered on the 12th day of March 1998

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

—————

Schedule.

1.—TITLE

This Agreement will be known as the Associated Corrosion Control Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application

5. Duration
6. Consultative Committee
7. Dispute Settlement Procedure
8. Single Enterprise
9. Relationship with Award
10. Revert to Award
11. Hours
12. Wages Review
13. Allowances
14. Superannuation
15. Health and Safety
16. Desire to prosper
17. Clothing and Footwear
18. Training
19. Seniority
20. Administration
21. Signatories

Appendix A: Wage Rates

Appendix B: Disciplinary Procedure

3.—AREA AND PARTIES BOUND

This is an Agreement between Associated Corrosion Control Pty Ltd (the "Company") and the Western Australian Builders' Labourers, Painters & Plasterers Union of Workers and the Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia (the "Unions") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, their officers and members and any person eligible to be member of the Unions employed on work covered by the terms of the Industrial Spraypainting and Sandblasting Award A33/87 (the "Award"). There are approximately 12 employees covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of ratification 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.—CONSULTATIVE COMMITTEE

Within four weeks of this agreement coming into force, a Works Consultative Committee will be set up. One member will represent Management and one member will represent employees. The Committee will discuss matters pertaining to operational improvements, taking into account submissions from employees and management, making its recommendations to management for consideration.

7.—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 42 Settlement of Disputes* of the Award. Every endeavour will be made for work to continue whilst negotiations are taking place.

8.—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").

9.—RELATIONSHIP WITH AWARDS

This Agreement shall be read in conjunction with the Award. Where there is conflict between this Agreement and the Award the Agreement shall have the over-riding power.

10.—REVERT TO AWARD

It is agreed by all parties to this Agreement that, should any party fail to abide by it in a manner deemed by any one other party to be seriously in conflict with the aims and intentions of the Agreement, then it will cease to operate and all conditions and rates will revert to those in the Award.

11.—HOURS

The working hours will be 40 hours per week 8 hours a day Monday to Friday between the hours of 6.00 am and 6.00 pm

or as agreed between the Company and its employees and the Unions. Two hours per week will be deducted from each employee's payment and paid on a Rostered Day Off, which will be scheduled at four-weekly intervals on a Friday. The schedule may be varied by agreement between the Company and its employees.

A Meal Break of 30 minutes will be taken between the hours of 11.30am and 1.30pm.

A Morning Tea Break of 10 minutes will be taken between the hours of 9.00am and 11.00am.

An employee arriving late must report to his supervisor. Wages may be reduced by the amount of time missed on their daily clock card. The continual practice of late arrival with or without reasonable explanation may be cause for disciplinary action or dismissal.

#### 12.—WAGES REVIEW

Rates of pay will be as per the schedule in Appendix A.

#### 13.—AVERAGED ALLOWANCES

Allowances will be paid in respect of the following. The allowances will be paid for all hours worked in any particular day whether the employee is exposed or not except those hours when the employee is already receiving another allowance relating to an incompatible exposure.

Allowances

- |                                       |             |
|---------------------------------------|-------------|
| a) Blaster's Dirt Allowance           | 29 cents/hr |
| b) Painter's Hourly Allowance         | 43 cents/hr |
| c) Proximity to Toxic Spray Allowance | 29 cents/hr |

The allowance for Proximity to Toxic Spray (c) will be paid to all employees working in the factory area except Painters and Blasters.

#### 14.—SUPERANNUATION

The Company will contribute the percentage as required by Federal Law into the existing Company superannuation schemes or C+BUS. Alternative schemes will be reviewed and, should one prove to be more beneficial, it may be adopted.

#### 15.—HEALTH AND SAFETY

##### (1) Protective Safety Equipment

Protective safety equipment as required by law will be supplied by the Company and must be worn or used while working at the tasks for which it is required. It is the responsibility of users to ensure that the equipment is maintained in good order. Damage or other failure impairing its operation must be replaced immediately. If an employee fails to wear or use the protective equipment the disciplinary procedure defined in Appendix B will be applied.

##### (2) Smoking

Due to the health risks caused by smoking, both to the individual smoking and other persons in close proximity and the danger of smoking in areas where paint and solvents are being used, mixed or stored, no employee will be permitted to smoke in any productive area, lunchrooms, changerooms or other communal areas. Failure to comply will cause the disciplinary procedure defined in Appendix B to be applied.

##### (3) Drugs and Alcohol

No drugs of addiction or alcohol are permitted to be used or consumed on the Company's premises. Failure to comply will cause the Disciplinary Procedure in Appendix B to be applied. People seriously affected by drugs or alcohol are a safety hazard to themselves and others in the workplace. If, in the opinion of the supervisor or the management, an employee is dangerously affected by such substances, he/she will be stood down immediately and sent home or otherwise removed from the work area. He/she will be given or sent a written notice of the reasons for this action and a recommendation to seek appropriate counselling or treatment before returning to work. No payment of sick pay will be made but the employee may be paid Annual Leave for this period on application.

If, after returning to work, there is a second offence within 12 months, this will be considered to constitute misconduct and be grounds for possible dismissal.

##### (4) Occupational Health and Safety

The parties are committed to attain high levels of safety and seek to minimise the occurrence of injuries and accidents and

to eliminate the potential for such occurrences. The company and all employees shall comply with the provisions of the Occupation Health and Safety legislation. Failure to do so will cause the disciplinary procedure in Appendix B to be applied.

##### (5) Safety Issues

Matters relating to Safety should be reported to the Safety Officer.

##### (6) Housekeeping

The parties shall individually and collectively contribute to maintaining a clean and safe work place. This includes, but is not limited to the proper disposal of waste material and tidy and secure storage of equipment when not in use.

#### 16.—DESIRE TO PROSPER

It is agreed that the ultimate prosperity of all parties is dependent on the success of the Company in winning work and processing it profitably. To this end, it is agreed that all parties will conduct themselves in such a way that efficiency is maximised and costs are minimised, within the parameters of a high quality of workmanship. Employees are encouraged to make constructive suggestions for the improvement of their own or anyone else's work practises, including administration and administrative methods. Suggestions which are adopted will be appropriately rewarded.

Certain specific work practices are agreed by the parties to be conducive to improvement to general efficiency—

##### (1) Reduction of Sick Leave and Absenteeism

All parties provide their personal commitment to the elimination of unjustified and unnecessary absences from work.

##### (2) Punctuality

Employees are to be at their allocated work station from the commencement to the completion of work each day with the exclusion of the lunch break and the morning tea break.

##### (3) Wastage and rework

There shall be a conscious and determined effort by all parties to reduce or eliminate wastage of material and labour through carelessness, poor workmanship or improper use of resources.

##### (4) Trust, Respect and Communication

The promotion and development of trust and motivation within the Company and the continued fostering of better employee relations is essential to the ultimate success of the enterprise. Honesty, and mutual respect should prevail at all times and a free exchange of relevant information and ideas at all times subject to agreed commercial confidentiality.

##### (5) Reward

An employee who makes an outstanding contribution to the improvement of productivity or efficiency in any function will be rewarded in proportion to that improvement according to management assessment.

##### (6) Classification Structure

An agreed classification structure will be discussed between the parties with a view to implementing the new structure in the next EBA.

#### 17.—CLOTHING AND FOOTWEAR

The following items will be supplied to each employee by the company, upon the completion of five working days—

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

3 pairs of overalls, also replaced on a fair wear and tear basis.

Safety equipment as required

The Company will make available to each employee not working in a roofed area, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

#### 18.—TRAINING

The Company wishes to encourage its employees to improve their skills and knowledge in relation to their occupation. Where relevant TAFE or other courses are available for this purpose,

employees will be given encouragement and assistance to take part. The Company may also ask an employee to take part in a particular course to obtain a Certificate of Competency in a particular function, such as Forklift driving etc.

Accredited in-house training is available to any employee who wishes to further skills as blaster, painter or in both functions.

In the case where the Company has initiated the attendance at the course, it will pay all fees and out-of-pocket expenses related thereto. In the case of an employee-initiated course, the Company may fully- or partially-reimburse expenses according to the degree of relevance and level of success achieved.

#### 19.—SENIORITY

The parties agree that continuity of employment is desirable wherever possible and that, where it is not possible, employees with longer periods of service will find re-employment more difficult. It is therefore accepted that the principle of retrenchment in order of seniority is desirable. However, this must be taken in conjunction with an assessment of the skills possessed by the employees concerned and their relevance to the Company's ongoing operations. Should there be any disagreement in this respect, it should be settled in accordance with Clause 6—Dispute Settlement Procedure.

#### 20.—ADMINISTRATION

The company reserves the right to control all administration and production activities as well as the employment and termination of staff, and the use of any labour, plant, equipment and materials it may wish to. The Company is committed to maintaining existing job security levels.

#### 21.—SIGNATORIES

Signed on behalf of—

The Unions—

The Western Australian Builders Signed Common Seal

Labourers Painters and Plasterers  
Union of Workers

Date: 18/12/97

Witness:

Signed

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

Signed Common Seal

Date: 18/12/97

Witness:

Signed

The Company—

Associated Corrosion  
Control Pty Ltd

Signed Common Seal

Director

Signed

Director/Secretary

Date: 17/12/97

#### APPENDIX A

##### SCHEDULE OF RATES OF PAY

Function		Initial Rate	August 98	February 99
Inexperienced	week	456.00	497.04	510.72
	hour	12.00	13.08	13.44
Experienced	week	475.00	517.75	533.48
	hour	12.50	13.63	14.04
Single skill	week	511.10	556.70	571.90
	hour	13.45	14.65	15.05
Multi-skilled	week	522.50	569.24	584.82
	hour	13.75	14.98	15.39
Bay Charge Hand	week	560.50	610.66	627.38
	hour	14.75	16.07	16.51

#### SKILLS

Blaster	Demonstrable proficiency to satisfy the Factory Supervisor or as already used by employer
Painter	Demonstrable proficiency to satisfy the Factory Supervisor or as already used by employer
Mobile Crane Driver	Certificate of Competency from an approved body

A multi-skilled employee is defined as having more than one of the above skills

#### APPENDIX B—DISCIPLINARY PROCEDURE

##### (1) First Warning

The employee is to be approached by the Works Supervisor, in the presence of a third party, who will make clear to the employee the nature of the misconduct or unsatisfactory work performance and identify the ways in which the employee's behaviour or performance is to change. The Supervisor will ensure that the employee is provided with the opportunity to respond to any allegations put to him. The nature of the Warning will be recorded and signed by the three parties.

##### (2) Formal Warning

If it is necessary to issue the employee with a further warning, this warning shall be made in the presence of a third party, in writing and signed by the employee. The Supervisor will ensure that the misconduct or unsatisfactory work performance is fully explained to the employee and will ensure that the employee is afforded the opportunity to respond to any allegations verbally or in writing within 7 days. If the response is verbal, the employee will be afforded the opportunity to make it in the presence of the Union Representative or another person of his/her choice. The Supervisor will ensure that the employee understands the way in which his/her conduct or work performance is to improve. The Formal Warning and response will be recorded and signed by the parties thereto.

##### (3) Termination

Should the employee fail to heed the Formal Warning, his services may be terminated by giving the appropriate period of notice.

##### (4) Instant Dismissal

The foregoing procedure is intended to protect the rights of employees but it shall not limit the right of the Company to summarily dismiss an employee for misconduct or refusal of duty.

(5) The above process shall operate in conjunction with appropriate training being given to employees, where necessary.

#### AUGUSTA-MARGARET RIVER TOURIST BUREAU (INC) CAVE GUIDES AWARD No. A 4 of 1994.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Augusta Margaret River Tourist Bureau (Inc.).

No. A 4 of 1994.

6 April 1998.

*Order.*

WHEREAS on 8 September 1994 this application was filed in the Registry of the Commission pursuant to section 40 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS on 9 November 1994, at a conference held pursuant to section 32 of the Act, a preliminary settlement of the issues was conducted; and

WHEREAS on 12 January 1995 a facsimile was sent by the Commission to the applicant requesting advice on the status of this matter;

AND WHEREAS on 4 March 1998 the matter was listed For Mention Only and thereat the parties requested that the application be dismissed;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, and by consent, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,

[L.S.]

Commissioner.

**BEAUFORT COLLEGE ENTERPRISE BARGAINING AGREEMENT 1998.**

**No. AG 58 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Comprehensive Education Centre Pty Ltd t/as Beaufort  
College

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers.

No. AG 58 of 1998.

Beaufort College Enterprise Bargaining Agreement 1998.

22 April 1998.

*Order.*

HAVING heard Ms C. Brown on behalf of Comprehensive Education Centre Pty Ltd t/a Beaufort College and Ms T. Howe on behalf of the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Beaufort College Enterprise Bargaining Agreement 1998 as filed in the Commission on the 2nd day of April 1998 and as amended by the parties on the 22nd day of April 1998 be registered on and from the 22nd day of April 1998.

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

\_\_\_\_\_

**1.—TITLE**

This Agreement shall be known as the Beaufort College Enterprise Bargaining Agreement 1998.

**2.—ARRANGEMENT**

1. Title
  2. Arrangement
  3. Parties to the Agreement
  4. Scope of Agreement
  5. Date and Duration of Agreement
  6. Relationship to the Parent Award
  7. Single Bargaining Unit
  8. Objectives
  9. Consultative Mechanisms
  10. Contract of Service
  11. Salary Rates
  12. Professional Development
  13. Appraisal
  14. Continuance in Employment
  15. Co-curricular Activities
  16. Supervision
  17. Relief
  18. Special Events
  19. Dispute Resolution Procedure
  20. Other Matters
  21. No Further Claims
  22. No Precedent
  23. Signatories to the Agreement
- Schedule A—Salary Rates  
Schedule B—Types of Duties included in a Full-time Teaching Position in Beaufort College

**3.—PARTIES TO THE AGREEMENT**

The parties to this Agreement are—

- (1) Comprehensive Education Centre Pty Ltd trading as Beaufort College (the College) of 381 Beaufort Street, Perth; and
- (2) The Independent Schools Salaried Officers Association of Western Australia, Industrial Union of Workers (ISSOA), a registered organisation of employees.

**4.—SCOPE OF AGREEMENT**

The Agreement applies to teachers (the employees) as defined in Clause 4 of the *Independent Schools' Teachers' Award 1976* (the Award), who are employed by the College. This Agreement applies to approximately 22 employees.

**5.—DATE AND DURATION OF AGREEMENT**

The Agreement shall come into effect on the date of registration, and shall apply from the first pay period commencing on or after 28 January 1998 and shall remain in force until the 31st day of December 1999. The parties may enter negotiations for a further agreement at any time within 6 months prior to the end of this Agreement. The terms of this Agreement shall continue in force after the 31st day of December 1999 until the parties conclude a further Agreement.

**6.—RELATIONSHIP TO PARENT AWARD**

The Agreement is to be read and interpreted in conjunction with the *Independent Schools' Teachers' Award 1976* (the Award). Where there is any inconsistency between this Agreement and the Award, or where this Agreement covers a matter addressed by the Award, then the provisions of this Agreement apply, and the provision of the Award shall have no effect.

**7.—SINGLE BARGAINING UNIT**

The parties to this Agreement have formed a single bargaining unit. The single bargaining unit has conducted negotiations with the College and has reached full agreement with the College represented by the Agreement

**8.—OBJECTIVES**

The nature, purposes and objectives of the Agreement are to—

- (1) Consolidate and further develop initiatives arising out of this Enterprise restructuring process.
- (2) Provide for increased payment of salary rates to employees covered by the Agreement with recognition given to relevant factors, including the salary rates of teachers in comparable schools, the commercial outcomes of efficiency improvements resulting from changes agreed to in this document, and the unique and individual nature of Beaufort College
- (3) Provide a basis for the College to more effectively manage the teaching and related operations of the College.
- (4) Provide an improved climate for the achievement of successful academic and financial outcomes from the operations of the College.
- (5) Accept a mutual responsibility to maintain a working environment, which will ensure that the College and its staff become genuine participants and contributors to the College's aims, objectives and philosophy.
- (6) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge.

**9.—CONSULTATIVE MECHANISMS**

(1) The implementation and on-going operation of this Agreement may be monitored by the College Consultative Committee, consisting of equal numbers of management and employee representatives. Employee representatives will be elected at a meeting convened by the College.

(2) The College, in conjunction with the Consultative Committee agrees to develop improved management practices designed to facilitate the achievement of the objectives of this Agreement, and the employees undertake to co-operate in the implementation of these improved management practices.

(3) The Consultative Committee may submit recommendations to Management for consideration, however the Consultative Committee's role shall be purely consultative and advisory. The responsibility for management of the College's affairs shall remain with Management.

**10.—CONTRACT OF SERVICE**

(1) The Contract of Service between the College and the employees covered by this Agreement shall be expressed in—

- The *Independent Schools' Teachers' Award 1976* as amended and registered in the Western Australian Industrial Relations Commission; and

- The terms of this Agreement; and
- A Letter of Appointment issued to each employee detailing the general conditions, and any special conditions applicable to the appointment; and
- A Duty Statement for the position occupied by each employee.

(2) The workload of any employee as specified in the Appointment Letter may be varied by the College to suit any changed circumstance. Management reserves the right to determine teaching loads, and will do so with consideration to all appropriate factors, including length of service and the requirements of the College.

(3) Notwithstanding the provisions of subclause (2) of this clause, all new employees shall be on probation for a period of one year during which time the College or the employee may terminate the contract of service by giving not less than three weeks notice. This period of notice will be extended to four weeks prior to the end of Terms 1, 2 and 3 and four weeks prior to the 31st day of December of any year.

(4) Employees covered by this Agreement shall attend the College throughout the College's Academic year. For the purpose of the Agreement the academic year shall be a period totalling 41 weeks, including 40 weeks of contact teaching (as per published school terms), and one to two days of non-contact professional time before and after each teaching semester for administrative, planning and other tasks to be carried out. The remaining weeks in each year shall be employee vacation periods to be taken during school vacations.

(5) Full-time employees shall attend the College for at least 35 hours per week within published school hours. This may include operating on a flexible timetabling arrangement to meet the needs of all parties. Part-time employees shall attend the College for the number of hours proportionate to their designated teaching load and shall be present at least 15 minutes before their first class, and at least 15 minutes after their last class on each teaching day.

(6) Employees are required to attend scheduled academic meetings and such meetings shall be conducted before or after school hours, or during scheduled non-contact periods. Lunch-time meetings will be avoided wherever possible.

#### 11.—SALARY RATES

(1) Salary rates payable to employees are detailed in Schedule A—Salary Rates of this Agreement, with the particular salary level of individual employees being detailed in the Appointment Letter issued in accordance with Clause 10.—Contract of Service of this Agreement.

(2) The salary rates detailed in Schedule A—Salary Rates shall be paid as the basic remuneration for employees carrying out Teaching I and Teaching II and Duties Other Than Teaching (DOTT) I, II and III as shown in Schedule B of this Agreement.

(3) The salary rates detailed in Schedule A—Salary Rates do not cover DOTT IV which duties shall be allocated at the discretion of Management. These duties may be carried out by the appointment of existing or external staff at the discretion of management. Payment terms will be as agreed between management and the appointee.

(4) In addition to the provision of established increases as per Schedule A—Salary Rates, Management will consider further increases in the event that there is noticeable improvement in public and market perceptions of the College. This may be reflected in terms of improved overall demand for places, an enhanced reputation in the market place, and improvements in the overall sustainable profitability (commercial performance) of the organisation.

(5) In the event of any safety net adjustments being applied to the Award, such adjustment shall be considered as having been absorbed into the increased salary schedule forming part of this Agreement.

#### 12.—PROFESSIONAL DEVELOPMENT

Management and teaching staff are committed to safeguarding and improving the quality of teaching and learning by upgrading professional skills and knowledge. This can best occur when both the College and the employees share responsibility for Professional Development by undertaking both

in-service, and external, courses and/or training. Professional Development activities may be undertaken partly in College time and partly in a teacher's own time in approximately equal proportions. All Professional Development that is undertaken during College time, or at College expense, must have the prior approval of College Management. Where possible, Professional Development will be planned for in advance, and such planning will be undertaken in consultation with Management and employees.

#### 13.—APPRAISAL

(1) Employees covered by this Agreement may continue in employment with the College subject to continued satisfactory performance to be evaluated by annual review carried out by the College Appraisal Committee which will consider the views and opinions of Academic, Administration and Marketing personnel.

(2) Appraisal shall be based mainly upon the criteria published in the Duty Statement issued to each employee, and on the employee's overall contributions to the achievement of the stated Objectives of the College and carried out in accordance with the provisions of the Award.

(3) Management may offer accelerated movement through salary levels of individual employees assessed as making a superior contribution to the achievement of the stated Objectives of the College.

(4) An employee may expect that satisfactory performance of duties will enable movement to the next salary increment on an annual basis. However, such entitlement should not be considered as automatic. Where performance is considered to need attention, the employee shall be notified in writing, and given the opportunity to demonstrate rectification of the concern. In such cases, the salary increment to the next step will be withheld until Management, in consultation with the Consultative Committee, is satisfied that the performance has been improved.

#### 14.—CONTINUANCE IN EMPLOYMENT

(1) Letters of re-appointment will be issued to individual employees based on the outcomes of the Appraisal process referred to in Clause 13.—Appraisal of this Agreement, and on forecast College enrolment numbers and patterns. The letter will indicate the expected teaching load for each employee for the forthcoming Term, but actual teaching loads will only be confirmed at the commencement of each Term. The letters will be issued not less than four weeks prior to the end of each of Terms 1, 2 and 3; and not less than four weeks prior to 31st December each year. Teachers are expected to give notice to the College on the same basis, and failure to do so will result in the automatic forfeiture of an amount equivalent to the salary for the number of weeks for which notice was not served.

(2) The College may summarily dismiss any employee for misconduct, refusal to accept a lawful direction, wilful neglect, bringing the College into disrepute, becoming of unsound mind, or being convicted of a criminal offence. In the event of summary dismissal, the employee shall be paid up to the time of dismissal only.

#### 15.—CO-CURRICULAR ACTIVITIES

All staff members are expected to make a contribution to the College's co-curriculum program. Full-time teachers are expected to contribute two hours per week to co-curricular activities, and part-time staff (those with less than 10 hours teaching per week) will contribute one hour per week. Catch-up classes or tutorials may be considered as part of the co-curricular program.

#### 16.—SUPERVISION

(1) Full-time teachers are expected to carry out regular supervisory duties of between two and four hours per week. This may be supervised study, designated common testing, relief duty, or yard duties at recess and lunch times.

(2) Part-time teachers are expected to carry out such supervisory duties as described above in proportion to their workload.

#### 17.—RELIEF

Where it is known that relief staff requirements will be in excess of the staff hours available to provide that relief, then the College will provide for paid relief staff.

## 18.—SPECIAL EVENTS

Staff are expected to attend College events during the year as requested, eg. Orientation Days for new students, School Dinner Dance, School Graduation Ceremony, Charity Fun Day.

## 19.—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this Agreement.

The following procedure shall apply to the resolution of any dispute:

- (1) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.
- (2) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties to this Agreement together with any additional representative as may be requested by the parties.
- (3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

## 20.—OTHER MATTERS

When reviewing this Agreement, or at an earlier mutually agreeable time, the parties agree to discuss such matters that are of relevance to either the College or the employees. Matters for future discussion may include—

- (a) Long Service Leave conditions
- (b) The positions of Head of Department
- (c) Senior Teachers
- (d) Merit Scales
- (e) Carer's Leave
- (f) Flexible arrangements for School Terms and Timetables
- (g) Provision for a Pastoral Care Counsellor

## 21.—NO FURTHER CLAIMS

(1) Notwithstanding the provisions of subclause (4) of Clause 11.—Salary Rates, it is a condition of this Agreement that the parties will not seek any further claims with respect to salaries or conditions of employment during the life of this Agreement.

(2) Prior to 31st December 1999, the employees undertake not to initiate any industrial action intended to secure new or improved rates of pay or conditions of employment in respect of the period after the end of this Agreement.

## 22.—NO PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the College or not.

## 23.—SIGNATORIES TO THE AGREEMENT

This Agreement is made at Perth, Western Australia on this 20th day of March 1998.

Signed for an on behalf of Beaufort College

T.I. Howe

Signed for and on behalf of The Independent Schools Salaried Officers' Association of WA Industrial Union of Workers

*Common Seal*

The Common Seal of Comprehensive Education Centre Pty Ltd was hereunto affixed by authority of the Board of Directors in the presence of—

Barry George Gregory Director

*Signed*

Robert Samuel Masters Secretary

*Signed*

## SCHEDULE A

## Salary Rates

(Attached to Beaufort College Enterprise Bargaining Agreement 1998)

STEP	On and from 27 January 1998	On and from first pay period in February 1998 + 2% on base	On and from first pay period in February 1999 + 4% on base
1	26,184	26,708	27,231
2	27,717	28,271	28,826
3	29,249	29,834	30,419
4	31,018	31,638	32,259
5	32,668	33,321	33,975
6	34,083	34,765	35,446
7	35,497	36,207	36,917
8	37,265	38,010	38,756
9	39,209	39,993	40,777
10	40,801	41,617	42,433
11	42,215	43,059	43,904
12	43,984	44,864	45,743
13	45,752	46,667	47,582

## SCHEDULE B

Types of Duties included in a Full-time Teaching Position in Beaufort College

(Attached to Beaufort College Enterprise Bargaining Agreement 1998)

## Teaching I

Classroom teaching of 20 hours per week during published school terms.

## Teaching II

All activities directly associated with classroom teaching, such as writing programs and lesson plans, general lesson preparation including preparation of materials and resources, visits and excursions, setting, marking and moderation of assignments, tests and examinations, contributions to curriculum development, writing reports, communication with parents, guardians and/or overseas agents as required.

## D.O.T.T. I

Activities such as classroom supervision, routine student counselling/pastoral care and disciplinary issues, subject tutorials, relief duties, lunch and tea break duties.

## D.O.T.T. II

Activities such as meetings, Professional Development, Administration tasks.

## D.O.T.T. III

Activities outside normal classroom teaching times including sport, coordination of Genesis, camps, cultural activities.

## D.O.T.T. IV

Duties outside normal teaching times such as specialised student counselling and/or specialised pastoral care, and residential students' homework supervision.

**BERNINI STONE AND TILES INDUSTRIAL AGREEMENT.**  
**No. AG 224 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, Timbryards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Bernini Stone and Tiles Pty Ltd.

No. AG 224 of 1997.

Bernini Stone and Tiles Industrial Agreement.

COMMISSIONER P.E. SCOTT.

30 April 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 Bernini Stone and Tiles Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

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

[L.S.]

**WAGE AGREEMENT**

Schedule.

**1.—TITLE**

This Agreement will be known as the Bernini Stone and Tiles Industrial Agreement.

**2.—ARRANGEMENT**

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Program
  20. No Extra Claims
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

**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, Timbryards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Bernini Stone and Tiles 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 0—15 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 calendar 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 unforeseen 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: 29/8/97

Signed

**WITNESS**

**CMETU**

Signed **Common Seal**

Date: 29/8/97

Signed

**WITNESS**

The Company:

Signed

Date: 12/8/97

**ROBERT MASSARA**

**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
Roofiler	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 \$
<b>Plasterer, Fixer</b>					
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
<b>Painter, Glazier</b>					
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
<b>Signwriter</b>					
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
<b>Carpenter</b>					
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
<b>Bricklayer</b>					
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
<b>Stonemason</b>					
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
<b>Roofiler</b>					
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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- 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.
- There will be no payment of lost time to a person unable to work in a safe manner.
- 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.
- 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—

- Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- 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.
- 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 \$2.1 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 contractor 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.

CAMBRIDGE PRIVATE HOSPITAL AND STIRLING  
COMMUNITY HOSPITAL HSOA ENTERPRISE  
AGREEMENT 1998.

No. AG 23 of 1998.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Westpoint Hospitals trading as Cambridge Private Hospital  
and Stirling Community Hospital.

No. AG 23 of 1998.

9 April 1998.

*Order.*

WHEREAS on 16 February 1998 the application cited herein was filed in the Commission pursuant to section 41 of the Industrial Relations Act, 1979 (the Act); and

AND WHEREAS on 18 March 1998 the first named party wrote to the Commission and requested that the said application be discontinued and stated that the agreement, the subject of the application, has been replaced by two separate agreements.

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.

(Sgd.) C. B. PARKS,  
Commissioner.

[L.S.]

**COLCHESTER CARPETS INDUSTRIAL AGREEMENT.**  
**No. AG 151 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

Lorndell Holdings Pty Ltd trading as Colchester Carpet Company.

No. AG 151 of 1997.

Colchester Carpets Industrial Agreement.

COMMISSIONER P E SCOTT .

30 April 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 Colchester Carpets Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

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

WAGE AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Colchester Carpets Industrial Agreement.

2.—ARRANGEMENT

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Program
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' 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 Lordell Holdings Pty Ltd trading as Colchester Carpet Company (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 6 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 July 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 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 \$55 per week per employee and will increase this to \$60 per week per employee on 1 August 1998.

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 calendar 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.

The Unions:

**BLPPU**

Signed **Common Seal**

Date: 13/7/97

Signed

**WITNESS**

**CMETU**

Signed **Common Seal**

Date: 15/7/97

Signed

**WITNESS**

The Company:

Signed

Date: 12/7/97

**DUCKWORTH**

**PRINT NAME**

Signed

**WITNESS**

#### APPENDIX A—WAGE RATES

	1 August 1997	1 February 1998	1 August 1998	1 February 1999
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
	\$	\$	\$	\$
Labourer Group 1	15.71	16.32	16.92	17.53
Labourer Group 2	15.17	15.75	16.34	16.92
Labourer Group 3	14.77	15.34	15.90	16.47
Plasterer, Fixer	16.33	16.96	17.58	18.21
Painter, Glazier	15.96	16.58	17.19	17.81
Signwriter	16.31	16.93	17.56	18.19
Carpenter	16.43	17.06	17.70	18.33
Bricklayer	16.27	16.89	17.52	18.14
Refractory Bricklayer	18.68	19.40	20.12	20.83
Stonemason	16.43	17.06	17.70	18.33
Rooftiler	16.14	16.76	17.38	18.00
Marker/Setter Out	16.9	17.56	18.21	18.86
Special Class T	17.13	17.79	18.45	19.11

#### 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 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 \$2.1 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 contractor 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.

### **CRAIG AND TAYLOR FORMWORK INDUSTRIAL AGREEMENT.**

**No. AG 14 of 1998.**

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

Cartledge Holdings Pty Ltd trading as Craig & Taylor  
Formwork.

No. AG 14 of 1998.

Craig and Taylor Formwork Industrial Agreement

COMMISSIONER P E SCOTT.

7 April 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 Craig and Taylor Formwork Industrial Agreement in the terms of the following schedule be registered on the 25th day of February 1998.

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

### **COMMERCIAL AND HOUSING AGREEMENT**

Schedule.

#### **1.—TITLE**

This Agreement will be known as the Craig and Taylor Formwork Industrial Agreement.

#### **2.—ARRANGEMENT**

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Payment of Wages
  13. Industry Standards
  14. Clothing and Footwear
  15. Training Allowance, Training Leave, Recognition of Prior Learning
  16. Seniority
  17. Sick Leave
  18. Pyramid Sub-Contracting
  19. Fares and Travelling
  20. Drug and Alcohol, Safety and Rehabilitation Program
  21. Income Protection
  22. No Extra Claims
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

#### **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 Cartledge Holdings Pty Ltd trading as Craig & Taylor Formwork. (hereinafter referred to as the "Company") in the State of Western Australia.

#### **4.—APPLICATION**

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the 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 5 employees covered by this agreement. The scope of work covered by this Agreement applies to Commercial and Housing construction work where more than four (4) dwellings are being constructed or on projects where the total value of the contract exceeds \$1,000,000.

#### **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 and allowances 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.—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.

#### 13.—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.

#### 14.—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.

#### 15.—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 calendar 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.

#### 16.—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.

#### 17.—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.

#### 18.—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.

19.—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.

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.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated through the ACTU Insurance Broking Pty Limited (ACN. 069 795 875).

22.—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.

Signed for and on behalf of—

The Unions—

BLPPU Signed *Common Seal*  
Date: 14/1/98  
.....Signed.....  
WITNESS

CMETU Signed *Common Seal*  
Date: 14/1/98  
.....Signed.....  
WITNESS

The Company—

*Common Seal* Signed.....Signed...  
Date: 14/1/98  
JOHN CRAIG  
BRENDAN TAYLOR  
PRINT NAME  
.....Signed.....  
WITNESS

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 \$
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
Rooflayer	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	1 February 1998	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
<b>Plasterer, Fixer</b>					
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
<b>Painter, Glazier</b>					
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
<b>Signwriter</b>					
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

	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 \$
<b>Carpenter</b>					
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
<b>Bricklayer</b>					
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
<b>Stonemason</b>					
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
<b>Rooflayer</b>					
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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- 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.
- There will be no payment of lost time to a person unable to work in a safe manner.
- 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.
- For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- 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—

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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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)

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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 contractor 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.

**DESIGN CEILINGS WALL AND CEILING  
INDUSTRIAL AGREEMENT.**

**No. AG 337 of 1997.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

P G & E A Larsen Nominees Pty Ltd and Prancer Holdings  
Pty Ltd trading as Design Ceilings.

No. AG 337 of 1997.

Design Ceilings Wall and Ceiling Industrial Agreement.

COMMISSIONER P E SCOTT.

30 April 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 Design Ceilings Wall and Ceiling Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

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

[L.S.]

**WALL AND CEILING AGREEMENT**

Schedule.

**1.—TITLE**

This Agreement will be known as the Design Ceilings Wall and Ceiling Industrial Agreement.

**2.—ARRANGEMENT**

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Objectives
  7. Dispute Settlement Procedure
  8. Single Enterprise
  9. Relationship with Awards
  10. Enterprise Agreement
  11. Trades/Labour Ratios
  12. Wage Increase
  13. Payment of Wages
  14. Site Allowance
  15. Tool Allowance
  16. Industry Standards
  17. Clothing and Footwear
  18. Training Allowance, Training Leave, Recognition of Prior Learning
  19. Seniority
  20. Overtime
  21. Company Based Incentive Scheme
  22. Sick Leave
  23. Pyramid Sub-Contracting
  24. Fares and Travelling
  25. Drug and Alcohol, Safety and Rehabilitation Program
  26. No Extra Claims
  27. Consultation
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

**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 P G & E A Larsen Nominees Pty Ltd and Prancer Holdings Pty Ltd trading as

Design Ceilings (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 a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 30 employees covered by this agreement.

The Agreement has been negotiated in consultation with the Association of Wall and Ceiling Contractors of WA Inc. (the "Association")

**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. Any party may terminate the Agreement provided three months notice has first been given in writing. In the event of a fundamental breach the period of notice shall be one month. A breach by a limited number of Association members shall not constitute a fundamental breach.

**6.—OBJECTIVES**

The objectives of this agreement are to—

- (a) Increase the efficiency of the Associations member companies by the effective utilisation of the skills and commitment of the employees in the industry.
- (b) Improve the living standards, job satisfaction and continuity of employment of the member companies employees.
- (c) Develop best practice standards that are internationally recognised based upon a culture of opportunity, continuous learning and improvement through training.
- (d) Ensure that increases in efficiency on the job are implemented in such a way as to ensure that health and safety in the industry are maintained.
- (e) Provide a mechanism by which disputes can be resolved quickly and in a manner which shall avoid lost time.

**7.—DISPUTE SETTLEMENT PROCEDURE**

This clause applies to any questions, disputes or difficulties arising out of the operation of this Agreement.

Company Specific Industrial Disputes

- a) In the first instance an employee should submit a request concerning a work related issue to his immediate Team Co-ordinator or Supervisor;
- b) If the matter cannot be resolved at this stage the employee shall raise the matter with the Union delegate, who shall submit the issue to the employees supervisor;
- c) If not settled at this stage, the delegate and the relevant union organiser may submit the matter to the Senior Company Supervisor for consideration;
- d) If not settled at this stage, the matter will be placed in the hands of the Company's Senior Management and State Secretary for the relevant union or his nominee;
- e) If the issue still exists after the abovementioned processes have been carried out, then the matter shall be referred to the Western Australian Industrial Relations Commission for determination. The Western Australian Industrial Relations Commission's decision will be accepted by all parties to legal rights of appeal.
- f) Whilst the above procedures are being followed work shall continue as it was prior to the issue occurring. No party shall be prejudiced by the final settlement, as a consequence of continuance of work in accordance with this clause.

## 2. Safety Dispute Resolution

It is agreed that management and their employees have responsibility to ensure that workplaces are safe and that employees are not exposed to hazards.

In the event of any disagreements on the necessity to carry out any safety measures or modify, reinforce or reinstate any safety device whatsoever, the procedures set out below shall be adopted.

- a) No person shall dismiss a safety complaint. Any complaint should be referred to the Company's Safety Officer or Workers Safety Representative to be dealt with in accordance with the following procedures.
  - (i) Where any employee becomes aware of an unsafe situation, that employee shall immediately notify the Company's Safety Officer or the Workers Safety Representative.
  - (ii) The Company's Safety Officer and the Workers Safety Representative shall take immediate action to have the unsafe situation rectified.
- b) Should the Company's Safety Officer consider that no safety precautions are necessary, he shall notify the Workers Safety Representative accordingly as soon as possible.
- c) Where there is disagreement on the ruling of the Company's Safety Officer, the Company's Safety Officer will arrange for the immediate transfer of any employee away from the disputed area.
- d) Should the Company's Safety Officer be of the opinion that no action is necessary and the Workers Safety Representative disagree with that decision, an appropriate Inspector from Worksafe WA shall be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- e) If disagreement still exists the Chief Inspector Construction Branch of Worksafe, or his nominee, shall be called in to assist in the resolution of the dispute.
- f) Whilst the above procedure is being followed, there shall be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.
- g) It is accepted that safety considerations do over-ride normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can over-ride normal demarcation practices.

## 8.—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").

## 9.—RELATIONSHIP WITH AWARDS

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

## 10.—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.

## 11.—TRADES/LABOUR RATIOS

1. (a) It is recognised that there is an important role for labourers in this industry and it is agreed that they will be utilised in the industry.

(b) No fixed ratios are established by this agreement as the number of labourers will be determined on an as needs basis on the site. Where there is any dispute in relation to this sub-clause the matter shall be processed in accordance with the general principles and procedures specified in Clause 7.

(c) Tradespeople may handle materials and gear within a reasonable vicinity of their work area.

## 12.—WAGE INCREASE

1. The parties to this agreement are committed to ensuring that the measures contained in this agreement lead to real gains in efficiency.

2. This agreement provides for increases of the Award hourly rate resulting in the wage rates in the Appendix A—Wage Rates, payable from the date of signing.

3. In addition to the rates prescribed by 12 (2) above, an allowance of \$1.00 per hour all purpose shall apply to all projects. This allowance will be in lieu of the Structural Frame Allowance.

4. (a) A further allowance of \$1.50 per hour for hours worked, shall be paid to employees required to handle or install tiled containing mineral fibres. It shall be a requirement of this agreement that the employees in receipt of this allowance wear the appropriate personal protective equipment and have been trained in the proper fitting, use and maintenance of that equipment.

(b) All of the Provisions of 4(a) above will be reviewed prior to the expiry of this agreement and such review shall include complete re-appraisal of the need to wear personal protective equipment. No allowance is payable if personal equipment is not required.

## 13.—PAYMENT OF WAGES

All new employees shall be paid by EFT into a maximum of two (2) bank accounts of their choice. Employees will be able to choose the Bank/Building Society/Credit Union into which their pay is to be deposited. For employees working in remote areas, cash advances will be organised if banks are not easily accessible. All current employees are to commit to wages being paid weekly EFT no later than six months from the signing of this Agreement. This clause shall operate in conjunction with Clause 34, Payment of Wages on the Award.

## 14.—SITE ALLOWANCE

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

## 15.—TOOL ALLOWANCE

In addition to the award "tool allowance" an additional payment of \$0.75 per hour worked on-site will be paid to all employees who provide the tools listed below. This amount is to be adjusted in line with annual CPI movements. The Company will facilitate the purchase of any tools requested. Employees purchasing tools from the Company shall reimburse the Company for the cost of the tools at the rate of \$0.75 per hour worked, until the full amount owed is paid. In addition, the Company shall reimburse the full cost of tools lost or stolen, and the cost of tagging all tools, and the cost of storage and security of tools used is to remain the responsibility of the employer in line with Clause 33 of the Award.

The parties agree that any change to the current Award tool allowance, excluding CPI increases will be discussed with a view to absorption within this additional payment.

The tools to be provided include—

<b>Fixing Tools</b>	1 pencil	1 electric extension lead
1 Bevel Square	1 plumb bob	1 flat trowel (280mm)
1 Bolt cutters	1 pop riveter	1 hacksaw
1 calculator	1 power box (4 points)	1 hammer
1 caulking gun	1 rod bender	1 hand saw
1 chalkline	1 screw driver (flat head)	1 internal tool—large
1 cold chisel	1 screw driver (Phillips Head)	1 internal tool—small
1 electric drill (12mm)	1 ladder (1.8m)	
2 electric extension leads	1 metre box	
1 electric screw gun	1 mixer bit	
1 flat bastard file	2 spanners	1 nail bag
1 hacksaw	1 spirit level (1.2m)	1 nail punch
1 hammer	1 Stanley knife	1 paint brush (75mm)
1 hammer drill (12mm Ramset Bit)	1 string line	1 pair tin snips
1 hand saw	1 stud crimper	1 power box
1 hole saw set	1 surfboard	1 sanding block
1 key hole saw	1 tape (20m)	1 screw driver (flat head)
1 ladder (1.8m)	1 tape (7m)	1 screw driver (Phillips Head)
1 mechanical hacksaw	1 water level (20m)	1 screw gun
1 nail bag		1 small tool
1 nail punch	<b>Flushing Tools</b>	1 spirit level (1.2m)
1 pair pliers	1 broad knife (50mm)	1 sponge
1 pair scissors (large)	1 broad knife (100mm)	1 Stanley knife
1 pair tin snips	1 broad knife (150mm)	1 staple gun
4 pairs "C" clamps	3 buckets	1 surfboard
4 pairs multigrips	1 caulking gun	1 tape (7m)
6 pairs spring clips	1 curved trowel (200mm)	
1 paper pad	1 curved trowel (275mm)	
	1 electric drill	

## 16.—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

It is recognised that there is an important role for apprentices in this industry and it is agreed that they will be utilised in the industry.

The number of apprentices will be determined on an as needs basis on each site. Where there is a dispute in relation to this sub-clause the matter shall be resolved in accordance with clause 7 of this agreement.

## 17.—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.

## 18.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. The parties recognise the need to adopt a "total trade" concept for training and skills acquisition to meet the current and future requirements of the industry and where appropriate to provide a career path for employees in the wall and ceiling industry.

To this end the parties reaffirm their commitment to training and agree that training and retraining of both the workforce and supervision will occur on an ongoing basis.

Mature adult employees may be trained, initially as labourers and then in the skills of a tradesman through a structured improver system which will be recognised by the industry.

2. A training allowance of \$12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. These payments will have a commencement date of 1 February 1996.

3. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The 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.

4. 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.

5. It is agreed that safety training will be an important component in the structured training program.

6. The parties agree to participate in a Training Advisory Committee that shall consist of 3 representatives from the Association and 3 representatives from the Construction Skills Training Centre. The role of the Committee will be to advise the parties as to training priorities for the industry and the appropriateness of particular courses for the industry.

## 19.—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 7—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.

## 20.—OVERTIME

The allocation of overtime shall be at the employers prerogative provided that the employer shall not be adversely or unreasonably discriminate against any employees. The practice of one in all in shall be eliminated. An overtime roster may be introduced by the employer in conjunction with the employees.

## 21.—COMPANY BASED INCENTIVE SCHEME

Individual companies may negotiate company specific incentive schemes which will form an appendix to this agreement. These incentive schemes must ensure that the award provides the base safety net and that all workers in the site have the opportunity to share in the proposed scheme.

Once negotiated bonus based incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant requirements have been satisfied.

## 22.—SICK LEAVE

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

- (a) The Company's employees shall have the option of converting up to 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.

## 23.—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.

#### 24.—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.

#### 25.—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.

#### 26.—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 unforeseen 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.

#### 27.—CONSULTATION

In relation to general industry matters not otherwise provided for in this Agreement the Union recognises the role of the Association and shall consult with the Association on matter of industry wide significance.

Signed for and on behalf of—

The Union:

**BLPPU**

Signed **Common Seal**

Date: 6/10/97

The Company:

Signed **Common Seal**

Date: 5/11/97 **Common Seal**

PAUL LARSEN

(Print Name)

Dated this 6th day of November 1997.

#### 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
	\$	\$	\$	\$	\$
Plasterer, Fixer	16.17	16.64	17.11	17.58	17.82
1st Year					
Apprentice	6.79	6.99	7.18	7.38	7.48
2nd Year					
Apprentice	8.90	9.16	9.42	9.68	9.81
3rd Year					
Apprentice	12.13	12.49	12.84	13.19	13.37
4th Year					
Apprentice	14.23	14.65	15.06	15.48	15.69

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

- There will be no payment of lost time to a person unable to work in a safe manner.
- 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.
- For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- 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—

- Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- 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.
- 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 \$2.1 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 \$2.1m	\$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 \$2.1 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 Eliminated 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 contractor 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.

**DORIC CONSTRUCTIONS PTY LTD INDUSTRIAL AGREEMENT.****No. AG 241 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

Doric Constructions Pty Ltd.

No. AG 241 of 1997.

Doric Constructions Pty Ltd Industrial Agreement.

COMMISSIONER P.E. SCOTT .

30 April 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 Doric Constructions Pty Ltd Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

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

Schedule.

1.—TITLE

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

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration

6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Fares and Travelling
  18. Productivity Initiatives
- Appendix A—Wage Rates  
Appendix B—Site Allowance

### 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—WA Branch (hereinafter referred to as the "Unions") and DORIC Constructions Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

### 4.—APPLICATION

This Agreement shall be binding upon the Company, the Unions, its Officers and Members, and any person eligible to be a Member 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 1 August 1997 and shall continue in effect until 31 October, 1999. Provided that nothing in this clause shall prevent the implementation of an Enterprise Agreement as detailed in Clause 9—Enterprise Agreement herein.

Neither the Unions nor its members shall make any claim against the Company for increases in rates of remuneration or make any other claim at all in the life of this Agreement.

### 6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this agreement shall be in the same terms as that outlined below—

#### Dispute Avoidance and Settlement Procedure

1. In the first instance an employee shall submit a request concerning an industrial issue to either their own site union representative or the immediate supervisor/foreperson. If the matter cannot be resolved at this stage then the following procedure shall be applied.
  - a. The Company and Union Delegate/Shop Steward shall submit the issue to the immediate supervisor/foreperson.
  - b. If not settled at this stage the employee and union delegate/shop steward shall submit the issue to the site manager of the Company.
  - c. If not settled at this stage the employee and union delegate/shop steward may submit the matter to the Union organiser for discussion with the project manager or industrial relations officer in consultation with the Company's site manager.
  - d. If not settled at this stage the employee and union delegate/shop steward may submit to the Union Secretary for discussion with the project builder at the state senior manager level. The matter shall then be discussed further with the senior management representative of any other relevant contractors.
  - e. If the dispute still exists after the aforementioned processes have been carried out, then the matter shall be referred to the Western Australian Industrial Relations Commission for determination. The decision of the Western Australian Industrial Relations

Commission will be accepted by all parties subject to rights of appeal.

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

#### Procedure for Settling Disagreements Over Safety Issues

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

#### Demarcation Procedure

1. Consultation shall be the primary method of avoiding demarcation disputes. If a dispute does occur, then senior officials of the union concerned will meet with the aim of reaching a resolution as soon as possible.
2. A demarcation issue or dispute shall not result in a work stoppage, ban or limitation on the project. All work shall continue as normal whilst the dispute is being resolved.
3. If within a period of 7 days the issue is not resolved the matter will be referred, where appropriate, to the Australian Industrial Relations Commission and/or the Western Australian Industrial Relations Commission.

### 7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (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 rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

#### 9.—ENTERPRISE AGREEMENT

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

#### 10.—WAGE INCREASE

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

#### 11.—SITE ALLOWANCE

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

#### 12.—INDUSTRY STANDARDS

##### 1. Redundancy

The Company will increase its level of payment into the Western Australian Construction Industry Redundancy Fund (WACIRF) to \$45 per week per employee from 1 August 1997 and will increase this to \$50 per week per employee from 1 August 1998.

##### 2. Superannuation

The Company will increase its level of payment into the Construction & Building Unions Superannuation Scheme (C+Bus.) or other approved scheme, to \$55 per week per employee from 1 August 1997 and increase this to \$60 per week per employee from 1 August 1998.

#### 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 per year, 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, safety sun glasses and sun brims to fit over safety helmets.

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

1. A training allowance of \$12 per week per worker shall be paid by the employer to the Construction Skills Centre Education and Training Fund for each employee (except casuals or apprentices).

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The 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.

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

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

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

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

#### 15.—SENIORITY

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

#### 16.—SICK LEAVE

For sick leave accrued from 1 August 1997, the following will apply—

- a. The Company's employees shall have the option of—
  - i. being paid up to 5 days unused sick leave per annum and having the balance of unused sick leave accrued and paid out on termination.
  - ii. having all unused sick leave accrued paid out 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.—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.

#### 18.—PRODUCTIVITY INITIATIVES

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

Furthermore, this Agreement is intended to assist working relations and broaden the co-operation between the employee, Unions and the Company.

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

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

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

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

4. The employees and the unions undertake to adhere to the following conditions of the Company—

- a. It is agreed that neither the employer or the Unions shall place any restrictions or limitations on reasonable overtime work that may be required by the Company who is party to this Agreement.
- b. Prior notification will be given to the relevant unions for Sunday work, however no triple time or day in lieu will be claimed or apply to Sunday work and the Award rates (eg double time Ref Award Clause 16(2)) only will apply.

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

6. Staggered start times: At the request of the Company, and to suit sensible movement of people and materials throughout the site, especially in relation to hoisting problems, the Company will be allowed to implement staggered starting and finishing times within the ordinary spread of hours prescribed by the Awards without penalty payment and agree the ordinary spread of hours prescribed by the Award to be between 6.00am to 6.00pm.

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

8. The Company will ensure that on sites where a nurse is employed a nurse is available on site if at any time there are at least 10 employees on site. Where the number of employees

on site is less than 10 the Company will ensure a First Aid qualified employee is available on site.

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

Signed for and on behalf of—

The Unions:

**BLPPU** Signed **Common Seal**

.....  
Date: 28/8/97

Signed

.....  
**WITNESS**

**CMETU** Signed **Common Seal**

.....  
Date: 28/8/97

Signed

.....  
**WITNESS**

The Company

**Common Seal** Signed

.....  
Date: 10/9/97

Signed

.....  
**(WITNESS)**

#### 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	16.46	16.91	17.14
Labourer Group 2	15.03	15.47	15.91	16.35	16.57
Labourer Group 3	14.63	15.06	15.49	15.92	16.13
Carpenter	16.27	16.74	17.21	17.68	17.92

#### APPENDIX B—SITE ALLOWANCE

Note: THE RATES PRESCRIBED IN THIS AGREEMENT APPLY TO PROJECTS COMMENCED ON OR AFTER 1 NOVEMBER 1997 AND WILL BE FURTHER REVIEWED AS ANTICIPATED BY CLAUSE 5 AND 6.

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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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)

	<u>Project Contractual Value</u>	<u>Site Allowance</u>
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 contractor 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—

- Aim & Objectives
- Occupational Health and Safety 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. Applications to Apprentices

The rates prescribed in this agreement shall apply to apprentices in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award, being—

1st Year	45%
2nd Year	55%
3rd Year	75%
4th Year	88%

#### **E.D. OATES BRUSHWARE LIMITED NAVAL BASE PLANT ENTERPRISE AGREEMENT 1994.** **No. AG 7 of 1994.**

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 Limited and Others.

No. AG 7 of 1994.

6 April 1998.

*Order.*

WHEREAS on 19 January 1994 this application was filed in the Registry of the Commission pursuant to section 41 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS on 2 March 1994 the Commission heard the parties and adjourned proceedings in order that they might rectify defects in the agreement submitted for registration as an industrial agreement;

AND WHEREAS on 4 March 1998 the application was listed For Mention Only and thereat the parties requested that the application be dismissed;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, and by consent, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,

[L.S.] Commissioner.

#### **FITZGERALD ROOFING INDUSTRIAL AGREEMENT.** **No. AG 142 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

John Joseph and Carol Ann Fitzgerald T/A Fitzgerald Roofing.

No. AG 142 of 1997.

Fitzgerald Roofing Industrial Agreement.

COMMISSIONER P E SCOTT.

6 April 1998.

*Order.*

WHEREAS this is an application filed on the 11th day of July 1997 pursuant section 41 of the Industrial Relations Act, 1979, for the registration of an agreement; and

WHEREAS on the 20th day of March 1998 the application was set down for hearing and determination on the 30th day of July 1997; and

WHEREAS at that hearing, the matter was adjourned at the request of the Applicants; and

WHEREAS by facsimile transmission dated the 1st day of April 1998 the Applicants sought to withdraw the application; and

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

That the application be withdrawn by leave.

(Sgd.) P.E. SCOTT,

[L.S.] Commissioner.

#### **FITZGERALD ROOFING INDUSTRIAL AGREEMENT.** **No. AG 243 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

John Joseph and Carol Ann Fitzgerald trading as Fitzgerald Roofing.

No. AG 243 of 1997.

Fitzgerald Roofing Industrial Agreement.

COMMISSIONER P E SCOTT.

6 April 1998.

*Order.*

WHEREAS this is an application filed on the 17th day of September 1997 pursuant section 41 of the Industrial Relations Act, 1979, for the registration of an agreement; and

WHEREAS on the 20th day of March 1998 the application was set down for mention only on the 20th day of April 1997; and

WHEREAS by facsimile transmission dated the 1st day of April 1998 the Applicants sought to withdraw the application; and

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

That the application be withdrawn by leave.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

### GERALDTON BUILDING CO PTY LTD CONSTRUCTION SITE AGREEMENT.

No. AG 13 of 1998.

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

Geraldton Building Co Pty Ltd.

No. AG 13 of 1998.

Geraldton Building Co Pty Ltd Construction Site Agreement.

COMMISSIONER P E SCOTT.

30 April 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 Geraldton Building Co Pty Ltd Construction Site Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

### ENTERPRISE BARGAINING AGREEMENT

Schedule.

#### 1.—TITLE

This agreement will be known as the Geraldton Building Co Pty Ltd Construction Site Agreement.

#### 2.—ARRANGEMENT

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

#### 17. Productivity Initiatives

Appendix A—Wage Rates

Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

#### 3.—AREA AND PARTIES BOUND

This is an Agreement between 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 (hereinafter referred to as the 'Unions') and Geraldton Building Co Pty Ltd ACN 008 673 103 (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 a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award No. 14 of the 1987 (the "Award"). There are approximately 25 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 1 April 1998.

#### 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 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 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 on other matters relating to the employment relationship, the Award shall apply. Where there is a conflict between the rates of pay, conditions, allowances and other matters in this agreement and the Award, the higher rate shall apply.

#### 9.—ENTERPRISE AGREEMENT

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

#### 10.—WAGE INCREASE

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

#### 11.—INDUSTRY STANDARDS

##### 1. Superannuation

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Construction and Building Unions Superannuation Scheme of at least \$50.00 per week per employee.

##### 2. Redundancy

It is a term of this Agreement that the Company will retain its payments of \$40.00 per week per employee into the Western Australian Construction Industry Redundancy Fund.

##### 3. Long Service Leave

The Company will continue to make payments into the Long Service Leave board.

#### 12.—CLOTHING AND FOOTWEAR

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

- (a) 1 pair of 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 during the period 1 April to 31 October, and will be replaced on a fair wear and tear basis.

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

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

1. Geraldton Building Company (GBC) employees will be able to access approved NBCITIC courses, and leave to attend such courses will not be unreasonably withheld.

2. GBC shall notify the Union of courses to be made available to GBC employees the subject of this agreement. Courses shall be free to all employees and attendance at courses shall be equitably distributed. Preference will be given to employees attending Construction Skills Centre courses, when they are held in the relevant regional area.

#### 14.—SENIORITY (RESTRICTED TO AGREED GEOGRAPHICAL AREAS)

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.

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 site by site basis.

It is recognised that from time to time instances may arise where the employee's individual skills may be subject to the caveat. Where there is any disagreement as to the application of this the matter will be proceeded with in accordance with Clause 46—Dispute Settlement Procedure.

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

#### 15.—SICK LEAVE

The sick leave accrued after the date of ratification of this agreement the following shall apply—

- (a) The Company's employees shall have the option of—
- (i) Being paid up to 5 days unused sick leave per annum and having the balance of unused sick leave accrued and paid out on termination; or
  - (ii) Having all unused sick leave accrued paid out 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.

#### 16.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

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

#### 17.—PRODUCTIVITY INITIATIVES

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

1. All demarcation issues will be resolve in accordance with the Dispute Settlement Procedure.

2. The parties to this agreement agree to adopt a reasonable and flexible approach to working hours in terms of starting and finishing times. Ordinary hours of 8 hours per day may be worked between 6am and 6pm on any week day.

3. Meetings of Union members held on site will be kept to a minimum and, wherever possible, held at a time likely to cause minimal disruption to work being performed on site

4. All parties agree to adopt a reasonable and flexible approach to inclement weather in order to minimise lost time caused through inclement weather.

5. Any employee elected as Job Steward or Health and Safety Representative will be required to carry out meaningful work, as directed by the Company, in addition to his/her duties as a Job Steward or Health and Safety Representative.

6. Wages are to be paid on a fortnightly basis and direct into an employee nominated bank account.

7. The Company and its employees wish to make RDO's more flexible by adopting the following procedures—

- (a) An employee can request to swap the designated industry RDO for an alternative RDO. The alternative day requested by the employee will not be unreasonably refused by the company subject to work constraints/requirements.

Employees working the designated industry RDO at their request will be paid the ordinary daily rate plus any allowances which may be payable on their work site for the RDO worked. The alternative RDO shall be paid at ordinary rates only.

- (b) Employees who are requested by the company to work on the designated RDO for the purpose of completing a project or to carry out emergency work may elect to be paid ordinary rates plus any allowances which may be payable on their work site for workers in the designated RDO and take a day off in lieu of the RDO at a later date.

- (c) Employees may request to bank RDO's up to a maximum of five days, and take them off at a later date in one period of leave. The alternative days off requested by the employee will not be unreasonably refused by the Company subject to work constraints/requirements.

Where agreed employees working the designated industry RDO's at their request for the purpose of banking them will be paid ordinary rates plus any allowance which may be payable on their work site for the RDO which is worked. The RDO which is banked and taken at a later date shall be paid at ordinary rates only.

The Unions:

BLPPU Signed *Common Seal*  
Date: 16/3/98

CMETU Signed *Common Seal*  
Date: 16/3/98

The Company

*Common Seal* Signed Signed  
Date: 9/3/98  
C. J. CROTHERS  
L. J. GALLOP  
PRINT NAME

#### APPENDIX A—WAGE RATES

##### (1) Labourers & Tradespersons—Construction Sites

1 November 1997	Hourly Rate \$
Labourer Group 1	15.11
Labourer Group 2	14.59
Labourer Group 3	14.20
Plasterer, Fixer	15.70
Painter, Glazier	15.35
Signwriter	15.80
Carpenter	15.80

##### (2) Apprentices

Apprentices shall receive the following percentages of the applicable wage rates contained in Appendix A—

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

#### 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 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 to a person unable to work in a safe manner.

(d) If this happens three (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 purpose of disciplinary action a warning shall be effective for a period of twelve (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 without pay while attending treatment

\_\_\_\_\_

**HJ & JW MAST PAINTING CONTRACTORS  
INDUSTRIAL AGREEMENT.**

**No. AG 303 of 1997.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Jayem Pty Ltd T/A HJ & JW Mast Painting Contractors.

No. AG 303 of 1997.

COMMISSIONER P E SCOTT.

6 April 1998.

*Order.*

WHEREAS this is an application filed on the 29th day of October 1997 pursuant section 41 of the Industrial Relations Act, 1979, for the registration of an agreement; and

WHEREAS on the 20th day of March 1998 the application was set down for mention only on the 20th day of April 1997 ; and

WHEREAS by facsimile transmission dated the 1st day of April 1998 the Applicant sought to withdraw the application; and

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

That the application be withdrawn by leave.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

**HOSPITAL SALARIED OFFICERS ALBANY  
HEALTH SERVICE ENTERPRISE BARGAINING  
AGREEMENT 1997.  
No. PSA AG 53 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Albany Hospital Board

and

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

No. PSA AG 53 of 1998.

7 May 1998.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT**

No. PSA AG 53 of 1998

HAVING heard Ms P Wilson on behalf of the first named party and Mr G. Reid on behalf of the second named party; and

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

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

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

THAT the agreement titled the Hospital Salaried Officers Albany Health Service Enterprise Bargaining Agreement 1997, filed in the Commission on 17 April 1998 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,

Public Service Arbitrator.

[L.S.]

\_\_\_\_\_

**AGREEMENT**

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Albany Health Service Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose Of Agreement
4. Application And Parties Bound
5. Term Of Agreement
6. No Extra Claims
7. Objectives, Principles And Commitments
8. Framework And Principles For Further Productivity Bargaining
9. Awards, Agreements And Workplace Agreements
10. Rates Of Pay And Their Adjustment
11. Resources For Productivity Negotiations
12. Dispute Avoidance And Settlement Procedures
13. Hours
14. Part-time Employees
15. Public Holidays
16. Long Service Leave
17. Sick Leave
18. Family, Bereavement And Personal Leave
19. Allowances
20. Overpayments
21. Salaries
22. Ratification

Attachment 1—Model For Identifying Productivity Increases

### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Albany Health Service along with allowing the benefits from those improvements to be shared by employees, Albany Health Service and the Government on behalf of the Community.

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

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 Albany Health Service, (hereinafter referred to as Albany 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 140 employees.

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

(4) This Agreement amends, consolidates and replaces the Hospital Salaried Officers Albany Health Service Enterprise Bargaining Agreement 1996 No. PSA AG 10 of 1996.

### 5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 30 April 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 1996.

(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 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 Albany Health Service;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Albany 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, Albany Health Service and its clients and the Government on behalf of the community;
- (b) ensuring that Albany 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 Albany Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Albany 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, Albany 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 Albany Health Service, a representative from Albany 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 Albany 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 Albany 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 Albany 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 Albany 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 Albany 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 Albany 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 Albany 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 Albany 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 Albany Health Service as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Albany 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 (7) 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 (7) 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 Albany 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 Albany Health Service.

(6) All promotional positions and new staff recruited by Albany 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 Albany Health Service.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this Clause, Albany 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, Albany 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 AG 10 of 1996, this Agreement provides for a 6.5% 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 Albany Health Service.

(2) (a) To assist in meeting these obligations, Albany Health Service will assist by providing appropriate resources having regard to the operational requirements of Albany 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 Albany 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 Albany Health Service and shall not unreasonably affect the operation of Albany 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; and

(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) may provide advice to Albany 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 Albany Health Service representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Albany 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 Albany 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 Albany 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 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.

(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 (38) per week and shall be worked by one of the following arrangements—

- (i) Ordinary hours of work of thirty-eight (38) per week;
- (ii) Flexitime roster covering a settlement period of four (4) 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 twelve (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 twelve (12) hours may be worked provided the average

normal hours worked in a shift cycle or settlement period does not exceed seventy-six (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 seven (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 (5) 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 (4) weeks and shall be made available to all affected employees no later than three (3) 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 (4) 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 (4) 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 (2) full days or any combination of half days and full days that does not in total exceed two (2) 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 (4) 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 four (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 ten (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.—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.

16.—LONG SERVICE LEAVE

This Clause replaces Clause 17. Long Service Leave of Hospital Salaried Officers Award No. 39 of 1968 with effect from the date of registration of this Agreement.

(1) An employee shall be entitled to thirteen (13) weeks paid long service leave on the completion of ten (10) years of continuous service and an additional thirteen weeks paid long service leave for each subsequent period of seven (7) years of continuous service completed by the employee.

(2) Notwithstanding subclause (1), an employee in employment with an employer respondent to the Hospital Salaried Officers Award No 39 of 1968 shall retain the proportion of long service leave accrued at the time of the registration of this Agreement, and shall accrue the balance in accordance with sub clause (1) of this clause.

(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 (26) weeks.

(7) (a) An employee who;

- (i) at or before the 1st April 1996 was employed by Albany Health Service, and has completed at least fifteen (15) years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Albany Health Service after the 1st April 1996, and has completed at least fifteen (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 Albany Health Service immediately prior to taking this leave.

(b) An employee who resigns from their employment with Albany Health Service and who;

- (i) at or before the 1st April 1996 was employed by Albany Health Service, and has completed at least fifteen (15) years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Albany Health Service after the 1st April 1996, and has completed at least fifteen (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 (3) years continuous service with Albany 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, three (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 fifteen (15) years continuous service, calculated in accordance with the provisions of this Clause, and having completed at least three (3) years continuous service, calculated in accordance with the provisions of this Clause, with Albany 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 (55) 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 (12) 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 (12) 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 (6) 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 (2) 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 Albany 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 Albany 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.

17.—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.

18.—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 thirty-eight (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 (5) 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 two (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 (2) days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employee's 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.

19.—ALLOWANCES

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.

20—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.

## 21—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 the 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 an final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 6.5% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,412
17 years of age	13,609	14,494
18 years of age	15,886	16,919
19 years of age	18,387	19,582
20 years of age	20,649	21,991
1st year of full-time equivalent adult service	22,682	24,156
2nd year of full-time equivalent adult service	23,382	24,902
3rd year of full-time equivalent adult service	24,078	25,643
4th year of full-time equivalent adult service	24,772	26,382
LEVEL 2	25,469	27,124
	26,167	27,868
	26,969	28,722
	27,524	29,313
	28,343	30,185
LEVEL 3	29,311	31,216
	30,064	32,018
	30,856	32,862
	32,118	34,206
LEVEL 4	32,779	34,910
	33,770	35,965
	34,788	37,049
	36,235	38,590
LEVEL 5	36,989	39,393
	38,025	40,497
	39,090	41,631
	40,187	42,799
LEVEL 6	42,299	45,048
	43,867	46,718
	46,095	49,091
LEVEL 7	47,287	50,361
	48,797	51,969
	50,362	53,636
LEVEL 8	52,648	56,070
	54,522	58,066
LEVEL 9	57,358	61,086
	59,331	63,188
LEVEL 10	61,491	65,488
	64,966	69,189
LEVEL 11	67,741	72,144
	70,563	75,150
LEVEL 12	74,432	79,270
	77,047	82,055
	80,028	85,230
CLASS 1	84,537	90,032
CLASS 2	89,046	94,834
CLASS 3	93,553	99,634
CLASS 4	98,062	104,436

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 6.5% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 12	74,432	79,270
	77,047	82,055
	80,028	85,230
CLASS 1	84,537	90,032
CLASS 2	89,046	94,834
CLASS 3	93,553	99,634
CLASS 4	98,062	104,436

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

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

(3) Salaries.—Specified Callings and Other Professionals are detailed as follows. The rates of pay have been adjusted to reflect the increase in Clause 10 of the Agreement and represent full an 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,

(b) 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	Award Rate + 2 ASNA + 5% + 2% + 6.5% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 3/5	29,311	31,216
	30,856	32,862
	32,779	34,910
	34,788	37,049
	38,025	40,497
	40,187	42,799
LEVEL 6	42,299	45,048
	43,867	46,718
	46,095	49,091
LEVEL 7	47,287	50,361
	48,797	51,969
	50,362	53,636
LEVEL 8	52,648	56,070
	54,522	58,066
LEVEL 9	57,358	61,086
	59,331	63,188
LEVEL 10	61,491	65,488
	64,966	69,189
LEVEL 11	67,741	72,144
	70,563	75,150
LEVEL 12	74,432	79,270
	77,047	82,055
	80,028	85,230
CLASS 1	84,537	90,032
CLASS 2	89,046	94,834
CLASS 3	93,553	99,634
CLASS 4	98,062	104,436

(b) Subject to paragraph (d) of this subclause, on appointment or promotion to the Level 3/5 under this subclause—

- (i) Employees, who have completed an approved three (3) academic year tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four (4) 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 subclause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this subclause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to 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 (4) 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.

## 22—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Graham Baker

common seal affixed

(signed by G. Baker)

5 May 1998

(Signature)

(Date)

Acting President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Christopher Panizza

common seal affixed

(signed by C. Panizza)

5 May 1998

(Signature)

(Date)

Acting Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The common seal of the Albany Health Service was affixed by the authority of the Board in the presence of—

(signed by MH Sharp)

(Board Member)

(signed by J. Lubich)

(Board Member)

1st May 1998

(Date)

## 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 Albany 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

REG.15 (1) (B) STATEMENT

1. The Agreement satisfies the requirements of S41 (2) of the Act as it applies to a single Government Enterprise, Albany Health Service

2. The changes which the Agreement effects in the relevant rates of pay and conditions of employment of the employees to whom the Agreement relates (based on variations from the Hospital Salaried Officers Award No 39 of 1968) are summarised in the following Schedule of Amendments—

**HOSPITAL SALARIED OFFICERS ASHBURTON  
HEALTH SERVICE ENTERPRISE BARGAINING  
AGREEMENT 1997.**

**No. PSA AG 25 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ashburton Health Service

and

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

No. PSAAG 25 of 1998.

Hospital Salaried Officers Ashburton Health Service  
Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Ashburton Health Service Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Ashburton Health Service Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Ashburton Health Service along with allowing the benefits from those improvements to be shared by employees, Ashburton Health Service and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Ashburton Health Service taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Ashburton 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 Ashburton Health Service, (hereinafter referred to as Ashburton 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 eleven 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 Ashburton Health Service, Paraburdoo District Hospital and Tom Price District Hospital Enterprise Bargaining Agreements No PSA AG12, 83 and 101 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) (a) 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.

(b) 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 Ashburton Health Service;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Ashburton 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, Ashburton Health Service and its clients and the Government on behalf of the community;
- (b) ensuring that Ashburton 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 Ashburton Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Ashburton 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, Ashburton 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 Ashburton Health Service, a representative from Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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 Ashburton Health Service as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Ashburton 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 re-visit the Workplace Agreement in light of this Agreement.

(5) All staff transferred or redeployed to Ashburton 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 Ashburton Health Service.

(6) All promotional positions and new staff recruited by Ashburton 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 Ashburton Health Service.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Ashburton 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, Ashburton 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 agreements nos PSA AG12, 83 and 101 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 Ashburton Health Service.

(2) (a) To assist in meeting these obligations, Ashburton Health Service will assist by providing appropriate resources having regard to the operational requirements of Ashburton 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 Ashburton 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 Ashburton Health Service and shall not unreasonably affect the operation of Ashburton 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) may provide advice to Ashburton 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 Ashburton Health Service representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Ashburton 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 Ashburton 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 Ashburton 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employees

remaining portion of accrued untaken leave entitlement is less than a week such portion may be taken.

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

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

(7) (a) An employee who;

(i) at or before the 1st April 1996 was employed by Ashburton Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

(ii) commenced employment with Ashburton 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 Ashburton Health Service immediately prior to taking this leave.

(b) An employee who resigns from their employment with Ashburton Health Service and who;

(i) at or before the 1st April 1996 was employed by Ashburton Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

(ii) commenced employment with Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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 Ashburton 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

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	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	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	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	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                      12/03/98  
(Signature)                                      (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill                              12/03/98  
(Signature)                                      (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of Ashburton Health Service was affixed by authority of the Board, in the presence of—

\_\_\_\_\_  
(Board Member)                                      (Date)

\_\_\_\_\_  
(Board Member)                                      (Date)

### 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 Ashburton 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 BEVERLEY DISTRICT HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.**

**No. PSAAG 27 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Beverley District Hospital Board

and

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

No. PSAAG 27 of 1998.

Hospital Salaried Officers Beverley District Hospital Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas 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 Beverley District Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998.

(Sgd.) A.R. BEECH,

[L.S.] Commissioner.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Beverley District Hospital Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Beverley District Hospital along with allowing the benefits from those improvements to be shared by employees, Beverley District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Beverley District Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Beverley 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 Beverley District Hospital, (hereinafter referred to as Beverley 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 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 Beverley District Hospital Enterprise Bargaining Agreement PSAAG15 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) (a) 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.

(b) 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 Beverley District Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Beverley 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, Beverley District Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Beverley 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 Beverley District Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Beverley 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, Beverley 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 Beverley District Hospital, a representative from Beverley 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 Beverley 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 Beverley 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 Beverley 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 Beverley 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 Beverley 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 Beverley 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 Beverley 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 Beverley 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 Beverley District Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Beverley 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 Beverley 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 Beverley District Hospital.

(6) All promotional positions and new staff recruited by Beverley 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 Beverley District Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Beverley 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, Beverley 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 AG15 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 Beverley District Hospital.

(2) (a) To assist in meeting these obligations, Beverley District Hospital will assist by providing appropriate resources having regard to the operational requirements of Beverley 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 Beverley 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 Beverley District Hospital and shall not unreasonably affect the operation of Beverley 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) may provide advice to Beverley 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 Beverley District Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Beverley 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 Beverley 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 Beverley 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

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

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

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

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

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

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

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

(7) (a) An employee who;

(i) at or before the 1st April 1996 was employed by Beverley District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

(ii) commenced employment with Beverley 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 Beverley District Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Beverley District Hospital and who;

- (i) at or before the 1st April 1996 was employed by Beverley District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Beverley 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 Beverley 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 Beverley 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 Beverley 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 Beverley 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

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	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	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	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	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 05/03/98  
.....  
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill 06/03/98  
.....  
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Beverley District Hospital Board was affixed by authority of the Board, in the presence of

.....  
(Signature) (Date)  
Board Member

.....  
(Signature) (Date)  
Board Member

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 Beverley 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 BRUCE ROCK  
MEMORIAL HOSPITAL ENTERPRISE  
BARGAINING AGREEMENT 1997.**

**No. PSAAG 26 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bruce Rock Memorial Hospital Board

and

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

No. PSAAG 26 of 1998.

Hospital Salaried Officers Bruce Rock Memorial Hospital  
Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Bruce Rock Memorial Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A. R. BEECH,  
Commissioner.

[L.S.]

AGREEMENT

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Bruce Rock Memorial Hospital Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours

14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Bruce Rock Memorial Hospital along with allowing the benefits from those improvements to be shared by employees, Bruce Rock Memorial Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Bruce Rock Memorial Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Bruce Rock 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 Bruce Rock Memorial Hospital, (hereinafter referred to as Bruce Rock 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 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 Bruce Rock Memorial Hospital Enterprise Bargaining Agreement No PSA AG22 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) (a) 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.

(b) 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 Bruce Rock Memorial Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Bruce Rock 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, Bruce Rock Memorial Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Bruce Rock 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 Bruce Rock Memorial Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Bruce Rock 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, Bruce Rock 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 Bruce Rock Memorial Hospital, a representative from Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock Memorial Hospital as required.

## (d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Bruce Rock 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 Bruce Rock 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 Bruce Rock Memorial Hospital.

(6) All promotional positions and new staff recruited by Bruce Rock 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 Bruce Rock Memorial Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Bruce Rock 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, Bruce Rock 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 agreements no PSAAG22 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 Bruce Rock Memorial Hospital.

(2) (a) To assist in meeting these obligations, Bruce Rock Memorial Hospital will assist by providing appropriate resources having regard to the operational requirements of Bruce Rock 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 Bruce Rock 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 Bruce Rock Memorial Hospital and shall not unreasonably affect the operation of Bruce Rock 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) may provide advice to Bruce Rock 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 Bruce Rock Memorial Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Bruce Rock Memorial Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

- (ii) commenced employment with Bruce Rock 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 Bruce Rock Memorial Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Bruce Rock Memorial Hospital and who—

- (i) at or before the 1st April 1996 was employed by Bruce Rock Memorial Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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 Bruce Rock 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

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	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration	LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective date of registration
	Salary P/Annum	Salary P/Annum		Salary P/Annum	Salary P/Annum
1st year of full-time equivalent adult service	22,682	23,816		29,311	30,777
2nd year of full-time equivalent adult service	23,382	24,551	LEVEL 3/5	30,856	32,399
3rd year of full-time equivalent adult service	24,078	25,282		32,779	34,418
4th year of full-time equivalent adult service	24,772	26,011		34,788	36,527
LEVEL 2	25,469	26,742	LEVEL 6	38,025	39,926
	26,167	27,475		40,187	42,196
	26,969	28,317	LEVEL 7	42,299	44,414
	27,524	28,900		43,867	46,060
LEVEL 3	28,343	29,760	LEVEL 8	46,095	48,400
	29,311	30,777		47,287	49,651
	30,064	31,567	LEVEL 9	48,797	51,237
	30,856	32,399	LEVEL 10	50,362	52,880
	32,118	33,724		52,648	55,280
LEVEL 4	32,779	34,418	LEVEL 11	54,522	57,248
	33,770	35,459		57,358	60,226
	34,788	36,527	LEVEL 12	59,331	62,298
	36,235	38,047		61,491	64,566
LEVEL 5	36,989	38,838	CLASS 1	64,966	68,214
	38,025	39,926	CLASS 2	67,741	71,128
	39,090	41,045	CLASS 3	70,563	74,091
	40,187	42,196	CLASS 4	74,432	78,154
LEVEL 6	42,299	44,414		77,047	80,899
	43,867	46,060		80,028	84,029
	46,095	48,400		84,537	88,764
LEVEL 7	47,287	49,651		89,046	93,498
	48,797	51,237		93,553	98,231
	50,362	52,880		98,062	102,965
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	Award Rate + 2 ASNA + 5% + 2% + 5% effective date of registration
	Salary P/Annum	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	05/03/98
.....	.....
(Signature)	(Date)
President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)	
Daniel P Hill	06/03/98
.....	.....
(Signature)	(Date)
Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)	
The Common Seal of the Bruce Rock Memorial Hospital Board was affixed by authority of the Board, in the presence of	
.....	.....
(Signature)	(Date)
Board Member	
.....	.....
(Signature)	(Date)
Board Member	

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 Bruce Rock 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 BUSSELTON  
HEALTH BOARD ENTERPRISE BARGAINING  
AGREEMENT 1997.**

**No. PSA AG 36 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Busselton Health Board

and

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

No. PSA AG 36 of 1998.

24 April 1998.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. PSA AG 36 OF 1998.**

HAVING heard Ms T. Wilson on behalf of the first named party and Mr C. Panizza on behalf of the second named party; and

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

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

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

THAT the agreement titled the Hospital Salaried Officers Busselton Health Board Enterprise Bargaining Agreement 1997, filed in the Commission on 1 April 1998, signed by me for identification, be and is hereby registered as an Industrial Agreement.

[L.S.]

(Sgd.) C.B. PARKS,  
Public Service Arbitrator.

**AGREEMENT**

**1.—TITLE**

This Agreement shall be titled the Hospital Salaried Officers Busselton Health Board Enterprise Bargaining Agreement 1997.

**2.—ARRANGEMENT**

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

**3.—PURPOSE OF AGREEMENT**

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Busselton Health Board along with allowing the benefits from those improvements to be shared by employees, Busselton Health Board and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Busselton Health Board taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Busselton Health 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 Busselton Health Board, (hereinafter referred to as Busselton Health 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 26 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 Busselton Health Board Enterprise Bargaining Agreement No PSA AG24 of 1996.

**5.—TERM OF AGREEMENT**

(1) This Agreement shall operate from the date of Registration until 31 May 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 Busselton Health Board;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Busselton Health 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, Busselton Health Board and its clients and the Government on behalf of the community;
- (b) ensuring that Busselton Health 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 Busselton Health Board operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Busselton Health 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, Busselton Health 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 Busselton Health Board, a representative from Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health Board as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Busselton Health 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 Busselton Health 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 Busselton Health Board.

(6) All promotional positions and new staff recruited by Busselton Health 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 Busselton Health Board.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Busselton Health 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, Busselton Health 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 agreements no Busselton Health Board?, this agreement provides for a 7% 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 Busselton Health Board.

(2) (a) To assist in meeting these obligations, Busselton Health Board will assist by providing appropriate resources having regard to the operational requirements of Busselton Health 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 Busselton Health 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 Busselton Health Board and shall not unreasonably affect the operation of Busselton Health 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 ques-

tions, 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) may provide advice to Busselton Health 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 Busselton Health Board representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Busselton Health 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 Busselton Health 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 Busselton Health 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. 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.

(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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employee's 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 Busselton Health Board, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Busselton Health 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 Busselton Health Board immediately prior to taking this leave.

(b) An employee who resigns from their employment with Busselton Health Board and who—

- (i) at or before the 1st April 1996 was employed by Busselton Health Board, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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 Busselton Health 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

	Leave On Full Pay Working Days
(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

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	Award Rate + 2 ASNA +5% + 2% + 7% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,470
17 years of age	13,609	14,562
18 years of age	15,886	16,998
19 years of age	18,387	19,674
20 years of age	20,649	22,094
1st year of full-time equivalent adult service	22,682	24,270
2nd year of full-time equivalent adult service	23,382	25,019
3rd year of full-time equivalent adult service	24,078	25,763
4th year of full-time equivalent adult service	24,772	26,506
LEVEL 2	25,469	27,252
	26,167	27,999
	26,969	28,857
	27,524	29,451
	28,343	30,327

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 7% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 3	29,311 30,064 30,856 32,118	31,363 32,168 33,016 34,366
LEVEL 4	32,779 33,770 34,788 36,235	35,074 36,134 37,223 38,771
LEVEL 5	36,989 38,025 39,090 40,187	39,578 40,687 41,826 43,000
LEVEL 6	42,299 43,867 46,095	45,260 46,938 49,322
LEVEL 7	47,287 48,797 50,362	50,597 52,213 53,887
LEVEL 8	52,648 54,522	56,333 58,339
LEVEL 9	57,358 59,331	61,373 63,484
LEVEL 10	61,491 64,966	65,795 69,514
LEVEL 11	67,741 70,563	72,483 75,502
LEVEL 12	74,432 77,047 80,028	79,642 82,440 85,630
CLASS 1	84,537	90,455
CLASS 2	89,046	95,279
CLASS 3	93,553	100,102
CLASS 4	98,062	104,926

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 7% effective date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 6	42,299 43,867 46,095	45,260 46,938 49,322
LEVEL 7	47,287 48,797 50,362	50,597 52,213 53,887
LEVEL 8	52,648 54,522	56,333 58,339
LEVEL 9	57,358 59,331	61,373 63,484
LEVEL 10	61,491 64,966	65,795 69,514
LEVEL 11	67,741 70,563	72,483 75,502
LEVEL 12	74,432 77,047 80,028	79,642 82,440 85,630
CLASS 1	84,537	90,455
CLASS 2	89,046	95,279
CLASS 3	93,553	100,102
CLASS 4	98,062	104,926

(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	Award Rate + 2 ASNA +5% + 2% + 7% effective date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 3/5	29,311 30,856 32,779 34,788 38,025 40,187	31,363 33,016 35,074 37,223 40,687 43,000

(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

common seal affixed

(signed by M Hartland) 30/03/98  
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

common seal affixed

(signed by D Hill) 30/3/98  
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Busselton Health Board was affixed by authority of the Board,

in the presence of— *common seal affixed*

(signed by J Edwards) 24/3/98  
(Board Member) (Date)

(signed by R Papalia) 24/3/98  
(Board Member) (Date)

### 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 Busselton Health 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 CORRIGIN  
DISTRICT HOSPITAL ENTERPRISE  
BARGAINING AGREEMENT 1997.  
No. PSAAG 20 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Corrigin District Hospital Board

and

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

No. PSAAG 20 of 1998.

Hospital Salaried Officers Corrigin District Hospital  
Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Corrigin District Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A.R. BEECH,

[L.S.] Commissioner.

**AGREEMENT**

**1.—TITLE**

This Agreement shall be titled the Hospital Salaried Officers Corrigin District Hospital Enterprise Bargaining Agreement 1997.

**2.—ARRANGEMENT**

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

**3.—PURPOSE OF AGREEMENT**

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Corrigin District Hospital along with allowing the benefits from those improvements to be shared by employees, Corrigin District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Corrigin District Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Corrigin 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 Corrigin District Hospital, (hereinafter referred to as Corrigin 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 Corrigin District Hospital Enterprise Bargaining Agreement No PSA AG27 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) (a) 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.

(b) 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 Corrigin District Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Corrigin 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, Corrigin District Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Corrigin 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 Corrigin District Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Corrigin 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, Corrigin 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 Corrigin District Hospital, a representative from Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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 Corrigin District Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Corrigin 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 Corrigin 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 Corrigin District Hospital.

(6) All promotional positions and new staff recruited by Corrigin 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 Corrigin District Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Corrigin 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, Corrigin 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 agreements no PSAAG27 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 Corrigin District Hospital.

(2) (a) To assist in meeting these obligations, Corrigin District Hospital will assist by providing appropriate resources having regard to the operational requirements of Corrigin 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 Corrigin 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 Corrigin District Hospital and shall not unreasonably affect the operation of Corrigin 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) may provide advice to Corrigin 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 Corrigin District Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Corrigin 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 Corrigin 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 Corrigin 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Corrigin District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Corrigin 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 Corrigin District Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Corrigin District Hospital and who—

- (i) at or before the 1st April 1996 was employed by Corrigin District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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 Corrigin 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

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	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	Salary P/Annum
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
CLASS 1	80,028	84,029
	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	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	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
LEVEL 6	40,187	42,196
	42,299	44,414
	43,867	46,060
LEVEL 7	46,095	48,400
	47,287	49,651
	48,797	51,237
LEVEL 8	50,362	52,880
	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective date of registration
	Salary P/Annum	Salary P/Annum
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	05/03/98
.....	.....
(Signature)	(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill	06/03/98
.....	.....
(Signature)	(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Corrigin District Hospital Board was affixed by authority of the Board, in the presence of

.....	.....
(Signature)	(Date)
Board Member	

.....	.....
(Signature)	(Date)
Board Member	

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 Corrigin 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 CUNDERDIN DISTRICT HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997. No. PSA AG 30 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cunderdin District Hospital Board

and

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

No. PSAAG 30 of 1998.

Hospital Salaried Officers Cunderdin District Hospital Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Cunderdin District Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

## AGREEMENT

### 1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Cunderdin District Hospital Enterprise Bargaining Agreement 1997.

### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Cunderdin District Hospital along with allowing the benefits from those improvements to be shared by employees, Cunderdin District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Cunderdin District Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Cunderdin 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 Cunderdin District Hospital, (hereinafter referred to as Cunderdin 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 4 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 Cunderdin District Hospital Enterprise Bargaining Agreement No PSA AG29 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) (a) 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.

(b) 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 Cunderdin District Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Cunderdin 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, Cunderdin District Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Cunderdin 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 Cunderdin District Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Cunderdin 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, Cunderdin 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 Cunderdin District Hospital, a representative from Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin District Hospital as required.

#### (d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Cunderdin 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 Cunderdin 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 Cunderdin District Hospital.
- (6) All promotional positions and new staff recruited by Cunderdin 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 Cunderdin District Hospital.
- (7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Cunderdin 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, Cunderdin 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 agreements no PSAAG29 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 Cunderdin District Hospital.

(2) (a) To assist in meeting these obligations, Cunderdin District Hospital will assist by providing appropriate resources having regard to the operational requirements of Cunderdin 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 Cunderdin 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 Cunderdin District Hospital and shall not unreasonably affect the operation of Cunderdin 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) may provide advice to Cunderdin 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 Cunderdin District Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Cunderdin 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 Cunderdin 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 Cunderdin 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay

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

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Cunderdin District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Cunderdin 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 Cunderdin District Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Cunderdin District Hospital and who—

- (i) at or before the 1st April 1996 was employed by Cunderdin District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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 Cunderdin 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

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	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	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	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	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
LEVEL 6	40,187	42,196
	42,299	44,414
	43,867	46,060
LEVEL 7	46,095	48,400
	47,287	49,651
	48,797	51,237
LEVEL 8	50,362	52,880
	52,648	55,280
LEVEL 9	54,522	57,248
	57,358	60,226
LEVEL 10	59,331	62,298
	61,491	64,566
LEVEL 11	64,966	68,214
	67,741	71,128
LEVEL 12	70,563	74,091
	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                      05/03/98  
(Signature)                                      (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill                              06/03/98  
(Signature)                                      (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Cunderdin District Hospital Board was affixed by authority of the Board, in the presence of—

.....  
(Signature) (Date)  
Board Member

.....  
(Signature) (Date)  
Board Member

#### 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 Cunderdin 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 EAST PILBARA HEALTH SERVICE ENTERPRISE BARGAINING AGREEMENT 1997.**

**No. PSAAG 28 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

East Pilbara Health Service

and

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

No. PSAAG 28 of 1998.

Hospital Salaried Officers East Pilbara Health Service Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 East Pilbara Health Service Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

#### AGREEMENT

##### 1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers East Pilbara Health Service Enterprise Bargaining Agreement 1997.

##### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists

16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

#### ATTACHMENT 1—Model for Identifying Productivity Increases

##### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of East Pilbara Health Service along with allowing the benefits from those improvements to be shared by employees, East Pilbara Health Service and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at East Pilbara Health Service taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to East Pilbara 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 East Pilbara Health Service, (hereinafter referred to as East Pilbara 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 94 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.

This Agreement replaces the Hospital Salaried Officers Marble Bar Nursing Post Enterprise Bargaining Agreement No PSA AG62 of 1996, Hospital Salaried Officers Newman District Hospital Enterprise Bargaining Agreement No PSA AG77 of 1996, and Hospital Salaried Officers Port Hedland Regional Hospital Enterprise Bargaining Agreement No PSA AG89 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) (a) 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.

(b) 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 East Pilbara Health Service;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at East Pilbara 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, East Pilbara Health Service and its clients and the Government on behalf of the community;
- (b) ensuring that East Pilbara 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 East Pilbara Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and East Pilbara 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, East Pilbara 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 East Pilbara Health Service, a representative from East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara Health Service as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at East Pilbara 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 East Pilbara 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 East Pilbara Health Service.

(6) All promotional positions and new staff recruited by East Pilbara 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 East Pilbara Health Service.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, East Pilbara 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, East Pilbara 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 agreements nos PSA AG62 of 1996, PSA AG77 of 1996, and PSA AG89 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 East Pilbara Health Service.

(2) (a) To assist in meeting these obligations, East Pilbara Health Service will assist by providing appropriate resources having regard to the operational requirements of East Pilbara 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 East Pilbara 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 East Pilbara Health Service and shall not unreasonably affect the operation of East Pilbara 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) may provide advice to East Pilbara 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 East Pilbara Health Service representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of East Pilbara 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 East Pilbara 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 East Pilbara 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by East Pilbara Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

- (ii) commenced employment with East Pilbara 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 East Pilbara Health Service immediately prior to taking this leave.

(b) An employee who resigns from their employment with East Pilbara Health Service and who—

- (i) at or before the 1st April 1996 was employed by East Pilbara Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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 East Pilbara 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

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	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	Salary P/Annum
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	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	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
LEVEL 6	40,187	42,196
	42,299	44,414
	43,867	46,060
LEVEL 7	46,095	48,400
	47,287	49,651
	48,797	51,237
LEVEL 8	50,362	52,880
	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
	61,491	64,566
LEVEL 10	64,966	68,214
	67,741	71,128
	70,563	74,091
LEVEL 11	74,432	78,154
	77,047	80,899
	80,028	84,029
LEVEL 12	84,537	88,764
	89,046	93,498
	93,553	98,231
CLASS 1	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 09/03/98  
 .....  
 (Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill 09/03/98  
 .....  
 (Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Ian Smith 03/03/98  
 .....  
 (Signature) (Date)

General Manager, East Pilbara Health Service for and on behalf of the Hon. Minister for Health as the Board of Management of East Pilbara 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 East Pilbara 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 JERRAMUNGUP HEALTH SERVICE ENTERPRISE BARGAINING AGREEMENT 1997.**  
**No. PSA AG 54 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jerramungup Hospital Board

and

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

No. PSA AG 54 of 1998.

7 May 1998.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. PSA AG 54 of 1998

HAVING heard Ms P Wilson on behalf of the first named party and Mr G. Reid on behalf of the second named party; and

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

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

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

THAT the agreement titled the Hospital Salaried Officers Jerramungup Hospital Enterprise Bargaining Agreement 1997, filed in the Commission on 17 April 1998 and as subsequently amended by the parties, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,  
Public Service Arbitrator.

[L.S.]

AGREEMENT

1.—TITLE

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

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose Of Agreement
4. Application And Parties Bound
5. Term Of Agreement
6. No Extra Claims
7. Objectives, Principles And Commitments
8. Framework And Principles For Further Productivity Bargaining
9. Awards, Agreements And Workplace Agreements
10. Rates Of Pay And Their Adjustment
11. Resources For Productivity Negotiations
12. Dispute Avoidance And Settlement Procedures
13. Hours
14. Part-time Employees
15. Public Holidays
16. Long Service Leave
17. Sick Leave
18. Family, Bereavement And Personal Leave
19. Allowances
20. Overpayments
21. Salaries
22. Ratification

Attachment 1—Model For Identifying Productivity Increases

### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Jerramungup Hospital along with allowing the benefits from those improvements to be shared by employees, Jerramungup Hospital and the Government on behalf of the Community.

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

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 Jerramungup Hospital, (hereinafter referred to as Jerramungup 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 1 employee.

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

(4) This Agreement amends, consolidates and replaces the Hospital Salaried Officers Jerramungup Hospital Enterprise Bargaining Agreement 1996 No. PSA AG 48 of 1996.

### 5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 30 April 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 1996.

(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 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 Jerramungup Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Jerramungup 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, Jerramungup Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Jerramungup 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 Jerramungup Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Jerramungup 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, Jerramungup 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 Jerramungup

Hospital, a representative from Jerramungup 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 Jerramungup 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 Jerramungup 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 Jerramungup 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 Jerramungup 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 Jerramungup 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 Jerramungup 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 Jerramungup 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 Jerramungup 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 Jerramungup Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Jerramungup 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 (7) 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 (7) 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 Jerramungup 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 Jerramungup Hospital.

(6) All promotional positions and new staff recruited by Jerramungup 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 Jerramungup Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this Clause, Jerramungup 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, Jerramungup 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 AG 48 of 1996, this Agreement provides for a 6.5% 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 Jerramungup Hospital.

(2) (a) To assist in meeting these obligations, Jerramungup Hospital will assist by providing appropriate resources having regard to the operational requirements of Jerramungup 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 Jerramungup 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 Jerramungup Hospital and shall not unreasonably affect the operation of Jerramungup 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; and

(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) may provide advice to Jerramungup 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 Jerramungup Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Jerramungup 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 Jerramungup 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 Jerramungup 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 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.

(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 (38) per week and shall be worked by one of the following arrangements—

(i) Ordinary hours of work of thirty-eight (38) per week;

(ii) Flexitime roster covering a settlement period of four (4) 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 twelve (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 twelve (12) hours may be worked provided the average normal hours worked in a shift cycle or settlement period does not exceed seventy-six (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 seven (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 (5) 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 (4) weeks and shall be made available to all affected employees no later than three (3) 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 (4) 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 (4) 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 (2) full days or any combination of half days and full days that does not in total exceed two (2) 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 (4) 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 four (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 ten (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.—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.

#### 16.—LONG SERVICE LEAVE

This Clause replaces Clause 17. Long Service Leave of Hospital Salaried Officers Award No. 39 of 1968 with effect from the date of registration of this Agreement.

(1) An employee shall be entitled to thirteen (13) weeks paid long service leave on the completion of ten (10) years of continuous service and an additional thirteen weeks paid long service leave for each subsequent period of seven (7) years of continuous service completed by the employee.

(2) Notwithstanding subclause (1), an employee in employment with an employer respondent to the Hospital Salaried Officers Award No 39 of 1968 shall retain the proportion of long service leave accrued at the time of the registration of this Agreement, and shall accrue the balance in accordance with sub clause (1) of this clause.

(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 (26) weeks.

(7) (a) An employee who;

- (i) at or before the 1st April 1996 was employed by Jerramungup Hospital, and has completed at least fifteen (15) years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Jerramungup Hospital after the 1st April 1996, and has completed at least fifteen (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 Jerramungup Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Jerramungup Hospital and who;

- (i) at or before the 1st April 1996 was employed by Jerramungup Hospital, and has completed at least fifteen (15) years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Jerramungup Hospital after the 1st April 1996, and has completed at least fifteen (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 (3) years continuous service with Jerramungup 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, three (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 fifteen (15) years continuous service, calculated in accordance with the provisions of this Clause, and having completed at least three (3) years continuous service, calculated in accordance with the provisions of this Clause, with Jerramungup 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 (55) 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 (12) 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 (12) 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 (6) 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 (2) 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 Jerramungup 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 Jerramungup 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.

17.—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.

18.—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 thirty-eight (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 (5) 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 two (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 (2) 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.

19.—ALLOWANCES

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.

20.—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.

21—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 the 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 an final settlement of wage adjustments provided for in this Agreement.

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 6.5% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 1		
under 17 years of age	11,654	12,412
17 years of age	13,609	14,494
18 years of age	15,886	16,919
19 years of age	18,387	19,582
20 years of age	20,649	21,991
1st year of full-time equivalent adult service	22,682	24,156
2nd year of full-time equivalent adult service	23,382	24,902
3rd year of full-time equivalent adult service	24,078	25,643
4th year of full-time equivalent adult service	24,772	26,382
LEVEL 2	25,469	27,124
	26,167	27,868
	26,969	28,722
	27,524	29,313
	28,343	30,185
LEVEL 3	29,311	31,216
	30,064	32,018
	30,856	32,862
	32,118	34,206
LEVEL 4	32,779	34,910
	33,770	35,965
	34,788	37,049
	36,235	38,590
LEVEL 5	36,989	39,393
	38,025	40,497
	39,090	41,631
	40,187	42,799
LEVEL 6	42,299	45,048
	43,867	46,718
	46,095	49,091
LEVEL 7	47,287	50,361
	48,797	51,969
	50,362	53,636
LEVEL 8	52,648	56,070
	54,522	58,066
LEVEL 9	57,358	61,086
	59,331	63,188
LEVEL 10	61,491	65,488
	64,966	69,189
LEVEL 11	67,741	72,144
	70,563	75,150
LEVEL 12	74,432	79,270
	77,047	82,055
	80,028	85,230

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 6.5% effective from date of registration
	Salary P/Annum	Salary P/Annum
CLASS 1	84,537	90,032
CLASS 2	89,046	94,834
CLASS 3	93,553	99,634
CLASS 4	98,062	104,436

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

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

(3) Salaries.—Specified Callings and Other Professionals are detailed as follows. The rates of pay have been adjusted to reflect the increase in Clause 10 of the Agreement and represent full an 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,

(b) 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	Award Rate + 2 ASNA +5% + 2% + 6.5% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 3/5	29,311	31,216
	30,856	32,862
	32,779	34,910
	34,788	37,049
	38,025	40,497
	40,187	42,799
LEVEL 6	42,299	45,048
	43,867	46,718
	46,095	49,091
LEVEL 7	47,287	50,361
	48,797	51,969
	50,362	53,636
LEVEL 8	52,648	56,070
	54,522	58,066
LEVEL 9	57,358	61,086
	59,331	63,188
LEVEL 10	61,491	65,488
	64,966	69,189
LEVEL 11	67,741	72,144
	70,563	75,150
LEVEL 12	74,432	79,270
	77,047	82,055
	80,028	85,230
CLASS 1	84,537	90,032
CLASS 2	89,046	94,834
CLASS 3	93,553	99,634
CLASS 4	98,062	104,436

(b) Subject to paragraph (d) of this subclause, on appointment or promotion to the Level 3/5 under this subclause—

(i) Employees, who have completed an approved three (3) academic year tertiary qualification, relevant to their calling, shall commence at the first year increment;

- (ii) Employees, who have completed an approved four (4) 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 subclause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this subclause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to 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 (4) 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.

## 22—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Graham Baker

common seal affixed

(signed by G. Baker) 5 May 1998

(Signature) (Date)

Acting President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Christopher Panizza

common seal affixed

(signed by C. Panizza) 5 May 1998

(Signature) (Date)

Acting Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The common seal of the Jerramungup Hospital was affixed by the authority of the Board in the presence of—

(signed by J. Cox) (Board Member)

(signed by V. Edwards) (Board Member)

1st May 1998 (Date)

## 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 Jerramungup 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

REG.15 (1) (B) STATEMENT

1. The Agreement satisfies the requirements of S41 (2) of the Act as it applies to a single Government Enterprise, Jerramungup Hospital

2. The changes which the Agreement effects in the relevant rates of pay and conditions of employment of the employees to whom the Agreement relates (based on variations from the Hospital Salaried Officers Award No 39 of 1968) are summarised in the following Schedule of Amendments—

**HOSPITAL SALARIED OFFICERS JOONDALUP  
HEALTH CAMPUS ENTERPRISE BARGAINING  
AGREEMENT 1997.**

**No. AG 36 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Mayne Nickless Limited Operating as Joondalup Health  
Campus.

No. AG 36 of 1998.

9 April 1998.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. AG 36 of 1998.

HAVING heard Ms C.L. Thomas on behalf of the first named party and Ms M.A. Cutten on behalf of the second named party; and

WHEREAS an agreement has been presented to the Commission for registration as an Industrial Agreement; and

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

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

THAT the agreement titled the Hospital Salaried Officers Joondalup Health Campus Enterprise Bargaining Agreement 1997, filed in the Commission on 11 March 1998, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,  
Commissioner.

[L.S.]

AGREEMENT

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Joondalup Health Campus Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Public Holidays
16. Long Service Leave
17. Sick Leave
18. Family, Bereavement and Personal Leave
19. Allowances
20. Overpayments
21. Salaries
22. Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases

ATTACHMENT 2 General Principles

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Joondalup Health Campus along with allowing the benefits from those improvements to be shared by employees and Joondalup Health Campus.

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

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 Hospital Salaried Officers (Joondalup Health Campus) Award, 1996 employed by Mayne Nickless Limited, ACN 004 073 410, trading as Health Care of Australia, incorporated in Victoria, operating as Joondalup Health Campus, (hereinafter referred to as Joondalup Health Campus), and to the employer employing those employees.

(2) The estimated number of employees bound by this Agreement at the time of registration is 70 employees.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers (Joondalup Health Campus) Award, 1996 (hereafter referred to as the Award) and shall replace the provisions of that Award where expressly stated herein.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from 1 December 1997 until 31 June 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.

(2) The parties to this Agreement agree to re-open negotiations on/around 1 March 1998

#### 6.—NO EXTRA CLAIMS

(1) For the life of this Agreement or any agreement replacing this Agreement, the Hospital Salaried Officers Association shall make no further claims for productivity improvements which occurred prior to 1 December 1997.

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

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

- (a) improve the productivity and efficiency of Joondalup Health Campus;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Joondalup Health Campus;
- (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, Joondalup Health Campus and its clients;
- (b) ensuring that Joondalup Health Campus operates in a manner consistent with the principles outlined in Attachment 2, section (1).
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that Joondalup Health Campus operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Joondalup Health Campus, 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 performance

- cost effectiveness
- working smarter

- (b) Support the clinical, teaching, research and organisational goals of the hospital 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 the hospital 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 Attachment 2 of this Agreement.

In addition, Joondalup Health Campus 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 Joondalup Health Campus, a representative from Joondalup Health Campus 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 Joondalup Health Campus.

(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 Joondalup Health Campus'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 Joondalup Health Campus 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 to 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 Joondalup Health Campus. 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 Joondalup Health Campus.

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 Joondalup Health Campus 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 Joondalup Health Campus 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 Joondalup Health Campus 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 1. The model is included as a guide only and it is expected that it will be modified to meet the needs of Joondalup Health Campus as required.

(d) **Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Joondalup Health Campus 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 Joondalup Health Campus.

(3) The Joondalup Health Campus agrees for the term of this Agreement to be bound by the provisions of this Agreement and as such, commits not to enter into Workplace Agreements under the Workplace Agreements Act, 1993, nor to enter an Australian Workplace Agreement, however subsequently legislated, with employees who would otherwise fall within the scope of this Agreement.

(4) Subject to Clause 43—Flexibility Agreements of the Award, nothing within this Agreement prevents the employer from offering an employee employment on terms more favourable than the terms of this Agreement.

10.—RATES OF PAY AND THEIR ADJUSTMENT

(1) **Wage Adjustments**

This Agreement shall provide for salary increases as outlined in Clause 21.—Salaries of this Agreement payable as follows—

- (a) An increase of 5%, payable from 1 December 1997

11.—RESOURCES FOR PRODUCTIVITY NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at Joondalup Health Campus.

(2) (a) To assist in meeting these obligations, Joondalup Health Campus will assist by providing appropriate resources having regard to the operational requirements of Joondalup Health Campus 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 Joondalup Health Campus 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 Joondalup Health Campus and shall not unreasonably affect the operation of Joondalup Health Campus;

(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 object 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) 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 Joondalup Health Campus representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Joondalup Health Campus 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 Joondalup Health Campus (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 Joondalup Health Campus (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.

(3) 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 Joondalup Health Campus.

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being satisfied that the efficient functioning of the hospital 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.—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.

16.—LONG SERVICE LEAVE

In addition to Clause 9 of the Hospital Salaried Officers (Joondalup Health Campus) Award, 1996, the following shall apply;

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.

17.—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

Leave On  
Full Pay  
Working Days

- (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.

18.—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.

19.—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.

20.—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.

21.—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 1 January 1996 until the expiry of this Agreement.

(2) Minimum Salaries are as follows;

LEVELS	Award Rate	Agreement	Agreement
		Rate effective 1 July 1996	Rate + 5% effective 1 December 1997
	Salary P/Annum	Salary P/Annum	Salary P/Annum
<b>LEVEL 1</b>			
under 17 years of age	11,363	11,654	12,237
17 years of age	13,270	13,609	14,289
18 years of age	15,490	15,886	16,680
19 years of age	17,928	18,387	19,306
20 years of age	20,136	20,649	21,681
1st year of full-time equivalent adult service	22,116	22,682	23,816
2nd year of full-time equivalent adult service	22,770	23,382	24,551
3rd year of full-time equivalent adult service	23,420	24,078	25,282
4th year of full-time equivalent adult service	24,068	24,772	26,011

LEVELS	Award Rate	Agreement	Agreement
		Rate effective 1 July 1996	Rate + 5% effective 1 December 1997
	Salary P/Annum	Salary P/Annum	Salary P/Annum
<b>LEVEL 2</b>			
	24,719	25,469	26,742
	25,370	26,167	27,475
	26,119	26,969	28,317
	26,637	27,524	28,900
	27,402	28,343	29,760
<b>LEVEL 3</b>			
	28,306	29,311	30,777
	29,009	30,064	31,567
	29,748	30,856	32,399
	30,927	32,118	33,723
<b>LEVEL 4</b>			
	31,544	32,779	34,418
	32,469	33,770	35,459
	33,420	34,788	36,527
	34,771	36,235	38,047
<b>LEVEL 5</b>			
	35,475	36,989	38,838
	36,442	38,025	39,926
	37,437	39,090	41,045
	38,461	40,187	42,196
<b>LEVEL 6</b>			
	40,433	42,299	44,413
	41,897	43,867	46,060
	43,977	46,095	48,400
<b>LEVEL 7</b>			
	45,090	47,287	49,651
	46,500	48,797	51,237
	47,961	50,362	52,880
<b>LEVEL 8</b>			
	50,096	52,648	55,280
	51,846	54,522	57,248
<b>LEVEL 9</b>			
	54,494	57,358	60,226
	56,336	59,331	62,297
<b>LEVEL 10</b>			
	58,353	61,491	64,566
	61,597	64,966	68,214
<b>LEVEL 11</b>			
	64,188	67,741	71,128
	66,823	70,563	74,091
<b>LEVEL 12</b>			
	70,436	74,432	78,154
	72,877	77,047	80,899
	75,661	80,028	84,029
<b>CLASS 1</b>			
	79,871	84,537	88,764
<b>CLASS 2</b>			
	84,081	89,046	93,498
<b>CLASS 3</b>			
	88,289	93,553	98,231
<b>CLASS 4</b>			
	92,499	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 as follows;

(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	Agreement	Agreement
		Rate effective 1 July 1996	Rate + 5% effective 1 December 1997
	Salary P/Annum	Salary P/Annum	Salary P/Annum
<b>LEVEL 3/5</b>	28,306	29,311	30,777
	29,748	30,856	32,399
	31,544	32,779	34,418
	33,420	34,788	36,527
	36,442	38,025	39,926
<b>LEVEL 6</b>	38,461	40,187	42,196
	40,433	42,299	44,413
	41,897	43,867	46,060
<b>LEVEL 7</b>	43,977	46,095	48,400
	45,090	47,287	49,651
	46,500	48,797	51,237
<b>LEVEL 8</b>	47,961	50,362	52,880
	50,096	52,648	55,280
	51,846	54,522	57,248
<b>LEVEL 9</b>	54,494	57,358	60,226
	56,336	59,331	62,297
<b>LEVEL 10</b>	58,353	61,491	64,566
	61,597	64,966	68,214
<b>LEVEL 11</b>	64,188	67,741	71,128
	66,823	70,563	74,091
<b>LEVEL 12</b>	70,436	74,432	78,154
	72,877	77,047	80,899
	75,661	80,028	84,029
<b>CLASS 1</b>	79,871	84,537	88,764
<b>CLASS 2</b>	84,081	89,046	93,498
<b>CLASS 3</b>	88,289	93,553	98,231
<b>CLASS 4</b>	92,499	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.

## 22.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall be with effect from 1 December 1997

Michael Hartland

*common seal affixed*

(signed by Michael Hartland) 5/3/98

(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

*common seal affixed*

(Signed by Daniel P Hill) 6/3/98

(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Ian MacDonald

(Signed by Ian MacDonald) 9/3/98

(Signature) (Date)

Chief Executive Officer, Joondalup Health Campus, for and on behalf of Mayne Nickless Ltd, ACN 004073410, trading as Health Care of Australia, incorporated in Victoria and operating as Joondalup Health Campus.

## 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 Joondalup Health Campus 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

### **ATTACHMENT 2—GENERAL PRINCIPLES**

#### **General Principles of Administration and Management**

(1) The principles of administration and management to be observed are that—

- (a) Joondalup Health Campus shall be administered in a manner which emphasises the importance of service to the community;
- (b) Joondalup Health Campus is to be structured and organised as to achieve and maintain operational responsiveness and flexibility, thus enabling it to adapt quickly and effectively to changes in policy and priority;
- (c) Joondalup Health Campus is to be structured and administered as to enable decisions to be made, and action taken, without excessive formality and with a minimum of delay;
- (d) administrative responsibilities are to be clearly defined and authority is to be delegated sufficiently to ensure that those to whom responsibilities are assigned have adequate authority to deal expeditiously with questions that arise in the course of discharging those responsibilities;
- (e) Joondalup Health Campus should have as their goal a continued improvement in the efficiency and effectiveness of their performance and should be administered with that goal always in view;
- (f) resources are to be deployed so as to ensure their most efficient and effective use;
- (g) proper standards of financial management and accounting are to be maintained at all times; and
- (h) proper standards are to be maintained at all times in the creation, maintenance and retention of records.

#### **General Principles of Human Resource Management**

(2) (a) The principles of Human Resource Management that are to be observed are that—

- (i) all selection processes are to be directed towards, and based on, a proper assessment of merit and equity;
- (ii) no power with regard to human resource management is to be exercised on the basis of nepotism or patronage;
- (iii) employees are to be treated fairly and consistently and are not to be subjected to arbitrary or capricious administrative acts;
- (iv) there is to be no unlawful discrimination against employees or persons seeking employment in the Public Sector on a ground referred to in the Equal Opportunity Act 1984 or any other ground; and
- (v) employees are to be provided with safe and healthy working conditions in accordance with the Occupational Health, Safety and Welfare Act 1984.

(b) In matters relating to—

- (i) the selection, appointment, transfer, secondment, classification, remuneration, redeployment, redundancy or termination of employment of an individual employee; or
- (ii) the classification of a particular office, post or position,

in its department or organisation, an employing authority is not subject to any direction given, whether under any written law or otherwise, by the Minister of the Crown responsible for the department or organisation, but shall, subject to this Act, act independently.

#### **General Principles of Official Conduct**

(3) The principles of official conduct that are to be observed by the employer and employees are that they—

- (a) are to comply with the provisions of—
  - (i) this Act and any other Act governing their conduct;
  - (ii) public sector standards and codes of ethics; and

- (iii) any code of conduct applicable to the public sector body or employee concerned;
- (b) are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and
- (c) are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.

- 13. Hours
- 14. Part-Time Employees
- 15. Medical Imaging Technologists
- 16. Public Holidays
- 17. Long Service Leave
- 18. Sick Leave
- 19. Family, Bereavement and Personal Leave
- 20. Allowances
- 21. Overpayments
- 22. Salaries
- 23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

**HOSPITAL SALARIED OFFICERS KATANNING HEALTH SERVICE ENTERPRISE BARGAINING AGREEMENT 1997.**

**No. PSA AG 50 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Board of Management, Katanning Health Service  
and

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

No. PSA AG 50 of 1998.

24 April 1998.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. PSA AG 50 OF 1998.**

HAVING heard Ms T. Wilson on behalf of the first named party and Mr C. Panizza on behalf of the second named party; and

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

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

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

THAT the agreement titled the Hospital Salaried Officers Katanning Health Service Enterprise Bargaining Agreement 1997, filed in the Commission on 8 April 1998, signed by me for identification, be and is hereby registered as an Industrial Agreement.

[L.S.] (Sgd.) C.B. PARKS,  
Public Service Arbitrator.

**AGREEMENT**

**1.—TITLE**

This Agreement shall be titled the Hospital Salaried Officers Katanning Health Service Enterprise Bargaining Agreement 1997.

**2.—ARRANGEMENT**

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures

**3.—PURPOSE OF AGREEMENT**

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Katanning Health Service along with allowing the benefits from those improvements to be shared by employees, Katanning Health Service and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Katanning Health Service taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Katanning 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 Katanning Health Service, (hereinafter referred to as Katanning 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 31 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 Katanning Health Service Enterprise Bargaining Agreement No PSA AG51 of 1996.

**5.—TERM OF AGREEMENT**

(1) This Agreement shall operate from the date of Registration until 30 April 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.

(i) 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 Katanning Health Service;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Katanning 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, Katanning Health Service and its clients and the Government on behalf of the community;
- (b) ensuring that Katanning 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 Katanning Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Katanning 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, Katanning 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 Katanning Health Service, a representative from Katanning 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 Katanning 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 Katanning 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 Katanning 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 Katanning 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 Katanning 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 Katanning 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 Katanning 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 Katanning 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 Katanning Health Service as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Katanning 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 Katanning 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 Katanning Health Service.

(6) All promotional positions and new staff recruited by Katanning 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 Katanning Health Service.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Katanning 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, Katanning 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 agreements no PSAAG51 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 Katanning Health Service.

(2) (a) To assist in meeting these obligations, Katanning Health Service will assist by providing appropriate resources having regard to the operational requirements of Katanning 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 Katanning 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 Katanning Health Service and shall not unreasonably affect the operation of Katanning 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) may provide advice to Katanning 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 Katanning Health Service representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Katanning 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 Katanning 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 Katanning 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. 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.

(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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employee's 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 Katanning Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or

- (ii) commenced employment with Katanning 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 Katanning Health Service immediately prior to taking this leave.

(b) An employee who resigns from their employment with Katanning Health Service and who—

- (i) at or before the 1st April 1996 was employed by Katanning Health Service, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Katanning 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 Katanning 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 Katanning 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 Katanning 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 Katanning 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	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	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

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
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 26,167 26,969 27,524 28,343	26,742 27,475 28,317 28,900 29,760
LEVEL 3	29,311 30,064 30,856 32,118	30,777 31,567 32,399 33,724
LEVEL 4	32,779 33,770 34,788 36,235	34,418 35,459 36,527 38,047
LEVEL 5	36,989 38,025 39,090 40,187	38,838 39,926 41,045 42,196
LEVEL 6	42,299 43,867 46,095	44,414 46,060 48,400
LEVEL 7	47,287 48,797 50,362	49,651 51,237 52,880
LEVEL 8	52,648 54,522	55,280 57,248
LEVEL 9	57,358 59,331	60,226 62,298
LEVEL 10	61,491 64,966	64,566 68,214
LEVEL 11	67,741 70,563	71,128 74,091
LEVEL 12	74,432 77,047 80,028	78,154 80,899 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 30,856 32,779 34,788 38,025 40,187	30,777 32,399 34,418 36,527 39,926 42,196
LEVEL 6	42,299 43,867 46,095	44,414 46,060 48,400
LEVEL 7	47,287 48,797 50,362	49,651 51,237 52,880
LEVEL 8	52,648 54,522	55,280 57,248
LEVEL 9	57,358 59,331	60,226 62,298
LEVEL 10	61,491 64,966	64,566 68,214
LEVEL 11	67,741 70,563	71,128 74,091
LEVEL 12	74,432 77,047 80,028	78,154 80,899 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.

common seal affixed

(signed by M Hartland) 07/04/98  
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

common seal affixed

(signed by D Hill) 6/4/98  
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Board of Management of Katanning Health Service was affixed by authority of the Board in the presence of—

common seal affixed

(signed by L Jury) 26/3/98  
(Board Member) (Date)

(signed by G Monk) 25/3/98  
(Board Member) (Date)

### 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 Katanning 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 KIMBERLEY  
HEALTH SERVICE (WEST) ENTERPRISE  
BARGAINING AGREEMENT 1997.**

**No. PSAAG 23 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kimberley Health Service  
and

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

No. PSAAG 23 of 1998.

Hospital Salaried Officers Kimberley Health Service (West)  
Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Kimberley Health Service (West) Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A. R. BEECH,

[L.S.] Commissioner.

AGREEMENT

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Kimberley Health Service (West) Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Kimberley Health Service (West) along with allowing the benefits from those improvements to be shared by employees, Kimberley Health Service (West) and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Kimberley Health Service (West) taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Kimberley Health Service (West).

(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 Kimberley Health Service (West), (hereinafter referred to as Kimberley Health Service (West)) 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 eighty-two 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 Broome District Hospital, Derby Regional Hospital, Fitzroy Crossing District Hospital, and Numbala Nunga Derby Nursing Home and Hospital Enterprise Bargaining Agreements No PSA AG21, AG32, AG38 and AG82 of 1996.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 30 April 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) (a) 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.

(b) 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 Kimberley Health Service (West);
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Kimberley Health Service (West);
- (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, Kimberley Health Service (West) and its clients and the Government on behalf of the community;

- (b) ensuring that Kimberley Health Service (West) 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 Kimberley Health Service (West) operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Kimberley Health Service (West), 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, Kimberley Health Service (West) 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 Kimberley Health Service (West), a representative from Kimberley Health Service (West) 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 Kimberley Health Service (West).

(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 Kimberley Health Service (West)'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 Kimberley Health Service (West) 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 Kimberley Health Service (West) 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 Kimberley Health Service (West).

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 Kimberley Health Service (West) 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 Kimberley Health Service (West) 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 Kimberley Health Service (West) 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 Kimberley Health Service (West) as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Kimberley Health Service (West) 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 Kimberley Health Service (West) 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 Kimberley Health Service (West).

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

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Kimberley Health Service (West) 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, Kimberley Health Service (West) 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 agreements nos PSA AG21, AG32, AG38 and AG82 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 Kimberley Health Service (West).

(2) (a) To assist in meeting these obligations, Kimberley Health Service (West) will assist by providing appropriate resources having regard to the operational requirements of Kimberley Health Service (West) 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 Kimberley Health Service (West) 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 Kimberley Health Service (West) and shall not unreasonably affect the operation of Kimberley Health Service (West);

(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) may provide advice to Kimberley Health Service (West) 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 Kimberley Health Service (West) representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Kimberley Health Service (West) 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 Kimberley Health Service (West) (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 Kimberley Health Service (West) (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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Kimberley Health Service (West), and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Kimberley Health Service (West) 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 Kimberley Health Service (West) immediately prior to taking this leave.

(b) An employee who resigns from their employment with Kimberley Health Service (West) and who—

- (i) at or before the 1st April 1996 was employed by Kimberley Health Service (West), and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Kimberley Health Service (West) 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 Kimberley Health Service (West) 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 Kimberley Health Service (West) 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 Kimberley Health Service (West), 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 Kimberley Health Service (West).

(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

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	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 7	47,287 48,797 50,362	49,651 51,237 52,880
LEVEL 8	52,648 54,522	55,280 57,248
LEVEL 9	57,358 59,331	60,226 62,298
LEVEL 10	61,491 64,966	64,566 68,214
LEVEL 11	67,741 70,563	71,128 74,091
LEVEL 12	74,432 77,047 80,028	78,154 80,899 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	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 3/5	29,311 30,856 32,779 34,788 38,025 40,187	30,777 32,399 34,418 36,527 39,926 42,196
LEVEL 6	42,299 43,867 46,095	44,414 46,060 48,400
LEVEL 7	47,287 48,797 50,362	49,651 51,237 52,880
LEVEL 8	52,648 54,522	55,280 57,248
LEVEL 9	57,358 59,331	60,226 62,298
LEVEL 10	61,491 64,966	64,566 68,214

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 11	67,741 70,563	71,128 74,091
LEVEL 12	74,432 77,047 80,028	78,154 80,899 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 12/03/98

.....  
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill 12/03/98

.....  
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Ern Hulbert 11/03/98

.....  
(Signature) (Date)

General Manager, Kimberley Health Service, for an on behalf of the Hon. Minister for Health as the Board of Management of Kimberley 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 Kimberley Health Service (West) 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 NARROGIN REGIONAL HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.**

**No. PSA AG 44 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Narrogin Regional Hospital Board

and

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

No. PSA AG 44 of 1998.

24 April 1998.

*Order.*

#### REGISTRATION OF AN INDUSTRIAL AGREEMENT

No. PSA AG 44 OF 1998.

HAVING heard Ms T. Wilson on behalf of the first named party and Mr C. Panizza on behalf of the second named party; and

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

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

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

THAT the agreement titled the Hospital Salaried Officers Narrogin Regional Hospital Enterprise Bargaining Agreement 1997, filed in the Commission on 1 April 1998, signed by me for identification, be and is hereby registered as an Industrial Agreement.

[L.S.] (Sgd.) C.B. PARKS,  
Public Service Arbitrator.

## AGREEMENT

### 1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Narrogin Regional Hospital Enterprise Bargaining Agreement 1997.

### 2.—ARRANGEMENT

1. Title
  2. Arrangement
  3. Purpose of Agreement
  4. Application and Parties Bound
  5. Term of Agreement
  6. No Extra Claims
  7. Objectives, Principles and Commitments
  8. Framework and Principles for further Productivity Bargaining
  9. Awards, Agreements and Workplace Agreements
  10. Rates of Pay and their Adjustment
  11. Resources for Productivity Negotiations
  12. Dispute Avoidance and Settlement Procedures
  13. Hours
  14. Part-Time Employees
  15. Medical Imaging Technologies
  16. Public Holidays
  17. Long Service Leave
  18. Sick Leave
  19. Family, Bereavement and Personal Leave
  20. Allowances
  21. Overpayments
  22. Salaries
  23. Ratification
- ATTACHMENT 1 Model for Identifying Productivity Increases

### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Narrogin Regional Hospital along with allowing the benefits from those improvements to be shared by employees, Narrogin Regional Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Narrogin Regional Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Narrogin Regional 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 Narrogin Regional Hospital, (hereinafter referred to as Narrogin Regional 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 50 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 Narrogin Regional Hospital Enterprise Bargaining Agreement No PSA AG76 of 1996.

### 5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until 30 April 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 Narrogin Regional Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Narrogin Regional 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, Narrogin Regional Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Narrogin Regional 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 Narrogin Regional Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Narrogin Regional 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, Narrogin Regional 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 Narrogin Regional Hospital, a representative from Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional Hospital as required.

**(d) Quantum and Timing of Increases**

The aggregate productivity gains negotiated at Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional Hospital.

(6) All promotional positions and new staff recruited by Narrogin Regional 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 Narrogin Regional Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Narrogin Regional 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, Narrogin Regional 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 AG76 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 Narrogin Regional Hospital.

(2) (a) To assist in meeting these obligations, Narrogin Regional Hospital will assist by providing appropriate resources having regard to the operational requirements of Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional Hospital and shall not unreasonably affect the operation of Narrogin Regional 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) may provide advice to Narrogin Regional 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 Narrogin Regional Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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 employee 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 1<sup>st</sup> April 1996 was employed by Narrogin Regional Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- 2. commenced employment with Narrogin Regional Hospital after the 1<sup>st</sup> April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

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

(b) An employee who resigns from their employment with Narrogin Regional Hospital and who;

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

shall, in addition to any accrued long service leave be paid pro-rata long service leave, provided that the employee has completed at least three years continuous service with Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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 Narrogin Regional 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

Leave On Full Pay Working Days

- (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	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	Salary P/Annum
<b>LEVEL 1</b>		
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

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 2	25,469 26,167 26,969 27,524 28,343	26,742 27,475 28,317 28,900 29,760
LEVEL 3	29,311 30,064 30,856 32,118	30,777 31,567 32,399 33,724
LEVEL 4	32,779 33,770 34,788 36,235	34,418 35,459 36,527 38,047
LEVEL 5	36,989 38,025 39,090 40,187	38,838 39,926 41,045 42,196
LEVEL 6	42,299 43,867 46,095	44,414 46,060 48,400
LEVEL 7	47,287 48,797 50,362	49,651 51,237 52,880
LEVEL 8	52,648 54,522	55,280 57,248
LEVEL 9	57,358 59,331	60,226 62,298
LEVEL 10	61,491 64,966	64,566 68,214
LEVEL 11	67,741 70,563	71,128 74,091
LEVEL 12	74,432 77,047 80,028	78,154 80,899 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 from date of registration Salary P/Annum
LEVEL 3/5	29,311 30,856 32,779 34,788 38,025 40,187	30,777 32,399 34,418 36,527 39,926 42,196
LEVEL 6	42,299 43,867 46,095	44,414 46,060 48,400
LEVEL 7	47,287 48,797 50,362	49,651 51,237 52,880
LEVEL 8	52,648 54,522	55,280 57,248
LEVEL 9	57,358 59,331	60,226 62,298
LEVEL 10	61,491 64,966	64,566 68,214
LEVEL 11	67,741 70,563	71,128 74,091
LEVEL 12	74,432 77,047 80,028	78,154 80,899 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.

#### *common seal affixed*

(signed by M Hartland)                      30/03/98  
(Signature)                                              (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

#### *common seal affixed*

(signed by D Hill)                              30/3/98  
(Signature)                                              (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

(signed by AJ Myers)                          25.3.98  
(Signature)                                              (Date)

General Manager, for and on behalf of the Narrogin Regional Hospital Board.

The Common Seal of the Board of Management of Narrogin Regional Hospital Board was affixed by authority of the Board, in the presence of—

(signed by T Park)                      (Board Member)

#### *common seal affixed*

(signed by C Froome) (Board Member)

### 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 Narrogin Regional 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 NICKOL BAY  
HOSPITAL ENTERPRISE BARGAINING  
AGREEMENT 1997.  
No. PSAAG 21 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Nickol Bay Hospital  
and

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

No. PSAAG 21 of 1998.

Hospital Salaried Officers Nickol Bay Hospital Enterprise  
Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas 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 Nickol Bay Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 and as amended on the 25th day of March 1998 be registered on and from the 25th day of March 1998.

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

**AGREEMENT**

**1.—TITLE**

This Agreement shall be titled the Hospital Salaried Officers Nickol Bay Hospital Enterprise Bargaining Agreement 1997.

**2.—ARRANGEMENT**

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures

13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

**3.—PURPOSE OF AGREEMENT**

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Nickol Bay Hospital along with allowing the benefits from those improvements to be shared by employees, Nickol Bay Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Nickol Bay Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Nickol Bay 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 Nickol Bay Hospital, (hereinafter referred to as Nickol Bay 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 thirty three 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 Nickol Bay Hospital Enterprise Bargaining Agreement No PSA AG78 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) (a) 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.

(b) 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 Nickol Bay Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Nickol Bay 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, Nickol Bay Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Nickol Bay 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 Nickol Bay Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Nickol Bay 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, Nickol Bay 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 Nickol Bay Hospital, a representative from Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Nickol Bay 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 Nickol Bay 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 Nickol Bay Hospital.

(6) All promotional positions and new staff recruited by Nickol Bay 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 Nickol Bay Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Nickol Bay 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, Nickol Bay 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 agreements no PSAAG78 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 Nickol Bay Hospital.

(2) (a) To assist in meeting these obligations, Nickol Bay Hospital will assist by providing appropriate resources having regard to the operational requirements of Nickol Bay 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 Nickol Bay 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 Nickol Bay Hospital and shall not unreasonably affect the operation of Nickol Bay 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) may provide advice to Nickol Bay 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 Nickol Bay Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employee's 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 Nickol Bay Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Nickol Bay 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 Nickol Bay Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Nickol Bay Hospital and who—

- (i) at or before the 1st April 1996 was employed by Nickol Bay Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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 Nickol Bay 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

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.

	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
LEVELS	Salary P/Annum	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration	LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective date of registration
	Salary P/Annum	Salary P/Annum		Salary P/Annum	Salary P/Annum
2nd year of full-time equivalent adult service	23,382	24,551		29,311	30,777
3rd year of full-time equivalent adult service	24,078	25,282	LEVEL 3/5	30,856	32,399
4th year of full-time equivalent adult service	24,772	26,011		32,779	34,418
LEVEL 2	25,469	26,742		34,788	36,527
	26,167	27,475		38,025	39,926
	26,969	28,317	LEVEL 6	40,187	42,196
	27,524	28,900		42,299	44,414
	28,343	29,760	LEVEL 7	43,867	46,060
LEVEL 3	29,311	30,777		46,095	48,400
	30,064	31,567	LEVEL 8	47,287	49,651
	30,856	32,399		48,797	51,237
	32,118	33,724	LEVEL 9	50,362	52,880
LEVEL 4	32,779	34,418		52,648	55,280
	33,770	35,459	LEVEL 10	54,522	57,248
	34,788	36,527		57,358	60,226
	36,235	38,047	LEVEL 11	59,331	62,298
LEVEL 5	36,989	38,838		61,491	64,566
	38,025	39,926	LEVEL 12	64,966	68,214
	39,090	41,045		67,741	71,128
	40,187	42,196	CLASS 1	70,563	74,091
LEVEL 6	42,299	44,414		74,432	78,154
	43,867	46,060	CLASS 2	77,047	80,899
	46,095	48,400	CLASS 3	80,028	84,029
LEVEL 7	47,287	49,651	CLASS 4	84,537	88,764
	48,797	51,237		89,046	93,498
	50,362	52,880		93,553	98,231
LEVEL 8	52,648	55,280		98,062	102,965
	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	Award Rate + 2 ASNA + 5% + 2% + 5% effective date of registration
	Salary P/Annum	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	12/03/98
.....	.....
(Signature)	(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill	12/03/98
.....	.....
(Signature)	(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Paul Aylward	
.....	.....
(Signature)	(Date)

General Manager, West Pilbara Health Service for and on behalf of the Hon. Minister for Health as the Board of Management of Nickol Bay 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 Nickol Bay 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 PEEL HEALTH SERVICES ENTERPRISE BARGAINING AGREEMENT 1997.**  
**No. PSAAG 24 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peel Health Services Board

and

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

No. PSAAG 24 of 1998.

Hospital Salaried Officers Peel Health Services Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Peel Health Services Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

AGREEMENT

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Peel Health Services Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Peel Health Services along with allowing the benefits from those improvements to be shared by employees, Peel Health Services and the Government on behalf of the Community.

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

(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 Metropolitan Health Service Board at Peel Health Services and/or any facility or service managed, controlled or operated by Peel Health Services, (hereinafter referred to as Peel Health Services) 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 94 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 Peel Health Services Enterprise Bargaining Agreement No PSA AG36 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) (a) 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.

(b) 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 Peel Health Services;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Peel Health Services;
- (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, Peel Health Services and its clients and the Government on behalf of the community;

- (b) ensuring that Peel Health Services 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 Peel Health Services operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Peel Health Services, 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, Peel Health Services 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 Peel Health Services, a representative from Peel Health Services 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 Peel Health Services.

(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 Peel Health Services'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 Peel Health Services 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 Peel Health Services 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 Peel Health Services.

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 Peel Health Services 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 Peel

Health Services 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 Peel Health Services 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 Peel Health Services as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Peel Health Services 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 Peel Health Services 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 Peel Health Services.

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

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Peel Health Services 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, Peel Health Services 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 agreements no PSA AG84 of 1996 and PSA AG36 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 Peel Health Services.

(2) (a) To assist in meeting these obligations, Peel Health Services will assist by providing appropriate resources having regard to the operational requirements of Peel Health Services 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 Peel Health Services 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 Peel Health Services and shall not unreasonably affect the operation of Peel Health Services;

(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) may provide advice to Peel Health Services 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 Peel Health Services representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Peel Health Services 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 Peel Health Services (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 Peel Health Services (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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Peel Health Services, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Peel Health Services 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 Peel Health Services immediately prior to taking this leave.

(b) An employee who resigns from their employment with Peel Health Services and who—

- (i) at or before the 1st April 1996 was employed by Peel Health Services, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Peel Health Services 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 Peel Health Services 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 Peel Health Services 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 Peel Health Services, 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 Peel Health Services.

(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

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	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA +5% + 2% + 5% effective from date of registration
	Salary P/Annum	Salary P/Annum
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	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	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
LEVEL 6	40,187	42,196
	42,299	44,414
	43,867	46,060
LEVEL 7	46,095	48,400
	47,287	49,651
	48,797	51,237
LEVEL 8	50,362	52,880
	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 09/03/98  
 .....  
 (Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill 09/03/98  
 .....  
 (Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Peel Health Services Board was affixed by authority of the Board in the presence of—

.....  
 (Board Member) (Date)

.....  
 (Board Member) (Date)

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 Peel Health Services 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 QUAIRADING DISTRICT HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.  
 No. PSA AG 29 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Quairading District Hospital Board

and

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

No. PSAAG 29 of 1998.

Hospital Salaried Officers Quairading District Hospital Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Quairading District Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A.R. BEECH,  
 Commissioner.

[L.S.]

AGREEMENT

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Quairading District Hospital Enterprise Bargaining Agreement 1997.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement

4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

#### ATTACHMENT 1—Model for Identifying Productivity Increases

##### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Quairading District Hospital along with allowing the benefits from those improvements to be shared by employees, Quairading District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Quairading District Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Quairading 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 Quairading District Hospital, (hereinafter referred to as Quairading 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 4 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 Quairading District Hospital Enterprise Bargaining Agreement No PSA AG90 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) (a) 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.

(b) 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 Quairading District Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Quairading 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, Quairading District Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Quairading 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 Quairading District Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Quairading 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, Quairading 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 Quairading District Hospital, a representative from Quairading 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 Quairading 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 Quairading 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 Quairading 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 Quairading 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 Quairading 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 Quairading 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 Quairading 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 Quairading 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 Quairading District Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Quairading 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 Quairading 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 Quairading District Hospital.

(6) All promotional positions and new staff recruited by Quairading 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 Quairading District Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Quairading 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, Quairading 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 agreements no PSAAG90 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 Quairading District Hospital.

(2) (a) To assist in meeting these obligations, Quairading District Hospital will assist by providing appropriate resources having regard to the operational requirements of Quairading 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 Quairading 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 Quairading District Hospital and shall not unreasonably affect the operation of Quairading 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) may provide advice to Quairading 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 Quairading District Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Quairading 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 Quairading 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 Quairading 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Quairading District Hospital, and has completed at

least 15 years continuous service within the Western Australian Public Sector; or

- (ii) commenced employment with Quairading 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 Quairading District Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Quairading District Hospital and who—

- (i) at or before the 1st April 1996 was employed by Quairading District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Quairading 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 Quairading 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 Quairading 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 Quairading 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 Quairading 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

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	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	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

LEVELS	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
	Salary P/Annum	Salary P/Annum
LEVEL 1— <i>continued</i>		
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 26,167 26,969 27,524 28,343	26,742 27,475 28,317 28,900 29,760
LEVEL 3	29,311 30,064 30,856 32,118	30,777 31,567 32,399 33,724
LEVEL 4	32,779 33,770 34,788 36,235	34,418 35,459 36,527 38,047
LEVEL 5	36,989 38,025 39,090 40,187	38,838 39,926 41,045 42,196
LEVEL 6	42,299 43,867 46,095	44,414 46,060 48,400
LEVEL 7	47,287 48,797 50,362	49,651 51,237 52,880
LEVEL 8	52,648 54,522	55,280 57,248
LEVEL 9	57,358 59,331	60,226 62,298
LEVEL 10	61,491 64,966	64,566 68,214
LEVEL 11	67,741 70,563	71,128 74,091
LEVEL 12	74,432 77,047 80,028	78,154 80,899 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	Award Rate + 2 ASNA +5% + 2% + 5% effective date of registration
	Salary P/Annum	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
LEVEL 6	40,187	42,196
	42,299	44,414
	43,867	46,060
LEVEL 7	46,095	48,400
	47,287	49,651
	48,797	51,237
LEVEL 8	50,362	52,880
	52,648	55,280
	54,522	57,248
LEVEL 9	57,358	60,226
	59,331	62,298
	61,491	64,566
LEVEL 10	64,966	68,214
	67,741	71,128
	70,563	74,091
LEVEL 11	74,432	78,154
	77,047	80,899
	80,028	84,029
LEVEL 12	84,537	88,764
	89,046	93,498
	93,553	98,231
CLASS 1	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 05/03/98  
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workes)

Daniel P Hill 06/03/98  
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workes)

The Common Seal of the Quairading District Hospital Board was affixed by authority of the Board, in the presence of—

.....  
(Signature) (Date)  
Board Member

.....  
(Signature) (Date)  
Board Member

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 Quairading 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 ROEBOURNE DISTRICT HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.

No. PSAAG 22 of 1998.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Roebourne District Hospital

and

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

No. PSAAG 22 of 1998.

Hospital Salaried Officers Roebourne District Hospital Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Mr C. Thomas on behalf of 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 Roebourne District Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A. R. BEECH,

Commissioner.

[L.S.]

### AGREEMENT

#### 1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Roebourne District Hospital Enterprise Bargaining Agreement 1997.

#### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

#### 3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Roebourne District Hospital along with allowing the benefits from those improvements to be shared by employees, Roebourne District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Roebourne District Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Roebourne 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 Roebourne District Hospital, (hereinafter referred to as Roebourne 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 two 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 Roebourne District Hospital Enterprise Bargaining Agreement No PSA AG93 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) (a) 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.

(b) 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 Roebourne District Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Roebourne 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, Roebourne District Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Roebourne 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 Roebourne District Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Roebourne 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, Roebourne 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 Roebourne District Hospital, a representative from Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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 Roebourne District Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Roebourne 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 Roebourne 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 Roebourne District Hospital.

(6) All promotional positions and new staff recruited by Roebourne District Hospital from outside the Public Sector may be provided with the choice of a Workplace Agreement or S.41 Industrial Agreement, subject to the discretion of Roebourne District Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Roebourne 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, Roebourne 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 agreements no PSAAG78 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 Roebourne District Hospital.

(2) (a) To assist in meeting these obligations, Roebourne District Hospital will assist by providing appropriate resources having regard to the operational requirements of Roebourne 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 Roebourne 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 Roebourne District Hospital and shall not unreasonably affect the operation of Roebourne 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) may provide advice to Roebourne 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 Roebourne District Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Roebourne 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 Roebourne 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 Roebourne 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 NO. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Roebourne District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Roebourne 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 Roebourne District Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Roebourne District Hospital and who—

- (i) at or before the 1st April 1996 was employed by Roebourne District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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 Roebourne 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

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

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 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	12/03/98
.....	.....
(Signature)	(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill	12/03/98
.....	.....
(Signature)	(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Paul Aylward	27/02/98
.....	.....
(Signature)	(Date)

General Manager, West Pilbara Health Service for and on behalf of the Hon. Minister for Health as the Board of Management of Roebourne 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 Roebourne 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 WICKHAM DISTRICT HOSPITAL ENTERPRISE BARGAINING AGREEMENT 1997.**

**No. PSAAG 19 of 1998.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wickham District Hospital

and

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

No. PSAAG 19 of 1998.

Hospital Salaried Officers Wickham District Hospital Enterprise Bargaining Agreement 1997.

25 March 1998.

*Order.*

HAVING heard Ms P. Wilson on behalf of the applicant and Ms C. Thomas on behalf of 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 Wickham District Hospital Enterprise Bargaining Agreement 1997 as filed in the Commission on the 13th day of March 1998 be registered on and from the 25th day of March 1998

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

**AGREEMENT**

**1.—TITLE**

This Agreement shall be titled the Hospital Salaried Officers Wickham District Hospital Enterprise Bargaining Agreement 1997.

**2.—ARRANGEMENT**

1. Title
2. Arrangement

3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for further Productivity Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Productivity Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Family, Bereavement and Personal Leave
20. Allowances
21. Overpayments
22. Salaries
23. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

**3.—PURPOSE OF AGREEMENT**

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of Wickham District Hospital along with allowing the benefits from those improvements to be shared by employees, Wickham District Hospital and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Wickham District Hospital taking responsibility for their own labour relations affairs and reaching agreement on issues appropriate to Wickham 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 Wickham District Hospital, (hereinafter referred to as Wickham 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 one employee.

(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 Wickham District Hospital Enterprise Bargaining Agreement No PSAAG108 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) (a) 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.

(b) 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 Wickham District Hospital;
- (b) facilitate greater decentralisation and flexibility in negotiating employment conditions and work arrangements at Wickham 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, Wickham District Hospital and its clients and the Government on behalf of the community;
- (b) ensuring that Wickham 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 Wickham District Hospital operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and Wickham 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, Wickham 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 Wickham District Hospital, a representative from Wickham 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 Wickham 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 Wickham 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 Wickham 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 Wickham 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 Wickham 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 Wickham 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 Wickham 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 Wickham 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 Wickham District Hospital as required.

(d) Quantum and Timing of Increases

The aggregate productivity gains negotiated at Wickham 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 Wickham 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 Wickham District Hospital.

(6) All promotional positions and new staff recruited by Wickham 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 Wickham District Hospital.

(7) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (5) and (6) of this clause, Wickham 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, Wickham 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 agreements no PSAAG78 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 Wickham District Hospital.

(2) (a) To assist in meeting these obligations, Wickham District Hospital will assist by providing appropriate resources having regard to the operational requirements of Wickham 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 Wickham 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 Wickham District Hospital and shall not unreasonably affect the operation of Wickham 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) may provide advice to Wickham 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 Wickham District Hospital representative, the matter is to be discussed between the employee representative and the Chief Executive Officer of Wickham 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 Wickham 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 Wickham 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 No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and accrue the balance at the ten year rate.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) at or before the 1st April 1996 was employed by Wickham District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Wickham 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 Wickham District Hospital immediately prior to taking this leave.

(b) An employee who resigns from their employment with Wickham District Hospital and who—

- (i) at or before the 1st April 1996 was employed by Wickham District Hospital, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with Wickham 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 Wickham 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 Wickham 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 Wickham 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 Wickham 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

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.

	Award Rate + 2 ASNA + 5% + 2% effective prior to date of registration	Award Rate + 2 ASNA + 5% + 2% + 5% effective from date of registration
LEVELS	Salary P/Annum	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

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— <i>continued</i>		
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	12/03/98
.....	.....
(Signature)	(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill	12/03/98
.....	.....
(Signature)	(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Paul Aylward	27/02/98
.....	.....
(Signature)	(Date)

General Manager, West Pilbara Health Service for and on behalf of the Hon. Minister for Health as the Board of Management of Wickham 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 Wickham 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

**LAKE JOONDALUP BAPTIST COLLEGE  
(ENTERPRISE BARGAINING) AGREEMENT 1998.  
No. AG 37 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

and

Lake Joondalup Baptist College (Inc).

No. AG 37 of 1998.

Lake Joondalup Baptist College (Enterprise Bargaining)  
Agreement 1998.

8 April 1998.

*Order.*

HAVING heard Ms T. Howe on behalf of the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers and there being no appearance on behalf of Lake Joondalup Baptist College (Inc), the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Lake Joondalup Baptist College (Enterprise Bargaining) Agreement 1998 as filed in the Commission on the 18th day of March 1998 be registered on and from the 7th day of April 1998.

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

1.—TITLE

This agreement shall be known as the Lake Joondalup Baptist College (Enterprise Bargaining) Agreement 1998.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Expiration of Agreement
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Objective
10. Salary Rates
11. Agreed Efficiency Improvements
12. Other Matters
13. Dispute Resolution Procedures
14. No Reduction
15. No Further Claims
16. No Precedent
17. Signatories

3.—PARTIES TO THE AGREEMENT

This agreement is made between Lake Joondalup Baptist College (Inc) (the College) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This agreement shall apply to teachers who are employed within the scope of the Independent Schools' Teachers' Award 1976 (the award) employed by the Secondary and Primary Sectors of the College, and Deputy Principals as defined by the College.

(2) The number of employees covered by this agreement is 46.

5.—DATE AND DURATION OF AGREEMENT

(1) This agreement shall come into effect on the 7th day of April 1998, and shall expire on 31 December 1998.

(2) The parties have agreed to meet no later than 31 August 1998 to review this agreement.

6.—EXPIRATION OF AGREEMENT

On the expiration of this agreement and in the absence of the registration of a subsequent enterprise agreement the provisions of the award and/or this agreement, whichever is the greater, shall prevail for the purposes of the conditions of employment that will apply to employees covered by this agreement.

7.—RELATIONSHIP TO PARENT AWARD

This agreement shall be read and interpreted in conjunction with the award. Where there is any inconsistency between this agreement and the award, this agreement will prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

The bodies party to this agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the College and reached full agreement.

9.—OBJECTIVE

The nature and purposes of this agreement are to—

- (1) Consolidate and develop further, initiatives arising out of the award restructuring process.
- (2) Accept a mutual responsibility to maintain a working environment which will ensure that the College and its staff become genuine participants and contributors to the College's aims, objectives and philosophy.
- (3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The College and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both College and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during College time and partly during teachers' time.

10.—SALARY RATES

(1) On and from 1 January 1998 the minimum annual rate of salary payable to teachers engaged in the classifications prescribed in Clause 11.—Salaries of the award shall be—

Salary Level	Annual Salary Effective 1st January 1998
Step	\$
1	26,900
2	28,535
3	30,459
4	32,363
5	33,815
6	35,323
7	36,832
8	38,717
9	40,790
10	42,487
11	43,996
12	45,883
13	47,768

(2)

	Annual Salary \$	Administration Time Allowance
Deputy Principals	Year 1 60,557	0.8
	Year 2 62,159	0.8
	Year 3 63,762	0.8

(3)

	Annual Salary \$	Administration Time Allowance
Heads of Department	Year 1 53,596	0.2
	Year 2 55,658	0.2
	Year 3 57,995	0.2

Where there are 3.0 Full-time equivalent staff or less in a department, the salary for the Head of that Department shall not exceed the salary for a Head of Department Year 1 level.

(4) (a) The following responsibility allowances will apply to staff who are allocated special responsibilities.

	Monetary Allowances \$ Per Annum	Adminis-tration Time Allowance	Percentage of Step 13
Head of House Year 1	3,917	0.2	8.20%
Year 2 on	5,111	0.2	10.70%
Sole Teacher in Learning Area	N/A	0.05	N/A
College Production	N/A	0.10	N/A
Computer Maintenance (only if no Technician)	N/A	0.10	N/A

(b) Monetary allowances are not cumulative.

(5) In the event of any safety net adjustment being applied to the award, such adjustment shall be absorbed into the salary rates prescribed by this agreement.

#### 11.—AGREED EFFICIENCY IMPROVEMENTS

##### (1) Long Service Leave

(a) From the commencement of service, a teacher's entitlement to long service leave shall accrue at the following rates—

- (i) 1.3 weeks for each year of service;
- (ii) after 8 years of service, 1.67 weeks for each year of service.

(b) Teachers shall be entitled to long service leave on the accrual of 10 weeks of such leave.

(c) Long service leave for part-time teachers will be paid at the average of the part-time rate over the years of accrual.

(d) Entitlement to pro-rata payment on termination or resignation will apply after the completion of the sixth year of service.

##### (2) Initial Employment

(a) When a teacher accepts an appointment with the College, it is understood that the initial appointment will be temporary. This appointment may become permanent towards the end of the first year of service.

(b) If the College shows sufficient cause then the teacher may be appointed as a temporary teacher for a further 12 months and be subject to appraisal as per the award.

##### (3) Duties Other Than Teaching—Time Allocation

(a) It is agreed duties other than teaching (DOTT) for secondary staff should be fixed at a minimum of 20% of the total available instructional time. Classroom teaching time agreed administrative relief will make up the remaining 80%. Part-time DOTT time will be calculated using the same proportions.

(b) Full-time secondary teachers agree to perform a maximum of one period per fortnight of relief teaching during their DOTT time.

(c) It is agreed duties other than teaching (DOTT) for primary staff should be fixed at a minimum of 10% of the total available instructional time.

(d) Part-time teachers agree to perform relief teaching during their DOTT time in the same proportion.

##### (4) Staffing of Time Out Room

Heads of House and the Deputy Principal Student Management agree to staff the time out room as part of their DOTT time or administrative relief allowance.

##### (5) Extra Curricular Activities

It is recognised that most staff of the College already contribute diversely and substantially to the extra curricular program of the College. In order to formalise what is already occurring and to ensure equity among staff, all teaching staff will be required to negotiate with the Principal a contribution of a minimum of 40 hours per year to the extra curricular program of the College. Extra curricular activities are those which are generally considered to be outside the normal role and time expectations of the teacher's daily routine. Part-time teachers agree to contribute a proportionate number of hours based on their part-time teaching load.

##### (6) Performance Appraisal System

All staff agree to participate in the College performance management program.

Heads of Department and Deputy Principals agree to—

- (a) continue to participate in the development and implementation of a performance management system;

(b) undergo the performance management process;

(c) undertake the performance management of other staff as delegated by the Principal.

##### (7) Deferred Salary Scheme

(a) To enable staff to take self funded paid leave of absence in the fifth year of service, it is agreed that staff will be permitted to defer 20% of each year's salary and that the amounts thus deferred will be paid to staff in the fifth year.

(b) It is agreed that the number of staff permitted to take leave under this scheme be limited to 2 per year and that guidelines be laid down to ensure that the operations of the College are not unduly disrupted.

(c) Leave of absence taken under this scheme will not qualify as service for the accrual of entitlements.

(d) Staff wishing to participate in this scheme will be required to apply to the Principal who will be responsible for recommending acceptance and scheduling of applications to the College Board for approval.

##### (8) Class Sizes—Secondary

###### (a) Upper Secondary Classes

- (i) The maximum class size in Years 11 and 12 will be 25 students.
- (ii) The maximum class size for any Year 11 or 12 combination of 2 non-TEE courses will be 18 students.
- (iii) TEE courses will not be combined except in exceptional circumstances with Board approval.

###### (b) Lower Secondary Classes

- (i) It is agreed that class sizes in lower school will approximate form class sizes of 32 unless there are health and safety issues requiring a reduction in class sizes.
- (ii) Woodwork, Food & Nutrition, Clothing & Fabrics, Outdoor Education and Art Metalwork will operate with a maximum of 22 students per class.

###### (c) Primary Classes

- (i) Pre Primary classes will have a maximum class size of 27 students
- (ii) Years 1 and 2 will have maximum class sizes of 30
- (iii) Years 3 to 7 will have maximum class sizes of 32

##### (9) School Administrators' Duties

School Administrators include Deputy Principals and Heads of Department.

###### (a) Duties Outside Instructional Time

- (i) Deputy Principals agree to attend school for administration tasks for a minimum of 80 hours per annum outside instructional time, including the three working days prior to the stated Association of Independent Schools of Western Australia (Inc) teachers' starting date to assist in timetabling, staff placement, student placement and new enrolments. Such time is in addition to the 40 hours of extra curricular activity referred to in subclause (5) of this clause.
- (ii) Heads of Department agree to attend school for administration tasks for a minimum of 40 hours per annum outside instructional time, including the three working days prior to the stated Association of Independent Schools of Western Australia (Inc) teachers' starting date for 1998 (to assist in timetabling, staff placement, student placement and new enrolments). Such time is in addition to the 40 hours of extra curricular activity referred to in subclause (5) of this clause.

###### (b) Career Guidance/Youth Education Officer

The administrative time relief of Deputy Principal Student Management includes the functions of Career Guidance and Youth Education Officer.

###### (c) Primary School Support

School Administrators agree to provide assistance and support for teachers in the Primary School in their areas of expertise.

## (d) Community Use of School Facilities

School Administrators agree to provide such management as may be requested from time to time to support the use of College building and facilities by community or church groups.

## (e) Utilities Management

School Administrators agree to take responsibility for utilities management including energy, water and telephones including investigation of methods for reducing utility costs.

## (f) Grants

School Administrators agree to investigate the availability of Association of Independent Schools of Western Australia (Inc), government or other grants and prepare applications where appropriate.

## (10) Professional Development

(a) Teachers and administrators agree to participate in professional development to enhance their performance. The student free days at the beginning and end of term will, in 1998, have an increased professional development focus. Teacher professional development is defined as the sum of all activities, both formal and informal, initiated by the individual (with the approval of the Principal) or the College, Head of Department or Teacher in Charge, which enables staff to improve the quality of teaching and provide better outcomes for students.

(b) Teachers agree to undertake at least 20 hours of out of school professional development, including meetings of the whole teaching staff. In meeting the out of school professional development requirements, any professional development activity should be based on a clear, documented and assessable purpose which is linked to enhancing knowledge or skills that will lead to improved student outcomes.

Professional development activities will be agreed to and monitored by the Principal. Examples of professional development are professional conferences, workshops, seminars and university course which specifically relate to and improve the teaching program of the teacher.

(c) The College will resource the professional development undertaken to meet the obligations resulting from this enterprise agreement, subject to the availability of College and departmental finances and subject to the approval of the Principal, Head of Department, or Teacher in Charge.

(d) All staff agree to keep a record of their applications for, and participation in, professional development activities and have this available for review as part of performance appraisal.

(e) Professional development does not include activities which normally occur within the role and time expectations of the teacher's daily routine.

(f) Part-time teachers agree to undertake a proportionate number of hours of professional development based on their part-time teaching load.

## (11) Superannuation

The College agrees to offer teachers a choice of superannuation funds.

## (12) Flexible Working Hours

All staff agree to support the investigation of flexible working hours in order to achieve improved student learning outcomes and better use of College facilities.

## (13) Carer's Leave

(a) A teacher may use up to five days per year from their accrued sick leave to care for a family member in need of care provided that the teacher—

- (i) informs the Principal of the need for Carers' Leave and the estimated period of absence at the first opportunity; and
- (ii) except for the first day's absence in the sequence of consecutive days and if requested by the College provide a medical certificate setting out the particulars of the illness or injury or other adequate evidence of the need for leave;

(b) Such leave shall not accumulate from year to year.

## (14) Salary Packaging

The College agrees to offer salary packaging arrangements to staff members covered by this agreement. Such arrangements will be in accordance with the Policy Guidelines as presented by the College.

## 12.—OTHER MATTERS

When reviewing this agreement or at an earlier mutually agreeable time, the parties agree to discuss such matters that are of relevance to either the College or the staff.

## 13.—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this agreement.

The following procedure shall apply to the resolution of such a dispute;

- (1) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.
- (2) If the parties are unable to resolve the dispute, the matter at the request of either party shall be referred to a meeting between the parties to the agreement together with any additional representatives as may be requested by either party.
- (3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

## 14.—NO REDUCTION

Nothing contained herein shall entitle the College to reduce the salary or conditions of an employee which prevailed prior to entering into this agreement, except where provided by this agreement.

## 15.—NO FURTHER CLAIMS

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

## 16.—NO PRECEDENT

It is a condition of this agreement that the parties will not seek to use the terms, contained herein as a precedent for other enterprise agreements, whether they involve the College or not.

## 17.—SIGNATORIES

J.C. SMITH	T.I. HOWE
_____	_____
(Signature)	(Signature)
J.C. SMITH	T.I. HOWE
_____	_____
(Name of signatory in block letters) Lake Joondalup Baptist College	(Name of signatory in block letters) Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

**MYER STORES LIMITED DISTRIBUTION CENTRE  
CAROUSEL ROAD CANNINGTON SITE  
AGREEMENT 1996.**

**No. AG 49 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees'  
Association of Western Australia  
and

Myer Stores Limited.

No. AG 49 of 1998.

Myer Stores Limited Distribution Centre Carousel Road  
Cannington Site Agreement 1996.

COMMISSIONER J F GREGOR.

7 May 1998.

*Order.*

HAVING heard Mr J Bullock on behalf of the Applicant and Ms C Brown 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 Myer Stores Limited Distribution Centre Carousel Road Cannington Site Agreement 1996, filed in the Commission on 26 March 1998, be and is hereby registered as an Industrial Agreement.

(Sgd.) J. F. GREGOR,  
Commissioner.

[L.S.]

### Schedule.

#### 1.—TITLE

This Agreement shall be known as the Myer Stores Limited Distribution Centre Carousel Road Cannington Site Agreement 1996.

#### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application and Operation
4. Relationship to Parent Award
5. No Extra Claims
6. Ordinary Hours
7. Wages
8. Allowances
9. Full Time Employees
10. Part Time Employees
11. Casual Employees
12. Limited Tenure
13. Roster Conditions
14. Overtime
15. Meal and Tea Breaks
16. Meal Money
17. Training
18. Family Leave
19. Grievance Handling Procedure
20. Signatories

#### 3.—APPLICATION AND OPERATION

(1) The parties to this Agreement are Myer Stores Limited ("the company") and The Shop, Distributive and Allied Employees' Association of Western Australia ("the union").

(2) This Agreement shall apply to the parties and to all current and future distribution centre employees who are employed in the receipt, storage, marking and dispatch of goods by the Myer Stores Limited Distribution Centre, Carousel Road, Cannington 6107 Perth Western Australia.

(3) This Agreement shall operate from the beginning of the first pay period to commence on or after the 30th November 1996 and shall remain in force until the 30th November 1998.

(4) The parties agree to commence negotiations for a new Agreement at least three months prior to the expiry of this Agreement.

(5) This Agreement applies to approximately 90 to 100 employees.

#### 4.—RELATIONSHIP TO PARENT AWARD

This Agreement is supplementary to and shall be read and interpreted wholly in conjunction with the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 No. 32 of 1976 as varied from time to time ("the parent award"). To the extent of any inconsistency between this Agreement and the parent award, the terms of this Agreement shall prevail.

#### 5.—NO EXTRA CLAIMS

The parties to this Agreement undertake not to pursue any extra claims for the duration of this Agreement provided that—

- a) Claims may be made as part of the negotiations required by subclause (4) of Clause 3.—Application and Operation of this Agreement, and,
- b) a claim may be made to increase the loading payable to part time employees working additional hours pursuant to subclause (5) of Clause 10.—Part Time Employees, of this Agreement in the event that the loading payable to shop assistants employed by the company to perform additional hours on a similar basis is increased during the term of this Agreement.

#### 6.—ORDINARY HOURS

(1) The ordinary hours of work may be worked on any or all days of the week between the hours of 6.00am and 9.00pm Monday to Friday inclusive and on Saturday between the hours of 8.00am and 6.00pm.

(2) An employee engaged before 1st May 1994 cannot be required to work ordinary hours after 6.00pm Monday to Friday inclusive unless he/she agrees to do so.

(3) An employee engaged before 30th November 1996 cannot be required to work ordinary hours on Saturday unless he/she agrees to do so.

(4) An employee rostered to work ordinary hours on Saturday shall not be rostered to work less than eight ordinary hours on such a day unless the employee specifically requests to be rostered for less than eight ordinary hours on Saturday.

(5) No employee may be rostered to work ordinary hours on more than one Saturday in three unless the employee requests such additional Saturday work.

(6) In the event that insufficient employees are available to perform the work required to be performed on Saturdays, the parties shall confer in an endeavour to satisfactorily resolve the matter.

(7) Except as specifically provided by this Agreement, all of the provisions of the parent award with respect to ordinary hours and rostering shall apply.

#### 7.—WAGES

The minimum rates of wage payable to employees under this Agreement shall be as follows—

##### (1) Adult (Classification and Wage per week)

Classification	\$ per week from first full pay period commencing on or after 1st December 1996	\$ per week from first full pay period commencing on or after 1st June 1997	\$ per week from first full pay period commencing on or after 1st December 1997	\$ per week from first full pay period commencing on or after 1st June 1998
Storeperson, Packer, Dispatch Hand, Reserve Stock Hand, Administrative Assistant	\$479.90	\$493.80	\$507.70	\$517.00

(2) The percentage rates for in charge employees and junior employees prescribed by the parent award shall apply to employees engaged pursuant to this Agreement.

##### (3) Saturday Rates

All ordinary hours of work performed on a Saturday shall attract an additional percentage penalty to be calculated on the employees' ordinary time rate of pay as follows—

- Ordinary hours before midday: 25%
- Ordinary hours after midday: 50%

(4) (a) An employee required to operate a ride on power operated tow motor, a ride on power operated pallet truck or a walk beside power operated high lift stacker in the performance of duties shall be paid an additional 35 cents per hour while so engaged, provided that this rate will increase to 36 cents per hour from 1st June 1997, 37 cents per hour from 1st December 1997 and 38 cents per hour from 1st June 1998.

(b) An employee required to operate a ride on power operated fork lift, high lift stock picker or power operated overhead traversing hoist in the performance of duties shall be paid an additional 49 cents per hour while so engaged, provided that this rate will increase to 50 cents from 1st June 1997, 52 cents from 1st December 1997 and 53 cents from 1st June 1998.

(5) Work performed on a Sunday by an employee shall be paid in accordance with the provisions of Clause 13.—Overtime of the parent award.

#### 8.—ALLOWANCES

All allowances specified in the parent award which are not set out in this Agreement shall be increased by 3½% from 1st December 1996, 3% from 1st June 1997, 3% from 1st December 1997, 2% from 1st June 1998.

### 9.—FULL TIME EMPLOYEES

(1) The ordinary hours of work for a full time employee shall be 38 per week or an average of 38 hours per week over a 152 hour four week roster cycle. The maximum number of ordinary hours which may be worked in any one week is 46 hours.

(2) The maximum number of ordinary hours which may be worked on any day is 9.5 hours.

(3) The minimum number of hours which may be worked on any day is 4 hours.

(4) The ordinary hours of work shall be exclusive of meal breaks and shall be so rostered that each employee shall not be required to commence work on more than five days in each week.

(5) The days on which ordinary hours of work may be rostered in any week shall be consecutive provided that this provision shall not be deemed to be breached by the provision of a Rostered Day Off as prescribed by subclause (6) hereof.

(6) Ordinary hours of work shall be rostered on not more than 19 days in each four week roster cycle provided that—

- a) rostered days off shall be rostered at periods of lower production requirement during the roster cycle;
- b) on not less than six occasions in each year rostered days off shall be so scheduled as to give rise to three consecutive days off;
- c) changes to rostered days off shall be granted at the employee's request unless there are strong operational reasons for such a request to be denied;
- d) schedules of rostered days off shall be posted at least one month in advance.

### 10.—PART TIME EMPLOYEES

(1) A part time employee shall mean an employee who may be engaged on any day Monday to Saturday inclusive for a minimum of 64 hours per four week trading month or 80 hours per five week trading month, and a maximum of 144 hours in a four week trading month and 180 hours per five week trading month. The trading month is to be in accordance with the company's definition of a trading month.

(2) The minimum hours to be worked by part time employees are to be 32 hours per fortnight.

(3) Notwithstanding the provisions of subclauses (1) and (2) hereof, part time employees engaged after 30th November 1996 may be rostered for a minimum of twelve hours per week or an average of twelve hours per week over a four week roster cycle.

(4) A part time employee shall receive payment for wages, annual leave, holidays, sick leave, family and long service leave on a pro rata basis in the same proportion as the average weekly hours regularly worked bears to 38 hours.

(5) Additional hours may be worked over and above the minimum hours of engagement subject to the agreement of the part time employee concerned. When such agreement is reached the additional hours may be worked without giving notice. All additional hours so worked are to be paid at a loading of plus 10%.

(6) The regular rostered hours of a part time employee may be reduced by up to twenty percent in any year to meet changed requirements of the business provided that part time employees who have suffered such a reduction shall be afforded preference in the allocation of additional hours of work in the event that additional work which they are qualified to perform becomes available.

(7) Part time marking staff are to be offered first choice of any regular additional hours that are over and above the minimum hours before any such available hours are offered to casual staff.

### 11.—CASUAL EMPLOYEES

(1) During the seasonal period from August to December of each year, a casual employee may work up to 38 hours per week for more than four consecutive weeks.

(2) A casual employee shall be paid an addition loading of 20% for all ordinary hours worked within the span of ordinary hours Monday to Friday inclusive.

(3) Any ordinary hours work undertaken on Saturday shall be paid in accordance with subclause (3) of Clause 7.—Wages of this Agreement.

(4) The minimum engagement shall be three consecutive hours on any day.

### 12.—LIMITED TENURE

(1) The Company may engage employees on a limited tenure basis as either full time or part time employees subject to the following conditions—

- a) A minimum tenure of one month except for employees engaged for the sole purpose of replacing an employee on annual leave; and
- b) a maximum tenure of not more than twelve months; and
- c) one limited tenure period shall not run consecutively with another.

(2) Prior to the commencement of a period of limited tenure, the employee shall be advised in writing of the nature of the work, the hours to be worked, the proposed weekly earnings and the commencing and ceasing dates of their limited tenure employment.

(3) Limited tenure employment may be terminated by either party in accordance with Clause 20.—Contract of Employment and Termination of the parent award.

(4) The provisions of this clause do not constitute employment of the type specified in Regulation 30B of the Industrial Relations Regulations in circumstances where limited tenure is offered and accepted by persons already in the employ of the company, provided those employees were not previously covered by Regulation 30B.

(5) Where an employee accepts limited tenure employment as provided by this clause, such an employee shall, at the conclusion of the limited tenure period, revert to a position of employment no less advantageous to the employee than that which existed immediately prior to the period of limited tenure.

### 13.—ROSTER CONDITIONS

(1) Roster conditions for full and part time employees may be changed in any of the following circumstances—

- (a) by two weeks notice,
- (b) by mutual agreement of seven days or less between the Company and the employee.

(2) Schedules of rostered days off for full time employee shall be published one month in advance.

(3) The ordinary hours of work and any meal break prescribed by this Agreement or the parent award shall be rostered as a continuous period on any day.

(4) Changes to casual employees' working arrangements shall be in accordance with Clause 11.—Casual Employees.

(5) The maximum number of hours in ordinary time that may be worked on any day shall not exceed 9.5 hours.

### 14.—OVERTIME

(1) Subject to the provisions of Clause 6.—Ordinary Hours, all time worked outside of ordinary hours shall be deemed to be overtime, payable in accordance with Clause 13.—Overtime of the parent award.

(2) The Company and any employee may agree that time off shall be allowed in lieu of overtime. Such time off shall be allowed subject to—

- (a) The time off allowed shall be equivalent to the overtime rate that otherwise would have been paid.
- (b) The time of taking time off shall be agreed to in writing at the time of arranging the overtime.
- (c) The time off being taken within 28 days of the overtime being worked.

### 15.—MEAL AND TEA BREAKS

(1) An employee, during any work period in which the ordinary hours of work are rostered to be worked, shall be allowed an unpaid meal break of not less than 30 minutes. The meal break shall be taken between 11.30am and 2.30pm Monday to Saturday inclusive.

(2) An employee required to work more than 4.5 hours shall be entitled to a paid break of 15 minutes each day either the first or second half of the work period.

(3) It is agreed that when the work area temperature exceeds 37.4°C, one additional paid break of 15 minutes shall be given. Such a break shall be taken to suit the needs of the company and is to be organised by the team leader.

#### 16.—MEAL MONEY

(1) When an employee is required to continue working after the usual finishing time for more than two hours, the employee shall be paid \$8.30 for the purchase of any meal required provided that the employee has not received a minimum of 24 hours' notice of the requirement to work overtime. When an employee has received a minimum of 24 hours' notice to work overtime meal money is not payable.

(2) The amount of meal money specified in sub-clause (1) hereof shall increase to \$8.50 from 1st June 1997; \$8.80 from 1st December 1997 and to \$9.00 from 1st June 1998.

(3) When meal money is payable, it is to be paid on the day of working overtime before the overtime is worked.

#### 17.—TRAINING

(1) For training purposes part time or casual staff may be engaged for a minimum of two hours up to a maximum of six occasions per year.

(2) If any productive work is undertaken during any such training sessions, then the minimum engagement of three hours shall apply.

#### 18.—FAMILY LEAVE

(1) A full time or part time employee who cannot attend work as rostered due to the unforeseen illness of a close relative or household member will be granted up to two days (16 hours) paid Family Leave per annum in addition to any entitlement to sick leave. The entitlement to Family Leave shall not accumulate from year to year.

(2) Wherever practicable, the employee shall provide timely notice of the absence on Family Leave to the appropriate manager.

(3) Part time employees' entitlement to Family Leave is on a pro rata basis in the same proportion as the number of hours regularly worked bears to 38.

#### 19.—GRIEVANCE HANDLING PROCEDURES

The following procedure shall be observed for handling grievances and settling disputes. Without prejudice to either party and except where a bona fide safety issue is involved, work shall continue in accordance with the Agreement while any matters in dispute are negotiated. Nothing in this clause shall operate to the prejudice of an employee's safety.

Step 1: In the first instance the employee shall explain and discuss the problem with their immediate team leader.

Step 2: If the matter is not resolved, then the employee and, if he or she wishes, the accredited union representative or a friend of his or her choice shall discuss the problem with the immediate manager.

Step 3: If the matter is not resolved, then the employee and, if he or she wishes, the accredited union representative or a friend of his or her choice shall discuss the problem with the personnel manager. These discussions should take place within 24 hours or such other period as is agreed by the parties.

Step 4: If the matter has still not been resolved, then it shall be referred to the local union official and the Distribution Centre manager.

Step 5: If the matter has still not been settled, it shall be submitted for a formal exchange between the Distribution Centre manager, the line manager and the accredited union representative or elected friend.

Step 6: If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission by either party.

#### 20.—SIGNATORIES

.....signed..... Signed for and on behalf of  
Myer Stores Ltd  
(ACN 004 143 239)

.....signed.....

Signed for and on behalf of the  
Shop Distributive and Allied  
Employees Association of  
Western Australia

### MRC CONTRACTING INDUSTRIAL AGREEMENT. No. AG 225 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, Timbryards, Sawmills and Woodworkers Union of  
Australia—Western Australian Branch

and

MRC Contracting Pty Ltd.

No. AG 225 of 1997.

MRC Contracting Industrial Agreement.

COMMISSIONER P.E. SCOTT.

30 April 1998.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and  
Mr S Varidel 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 MRC Contracting Industrial Agreement in  
the terms of the following schedule be registered on the  
30th day of March 1998.

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

[L.S.]

#### WAGE AGREEMENT

Schedule.

##### 1.—TITLE

This Agreement will be known as the MRC Contracting In-  
dustrial Agreement.

##### 2.—ARRANGEMENT

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of  
Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Pro-  
gram
  20. No Extra Claims
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Reha-  
bilitation Program  
Appendix C—Site Allowance

### 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 MRC Contracting Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australian.

### 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 10 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 calendar 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 unforeseen 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: 11/8/97

Signed

.....

**WITNESS**

**CMETU** Signed **Common Seal**

.....

Date: 11/8/97

Signed

.....

**WITNESS**

The Company

**MRC CONTRACTING PTY LTD**

Signed

.....

**Common Seal** Date: 7/8/97

**S. R. ANDERSON**

**PRINT NAME**

Signed

.....

**WITNESS**

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
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/Roofer	16.27	16.75	17.22	17.70	17.93

APPENDIX A—WAGE RATES—continued

	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 \$
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	1 February 1998	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
<b>Plasterer, Fixer</b>					
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
<b>Painter, Glazier</b>					
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
<b>Signwriter</b>					
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
<b>Carpenter</b>					
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
<b>Bricklayer</b>					
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
<b>Stonemason</b>					
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
<b>Rooftiler</b>					
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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- 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 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 \$2.1 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 contractor 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.

\_\_\_\_\_

**MERIDIAN CONSTRUCTION INDUSTRIAL AGREEMENT.**

**No. AG 273 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

Penta Construction Services Pty Ltd T/A Meridian Concrete Structures.

No. AG 273 of 1997.

COMMISSIONER P E SCOTT.

6 April 1998.

*Order.*

WHEREAS this is an application filed on the 10th day of October 1997 pursuant section 41 of the Industrial Relations Act, 1979, for the registration of an agreement; and

WHEREAS on the 20th day of March 1998 the application was set down for mention only on the 20th day of April 1997; and

WHEREAS by facsimile transmission dated the 1st day of April 1998 the Applicants sought to withdraw the application; and

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

That the application be withdrawn by leave.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

**ORVAD SCAFFOLDING INDUSTRIAL AGREEMENT.**

**No. AG 335 of 1997.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Orvad (WA) Pty Ltd.

No. AG 335 of 1997.

Orvad Scaffolding Industrial Agreement.

COMMISSIONER P E SCOTT.

30 April 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 Orvad Scaffolding Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

SCAFFOLDING AGREEMENT

Schedule.

1.—TITLE

This Agreement will be known as the Orvad Scaffolding Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Aims and Objectives of this Agreement
6. Term and Renewal of Agreement
7. Rates of Pay and Allowances
8. Dispute Settlement Procedure
9. Safety Dispute Resolution
10. First on Last Off
11. Overtime
12. Company Based Incentive Scheme
13. Industry Standards
14. Clothing and Footwear
15. Training Allowance, Training Leave, Recognition of Prior Learning
16. Pyramid Sub-contracting
17. Sick Leave
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. Signatories to the Agreement  
Appendix A—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix B—Labour Levels for Scaffolding

3.—AREA AND PARTIES BOUND

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

4.—APPLICATION

1. This Agreement shall be binding on the Company, the Union and its' officers and employees eligible to be members of the Union employed by the Company, on scaffolding work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the relevant Award). There are approximately 5 employees covered by this Agreement.

2. The provisions of this Agreement are in lieu of entitlements specified in the relevant Award and where there is an inconsistency the Agreement shall prevail.

3. This Agreement does not cover employees engaged in maintenance, workshops, yards or deliveries.

#### 5.—AIMS AND OBJECTIVES OF THE AGREEMENT

The Objectives of this Agreement are to—

1. Increase the efficiency of the Company by the effective use of the skills and commitment of the employees of the Company.
2. Improve the living standards, job satisfaction and continuity of employment of the Company's employees.
3. Develop best practice standards that are based upon a culture of opportunity, continuous learning and improvement through training.
4. Ensure that increases in efficiency on the job are implemented in such a way as to ensure that health and safety standards in the industry are maintained.
5. Provide a mechanism by which disputes can be resolved quickly and in a manner which shall avoid lost time.

#### 6.—TERM AND RENEWAL OF AGREEMENT

1. This Agreement shall come into operation from the date of signing and shall remain in force until 31 October 1999.

2. Any party may terminate the Agreement provided three months' notice has first been given in writing.

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

#### 7.—RATES OF PAY AND ALLOWANCES

1. The following rate shall apply to all employees covered by this Agreement.

From date of signing, hourly rate of \$15.03

From 1 February 1998, hourly rate \$15.47

From 1 August 1998, hourly rate \$15.90

From 1 February 1999, hourly rate \$16.34

From 1 August 1999, hourly rate \$16.56

2. In addition, the following allowance will be paid for work carried out—

- a) A rate of \$5.25 per hour will be paid to all employees covered by this Agreement. This allowance is "all purpose" and shall be included as part of the ordinary rate.
- b) The \$5.25 per hour allowance will be paid in lieu of any other allowance.

#### 8.—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.

#### 9.—SAFETY DISPUTE RESOLUTION

1. It is agreed the Company and their employees have a responsibility to ensure that workplaces are safe and that employees are not exposed to hazards.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the Company's safety officer or worker's safety representative to be dealt with in accordance with the following procedures—

- a) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the Company's safety officer or the worker's safety representative.
- b) The Company's safety officer and the worker's safety representative will take immediate action to have the unsafe situation rectified.

c) Should the Company's safety officer consider that no safety precautions are necessary, he/she will notify the worker's safety representative accordingly as soon as possible.

d) While there is disagreement on the ruling of the Company's safety officer, the Company's safety officer will arrange for the immediate transfer of all employees from the disputed area.

e) Should the Company's safety officer be of the opinion that no action is necessary and the employees' safety representative disagrees, an appropriate inspector from Worksafe will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.

f) If disagreement still exists the chief inspector, construction branch of Worksafe or his/her nominee will be called in to assist in the resolution of the dispute.

4. Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.

5. It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

#### 10.—FIRST ON LAST OFF

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 8—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.

#### 11.—OVERTIME

1. The allocation of overtime will be at the employer's prerogative provided that the employer will not discriminate against any employee.

2. The practice of "one in all in" will not occur.

3. An overtime roster may be introduced after agreement is reached between the employees, the Company and the Union.

#### 12.—COMPANY BASED INCENTIVE SCHEME

1. The Company may negotiate incentive schemes which will not affect the terms of this Agreement. These schemes must ensure that the Award provides the base safety net and that all workers on-site have the opportunity to share in the proposed scheme.

2. Once negotiated incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant Award requirements have been satisfied.

#### 13.—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 covered by this agreement 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 covered by this agreement as of 1 August 1997

#### 14.—CLOTHING AND FOOTWEAR

1. The following items or other suitable clothing as agreed between the company and the Union 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.

#### 15.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. The parties recognise the need to adopt a "total trade" concept for training and skills acquisition to meet the current and future requirements of the industry. To this end the parties reaffirm their commitment to training and agree that training and retraining of both the workforce and supervision will occur on an ongoing basis.

2. It is agreed that safety training will be an important component in the structured training programme.

3. All scaffolding work will be carried out using labour suitably trained and qualified to a standard approved by the Company and the Union.

4. A training allowance of \$12.00 per week per worker covered by this agreement shall be paid by the employer to the Union Education and Training Fund.

5. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The 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.

6. 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.

#### 16.—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.

#### 17.—SICK LEAVE

For sick leave accrued after the date of signing of 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 with the Company.

#### 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—Drug and Alcohol, Safety and Rehabilitation Program.

#### 20.—SIGNATORIES

<b>Common Seal</b>	.....Signed.....
On behalf of the Union	(SIGNATURE)
<b>Company Seal</b>	.....Signed.....
On behalf of the Company	(SIGNATURE)
	JAMES R ORVAD
Dated this 5 day of NOV 1997.	(PRINT NAME)

#### APPENDIX A

##### 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 three 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 B

##### Labour Levels for Scaffolding

This appendix sets out parameters for labour levels on scaffolding work, however it has been an understanding between the parties that a common sense approach in keeping with practical and safe working conditions forms the basis of this Agreement.

##### 1. Steel Scaffolding

Scaffolding work of a substantial nature erected over 4 metres high in accordance with Division 7 of the Occupational Safety and Health Regulations and Australian Standard 1576 shall where that scaffolding is to be erected at one time be the work of at least 3 workers.

Scaffolding that will ultimately be erected over 4 metres high, however is built in stages can be erected up to 4 metres by a two person team one of which shall be a licensed scaffolder.

Notwithstanding the abovementioned agreements and due to the variation of circumstances applicable in scaffolding work such as towers, scaffolding over uneven sites, etc, there will be consultation between the Licensed Scaffolder and the Employer on labour levels in line with practical and safe working conditions is an understanding between the parties to this agreement.

##### 2. Aluminium Mobiles

There shall not be a requirement for 3 person gangs up to a height of 9.2 metres on Aluminium Mobiles unless deemed necessary by the employer.

### PERTH RIGGING INDUSTRIAL AGREEMENT. No. AG 298 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, Timbryards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

and

Perth Rigging Co Pty Ltd.

No. AG 298 of 1997.

Perth Rigging Industrial Agreement.

COMMISSIONER P E SCOTT.

30 April 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 Perth Rigging Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

[L.S.]

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

### WAGE AGREEMENT

Schedule.

#### 1.—TITLE

This Agreement will be known as the Perth Rigging Industrial Agreement.

#### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. No Extra Claims

Appendix A—Wage Rates

Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

Appendix C—Site Allowance

#### 3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters, & Plasterers Union of Workers and the Construction, Mining, Energy, Timbryards, Sawmills and Woodworkers Union of Australia—Western Australian Branch (hereinafter referred to as the "Unions") and Perth Rigging Co. 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 27 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 calendar 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 unforeseen 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: 7/8/97

Signed \_\_\_\_\_

**WITNESS**

**CMETU**

Signed Common Seal

Date: 7/8/97

Signed \_\_\_\_\_

**WITNESS**

The Company: **Common Seal** Signed  
 Date: 6/8/97  
RAY CLARK  
**PRINT NAME**  
Signed  
**WITNESS**

## 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
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	1 February 1998	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
<b>Plasterer, Fixer</b>					
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
<b>Painter, Glazier</b>					
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
<b>Signwriter</b>					
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
<b>Carpenter</b>					
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
<b>Bricklayer</b>					
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
<b>Stonemason</b>					
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
<b>Rooftiler</b>					
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

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 contractor 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.

### QUAKE HOLDINGS INDUSTRIAL AGREEMENT. No. AG 202 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

Quake Holdings Pty Ltd.

No. AG 202 of 1997.

Quake Holdings Industrial Agreement.

COMMISSIONER P.E. SCOTT.

30 April 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 Quake Holdings Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

## WAGE AGREEMENT

## Schedule.

## 1.—TITLE

This Agreement will be known as the Quake Holdings Industrial Agreement.

## 2.—ARRANGEMENT

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Program
  20. No Extra Claims
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

## 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 Quake Holdings 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 6 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 calendar 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.

Signed for and on behalf of:

The Unions:

**BLPPU** Signed **Common Seal**  
Date: 7/8/97  
.....  
Signed  
.....  
**WITNESS**  
**CMETU** Signed **Common Seal**  
.....  
Date: 7/8/97  
Signed  
.....  
**WITNESS**

The Company:

**Common Seal** Quake Holdings P/L  
Date: 6/8/97

.....  
**GRANT MCROBBIE**  
Signed

.....  
**PRINT NAME**  
Signed

.....  
**WITNESS**

**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
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	1 February 1998	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
<b>Plasterer, Fixer</b>					
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
<b>Painter, Glazier</b>					
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
<b>Signwriter</b>					
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
<b>Carpenter</b>					
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
<b>Bricklayer</b>					
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
<b>Stonemason</b>					
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
<b>Rooftiler</b>					
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 contractor 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.

## QUICKFIX INDUSTRIAL AGREEMENT.

No. AG 152 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

Ramsar Pty Ltd trading as Quick Fix Reinforcing.

No. AG 152 of 1997.

Quickfix Industrial Agreement.

COMMISSIONER P E SCOTT.

30 April 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 Quickfix Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

[L.S.]

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

## WAGE AGREEMENT

Schedule.

### 1.—TITLE

This Agreement will be known as the Quickfix Industrial Agreement.

### 2.—ARRANGEMENT

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Program
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

### 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 Ramsar Pty Ltd trading as Quickfix Reinforcing (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 July 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 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 \$55 per week per employee and will increase this to \$60 per week per employee on 1 August 1998.

##### 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 calendar 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.

Signed for and on behalf of:

The Unions: BLPPU Signed.....Common Seal

Date: 13/7/97

.....Signed.....

WITNESS

CMETU Signed Common Seal  
Date: 15/7/97  
.....Signed.....  
WITNESS

The Company: .....Signed.....  
Date: 14/7/97  
.....P WEALL.....  
PRINT NAME  
.....Signed.....  
WITNESS

- 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 A—WAGE RATES

	1 August 1997	1 February 1998	1 August 1998	1 February 1999
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
	\$	\$	\$	\$
Labourer Group 1	15.71	16.32	16.92	17.53
Labourer Group 2	15.17	15.75	16.34	16.92
Labourer Group 3	14.77	15.34	15.90	16.47
Plasterer, Fixer	16.33	16.96	17.58	18.21
Painter, Glazier	15.96	16.58	17.19	17.81
Signwriter	16.31	16.93	17.56	18.19
Carpenter	16.43	17.06	17.70	18.33
Bricklayer	16.27	16.89	17.52	18.14
Refractory Bricklayer	18.68	19.40	20.12	20.83
Stonemason	16.43	17.06	17.70	18.33
Rooftiler	16.14	16.76	17.38	18.00
Marker/Setter Out	16.9	17.56	18.21	18.86
Special Class T	17.13	17.79	18.45	19.11

#### 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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- 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.
- There will be no payment of lost time to a person unable to work in a safe manner.
- 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.
- For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- 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—

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

#### 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 contractor 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.

**SAFE SCAFFOLD INDUSTRIAL AGREEMENT.  
No. AG 338 of 1997.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Safe Scaffold Pty Ltd.

No. AG 338 of 1997.

Safe Scaffold Industrial Agreement.

COMMISSIONER P.E. SCOTT.

7 April 1998.

*Order.*

WHEREAS this is an application for the registration of an agreement pursuant section 41 of the Industrial Relations Act, 1979; and

WHEREAS on the 12th day of March 1998 the Commission convened a hearing for the purpose of dealing with the application; and

WHEREAS the Commission has considered the submissions of the parties and is satisfied that the Agreement contains those provisions which such agreements are required by the Act to contain, and that there is no impediment to its registration;

NOWHEREFORE, 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 Safe Scaffold Industrial Agreement in the terms of the following schedule be registered on the 12th day of March 1998.

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

[L.S.]

**SCAFFOLDING AGREEMENT**

Schedule.

1.—TITLE

This Agreement will be known as the Safe Scaffold Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Aims and Objectives of this Agreement
6. Term and Renewal of Agreement
7. Allowances
8. Dispute Settlement Procedure
9. Safety Dispute Resolution
10. First on Last Off
11. Overtime
12. Company Based Incentive Scheme
13. Industry Standards
14. Clothing and Footwear
15. Training Allowance, Training Leave, Recognition of Prior Learning

16. Pyramid Sub-contracting
17. Sick Leave
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. Signatories to the Agreement
  - Appendix A—Drug and Alcohol, Safety and Rehabilitation Program
  - Appendix B—Labour Levels for Scaffolding

### 3.—AREA AND PARTIES BOUND

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

### 4.—APPLICATION

1. This Agreement shall be binding on the Company, the Union and its' officers and employees eligible to be members of the Union employed by the Company, on scaffolding work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the relevant Award). There are approximately 5 employees covered by this Agreement.

2. The provisions of this Agreement are in lieu of entitlements specified in the relevant Award and where there is an inconsistency the Agreement shall prevail.

3. This Agreement does not cover employees engaged in maintenance, workshops, yards or deliveries.

### 5.—AIMS AND OBJECTIVES OF THE AGREEMENT

The Objectives of this Agreement are to—

1. Increase the efficiency of the Company by the effective use of the skills and commitment of the employees of the Company.
2. Improve the living standards, job satisfaction and continuity of employment of the Company's employees.
3. Develop best practice standards that are based upon a culture of opportunity, continuous learning and improvement through training.
4. Ensure that increases in efficiency on the job are implemented in such a way as to ensure that health and safety standards in the industry are maintained.
5. Provide a mechanism by which disputes can be resolved quickly and in a manner which shall avoid lost time.

### 6.—TERM AND RENEWAL OF AGREEMENT

1. This Agreement shall come into operation from the date of signing and shall remain in force until 31 October 1999.

2. Any party may terminate the Agreement provided three months' notice has first been given in writing.

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

### 7.—ALLOWANCES

1. The following rate shall apply to all employees covered by this Agreement.

- From date of signing, hourly rate of \$15.03
- From 1 February 1998, hourly rate \$15.47
- From 1 August 1998, hourly rate \$15.90
- From 1 February 1999, hourly rate \$16.34
- From 1 August 1999, hourly rate \$16.56

2. In addition, the following allowance will be paid for work carried out—

- a) A rate of \$5.25 per hour will be paid to all employees covered by this Agreement. This allowance is "all purpose" and shall be included as part of the ordinary rate.
- b) The \$5.25 per hour allowance will be paid in lieu of any other allowance.

### 8.—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.

### 9.—SAFETY DISPUTE RESOLUTION

1. It is agreed the Company and their employees have a responsibility to ensure that workplaces are safe and that employees are not exposed to hazards.

2. In the event of any disagreements on the necessity to carry out any safety measure or modify, reinforce or reinstate any safety device whatsoever, the procedures set out in this clause will be adopted.

3. No person shall dismiss a safety complaint. Any complaint should be referred to the Company's safety officer or worker's safety representative to be dealt with in accordance with the following procedures—

- a) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the Company's safety officer or the worker's safety representative.
- b) The Company's safety officer and the worker's safety representative will take immediate action to have the unsafe situation rectified.
- c) Should the Company's safety officer consider that no safety precautions are necessary, he/she will notify the worker's safety representative accordingly as soon as possible.
- d) While there is disagreement on the ruling of the Company's safety officer, the Company's safety officer will arrange for the immediate transfer of all employees from the disputed area.
- e) Should the Company's safety officer be of the opinion that no action is necessary and the employees' safety representative disagrees, an appropriate inspector from Worksafe will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- f) If disagreement still exists the chief inspector, construction branch of Worksafe or his/her nominee will be called in to assist in the resolution of the dispute.

4. Whilst the above procedure is being followed there will be no stoppage of work in respect of the matter being considered, except in the area alleged to be unsafe.

5. It is accepted that safety considerations override normal work practices and depending on the degree of potential risk to persons on the job, or the general public, can override normal demarcation practices.

### 10.—FIRST ON LAST OFF

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 8—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.

### 11.—OVERTIME

1. The allocation of overtime will be at the employer's prerogative provided that the employer will not discriminate against any employee.

2. The practice of "one in all in" will not occur.

3. An overtime roster may be introduced after agreement is reached between the employees, the Company and the Union.

### 12.—COMPANY BASED INCENTIVE SCHEME

1. The Company may negotiate incentive schemes which will not affect the terms of this Agreement. These schemes

must ensure that the Award provides the base safety net and that all workers on-site have the opportunity to share in the proposed scheme.

2. Once negotiated incentive schemes will be submitted to the Union prior to its implementation for confirmation that the relevant Award requirements have been satisfied.

13.—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 covered by this agreement 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 covered by this agreement as of 1 August 1997

14.—CLOTHING AND FOOTWEAR

1. The following items or other suitable clothing as agreed between the company and the Union 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.

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

1. The parties recognise the need to adopt a "total trade" concept for training and skills acquisition to meet the current and future requirements of the industry. To this end the parties reaffirm their commitment to training and agree that training and retraining of both the workforce and supervision will occur on an ongoing basis.

2. It is agreed that safety training will be an important component in the structured training programme.

3. All scaffolding work will be carried out using labour suitably trained and qualified to a standard approved by the Company and the Union.

4. A training allowance of \$12.00 per week per worker covered by this agreement shall be paid by the employer to the Union Education and Training Fund.

5. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The 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.

6. 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.

16.—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.

17.—SICK LEAVE

For sick leave accrued after the date of signing of 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 with the Company.

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—Drug and Alcohol, Safety and Rehabilitation Program.

20.—SIGNATORIES

On behalf of the Union  
**Common Seal** Signed  
 .....  
 (Signature)

On behalf of the Company  
**Company Seal** Signed  
 .....  
 (Signature)

Dated this 12 day of NOV 1997.  
 ANDREW R WESKIN  
 (Print Name)

APPENDIX A

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 three 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 officer, safety committee members, Union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

## APPENDIX B

## Labour Levels for Scaffolding

This appendix sets out parameters for labour levels on scaffolding work, however it has been an understanding between the parties that a common sense approach in keeping with practical and safe working conditions forms the basis of this Agreement.

1. Steel Scaffolding

Scaffolding work of a substantial nature erected over 4 metres high in accordance with Division 7 of the Occupational Safety and Health Regulations and Australian Standard 1576 shall where that scaffolding is to be erected at one time be the work of at least 3 workers.

Scaffolding that will ultimately be erected over 4 metres high, however is built in stages can be erected up to 4 metres by a two person team one of which shall be a licensed scaffolder.

Notwithstanding the abovementioned agreements and due to the variation of circumstances applicable in scaffolding work such as towers, scaffolding over uneven sites, etc, there will be consultation between the Licensed Scaffolder and the Employer on labour levels in line with practical and safe working conditions is an understanding between the parties to this agreement.

2. Aluminium Mobiles

There shall not be a requirement for 3 person gangs up to a height of 9.2 metres on Aluminium Mobiles unless deemed necessary by the employer.

## SCHOOL CANTEEN EMPLOYEES AWARD 1993.

## No. A11 of 1993.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

The Western Australian Council of State Schools Organisations.

No. A 11 of 1993.

6 April 1998.

*Order:*

WHEREAS on 22 December 1993 this application was filed in the Registry of the Commission pursuant to section 40 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS the matter was listed for hearing on 3 March 1994; and

WHEREAS on 3 March 1994 the applicant was directed to serve those additional persons the Applicant sought to have joined as parties to the proceedings;

AND WHEREAS on 4 March 1998 the matter was listed For Mention Only and thereat the parties requested that the application be dismissed;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, and by consent, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,  
Commissioner.

[L.S.]

## TOM'S CRANES INDUSTRIAL AGREEMENT.

## No. AG 4 of 1998.

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

Anna Martinazzo and Thomas Gaetano Martinazzo trading as Tom's Crane and Plant Hire Co.

No. AG 4 of 1998.

Tom's Cranes Industrial Agreement  
COMMISSIONER P.E. SCOTT .

30 April 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 Tom's Cranes Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

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

[L.S.]

## WAGE AGREEMENT

## Schedule.

## 1.—TITLE

This Agreement will be known as the Tom's Cranes Industrial Agreement.

## 2.—ARRANGEMENT

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Program
  20. No Extra Claims
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

## 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 Anna Martinazzo and Thomas Gaetano Martinazzo trading as Tom's Crane and Plant Hire Co. (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 and the Engine Drivers' (Building and Steel Construction) Award No. 20 of 1973 (the "Awards"). There are approximately 4 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 Award No. 14 of 1978.

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

## 9.—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 and allowances 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 calendar 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 unforeseen 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: 14/1/98

Signed

.....  
**WITNESS**

**CMETU** Signed **Common Seal**

.....  
Date: 14/1/98

Signed

.....  
**WITNESS**

The Company:

Toms Crane & Plant Hire Co

Signed

.....  
Date: 18/12/97

GIOVANNI RENATO

MARTINAZZO

**PRINT NAME**

Signed

.....  
**WITNESS**

## APPENDIX A—WAGE RATES

	Date of Signing	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
	\$	\$	\$	\$
Labourer Group 1	16.01	16.47	16.92	17.15
Labourer Group 2	15.47	15.90	16.34	16.56
Labourer Group 3	15.05	15.48	15.90	16.12
	Weekly Rate	Weekly Rate	Weekly Rate	Weekly Rate
	\$	\$	\$	\$
Crane Driver				
0-8 Tonnes	604.07	621.17	638.27	646.81
8—15 tonnes	617.85	635.34	652.83	661.57
15—40 tonnes	629.37	647.19	665.00	673.91
40—80 tonnes	638.52	656.59	674.67	683.70
80—100 tonnes	645.54	663.81	682.08	691.21
100—140 tonnes	655.87	674.44	693.00	702.28
140—180 tonnes	669.65	688.61	707.56	717.04
180—220 tonnes	687.94	707.41	726.88	736.61
over 220 tonnes	711.66	731.80	751.95	762.02
Tower Crane	660.59	679.29	697.98	707.33

## 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

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 contractor 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.

4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Program
  20. Income Protection
  21. No Extra Claims
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

### 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 Karel Kivitis trading as Under Cut (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 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

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.

## UNDER CUT INDUSTRIAL AGREEMENT. No. AG 27 of 1998.

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Karel Kivitis trading as Under Cut.

No. AG 27 of 1998.

Under Cut Industrial Agreement.

COMMISSIONER P.E. SCOTT.

30 April 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 Under Cut Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

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

[L.S.]

## CONCRETE CUTTING AND DRILLING AGREEMENT Schedule.

### 1.—TITLE

This Agreement will be known as the Under Cut Industrial Agreement.

### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound



## APPENDIX A—WAGE RATES

	Date of Signing	1 August 1998	1 February 1999	1 August 1999
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
Labourer Group 1	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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- The decision on a person's 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.
- There will be no payment of lost time to a person unable to work in a safe manner.
- 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.
- For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- 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—

- Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- 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.
- 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 contractor 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.

## SECURITY MONITORING CENTRES (CONTROL ROOM OPERATORS) AGREEMENT 1998.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Security Monitoring Centres Australia Pty Ltd.

No. AG 32 of 1998.

Security Monitoring Centres (Control Room Operators)  
Agreement 1998.

COMMISSIONER P.E. SCOTT.

7 April 1998.

*Order.*

HAVING heard Mr R Dhue on behalf of the Applicant and Mr A Westall 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 Security Monitoring Centres (Control Room Operators) Agreement 1998 in the terms of the following schedule be registered on the 23rd day of March 1998.

(Sgd.) P.E. SCOTT,

Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Security Monitoring Centres (Control Room Operators) Agreement 1998.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Incidence and Parties Bound
5. Operation of Agreement
6. Relationship to Parent Agreement
7. Commitments
8. Disputes Settlement Procedure
9. Casual Employees
10. Hours of Work
11. Accrued Days Off
12. Rates of Pay
13. Annual Leave
14. Classification Structure
15. Introduction of Change and Redundancy
16. Number of Employees Covered by this Agreement
17. Signatories

3.—SCOPE

The scope of this Agreement shall be that prescribed in the Clerks' (Control Room Operators) Award 1984 No. A14 of 1981.

4.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall be binding on the parties to the Agreement individually and collectively and shall apply to employees of Security Monitoring Centres Australia Pty Ltd who are members, or eligible to be members of the organisation of employees party to this Agreement and who are covered by the Award detailed in Clause 3.—Scope.

(2) The parties to this Agreement are—

- Australian Municipal, Administrative, Clerical and Services Union of Employees, West Australian Clerical and Administrative Branch.
- Security Monitoring Centres Australia Pty Ltd.

5.—OPERATION OF AGREEMENT

Except as provided in Clause 10.—Hours of Work, this Agreement shall operate from the commencement of the first

pay period on or after 1 February 1998 and shall remain in operation until 31 January 2000.

#### 6.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the relevant Award as identified in Clause 3.—Scope of this Agreement.

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

#### 7.—COMMITMENTS

(1) The concept of continuous improvement in all aspects of Security Monitoring Centres operations is seen as fundamental to its prosperity in an increasingly competitive market. The parties and all employees are committed to this concept as a cornerstone of this and subsequent agreements and in particular, the parties recognise—

- That the success of the Control Room depends upon the highest possible standards of monitoring, telephone procedures and techniques and training will be provided to assist this;
- There will be positive co-operation between employees and management with regard to dealing with any issues arising within the workplace.
- The requirement to develop and improve all aspects of the employment relationship including the issue of mutual trust and respect.

#### 8.—DISPUTES SETTLEMENT PROCEDURE

(1) Subject to the provisions of the Industrial Relations Act, 1979 any dispute, question or difficulty arising under this clause shall be dealt with as follows—

- (a) As soon as is practicable after the dispute, question or difficulty has arisen, the employee concerned will take the matter up with his or her immediate supervisor offering him or her the opportunity to remedy the cause of this dispute, question or difficulty within 2 working days.
- (b) Where any such attempt at settlement has failed, or where the dispute, question or difficulty is of such a nature that a direct discussion between the employee and his or her immediate supervisor would be inappropriate, the employee concerned will as soon as practicable take the matter up with his or her department head or the Control Room Manager affording the department head or Control Room Manager the opportunity to remedy the cause of the dispute, question or difficulty within 2 working days.
- (c) Where any such attempt at settlement has failed, or where the dispute, question or difficulty is of such a nature that a direct discussion between the employee and his or her department head and Control Room Manager would be inappropriate, the employee may notify a duly authorised representative of his or her Union who, if he or she considers that there is some substance in the dispute, question or difficulty, shall forthwith take the matter up with the employer or its representative.
- (d) If the matter is not settled it shall be submitted to the Western Australian Industrial Relations Commission for a determination and, subject to the rights of appeal, all parties shall abide by the determination.
- (e) Without prejudice to either party, work should continue in accordance with this agreement while the matters in dispute are being dealt with in accordance with this paragraph.

#### 9.—CASUAL EMPLOYEES

(1) Notwithstanding the provisions of Clause 14 subclause (3) paragraph (a) of the Award, casual employees may be employed for periods exceeding 4 weeks provided—

- (i) Only two casual employees may be rostered for work on any 1 shift
- (ii) Casual employees must be rostered on a shift simultaneously with a full-time Control Room Operator.

(iii) Notwithstanding the provisions of (i), if due to unforeseen circumstances, full time staff cannot adequately cover a shift a maximum of 3 casual staff may be rostered on the one shift.

- (b) (i) The number of hours worked in any week by casual employees shall not exceed an amount equivalent to 20% of the number of hours worked by full time employees in such a week.
- (ii) The provisions of (i) shall not apply if there is a need for casual employees to provide coverage for periods of annual leave, sick leave, long service leave and special short term monitoring contracts.
- (iii) Any dispute arising out of the engagement of casual employees shall be dealt with in accordance with Clause 8.—Disputes Settlement Procedure.
- (c) Should there be a need for a reduction in hours to be worked or in the number of staff employed in the Control Room then the number of hours worked by casual employees or the number of casual employees employed shall be reduced first.
- (d) Except as provided otherwise in this clause, casual employees shall not be employed at the expense of permanent staff members.

#### 10.—HOURS OF WORK

(1) Notwithstanding the provisions of Clause 7—Hours of the Award—

- (a) (i) An employee shall work a maximum of 80 hours per fortnight with shifts of no less than 6 hours and no more than 12 hours in length.
- (ii) An employee rostered to work a 12 hour shift shall be entitled to two twenty minute paid crib breaks during such shift. The first such break shall be taken during the first 5 hours of the shift.
- (b) (i) The hours worked during such shifts as referred to at (a) shall be paid for at the relevant ordinary rate of pay which shall include the appropriate shift penalty.
- (ii) A loading of 20% on the ordinary rate shall be paid for all shifts that commence between 12 noon and 4.00am.
- (c) (i) Employees shall be entitled to at least a 10 hour break between shifts.
- (ii) An employee who is required to commence a shift without a 10 hour break since the termination of their previous shift shall be paid at overtime rates for the duration of such shift.

(2) The operation of 12 hour shifts shall be continually monitored in light of any health and safety issues that may arise.

(3) This clause, other than subclauses (1)(b)(ii), (c)(i) and (c)(ii), shall have effect from 1 January 1992.

#### 11.—ACCRUED DAYS OFF

(1) Employees covered by this Agreement shall not be entitled to an Accrued Day Off.

#### 12.—RATES OF PAY

(1) The following increases shall apply to employee's actual rate of pay who are covered by this Agreement;

- (a) 3% increase payable from the first pay period commencing on or after 1 February 1998.
- (b) 3% increase payable from the first pay period commencing on or after 1 February 1999.

(2) Employees may elect to have their wages averaged over the period of the roster to avoid fluctuating payments which result from the addition of shift loadings.

#### 13.—ANNUAL LEAVE

By mutual agreement between the employer and employee an employee may take, in any calendar year, a maximum of one weeks annual leave in single days. The employer will not unreasonably withhold their agreement.

14.—CLASSIFICATION STRUCTURE

The party's shall develop and implement a skills based classification structure within 12 months from the registration of this Agreement.

15.—INTRODUCTION OF CHANGE AND REDUNDANCY

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

"Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the Award or this Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have "significant effects".

The Company will discuss with the employees affected and their Union, the introduction of the changes, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of those changes on employees and will give prompt consideration to matters raised by the employees and their Union in relation to their changes.

For the purpose of this discussion, the Company will provide in writing to the employees concerned and their Union, all relevant information about the changes on employees and any other matters likely to affect employees provided that the Company will not be required to disclose confidential information the disclosure of which would be contrary to the Company's interests.

(a) Redundancy

(i) Discussions Before Redundancies

Where any employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done anymore and this is not due to the ordinary customary turnover of labour and that decision may lead to termination of employment, the employer must hold discussions with the employees directly affected and with their Union.

(ii) Severance Pay

In lieu of notice prescribed for ordinary termination an employee whose employment is terminated for reasons set out in subclause (i) above will be entitled to—

- (a) 2 weeks pay for each completed year of service.
- (b) 1 days pay for each month of service that is completed during an incomplete year of service.
- (c) The total payment received pursuant to subclauses (a) and (b) shall not exceed 52 weeks pay.
- (d) "weeks pay" means the ordinary base weekly rate of wage for the employee concerned.

(b) For the purpose of this clause, continuity of service will be as defined as published in 77 WAIG pages 1 to 4.

(c) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (i) above may terminate his or her employment during the period of notice. In such circumstances the employee will not be entitled to payment in lieu of notice.

(d) Alternative Employment

The Company, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the Company obtains acceptable alternative employment for an employee.

(e) Time Off During Notice Period

During the period of notice of termination, given by the Company an employee will be allowed up to one day's time

off without loss of pay during each week of notice for the purpose of seeking other employment.

If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee will, at the request of the employer, be required to produce proof of attendance at an interview or he or she will not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

(f) Employees With Less Than One Year's Service

This clause does not apply to employees with less than one year's continuous service and the general obligation on the Company should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

(g) Employees Exempted

This clause does not apply where employment is terminated as a consequence of conduct that justifies instant dismissal, including malingering, inefficiency or neglect of duty. This clause also does not apply in the case of casual employees, seasonal employees, temporary employees or apprentices.

(h) Incapacity to Pay

The Company, in particular redundancy cases, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the Company's incapacity to pay.

16.—NUMBER OF EMPLOYEES COVERED BY THIS AGREEMENT

This Agreement shall apply to approximately 30 employees.

17.—SIGNATORIES

SIGNED FOR AND ON BEHALF OF—

SECURITY MONITORING CENTRES AUSTRALIA PTY LTD.

Signed

..... DATE: 25-2-98

SIGNED FOR AND ON BEHALF OF AUSTRALIAN MUNICIPAL, ADMINISTRATIVE, CLERICAL AND SERVICES UNION OF EMPLOYEES, WEST AUSTRALIAN CLERICAL AND ADMINISTRATIVE BRANCH

Signed

..... DATE: 25-2-98

Common Seal

**SUNASON INDUSTRIAL AGREEMENT.  
No. AG 8 of 1998.**

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

Sunason Pty Ltd.

No. AG 8 of 1998.

Sunason Industrial Agreement.

COMMISSIONER P E SCOTT.

7 April 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 Sunason Industrial Agreement in the terms of the following schedule be registered on the 25th day of February 1998.

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

## WAGE AGREEMENT

### Schedule.

#### 1.—TITLE

This Agreement will be known as the Sunason Industrial Agreement.

#### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Site Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning
15. Seniority
16. Sick Leave
17. Pyramid Sub-Contracting
18. Fares and Travelling
19. Drug and Alcohol, Safety and Rehabilitation Program
20. Income Protection
21. No Extra Claims

Appendix A—Wage Rates

Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

Appendix C—Site Allowance

#### 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 Sunason 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 4 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 and allowances 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 calendar 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 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.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated through the ACTU Insurance Broking Pty Limited (ACN. 069 795 875).

#### 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.

Signed for and on behalf of—

The Unions: BLPPU Signed Common Seal  
Date: 14/1/98

Signed

WITNESS

CMETU Signed Common Seal  
Date: 14/1/98

Signed

WITNESS

The Company COMMON SEAL Signed  
Date: 22/12/97

Gary Bentley

PRINT NAME

Signed

WITNESS

#### 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 \$
Labourer Group 1	15.56	16.01	16.47	16.92
Labourer Group 2	15.03	15.47	15.90	16.34
Labourer Group 3	14.63	15.05	15.48	15.90
Plaster, Fixer	16.17	16.64	17.11	17.58
Painter, Glazier	15.81	16.27	16.73	17.19
Signwriter	16.15	16.62	17.09	17.56
Carpenter	16.27	16.75	17.22	17.70
Bricklayer	16.11	16.58	17.05	17.52
Refractory				
Bricklayer	18.50	19.04	19.58	20.12
Stonemason	16.27	16.75	17.22	17.70
Rooftiler	15.99	16.45	16.92	17.38
Marker/Setter Out	16.75	17.24	17.72	18.21
Special Class T	16.96	17.46	17.95	18.45

#### APPRENTICE 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 \$
<b>Plasterer, Fixer</b>				
Yr 1	6.79	6.99	7.18	7.38
Yr 2 (1/3)	8.90	9.16	9.42	9.68
Yr 3 (2/3)	12.13	12.49	12.84	13.19
Yr 4 (3/3)	14.23	14.65	15.06	15.48
<b>Painter, Glazier</b>				
Yr 1 (.5/3.5)	6.64	6.84	7.03	7.22
Yr 2 (1/3), (1.5/3.5)	8.70	8.95	9.20	9.45
Yr 3 (2/3), (2.5/3.5)	11.86	12.20	12.55	12.89
Yr 4 (3/3), (3.5/3.5)	13.92	14.32	14.73	15.13
<b>Signwriter</b>				
Yr 1 (.5/3.5)	6.79	6.99	7.18	7.38
Yr 2 (1/3, 1.5/3.5)	8.88	9.14	9.40	9.65
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.82	13.17
Yr 4 (3/3, 3.5/3.5)	14.21	14.63	15.04	15.46
<b>Carpenter</b>				
Yr 1	6.84	7.04	7.24	7.44
Yr 2 (1/3)	8.95	9.21	9.47	9.73
Yr 3 (2/3)	12.21	12.56	12.92	13.27
Yr 4 (3/3)	14.32	14.73	15.15	15.57
<b>Bricklayer</b>				
Yr 1	6.77	6.96	7.16	7.36
Yr 2 (1/3)	8.86	9.12	9.37	9.63
Yr 3 (2/3)	12.08	12.43	12.79	13.14
Yr 4 (3/3)	14.17	14.59	15.00	15.41
<b>Stonemason</b>				
Yr 1	6.84	7.04	7.24	7.44
Yr 2 (1/3)	8.95	9.21	9.47	9.73
Yr 3 (2/3)	12.21	12.56	12.92	13.27
Yr 4 (3/3)	14.32	14.73	15.15	15.57
<b>Rooftiler</b>				
6 months	9.12	9.38	9.65	9.91
2nd 6 months	10.02	10.31	10.61	10.90
Yr 2	11.71	12.05	12.39	12.73
Yr 3	13.74	14.14	14.54	14.94

## 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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- The decision on a person's 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.
- There will be no payment of lost time to a person unable to work in a safe manner.
- 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.
- For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- 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—

- Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- 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.
- 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 contractor 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.

\_\_\_\_\_

**WEST AUSTRALIAN NEWSPAPERS CLERICAL  
(ENTERPRISE BARGAINING) AGREEMENT 1993.  
No. 6 of 1993.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

West Australian Newspapers Ltd

and

The Federated Clerks' Union of Australia, Industrial Union  
of Workers, W.A. Branch.

No. AG 6 of 1993.

7 April 1998.

*Order.*

WHEREAS on 4 February 1993 the application cited herein was filed in the Registry of the Commission pursuant to section 41 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS the matter was listed for hearing on 23 November 1993 however that proceeding was adjourned in order that the parties might review the terms of their agreement; and

WHEREAS on 23 March 1994 the Commission made a written request to the first named party for advice upon the status of the matter; and

WHEREAS on 5 April 1994 the first named party requested that the application remain afoot; and

WHEREAS on 4 March 1998 the matter was listed For Mention Only and thereat the first named party asked that the Commission register the aforementioned agreement as an Industrial Agreement;

AND WHEREAS the Commission is satisfied that the agreement submitted for registration—

- (a) does not comply with the requirements of the Act;
- (b) has expired according to its terms;
- (c) is defunct and has in effect been replaced by a subsequently registered Industrial Agreement;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,

[L.S.]

Commissioner.

\_\_\_\_\_

**WESTERN AUSTRALIAN ELECTORAL  
COMMISSION ENTERPRISE AGREEMENT 1998.  
No. PSA AG 31 of 1998.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia  
Incorporated

and

Electoral Commissioner, Western Australian Electoral  
Commission

No. PSA AG 31 of 1998.

Western Australian Electoral Commission Enterprise  
Agreement 1998.

COMMISSIONER P E SCOTT.

30 April 1998.

*Order.*

HAVING heard Mr K Ross on behalf of the Applicant and Mr C Patterson on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Western Australian Electoral Commission Enterprise Agreement 1998 in the terms of the following schedule be registered on the 1st day of April 1998.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

\_\_\_\_\_

Schedule.

TABLE OF CONTENTS

1. TITLE
2. SCOPE OF THE AGREEMENT
3. PARTIES AND NUMBER OF EMPLOYEES BOUND
4. DEFINITIONS
5. DATE AND PERIOD OF OPERATION OF THE AGREEMENT
6. NO FURTHER CLAIMS
7. RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS
8. SINGLE BARGAINING UNIT
9. SHARED MISSION FOR THE WESTERN AUSTRALIAN ELECTORAL COMMISSION
10. OBJECTIVES AND PRINCIPLES
11. PRODUCTIVITY IMPROVEMENTS

12. PRODUCTIVITY IMPROVEMENTS AND REWARDS
13. SALARY OUTCOME
14. SALARY INCREASES
15. CONSULTATION MECHANISM
16. DISPUTE SETTLEMENT PROCEDURES
17. EMPLOYMENT CONDITIONS
  - 17.1 ANNUAL LEAVE LOADING
  - 17.2 BEREAVEMENT LEAVE
  - 17.3 FLEXI-LEAVE
  - 17.4 PART TIME EMPLOYMENT
  - 17.5 HOURS OF SERVICE—ELECTION PERIODS
  - 17.6 LONG SERVICE LEAVE
  - 17.7 OVERTIME ALLOWANCE
  - 17.8 PARENTAL LEAVE
  - 17.9 PUBLIC SERVICE HOLIDAY—DAYS IN LIEU
  - 17.10 CHRISTMAS SHUTDOWN
  - 17.11 SICK AND SPECIAL LEAVE
18. SIGNATURES OF PARTIES TO THE AGREEMENT
  - SCHEDULE A—SALARIES
  - SCHEDULE B—OVERTIME
  - SCHEDULE C—GRIEVANCE/DISPUTE SETTLING PROCEDURES

#### 1.—TITLE

This Agreement shall be known as the Western Australian Electoral Commission Enterprise Agreement 1998 and shall replace the Western Australian Electoral Commission Enterprise Agreement 1996.

#### 2.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Western Australian Electoral Commission employees employed under the Public Sector Management Act working for the Western Australian Electoral Commission who are members of or eligible to be members of the CSA party to this Agreement.

#### 3.—PARTIES AND NUMBER OF EMPLOYEES BOUND

3.1 This Agreement is made between The Electoral Commissioner, and the Civil Service Association of Western Australia Incorporated.

3.2 It is estimated that 20 employees will be bound by this Agreement upon registration.

#### 4.—DEFINITIONS

**“Agreement”** The Western Australian Electoral Commission Enterprise Agreement 1998

**“CSA”** Civil Service Association of Western Australia Incorporated

**“Employee”** for the purpose of this Agreement, someone who is referred to at Clause 2—Scope

**“Employer”** the Electoral Commissioner

**“Family”** a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of the employee. (Equal Opportunity Act 1984)

**“Government”** the State Government of Western Australia

**“Minister”** the Minister or Ministers of the Crown responsible for the administration of the Commission

**“PSA 1992”** the Public Service Award 1992

**“the Commission”** The Western Australian Electoral Commission

**“WAIRC”** The Western Australian Industrial Relations Commission

#### 5.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

5.1 This Agreement will operate for a period of 2 years from the date of registration in the Western Australian Industrial Relations Commission (WAIRC).

5.2 No later than six months before the expiry of this Agreement the parties shall commence negotiations for a new Agreement.

5.3 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.

5.4 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.—NO FURTHER CLAIMS

6.1 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.

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

#### 7.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

7.1 This Agreement shall be read and interpreted wholly in conjunction with the provisions of the PSA 1992 which apply to the parties bound to this Agreement.

7.2 Where there is any inconsistency between this Agreement and the relevant parent Award, this Agreement shall have precedence to the extent of any inconsistency.

#### 8.—SINGLE BARGAINING UNIT

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

8.2 The SBU comprises representatives from the Commission and CSA.

#### 9.—SHARED MISSION FOR THE WESTERN AUSTRALIAN ELECTORAL COMMISSION

9.1 The parties to this Agreement are committed in striving to achieve the Commission’s mission which is—

To maintain and enhance the integrity of electoral systems for which the Western Australian Electoral Commission is responsible.

In achieving our mission we have five (5) primary values which shape the way we will operate. These are—

- (a) To ensure services and policy have a customer focus.
- (b) To strive for success and continuous improvement in all our activities.
- (c) To carry out all our activities with integrity.
- (d) To be a leader in the field of educating the public in their electoral rights and obligations.
- (e) To develop a corporate culture which fosters innovation, creativity and a commitment to the development of the employee’s of the Commission.

#### 10.—OBJECTIVES AND PRINCIPLES

10.1 The Western Australian Electoral Commission will continuously strive to provide a quality service to the Western Australian public and to improve the overall performance of the Commission. Enterprise bargaining will assist this by—

- (a) Ensuring that the operations of the Commission are managed efficiently and effectively in the best interest of its employees, customers and clients that it serves.
- (b) Satisfying the requirements of clients and customers through the provision of reliable, efficient and professional services.
- (c) Achieving the Commission’s mission and improving productivity and efficiency through ongoing improvements.
- (d) Promoting the development of trust and motivation and to continue to foster enhanced employee relations.
- (e) Facilitating greater flexibility in decision making and allocation of human and other resources.

- (f) Promoting increased satisfaction from jobs and secure employment opportunities.
- (g) Developing and pursuing changes on a cooperative continuing basis by using participative practices.
- (h) Promoting health, safety, welfare and equal opportunity for all employees.
- (i) Constantly developing the skills of employees through the provision of appropriate training and career development.
- (j) Constantly reviewing management and employee work practices with a view to promoting efficiency and flexibility.

#### 11.—PRODUCTIVITY IMPROVEMENTS

11.1 The parties agree that there is a range of current and ongoing measures within the Commission that have improved and continue to improve productivity, efficiency, flexibility and quality.

11.2 The parties agree that such productivity is substantial and in recognition of these improvements a salary increase of 2.67% will apply from the date of registration of the Agreement.

11.3 The Commission will introduce a compulsory shutdown of three days which will occur between Christmas and New Year commencing 1998. The employee will be required to take leave during this time. This initiative provides for a significant overall productivity gain.

11.4 Commission staff will complete a series of management training courses to assist in the Commission's overall strategic policy of project management.

11.5 Public access to the electoral roll will be enhanced by developing and implementing computerised access to the roll.

11.6 The initiatives described in Clauses 11.3, 11.4 and 11.5 introduced from the commencement of the agreement will provide productivity improvements that will result in a salary increase of 2% from 12 months after registration date of Agreement.

11.7 Further initiatives will be developed and agreed upon by the parties by 31 December 1998 in order to provide for new productivity improvements and a consequential salary increment of 1% from 1 July 1999, subject to achievement of the developed initiatives.

Details of these productivity initiatives and targets and associated salary rewards are in Clauses 12 and 13.

#### 12.—PRODUCTIVITY IMPROVEMENTS AND REWARDS

12.1 The Enterprise Bargaining Agreement that preceded this Agreement made provisions for a number of productivity issues to be dealt with during the life of the Agreement that would form the basis of a future Agreement.

The management of these issues will provide ongoing and continuous benefit to the Commission and its customers. The reward applying to staff for these improvements is 2.67% payable from the registration of this Agreement.

12.2 The following initiatives are to be developed and implemented upon commencement of this Agreement—

- Christmas shutdown from 1998
- Management training for mid level staff
- Computerised access to the electoral roll for the public

Combined with ongoing savings for by-elections initiated in regard to non voter processing the successful achievement of these initiatives will provide a salary increase of 2% from 12 months after the registration date of the Agreement.

12.3 Performance reporting initiatives already developed have laid the framework for future development of new productivity initiatives. If such initiatives are developed by 31 December 1998 and are implemented and evaluated successfully by 30 June 1999, a 1% salary increase will apply from 1 July 1999.

#### 13.—SALARY OUTCOME

Payment Date	Percentage Increase	Current Ongoing or Future Targets/Initiatives on which the Increase is Based.
At Registration	2.67%	Current and ongoing initiatives as detailed in the preceding Enterprise Bargaining Agreement.
12 months after Registration date of Agreement	2%	Christmas shutdown—to take effect from December 1998. Non-voter processing—to apply to by-elections as required Computerised public access to the electoral roll—to be established by 30 June 1998 Management Training Course—to be completed by 30 June 1998
1 July 1999	1%	Specific initiatives and targets are to be developed by 31 December 1998, with targets achieved by 30 June 1999.
<b>TOTAL</b>	<b>5.67%</b>	

#### 14.—SALARY INCREASES

14.1 The following salary increases are payable on the basis of implementation and continued cooperation of those improvements in productivity and work practice changes outlined in Clause 11—Productivity Improvements.

14.2 The following increases will be payable during the life of this Agreement—

- (a) An increase of 2.67% will apply on registration of the Agreement in the Western Australian Industrial Relations Commission; and
- (b) A further increase of 2% to apply on and from 12 months after the Registration date of the Agreement, subject to achievements of targets documented at Clause 13; and
- (c) A further increase of 1% to apply on and from 1 July 1999, subject to the parties developing by 31 December 1998, agreed productivity initiatives and targets sufficient to justify a 1% salary increase, and the achievement of those initiatives and targets by 30 June 1999.

The rates that shall apply during the Agreement are set out in Schedule A—Salaries of this Agreement.

#### 15.—CONSULTATION MECHANISM

15.1 The parties to this Agreement are committed to working together to improve the quality of electoral services to the Western Australian public. The parties will form a Joint Consultative Committee for consultation on all matters covered by this Agreement. Its purpose is to actively progress the implementation of the agreement and monitor achievements in productivity.

#### 16.—DISPUTE SETTLEMENT PROCEDURES

In the event of any questions, disputes or difficulties between the parties as to the interpretation and implementation of this Agreement or other matters, the following procedures shall apply—

- (a) The CSA 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 CSA Representative.
- (b) If the matter is not resolved within 5 working days following the discussion in accordance with sub-clause (a) hereof the matter shall be referred by the CSA Representative to the Electoral Commissioner or his/her nominee for resolution.
- (c) If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the Electoral Commissioner it may be referred by either party to the WAIRC.

Grievance/Dispute Settling Procedures are detailed at Schedule C of this Agreement.

#### 17.—EMPLOYMENT CONDITIONS

##### 17.1 ANNUAL LEAVE LOADING

The following provisions shall be read in conjunction with the existing clause 19 (Annual Leave) provisions in the PSA 1992.

## 17.1.1 Definitions

- (a) **Accrued leave**—is the leave an officer is entitled to from a previous calendar year.
- (b) **Pro-rata leave**—is the proportion of leave that an officer is entitled to in the current year, either from the date of commencement, or to the date of cessation.

## 17.1.2 Annual Leave Loading—

- (a) Employees shall be paid annual leave loading in a lump sum equivalent to 17.5% of four weeks salary on the first pay period in December of each year, subject to—
- (i) any employee commencing at the Commission during the year shall receive a pro-rata lump sum equivalent, calculated from the date of commencement to 31 December, and
  - (ii) Any employee who is promoted or transferred out of the Commission shall receive a pro-rata payment of annual leave loading calculated to the final day of employment with the Commission.
- (b) The salary rate for such annual leave loading shall be at the employee's substantive salary except for employees who—
- (i) are receiving an allowance for higher duties and where the allowance has been paid for a continuous period of 12 months or more prior to the payment of the leave loading; or
  - (ii) would have received an allowance for a continuous period of 12 months or more to 31 December of the year in question.
- (c) An employee meeting the requirements of Clause 17.1.2(b)(i) and (ii) shall be paid leave loading at the higher rate.

## 17.2 BEREAVEMENT LEAVE

## 17.2.1 Entitlement

Subject to Clause 17.2.4, on the death of a family member as defined in Clause 4 -Definitions of this Agreement, the employee is entitled to paid bereavement leave of up to two (2) days per bereavement.

17.2.2 The two (2) days need not be consecutive.

17.2.3 Bereavement leave is not to be taken during a period of any other kind of leave.

17.2.4 Proof in support of claim for leave;

An employee who claims to be entitled to paid leave under Clause 17.2.1, is to provide to the Electoral Commissioner, if so requested by the Electoral Commissioner, evidence that would satisfy a reasonable person as to—

- (a) the death that is the subject of the leave sought, and
- (b) the relationship of the employee to the deceased person.

## 17.3 FLEXI LEAVE

The following provisions shall be read in conjunction with the existing flexitime Clause 16 (Hours) provisions in the PSA 1992. These provisions replace clause 16 (3)(h)(i) and (ii) of the PSA 1992.

## 17.3.1 Credit hours

- (a) Credit hours in excess of the required 150 hours to a maximum of 15 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (b) Credit hours in excess of 15 hours at the end of a settlement period shall be lost.

## 17.3.2 Election Periods

Flexi time will not operate during any six (6) week election period as defined in Clause 17.5.1(a) and 17.5.2(b).

## 17.4 PART TIME EMPLOYMENT

The following provisions shall be read in conjunction with the existing Clause 9 (Part Time Employment) of the PSA 1992. This provision shall replace Clause 9(l)(a) of the PSA 1992.

## 17.4.1 Definition

- (a) Permanent Part time employment is defined as regular and continuing employment for a minimum of 7.5 hours per week, and a maximum of 30 hours per week.

The employee shall not be required to work for a period of less than 3 hours on any single occasion.

## 17.5 HOURS OF SERVICE—ELECTION PERIODS

The following provisions shall be read in conjunction with the existing Clause 16 (Hours) provisions in the PSA 1992.

## 17.5.1 Definitions—

For the purposes of this Clause, the following terms shall have the following meanings

- (a) Election Period—

The "election period" shall be a (6) six week period from the day of issue of the election writs or as determined by the Electoral Commissioner. Such time shall be typically four weeks pre-election and two weeks post election day.

## 17.5.2 Prescribed Hours of Duty

- (a) Prescribed hours of duty to be observed by officers shall be nine hours per day during an "election period" to be worked between 7.30 am and 9.30 pm Monday to Friday as determined by the Electoral Commissioner with a lunch interval of thirty or forty-five minutes.
- (b) The Electoral Commissioner shall give notice in writing of the intention to vary the prescribed hours of duty as prescribed in Clause 16 (1) (Hours) of the PSA 1992 for officers affected by the change. Such notice shall be given as soon as practicable after the announcement of the election date which requires the prescribed hours of duty to be changed. These elections are—
  - General election
  - Referendum
  - Other parliamentary elections as determined by the Electoral Commissioner.

## 17.5.3 Other Working Arrangements

- (a) Notwithstanding clause 16 (2)(a) of the PSA 1992, where it is considered necessary to provide more productive operations, the Electoral Commissioner may authorise the operation of alternative working arrangements.

Such alternative working arrangements may include—

- (i) The operation of more flexible starting and finishing times
- (ii) Opening Saturday morning.

## 17.5.4 More Flexible Starting and Finishing Times

- (a) Officers will operate under a more flexible starting and finishing time system as determined by management and having regard for the operational needs of the project.
- (b) Ten Hour break.

(i) An officer shall be entitled to a break of not less than ten (10) hours between the completion of work on one day and the commencement of work on the next, without loss of salary for ordinary working time occurring during such absence.

(ii) Provided that where an officer is directed to return to or continue work without the break provided in subparagraph (i) of this paragraph, then the officer shall be paid at double the ordinary rate until released from duty, or until the officer has had ten consecutive hours off duty without loss of salary for ordinary working time occurring during such absence.

## 17.5.5 Flexitime Arrangements

- (a) Flexitime arrangements will not operate for the period as prescribed in Clause 17.5.1(a).

- (b) All hours in debit or credit prior to the change in prescribed hours as per Clause 17.5.2(a) of this clause shall be carried over at the conclusion of the change in hours with the return to flexitime arrangements.

#### 17.6 LONG SERVICE LEAVE

The following provisions shall be read in conjunction with the existing Clause 21 (Long Service Leave) provisions in the PSA 1992.

##### 17.6.1 Clearance of Long Service Leave.

- (a) Long service leave shall be taken within three years of leave becoming due except as provided in (b) of this clause.
- (b) Deferral
- (i) The Electoral Commissioner may approve the deferral of an officer taking an entitlement of long service leave beyond three years in exceptional circumstances. Exceptional circumstances shall include the proposed retirement of an officer within five years of the date of accrual of the entitlement.
  - (ii) Application for the deferral of an entitlement of long service leave shall be made in writing and referred to the Electoral Commissioner before the third anniversary of the accrual of the entitlement.
  - (iii) Approval to defer the taking of long service leave given in accordance with Clause 17.6.1(b)(ii) may be withdrawn or varied at any time by the Electoral Commissioner. The officer must be given notice in writing of the withdrawal or variation.

##### 17.6.2 Minimum period of Long Service Leave

- (a) The portion of long service leave taken on full or half pay shall be not less than two (2) weeks entitlement.
- (b) Portions of long service leave in excess of two weeks shall be in multiples of weekly entitlements;

provided that if less than four (4) weeks remain, the remaining balance shall be taken as one period of leave.

#### 17.7 OVERTIME ALLOWANCE

The following provisions shall be read in conjunction with the existing Clause 18 (Overtime) provisions in the PSA 1992.

17.7.1 For the purposes of the Clause, the following terms shall have the following meanings—

**“Overtime”** means all work performed only at the direction of the Chief Executive Officer or a duly authorised officer outside the prescribed hours of duty for defined overtime projects.

Overtime projects are defined as—

- (a) State General Election
- (b) First two(2) by-elections in any calendar year
- (c) Perth Royal Show
- (d) Local Government Roll Closure
- (e) All other incidental periods of overtime.

**Any other period of “overtime arising from exceptional circumstances”** and not covered by overtime above, shall include but is not limited to—

- (a) By-elections in excess of two (2) per calendar year
- (b) Boundary redistribution
- (c) Any period in excess of the “election period” as defined in Clause 17.5 (Hours of Service—Election Periods), of this Agreement
- (d) Local Government Postal Voting Elections.

**“Prescribed hours of duty”** means an officer’s normal working hours as prescribed by the Chief Executive Officer in accordance with Clause 17.5 (Hours of Service—Election Periods), of this Agreement and as per Clause 16 (1) (Hours) of the PSA 1992.

##### 17.7.2 Payment for Overtime

This clause replaces Clause 18 (2)(d) of the PSA 1992 when referring to **“overtime”**. Payment for **“overtime”** as defined

in Clause 17.7.1 of this Agreement shall be calculated on an hourly basis in accordance with Schedule B—Overtime.

Payment for any other **“period of overtime arising from exceptional circumstances”** as defined in Clause 17.7.1 shall be calculated on an hourly basis in accordance with Schedule B—Overtime.

#### 17.8 PARENTAL LEAVE

The following provisions shall replace in full the Maternity Leave Clause 23 of the PSA 1992.

##### 17.8.1 Definitions—

- (a) Adoption—in relation to a child, is a reference to a child who—
- (i) is not the natural child or the step child of the employee or the employee’s spouse;
  - (ii) is less than 5 years of age; and
  - (iii) has not lived continuously with the officer for 6 months or longer.
- (b) Continuous service—means service under an unbroken contract of employment and includes—
- (i) any period of parental leave.
  - (ii) any period during which the officer is absent on full pay or part pay from duties in the Public Service but does not include—
    - (aa) any period exceeding two weeks during which the officer is absent on leave without pay, except where leave without pay is approved for the purpose of fulfilling an obligation by the Government of Western Australia to provide staff for a particular assignment external to the Public Sector of Western Australia.
    - (bb) any service of a Cadet whilst undertaking full time studies.

- (c) Expected date of Birth—means the day certified by a medical practitioner to be the day on which the medical practitioner expects the officer or the officer’s spouse, as the case may be, to give birth to a child.
- (d) Parental Leave—means leave provided for by Clause 17.8.2.
- (e) Spouse—includes a Defacto spouse.

##### 17.8.2 Entitlement

- (a) Subject to Clauses 17.8.4, 17.8.5(a) and 17.8.6(a), an officer, other than a casual officer, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—
- (i) the birth of a child to the officer or the employee’s spouse; or
  - (ii) the placement of a child with the employee with a view to the adoption of the child by the employee.
- (b) An employee is not entitled to take parental leave unless he or she has given the employer at least 10 weeks’ written notice of his or her intention to take the leave.
- (c) An officer is not entitled to take parental leave at the same time as the employee’s spouse but the subclause does not apply to one week’s parental leave;—
- (i) taken by the male parent immediately after the birth of the child; or
  - (ii) taken by the officer and the officer’s spouse immediately after a child has been placed with them with a view to their adoption of the child.
- (d) The entitlement to parental leave is reduced by any period of parental leave taken by the officer’s spouse in relation to the same child except the period of one week’s leave referred to in Clause 17.8.2(c).
- (e) An officer proceeding on parental leave may elect to take a shorter period of parental leave in accordance with Clause 17.8.2(a), and may at any time during that period of leave elect to extend or reduce the period of the original application within the limitations of the provisions of Clauses 17.8.2(c) and 17.8.3.

(f) An officer proceeding on parental leave may elect to utilise—

- (i) accrued annual leave
- (ii) accrued long service leave

for the whole or part of the period referred to in Clause 17.8.2(a). The periods of leave referred to in paragraphs (i) and (ii) of this subclause which are utilised, shall be paid leave.

(g) Absence of an officer which has been permitted in accordance with the provisions of this clause shall not be deemed absence on sick leave.

#### 17.8.3 Maternity Leave to Start 6 Weeks Before Birth

(a) A female officer who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave six (6) weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the officer is fit to work.

(b) Where an officer has not applied for leave in accordance with the provisions of this clause, and does not have express approval of the Electoral Commissioner for continued employment, the Electoral Commissioner may direct the officer to take maternity leave, and may determine the date on which such leave shall commence. Should the officer not comply with the directions, disciplinary action may be taken against her.

#### 17.8.4 Medical Certificate

An officer who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the employer a certificate from a medical practitioner stating that the officer or the officer's spouse, as the case may be, is pregnant and the expected date of birth.

#### 17.8.5 Notice of Spouse's Parental Leave

(a) An officer who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the officer's spouse in relation to the same child.

(b) Any notice given under Clause 17.8.5(a) is to be supported by a statutory declaration by the officer as to the truth of the particulars notified.

#### 17.8.6 Notice of Parental Leave Details

(a) An officer who has given notice of his or her intention to take parental leave is to notify the employer of the dates on which the officer wishes to start and finish the leave.

(b) An officer who is taking parental leave is to notify the employer of any change to the date on which the officer wishes to finish the leave.

(c) The starting and finishing date of a period of parental leave are to be agreed between the officer and the Electoral Commissioner.

#### 17.8.7 Transfer to a Safe Job

(a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.

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

#### 17.8.8 Return to Work

(a) An employee shall confirm his or her intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of parental leave.

(b) On finishing parental leave, an officer is entitled to the position he or she held immediately before starting parental leave.

(c) If the position referred to in Clause 17.8.8(b) is not available, the officer is entitled to an available position—

- (i) for which the officer is qualified; and
- (ii) that the officer is capable of performing,

most comparable in status and pay to that of his or her former position.

#### 17.8.9 Effect of Parental Leave on Employment

Absence on parental Leave—

(a) does not break the continuity of service of an officer; and

(b) is not to be taken into account when calculating the period of service for a purpose of salary increments, sick leave credits, long service leave and annual leave.

#### 17.8.10 Part Time Officers

A Part time officer shall have the same entitlement to maternity leave as full time officers.

#### 17.8.11 Fixed Term Officers

An officer employed on a fixed term contract shall have the same entitlement to maternity leave, however the period of leave granted shall not extend beyond the term of that contract.

#### 17.9 PUBLIC SERVICE HOLIDAY DAYS IN LIEU

17.9.1 The following two days shall be known as Public Service Holiday days in lieu.

(a) The day immediately following the New Years Day public holiday and the Tuesday immediately following Easter Monday public holiday.

(b) Such public service holiday days in lieu are as prescribed in Circular 11 of 1994 from the Department of Productivity and Labour Relations.

17.9.2 The two (2) days as per (1)(a) of this clause shall—

(a) be taken as days in lieu at ordinary time.

(b) be accrued on the day they fall due and shall not be taken prior to their respective accrual day.

(c) be cleared by 31 December in the year which the days fell due, meaning the days in lieu are not cumulative; and

(d) not be accrued whilst an employee is on any period of leave without pay.

#### 17.9.3 Part Time and Contract Employees

(a) Part time and contract employees shall be granted the days as per (1) (a) of this clause providing—

(i) they ordinarily work on those days that are the days in question; and

(ii) pro-rata hours are granted in accordance with the hours ordinarily worked on those days that are the days in question.

#### 17.9.4 Casual Employees

The days as per 1(a) of this clause shall not apply to employees employed under a casual contract.

#### 17.9.5 Termination of an Employee

(a) If an employee's employment is terminated as a result of resignation, retirement, dismissal, redundancy or death, the employee or the deceased employee's estate or dependent, shall receive payment at normal time in lieu of the days as per 1(a) of this clause providing—

(i) The days in question have not been taken as days in lieu prior to the termination date.

(ii) The employee has accrued the days in question.

17.9.6 Clearance of the days as per 1 (a) of this clause shall be granted at the convenience of the Commission.

#### 17.10 CHRISTMAS SHUTDOWN

A compulsory shut-down of three days will occur between Christmas and New Year commencing in the 1998 year. The employee will be required to take paid leave during this time. The shutdown will be at the discretion of the Electoral Commissioner and will be dependent on the election cycle.

17.11 SICK AND SPECIAL LEAVE

The following provisions shall be read in conjunction with the existing Clause 22 (Sick Leave) provisions in the PSA 1992.

17.11.1 Definitions—

- (a) Special Leave: “Special Leave” shall mean any leave relating to—
  - (i) Illness or injury of a family member as defined in Clause 4—Definitions
  - (ii) Family responsibilities of an urgent or un-planned nature
  - (iii) Tribal, ceremonial or cultural purposes.
- (b) Entitlement year: An “Entitlement Year” year relates to an officer’s commencement date in the service and the following 12 month period/s.

17.11.2 Entitlement—

This clause replaces clause 22 (1)(a) of the PSA 1992. Sick leave credits which shall be cumulative, shall be available all at full pay.

- (a) On the day of initial appointment—  
45 hours (6 days)
- (b) On completion of 6 months continuous service—  
48.75 hours (6.5 days)
- (c) On completion of 12 months continuous service—  
93.75 hours (12.5 days)

- (d) On completion of further 12 months continuous service—  
93.75 hours (12.5 days)

17.11.3 Special Leave

Portions of sick leave as per the PSA 1992, may be used as special leave as follows.

- (a) Employees may use up to five (5) days sick leave per entitlement period from the registration of this Agreement for special leave as defined in subclause (1) of this clause.
- (b) Special leave shall be available on an hourly basis.
- (c) The granting of special leave is subject to approval by the Electoral Commissioner.

18.—SIGNATURES OF PARTIES TO THE AGREEMENT  
Signatories

Signed for and on behalf of the  
CIVIL SERVICE ASSOCIATION WESTERN  
AUSTRALIA INC. BY:

**COMMON SEAL** Signed  
.....  
Date 13/3/98  
Signed by the Electoral Commissioner  
Signed  
.....  
Date 16/3/98

SCHEDULE A—SALARIES—Salary increases in this schedule are subject to the achievement of targets and initiatives as outlined in Clause 14.

WESTERN AUSTRALIAN ELECTORAL COMMISSION ENTERPRISE AGREEMENT 1998

		1.10.96			At Registration 2.67%			12 mths after reg. of agt 2%			1.7.99 1%		
		Annual	F/Night	Hourly	Annual	F/Night	Hourly	Annual	F/Night	Hourly	Annual	F/Night	Hourly
Level 1	Under 17	\$11,909	456.58	6.0877	12227	468.77	6.2503	12472	478.16	6.3755	12597	482.95	6.4393
	17yrs	\$13,918	533.6	7.1147	14290	547.86	7.3048	14576	558.82	7.4509	14722	564.42	7.5256
	18yrs	\$16,234	622.39	8.2985	16667	638.99	8.5199	17000	651.76	8.6901	17170	658.28	8.7771
	19yrs	\$18,793	720.5	9.6067	19295	739.75	9.8633	19681	754.54	10.0605	19878	762.1	10.1613
	20yrs	\$21,103	809.06	10.7875	21666	830.65	11.0753	22099	847.25	11.2967	22320	855.72	11.4096
	1st year	\$23,183	888.77	11.8503	23801	912.5	12.1667	24277	930.75	12.41	24520	940.07	12.5343
	2nd year	\$23,897	916.18	12.2157	24535	940.64	12.5419	25026	959.46	12.7928	25276	969.05	12.9207
	3rd year	\$24,610	943.52	12.5803	25267	968.7	12.916	25772	988.07	13.1743	26030	997.96	13.3061
	4th year	\$25,318	970.66	12.9421	25994	996.58	13.2877	26514	1016.51	13.5535	26779	1026.67	13.6889
	5th year	\$26,032	998.03	13.3071	26727	1024.68	13.6624	27262	1045.19	13.9359	27535	1055.66	14.0755
Level 2	6th year	\$26,745	1025.37	13.6716	27459	1052.74	14.0365	28008	1073.79	14.3172	28288	1084.53	14.4604
	7th year	\$27,565	1056.81	14.0908	28301	1085.02	14.4669	28867	1106.72	14.7563	29156	1117.8	14.904
	8th year	\$28,132	1078.54	14.3805	28883	1107.34	14.7645	29461	1129.5	15.06	29756	1140.81	15.2108
	9th year	\$28,970	1110.67	14.8089	29743	1140.31	15.2041	30338	1163.12	15.5083	30641	1174.74	15.6632
	1st year	\$29,976	1149.24	15.3232	30776	1179.91	15.7321	31392	1203.53	16.0471	31706	1215.57	16.2076
	2nd year	\$30,746	1178.76	15.7168	31567	1210.24	16.1365	32198	1234.43	16.4591	32520	1246.77	16.6236
	3rd year	\$31,555	1209.78	16.1304	32398	1242.1	16.5613	33046	1266.94	16.8925	33376	1279.59	17.0612
	4th year	\$32,410	1242.56	16.5675	33275	1275.72	17.0096	33941	1301.25	17.35	34280	1314.25	17.5233
	5th year	\$33,305	1276.87	17.0249	34194	1310.95	17.4793	34878	1337.18	17.8291	35227	1350.56	18.0075
	1st year	\$34,535	1324.03	17.6537	35457	1359.38	18.1251	36166	1386.56	18.4875	36528	1400.44	18.6725
Level 3	2nd year	\$35,494	1360.79	18.1439	36442	1397.14	18.6285	37171	1425.09	19.0012	37543	1439.35	19.1913
	3rd year	\$36,482	1398.67	18.6489	37456	1436.01	19.1468	38205	1464.73	19.5297	38587	1479.38	19.7251
	4th year	\$37,495	1437.51	19.1668	38496	1475.89	19.6785	39266	1505.41	20.0721	39659	1520.47	20.2729
	1st year	\$38,887	1490.88	19.8784	39925	1530.67	20.4089	40724	1561.31	20.8175	41131	1576.91	21.0255
	2nd year	\$39,977	1532.67	20.4356	41044	1573.57	20.9809	41865	1605.05	21.4007	42284	1621.11	21.6148
	3rd year	\$41,098	1575.64	21.0085	42195	1617.7	21.5693	43039	1650.06	22.0008	43469	1666.55	22.2207
	1st year	\$43,259	1658.49	22.1132	44414	1702.78	22.7037	45302	1736.82	23.1576	45755	1754.19	23.3892
	2nd year	\$44,718	1714.43	22.8591	45912	1760.21	23.4695	46830	1795.4	23.9387	47298	1813.34	24.1779
	3rd year	\$46,235	1772.59	23.6345	47469	1819.9	24.2653	48418	1856.28	24.7504	48902	1874.84	24.9979
	4th year	\$47,810	1832.97	24.4396	49087	1881.93	25.0924	50069	1919.58	25.5944	50570	1938.79	25.8505
Level 6	1st year	\$50,341	1930.01	25.7335	51685	1981.54	26.4205	52719	2021.18	26.9491	53246	2041.38	27.2184
	2nd year	\$52,062	1995.99	26.6132	53452	2049.28	27.3237	54521	2090.26	27.8701	55066	2111.16	28.1488
	3rd year	\$53,843	2064.27	27.5236	55281	2119.4	28.2587	56387	2161.8	28.824	56951	2183.43	29.1124
	4th year	\$55,745	2137.19	28.4959	57233	2194.24	29.2565	58378	2238.14	29.8419	58962	2260.53	30.1404
Level 7	1st year	\$58,660	2248.95	29.986	60226	2308.99	30.7865	61431	2355.19	31.4025	62045	2378.73	31.7164
	2nd year	\$60,677	2326.28	31.0171	62297	2388.39	31.8452	63543	2436.16	32.4821	64178	2460.5	32.8067
	3rd year	\$62,873	2410.47	32.1396	64552	2474.84	32.9979	65843	2524.34	33.6579	66501	2549.56	33.9941
Level 8	1st year	\$66,440	2547.22	33.9629	68214	2615.24	34.8699	69578	2667.53	35.5671	70274	2694.21	35.9228
	2nd year	\$68,995	2645.18	35.2691	70837	2715.8	36.2107	72254	2770.12	36.9349	72977	2797.84	37.3045
	3rd year	\$72,164	2766.67	36.8889	74091	2840.55	37.874	75573	2897.37	38.6316	76329	2926.36	39.0181
Level 9	1st year	\$76,121	2918.38	38.9117	78153	2996.28	39.9504	79716	3056.21	40.7495	80513	3086.76	41.1568
	2nd year	\$78,795	3020.9	40.2787	80899	3101.56	41.3541	82517	3163.6	42.1813	83342	3195.22	42.6029
	3rd year	\$81,844	3137.79	41.8372	84029	3221.56	42.9541	85710	3286.01	43.8135	86567	3318.87	44.2516

## SCHEDULE B—OVERTIME

## PAYMENT FOR OVERTIME

Overtime payment for all hours worked outside the prescribed hours of duty as prescribed in Clause 16—Hours of the PSA 1992 and defined in Clause 17.5.2(a)—Hours of Service—Election Periods and Clause 17.7.1—Overtime of this Agreement shall be calculated on an hourly basis in accordance with the following—

“Overtime” shall be calculated on an hourly basis at the rate of time and one half in accordance with the following formula—

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

“Overtime arising from exceptional circumstances” shall be calculated on an hourly basis in accordance with the following rates and formula—

**Weekdays**

For the first three hours worked outside the prescribed hours of duty on any one weekday at the rate of time and one half—

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

After the first three hours on any one week day at the rate of double time—

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

**Saturdays**

For the first three hours on any Saturday, before 12.00 noon, at the rate of time and one half—

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

After the first three hours or after 12.-00 noon, whichever is the earlier, on any Saturday at the rate of double time—

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

**Sunday**

For all hours on any Sunday, at the rate of double time—

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{2}{1}$$

**Public Service Holidays**

For hours worked during prescribed hours of duty on any Public Service Holiday at the rate of time and one half (in addition to the normal pay for that day).

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{3}{2}$$

For hours worked outside of the prescribed hours of duty on any Public Service Holiday at the rate of double time and a half—

$$\text{ie. } \frac{\text{Fortnightly Salary}}{75} \times \frac{5}{2}$$

## SCHEDULE C—GRIEVANCE/DISPUTE SETTLING PROCEDURES

## (1) Objective

To ensure that all Grievances/disputes as defined in (2)(a) of this schedule which are raised by employees of the Western Australian Electoral Commission are resolved in a fair, equitable and expedient manner.

## (2) Definition

- (a) A grievance/dispute may arise as a result of any questions, disputes or difficulties raised by employees in respect to their employment conditions and/or environment. These may include—
- (i) Interpretation of provisions of the PSA 1992,
  - (ii) Decisions made in respect of human resource policies and practices;
  - (iii) Safety issues;
  - (iv) Any form of harassment, discrimination or victimisation of employees not covered by specified grounds under the Equal Opportunity Act 1984 as listed in subclause (b) of this clause.

(b) Grievances/disputes arising from discrimination or victimisation on the grounds of gender, race, marital status, pregnancy, age, sexual preference, religious belief, political conviction, family responsibility or disability as specified under the Equal Opportunity Act 1984 will continue to be dealt with by the Commission’s Harassment Prevention Policy 1997.

(c) Grievances/disputes of a sexual harassment nature as defined by the Equal Opportunity Act 19’04 will continue to be dealt with by the Commission’s Harassment Prevention Policy 1997.

(d) Grievances/disputes arising out of an interpretation of provisions of the Western Australian Electoral Commission Enterprise Agreement 1998 will be dealt with under Part A Clause 15 of this Agreement.

## (3) Resolution Principles

- (a) In resolving a grievance/dispute, the following principles must be adhered to—
- (i) All officers have the right to raise their grievance in order to achieve a fair and expedient resolution.
  - (ii) Where possible, grievances should be resolved informally and quickly by the parties directly involved.
  - (iii) Confidentiality should be maintained at all times in the resolution of a grievance/dispute.
  - (iv) The principles of natural justice should apply in the resolution process.
  - (v) The officer lodging a grievance/dispute has the option to terminate the process at any time.
  - (vi) At any point in this process, the officer is entitled to his/her representation from the union.

## (4) Submission Of Grievance

- (a) Any officer who considers that he/she has grounds for a grievance may raise the grievance with a supervisor, manager or other appropriate person.
- (b) The grievance will be raised as soon as practicable after arising to ensure a rapid resolution of the grievance.

Where—

- (i) The grievance is not resolved by the supervisor or manager within ten (10) working days; or
- (ii) it is not appropriate to raise the grievance with the supervisor or manager  
the matter may be referred to the Manager, Corporate Services. Any matter so referred will be replied to within seven (7) working days.

## (5) Confidentiality

- (a) At all times the highest confidentiality must be maintained in resolving a grievance or dispute.
- (b) Any documentation concerning the grievance or dispute shall be held on a “Grievance/Dispute Resolution” file maintained in the Corporate Services Branch. No additional copies of correspondence will be held on any other source, including word processors.
- (c) Access to the “Grievance/Dispute Resolution” file will be limited to the Electoral Commissioner or his/her delegate.

**WROXTON INDUSTRIAL AGREEMENT.  
No. AG 215 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

Wroxton Pty Ltd.  
No. AG 215 of 1997.

Wroxton Industrial Agreement.  
COMMISSIONER P E SCOTT.

30 April 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 Wroxton Industrial Agreement in the terms of the following schedule be registered on the 30th day of March 1998.

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

[L.S.]

**WAGE AGREEMENT**

Schedule.

**1.—TITLE**

This Agreement will be known as the Wroxton Industrial Agreement.

**2.—ARRANGEMENT**

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. Site Allowance
  12. Industry Standards
  13. Clothing and Footwear
  14. Training Allowance, Training Leave, Recognition of Prior Learning
  15. Seniority
  16. Sick Leave
  17. Pyramid Sub-Contracting
  18. Fares and Travelling
  19. Drug and Alcohol, Safety and Rehabilitation Program
  20. No Extra Claims
- Appendix A—Wage Rates  
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program  
Appendix C—Site Allowance

**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 Wroxton Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australian.

**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 21 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 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 calendar 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 as per the award.

#### 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 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: 25/8/97

Signed

**WITNESS**

**CMETU**

Signed **Common Seal**

Date: 25/8/97

Signed

**WITNESS**

The Company:

Signed **Common Seal**

Date: 22/8/97

**JACK SCHERBARTH**

**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	16.03	16.51	17.01	17.27
Labourer Group 2	15.03	15.48	15.94	16.42	16.67
Labourer Group 3	14.63	15.07	15.52	15.99	16.23
Plasterer, Fixer	16.17	16.66	17.16	17.67	17.94
Painter, Glazier	15.81	16.28	16.77	17.27	17.53
Signwriter	16.15	16.63	17.13	17.64	17.90
Carpenter	16.27	16.76	17.26	17.78	18.05
Bricklayer	16.11	16.59	17.09	17.60	17.86
Refractory Bricklayer	18.50	19.06	19.63	20.22	20.52
Stonemason	16.27	16.76	17.26	17.78	18.05
Roofiler	15.99	16.47	16.96	17.47	17.73
Marker/Setter Out	16.75	17.25	17.77	18.30	18.57
Special Class T	16.96	17.47	17.99	18.53	18.81

#### 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 \$
<b>Plasterer, Fixer</b>					
Yr 1	6.79	6.99	7.20	7.42	7.53
Yr 2 (1/3)	8.90	9.17	9.45	9.73	9.88
Yr 3 (2/3)	12.13	12.50	12.88	13.27	13.47
Yr 4 (3/3)	14.23	14.66	15.10	15.55	15.75
<b>Painter, Glazier</b>					
Yr 1 (.5/3/5)	6.64	6.84	7.05	7.26	7.37
Yr 2 (1/3), 1.5/3.5)	8.70	8.96	9.23	9.51	9.65
Yr 3 (2/3), 2.5/3.5)	11.86	12.22	12.59	12.97	13.16
Yr 4 (3/3), 3.5/3.5)	13.92	14.34	14.77	15.21	15.44

APPRENTICE RATES—*continued*

	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 \$
<b>Signwriter</b>					
Yr 1 (.5/3/5)	6.79	6.99	7.20	7.42	7.53
Yr 2 (1/3, 1.5/3.5)	8.88	9.15	9.42	9.70	9.85
Yr 3 (2/3, 2.5/3.5)	12.11	12.47	12.84	13.23	13.43
Yr 4 (3/3, 3.5/3.5)	14.21	14.64	15.08	15.53	15.76
<b>Carpenter</b>					
Yr 1	6.84	7.05	7.26	7.48	7.59
Yr 2 (1/3)	8.95	9.22	9.50	9.79	9.94
Yr 3 (2/3)	12.21	12.58	12.96	13.35	13.55
Yr 4 (3/3)	14.32	14.75	15.19	15.65	15.88
<b>Bricklayer</b>					
Yr 1	6.77	6.97	7.18	7.40	7.51
Yr 2 (1/3)	8.86	9.13	9.40	9.68	9.83
Yr 3 (2/3)	12.08	12.44	12.81	13.19	13.39
Yr 4 (3/3)	14.17	14.60	15.04	15.50	15.73
<b>Stonemason</b>					
Yr 1	6.84	7.05	7.26	7.48	7.59
Yr 2 (1/3)	8.95	9.22	9.50	9.79	9.94
Yr 3 (2/3)	12.21	12.58	12.96	13.35	13.55
Yr 4 (3/3)	14.32	14.75	15.19	15.65	15.88
<b>Rooftiler</b>					
6 months	9.12	9.39	9.67	9.96	10.10
2nd 6 months	10.02	10.32	10.63	10.95	11.11
Yr 2	11.71	12.06	12.42	12.79	13.17
Yr 3	13.74	14.15	14.57	15.01	15.24

## 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 person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- 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.
- There will be no payment of lost time to a person unable to work in a safe manner.
- 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.
- For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- 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—

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

- 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.
- 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 \$2.1 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 contractor 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.

## AWARDS/AGREEMENTS— Variation of—

### MISCELLANEOUS GOVERNMENT CONDITIONS AND ALLOWANCES AWARD

No. A4 of 1992.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Albany Regional Hospital and Others.

No. 454B of 1997.

17 April 1998.

*Order.*

HAVING heard Mr B.G. Cusack on behalf of the Applicant and Ms J. Brown on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Miscellaneous Government Conditions and Allowances Award A4 of 1992 as varied, be further varied in accordance with the following Schedule and that such variation shall have effect on and from 1 April 1998.

(Sgd.) C.B. PARKS,

Commissioner.

[L.S.]

Schedule.

Clause 19.—Employees Living North of the 26 degrees South Latitude: Delete subclause (3) of this clause and insert in lieu thereof—

- (3) Employees who are tenants occupying Government Employees Housing Authority (GEHA) houses equipped with gas hot water systems are eligible for a reimbursement up to a maximum of \$21.00 per month.

### PRINTING AWARD

No. 9 of 1969.

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

Albany Advertiser (1932) Limited  
and Others.

No. 1971 of 1997.

Printing Award No. 9 of 1969.

COMMISSIONER J.F. GREGOR.

7 May 1998.

*Order.*

HAVING heard Mr G Sturman on behalf of the Applicant and Ms N Embleton on behalf of the Respondents, and by

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

THAT the document titled Printing Award No. 9 of 1969, be varied in accordance with the amended schedule filed in the Commission on 8 April 1998 and that such variation shall have effect from the date of the Order.

[L.S.] (Sgd.) J.F. GREGOR,  
Commissioner.

Schedule.

1. Clause 11.—Rate of Wages. Delete Part 1—Rate of Wages and insert in lieu the following.

An adult employees' minimum award rate of wage is set out in Table A hereof, operative from the beginning of the first pay period to commence on or after 14 November 1997.

TABLE A

Group Level	Base Rate	Safety Net Adjustment	Award Rate
	\$	\$	\$
1	325.40	34.00	359.40
2	342.10	34.00	376.10
3	364.60	34.00	398.60
4	385.50	34.00	419.50
5	417.20	34.00	451.20

**Junior and apprentices**

Where the work is performed by a junior (other than a junior artist and/or designer or a junior keyboard operator/assembler) not being an apprentice, the minimum rates of wages shall be undermentioned percentages of the wage of an employee working at the rate prescribed for group level 2 of this award for the area in which he is employed—

TABLE B

AGE	% OF LEVEL 2 WAGE
under 16 years of age	30
between 16 and 17 years of age	40
between 17 and 18 years of age	50
between 18 and 19 years of age	60
between 19 and 20 years of age	75
between 20 and 21 years of age	90

**Junior keyboard operator/assembler**

The minimum rate of wage payable to a junior employed as a keyboard operator/assembler shall be the award rate of wage prescribed for group level 4 for the area in which he is employed.

**Apprentice**

Where the work is performed by an apprentice, the minimum rates of wages shall be the undermentioned percentages of the wage of a skilled employee working at the rate prescribed for group level 5 for the area in which he is employed—

TABLE C

YEAR	% OF LEVEL 5 WAGE
First	47.5
Second	60.0
Third	72.5
Fourth	87.5

Junior artist and/or designer (including junior commercial artist)

Where the work is performed by a junior artist and/or designer (including a junior commercial artist) the minimum rates of wages shall be undermentioned percentages of the wage of an employee working at the rate prescribed for group level 4 of this award for the area in which he is employed—

TABLE D

AGE	% OF LEVEL 4 WAGE
under 17 years of age	37.5
between 17 and 18 years of age	47.5
between 18 and 19 years of age	60.0
between 19 and 20 years of age	72.5
between 20 and 21 years of age	87.5

**Adult apprentice**

Where the work is performed by an adult apprentice, the minimum rates of wages shall be the undermentioned percentage of the wage of an employee working at the rate prescribed for group level 5 for the area in which he is employed—

TABLE E

YEAR	% OF LEVEL 5 WAGE
First	82.0
Second	87.0
Third	92.0
Fourth	100.0

An adult apprentice who enters his apprenticeship at an advanced stage pursuant to paragraph 36A(3)(b) of this award, shall be deemed, for the purposes of calculating the appropriate wage rate, to have completed the period by which he has been advanced.

Progress to the next year rate of wage shall occur when the balance of the year to which he has been advanced in his apprenticeship is completed.

**Traineeship**

Where the work is performed by a small offset printing trainee, a printing production support trainee, a print design trainee and a graphic arts merchants trainee under the terms of Clause 36B.—Traineeships, the wage rate shall be as set out in subclause (2) of that clause.

**Calculation of rates in table "B"**

The rate prescribed for all employees paid in accordance with the provisions of this table shall be calculated in multiples of 10 cents, amounts less than 5 cents being taken to the lower multiple and amounts of 5 cents or more being taken to the higher multiple.

"Overaward payments" is defined as the amount (whether it be termed "overaward payment", "attendance bonus", "service increment", or any other terms whatsoever) which an employee would receive in excess of the "base rate" of pay set out in Table A. Payments such as overtime, shift allowances, penalty rates, disability allowance, fares and travelling time allowance and other ancillary payment of like nature prescribed by this award shall be excluded from the definition.

2. Clause 11- Rate of Wages. Delete Part 2—Classification Structure and insert in lieu the following—

The classification structure relates to an adult employee performing the description of employment set out in the second column below. The Group Level for the adult employee is shown in the third column and the appropriate minimum weekly rate of pay in the fourth column.

	Column 2 Description of Employment	Column 3 Group Level	Column 4 Minimum Weekly Wage
		\$	\$
(a)	Composer	5	451.20
(b)	Keyboard Operator	4	419.50
(c)	Proof Reader	4	419.50
(d)	Proof Readers' Assistant	2	376.10
(e)	Printing Machinist	5	451.20
(f)	Artist/Designer	4	419.50
(g)	Graphic Reproducer	5	451.20
	(i) Image Preparer		
	(ii) Plate Preparer		
	(iii) Cylinder Preparer		
(h)	Small Offset Machinist	4	419.50
(i)	Non Impact Printing Machinist (including Electronic and Laser Printing Machine Operator)	4	419.50
(j)	Binder/Finisher	5	451.20
(k)	Employee employed directly in connection with stationery, system work, addressograph work, paper products	2	376.10
(l)	Feeder on any machine	2	376.10
(m)	Storeperson	3	398.60

Column 2 Description of Employment	Column 3 Group Level \$	Column 4 Minimum Weekly Wage \$
(n) Screen Printing:		
(i) Stencil Preparer	5	451.20
(ii) Power Driven Screen Printing Machine Operator	3	398.60
(iii) Screen attendant	2	376.10
(o) An employee not otherwise specified	1	359.40

**AWARDS/AGREEMENTS—  
Application for variation of—  
No variation resulting—**

**AGED AND DISABLED PERSONS HOSTELS  
AWARD, 1987.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Anglican Homes for the Aged (Incorporated) and Others.

No. 1223 of 1994.

6 April 1998.

*Order.*

WHEREAS on 25 November 1994 this application was filed in the Registry of the Commission pursuant to section 40 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS on 23 May 1995 a conference was held pursuant to section 32 of the Act whereat the parties reached an agreement in principle and the said conference was adjourned for the parties to confer on matters of detail; and

WHEREAS on 24 October 1995 the Commission forwarded a letter to the applicant requesting advice as to the status of this matter; and

WHEREAS on 8 January 1996 the matter was listed For Mention Only, and on that date was adjourned sine die for the parties to confer regarding the matter;

AND WHEREAS on 4 March 1998 the matter was listed For Mention Only and thereat the parties requested that the application be dismissed;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, and by consent, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,  
Commissioner.

[L.S.]

**ENROLLED NURSES AND NURSING ASSISTANTS  
(PRIVATE) AWARD.  
No. 8 of 1978.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Liquor, Hospitality and Miscellaneous Workers'  
Union, Miscellaneous Workers Division, Western Australian  
Branch

and

Anglican Homes (Inc.) and Others.

No. 354 of 1996.

28 April 1998.

*Order.*

WHEREAS on 8 March 1996 the application cited herein was filed in the Commission to amend the House Care Person Interim Wages Order 1995; and

WHEREAS on 22 May 1996 a conference was held pursuant to section 32 of the Act; and

WHEREAS on 14 June and 28 June 1996 the matter was listed for hearing and determination and adjourned to a date to be fixed;

AND WHEREAS on 23 April 1998 a Notice of Discontinuance was filed in the Commission;

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.

(Sgd.) C.B. PARKS,

[L.S.]

Commissioner.

**ENROLLED NURSES AND NURSING ASSISTANTS  
(PRIVATE) AWARD.  
No. 8 of 1978.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Liquor, Hospitality and Miscellaneous Workers'  
Union, Miscellaneous Workers Division, Western Australian  
Branch

and

Australian Red Cross Society.

No. 357 of 1996.

28 April 1998.

*Order.*

WHEREAS on 8 March 1996 the application cited herein was filed in the Commission to amend the House Care Person Interim Wages Order 1995; and

WHEREAS on 22 May 1996 a conference was held pursuant to section 32 of the Act; and

WHEREAS on 14 June and 28 June 1996 the matter was listed for hearing and determination and adjourned to a date to be fixed;

AND WHEREAS on 24 April 1998 a Notice of Discontinuance was filed in the Commission;

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.

(Sgd.) C.B. PARKS,

[L.S.]

Commissioner.

**PRIVATE HOSPITAL EMPLOYEES' AWARD, 1972.  
No. 27 of 1971.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

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

and

St John of God and Others.

No. 1224 of 1994.

6 April 1998.

*Order.*

WHEREAS on 25 November 1994 this application was filed in the Registry of the Commission pursuant to section 40 of the Industrial Relations Act, 1979 (the Act); and

WHEREAS on 23 May 1995 a conference was held pursuant to section 32 of the Act whereat the parties reached an agreement in principle and the said conference was adjourned for the parties to confer on matters of detail; and

WHEREAS on 24 October 1995 the Commission forwarded a letter to the applicant requesting advice as to the status of this matter; and

WHEREAS on 8 January 1996 the matter was listed For Mention Only, and on that date was adjourned sine die for the parties to confer regarding the matter;

AND WHEREAS on 4 March 1998 the matter was listed For Mention Only and thereat the parties requested that the application be dismissed;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, and by consent, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,

[L.S.]

Commissioner.

“With reference to Clause 32.—Introduction of Change—

1. What is meant by the “Employer’s Duty to Notify”, the heading of subclause (1)?
2. What is meant by the “Employer’s Duty to Discuss Change”, the heading of subclause (2)?

With reference to Clause 32A.—Redundancy—

1. What is meant by the wording “Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone ...”, contained in paragraph (a) of subclause (1)—Discussions before Terminations?
2. What is meant by the wording “... ordinary and customary turn-over of labour ...” contained in paragraph (a) of subclause (1)—Discussions before Terminations?
3. Where any of the changes referred to in Clause 32.—Introduction of Change occur and where these changes lead to termination of employment, is severance pay, as prescribed by paragraph (a) in subclause (3) of clause 32A.—Redundancy, payable to persons terminated.”

The facts giving rise to the Application are also set out in the Amended Schedule.

The relevant subclauses for the purposes of this Application read as follows.

“Clause 32.—Introduction of Change

(1) Employer’s Duty to Notify

- (a) Where an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have “significant effects” on employees, the employer shall notify the employees who may be affected by the proposed changes and their union or unions.
- (b) “Significant effects” include termination of employment, major changes in the composition, operation or size of the employer’s workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have “significant effects”.

(2) Employer’s Duty to Discuss Change

- (a) The employer shall discuss with the employees affected and their union or unions, the introduction of the changes referred to in subclause (1) of this clause, among other things, the effects the changes are likely to have on employees, measures to avoid or minimise the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their unions in relation to the changes.
- (b) The discussion shall commence as soon as is practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1) of this clause.

Clause 32A.—Redundancy

(1) Discussions Before Termination

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.
- (b) The discussion shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions

## AWARDS/AGREEMENTS— Interpretation of—

**METAL TRADES (GENERAL) AWARD 1966.  
No. 13 of 1965.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

Metals and Engineering Workers Union

and

Cockburn Engineering WA.

No. 1071 of 1993.

Metal Trades (General) Award 1966.

COMMISSIONER R.N. GEORGE.

21 April 1998.

*Reasons for Decision.*

THE COMMISSIONER: The Metal Trades General Award No. 13 of 1965 (hereinafter referred to as “the Award”) provides by virtue of Clause 32.—Introduction of Change, and Clause 32A.—Redundancy, provisions in relation to job protection which have their genesis in decisions of the Full Bench of the Australian Conciliation and Arbitration Commission, as it then was, (hereinafter referred to as “the Federal Commission”) in what are referred to as the Termination Change and Redundancy Cases (Prints F6230 and F7262). The Applicant Union seeks a declaration pursuant to section 46 of the Industrial Relations Act 1979 of the true interpretation of the Award as it applies to subclauses (1) and (2) of Clause 32 and to paragraphs (1)(a), (1)(b) and (3)(a) of Clause 32A. The specific questions posed are set out in the Amended Schedule A to the Application in the following terms.

of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse affect of any terminations on the employees concerned.

- (c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their union or unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

(2) .....

(3) Severance Pay

- (a) In addition to the period of notice prescribed in paragraph (a) of subclause (2) in Clause 6—Contract of Service, of this award, for ordinary termination, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in paragraph (a) of subclause (1) of this clause shall be entitled to the following amount of severance pay in respect of a continuous period of service.

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

“Weeks Pay” means the ordinary weekly rate of wage for the employee concerned.

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

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

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

- (c) Service by the employee with a business which has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave Provisions published in Volume 66 of the Western Australian Industrial Gazette at

pages 1-4 shall also constitute continuous service for the purpose of this clause.”

The issues which gave rise to the questions posed were described in proceedings by Mr Logan, for the Applicant Union, as follows.

“For the unions the issue at stake here is that in what would appear to be a relatively straightforward case of retrenchment because of lack of work, if the company claims exemption from its award obligations because it views the terminations ordinary and customary turnover of labour what then is meant by that particular phrase?

When a downturn in work has occurred and people have been laid off, does that mean a definite decision has been made by the employer, as prescribed in paragraph (a) of subclause (i), and when then does an employer have to notify and discuss with employees and their unions the decision to introduce major changes which are likely to have significant effects on employees? Is it simply enough to say, “Their terminations were due to the ordinary and customary turnover of labour. Therefore, (a) I am not bound to pay severance pay in accordance with clause 32A; nor am I bound to notify my employees or the unions over those changes and the effects of those changes in accordance with clause 32, Introduction of change.....”

[Transcript pp 21/22]

It is argued by the Applicant Union that in answering the questions posed the Commission is compelled to re-examine in detail those cases which led to the establishment of termination change and redundancy provisions in the Award. Mr Logan argued that there is ambiguity in the provisions to be interpreted (transcript p.29) and referred to the judgement of Burchett J. in *Andrew John Short v. F.W. Hercus Pty Ltd (1993) 46 IR 128* (hereinafter referred to as “the Hercus case”) and to authorities referred to therein to support his contention that in construing a clause of an award it is legitimate to look at the history of the provision. He also referred to a number of other well known authorities relating to the interpretation of Awards and the permissibility of resort to extrinsic material where ambiguity exists. The ambiguity, if I understand correctly the submissions of Mr Logan, arises from difficulties experienced by the Applicant Union in engaging employers in discussions about matters which it considers to involve redundancy of employees and being thwarted by assertions that the termination(s) in question were as a consequence of the ordinary and customary turnover of labour or that the employer did not require the job(s) being done to be done by anybody, thus avoiding the obligation to hold discussions as required by Clauses 32 and 32A of the Award and to make redundancy payments as required by Clause 32A.

Mr Logan went on to analyse the history of the introduction of termination, change and redundancy provisions in the Federal Metal Industry Award by the Federal Commission and decisions of other jurisdictions which were of influence in that history—in particular *R v. The Industrial Commission: ex parte Adelaide Milk Supply Co-operative Ltd (1977) 44 SAIR 1202* (hereinafter referred to as “the Amscol case”) and *Shop Distributive and Allied Employees Association (NSW) v. Countdown Stores (1983) 7 IR 273* (hereinafter referred to as “the Countdown Stores case”). On this analysis Mr Logan constructed the following list of what he submitted were dismissals which could be categorised as falling within the scope of the term “ordinary and customary turnover of labour” as that term is used in paragraph (a) of subclause (1) of Clause 32A the Award.

“THE MEWU VIEW OF ORDINARY AND CUSTOMERY (sic)

TURNOVER OF LABOUR BASED ON FISHER P'S DECISION.

WHERE DISMISSAL OCCURS ON—

- \* Completed/Project or Contract      Addressed by Part II of the award.
- \* Retirement      Addressed by Contract of Service Clause
- \* Resignation/Termination on Grounds of Ill Health      Other addressed by Contract of Service Clause
- \* Resignation

* Seasonal Work	Not relevant to Metal Trades Award
* Specified Term Work	Addressed by casual provision in Contract of Service
* Unsuitability	Usually addressed within first 12 months of service
* Misconduct, including Inefficiency/Unsatisfactory performance	Addressed by Contract of Service Clause.

The commissions view on ordinary and customary (sic) turnover of labour is found at page 46 of the original TCR case (PRINT F6230) paragraph d.

‘where termination is as a consequence of misconduct where employees have been engaged for a specific job or contract to seasonal and/or casual employees or in cases where provision is contained in the calculation of the wage rates for the itinerant nature of the work. In addition we are of the opinion that where termination is within the context of an employee’s retirement and (sic) employee should not be entitled to more than he/she would have earned if he/she had proceeded to normal retirement.’”

[Exhibit 1]

In all other cases it was said by Mr Logan that there should be no distinction based upon the cause of termination for the purposes of redundancy payments.

While the question of what constitutes ordinary and customary turnover of labour was addressed by the Full Bench of this Commission in *Amalgamated Metal Workers and Shipwrights Union v. Grant Electrical Industries Pty Ltd (1989) 69 WAIG 1019* (hereinafter referred to as “the Grant Electrical case”), it is argued by Mr Logan that the qualifications placed on that term by Fisher P in the Countdown Stores case were not addressed. This had resulted, in Mr Logan’s submission, in an outcome which enabled employers in this State to use the concept of ordinary and customary turnover of labour to avoid obligations which would otherwise exist if that phrase was interpreted in a manner consistent with the historical development of the termination change and redundancy provisions in awards and with the approach adopted in the Amscol and Countdown Stores cases.

The second issue addressed by Mr Logan in his submissions related to the question of what is meant by the wording “where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone” (paragraph (a) of subclause (1) of Clause 32A of the Award). The meaning to be given to this phrase was that said by Mr Logan to have been adopted by the Full Court of the Federal Court of Australia in the Hercus case. In that matter the Full Court upheld the decision of Parsons SM of the Industrial Court of South Australia (58 SAIR 868) who had held that an employee dismissed through a downturn in business and who was not replaced, came within the scope of a provision identical to that now under consideration. Burchett J in his reasons for decision on appeal relied substantially upon the decision of the Full Court of the Supreme Court of South Australia in the Amscol case and so should, in Mr Logan’s submission, this Commission in addressing the questions now before it. The conclusions to be drawn from the Hercus case are reinforced, in Mr Logan’s submission, by the judgement of the Supreme Court of Western Australia in *Douglas—Brown v. Isles in re Vetter Trittler Pty Ltd (Receiver and Manager appointed) (in liquidation) [COY No. 109 of 1991—2nd September 1992]* and by the Federal Commission in *Amalgamated Metal Workers Union v. Horwood Bagshaw Limited, Print G707* (hereinafter referred to as “the Horwood Bagshaw case”).

Mr Logan finally took the Commission to a number of authorities to support the contention that the questions posed should be answered by reference to the Federal TCR cases and the other authorities referred to. Apart from that general submission, it was not said how the answers ought be constructed.

Mr Dixon, for the Respondent, also took the Commission to a number of authorities relating to the interpretation of awards and drew attention in particular to the following passage from the Reasons for Decision of the Full Bench of this Commission in *Boans Ltd and Others v. Federated Clerks Union of*

*Australia Industrial Union of Workers, WA Branch* (hereinafter referred to as “the Boans Ltd case”).

“It is no part of the duty of the Court in constructing an award on an application for interpretation to give it a meaning either with the object of prescribing that which it considers to be proper or for the purpose of carrying out what it supposes to be the intention of the award-making authority unless the words of the award can reasonably bear that meaning.”

[64 WAIG 651 at 652]

In Mr Dixon’s submission it is apparent in some of the authorities in the Federal jurisdiction relied upon by Mr Logan that the courts were engaged in the exercise of an arbitral function as opposed to the function of interpreting an award. In those cases it was said that the approach cautioned against in the above extract from the Reasons for Decision in the Boans Ltd case had been followed and their relevance in this matter should be assessed in that light. In Mr Dixon’s submission, the proper approach to the interpretation of awards is that set out in the Reasons for Decision of the Full Bench of the Western Australian Industrial Relations Commission in *The Federated Miscellaneous Workers Union of Australia, Hospital Service and Miscellaneous WA Branch v. Wormald International (Australia) Pty Ltd and Others (1990) 70 WAIG 1287*. Having reviewed the relevant authorities in that matter the Full Bench extracted a number of principles which it expressed in the following terms.

- “(1) The interpretation of an award is a matter of law [see per Kennedy J. in *RRIA v. AMWSU and Others (op.cit.)* at page 1101].
- (2) To interpret this award, one must read the document itself and give to the words used their ordinary commonsense English meaning [see *Norwest Beef Industries Ltd and Another v. AMIEU (op.cit.)* at page 2133].
- (3) Thus, the first task in interpretation is to ascertain whether the words used are capable in their ordinary sense of having unambiguous meaning [see *Norwest Beef Industries Ltd and Another v. AMIEU (op.cit.)*].
- (4) If the meaning of the language read in its ordinary and natural sense is obtained then it is not necessary or indeed permissible to look to the intention of the parties or other extrinsic evidence [see *Norwest Beef Industries Ltd and Another v. AMIEU (op.cit.)* at pages 2127 and 2133].
- (5) In the event that an award is genuinely capable of two or more meanings, then it is obvious that the primary rule of construction cannot be applied.
- (6) Should a consideration of the whole of the terms of the award expose an ambiguity in construction of the clause, then resort may be made to extrinsic material, and in certain circumstances any trade, custom or usage [see *RRIA v. AMWSU and Others (op.cit.)* at pages 1098, 1100 and 1101].
- (7) The award should be interpreted with allowance made for the fact that it may have been drafted by industrial rather than skilled draftsmen so that there should not be too literal adherence placed on the strict technical meaning of words, but the matter should be viewed broadly to give the agreement a meaning consistent with the intention of the draftsmen [see *RRIA v. AMWSU and Others (op.cit.)* at pages 1100].”

[supra at 1289]

As to the questions posed and the manner in which they are framed, Mr Dixon put a number of arguments which can be briefly summarised as follows.

1. The questions in respect of Clause 32.—Introduction of Change, ask firstly what is meant by the “Employers Duty to Notify”, the heading of subclause (1) of Clause 32 and secondly, what is meant by the “Employer’s Duty to Discuss Change”, the heading of subclause (2) of Clause 32. Framed in this way it is said that persons served with the Application could not have anticipated the issues raised by Mr Logan in his submissions, which go

well beyond the scope of the Application, and further that the effect of what was put was to seek an interpretation of the clause as a whole without a specific question being posed. In that respect it was argued that it is not the headings of the subclauses referred to which contain any material element imposing rights or obligations but rather the content of those subclauses and the Commission ought not attempt to embark upon an exploration of their wider terms when that was not a course that the Respondents to the Application were given notice of and which, in any event, raise questions not capable of proper determination pursuant to section 46 of the Industrial Relations Act 1979. If that submission not be accepted, it was argued, the only way in which the questions can be answered is to say "the meaning of the heading of subclause (1) of Clause 32 is as set out in paragraphs (a) and (b) of that subclause". Similarly, the meaning of the heading of subclause (2) of Clause 32 can only be what is set out in paragraphs (a), (b) and (c) of that subclause. In this respect, Mr Dixon submitted that it had not been established that there was any ambiguity in the wording of those subclauses and therefore it is simply a matter of examining the facts in a particular case to determine whether the provisions under the relevant headings are applicable. Mr Dixon also contended that there was nothing in the legislative history of the TCR provisions which would lead to any other conclusion.

2. The questions raised concerning subclauses (1) and (2) of Clause 32A.—Redundancy, ask in general terms firstly what is meant by the wording "where an employee has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone ..." and, secondly, what is meant by the wording "ordinary and customary turnover of labour ..." (paragraph (a) of subclause (1)—Discussions Before Termination, of Clause 32A).

In Mr Dixon's submission, these questions are also framed in such a way that they invite the same criticisms raised in relation to the questions posed in connection with Clause 32.—Introduction of Change. He nevertheless went on to examine the meaning of the wording in question and in so doing submitted that it was not open to the Commission to ignore decisions of the Western Australian Industrial Relations Commission and to look to other jurisdictions, as urged by the Applicant Union, where there might, in a particular case, be found a different interpretation more convenient to the argument being put. The proper course for the Commission to follow in this case, in Mr Dixon's submission, is to answer the questions posed, to the extent that they are capable of being answered because of the way in which they are framed, by reference to the decision of the Full Bench of the Western Australian Industrial Relations Commission in the Grant Electrical case which, on appeal, considered the question of redundancy against the legislative history of the provisions now under consideration. At the same time, however, he conceded that precisely what had been determined in that matter might be difficult to establish and submitted that while the Full Bench in the Grant Electrical case found no ambiguity, the Commission was "bound on this occasion to follow that approach and look at the historical meaning in relation to clause 32A" (transcript p 100). The existence of ambiguity, as said by both Mr Logan and Mr Dixon, is confirmed by the Federal Court in the Hercus case. Mr Dixon went on to analyse the Grant Electrical case to support the following propositions.

- (a) The Grant Electrical case addressed the question of whether an employee had been the subject of a definite decision that the employer no longer wished the job the employee had been doing done by anyone and whether this was due to the ordinary and customary

turnover of labour. This covers both of the elements of the first two questions raised in this case in respect of Clause 32A.

- (b) The Full Bench in the Grant Electrical case distinguished "the job" from "the work" for the purposes of determining whether the employer had made a definite decision that it no longer wished the job the employee had been doing to be done by anyone. The distinction seemed to be that "the job" was to be equated with "the position". In Mr Dixon's submission, the only reasonable conclusion to be drawn from what the Full Bench said in the Grant Electrical case, and from what was said in the Horwood Bagshaw case, endorsed by the Full Bench, was that where an employee was dismissed due to lack of work but the job (i.e. the position) was to be filled again when sufficient work became available, then it could not be said that the employer had decided it no longer required the job to be performed by anyone and thus the job was not redundant (see: The Full Bench in Grant Electrical case at 1023—paragraph (a) left hand column). Mr Dixon conceded, however, that other passages from the decision of the Full Bench in the Grant Electrical case seem to put aside the distinction drawn between "the job" and "the work" earlier referred to and could lead to an opposite conclusion to the one drawn above (see for example: The Full Bench in Grant Electrical case at 1023—paragraph (b) right hand column). Read in its entirety, however, the effect of the decision of the Full Bench in the Grant Electrical case, in Mr Dixon's submission, is that "upon a proper construction of Clause 32A the phrase 'if the employer no longer wants the job done by anyone' means that the employer must have decided that the position no longer exists and would not be filled, for example, if new contracts came in".
- (c) While the above interpretation appears to be at odds with what was said by Gray J in *McGarry v. Boonah Clothing Case Pty Ltd (1993) 49 IR 66* (hereinafter referred to as "the Boonah Clothing case") and by the Full Court of the Federal Court in the Hercus case, both of those matters, in Mr Dixon's submission, can be distinguished and do not alter what he says is the proper interpretation of the Grant Electrical case.
- (d) The meaning of the term "ordinary and customary turnover of labour" was not in issue in either the Hercus or the Boonah Clothing cases and is to be determined by reference to the Grant Electrical case.
- (e) Having examined the historical development and the origins of the clause in question, the Full Bench in the Grant Electrical case relied upon what was said by Fisher J in the Countdown Stores case (as did the Federal Commission in the TCR cases) in respect of the meaning of "ordinary and customary turnover of labour". The meaning of the phrase, as expressed by Fisher J, is set out in a schedule submitted by Mr Dixon as Exhibit A in the following terms—

"Schedule.

A dismissal because of the "ordinary and customary turnover of labour" referred to in clause 32A(1)(a) of the Award includes—

A dismissal because of—

- (a) completed project/contract;
- (b) seasonal shifts in markets;
- (c) loss of contracts or changes in contracts not relating to recession;
- (d) changes in model or product;

- (e) shifts in marketing emphasis; and
- (f) many other day to day causes removed from recession.”

[Exhibit A]

The above list cannot, in Mr Dixon’s submission, be seen to be exhaustive. This is said to have been recognised by the Federal Commission in the TCR decisions where, subject to the particular exceptions identified above, the ambit of the phrase is acknowledged.

- (f) Given what is said in (e) above, the alternative list of what constitutes “ordinary and customary turnover of labour” submitted by the Applicant Union as Exhibit 1 is not, in Mr Dixon’s submission, supportable as an exhaustive list and includes circumstances inconsistent with the concept of a “decision that the employer no longer wishes the job the employee has been doing done by anyone” (emphasis added). The extract from the Federal Commission decision in the original TCR case quoted as part of Exhibit 1 and relied upon by the Applicant Union in constructing that Exhibit, is not a definition adopted by the Federal Commission and the proper source for determining what constitutes ordinary and customary turnover of labour is to be found in the words of Fisher J in the Countdown Stores case.
- (3) The third question posed by the Application now before the Commission asks “where any of the changes referred to in Clause 32—Introduction of Change, occur and where these changes lead to termination of employment, is severance pay, as prescribed by paragraph (a) in subclause (3) of Clause 32A—Redundancy, payable to persons terminated”. This question is simply answered, in Mr Dixon’s submission, by giving the language used its plain and ordinary meaning. When this is done, it is said to be clear that the obligation to pay monies pursuant to paragraph (a) of subclause (3) of Clause 32A only arises in situations where the requirements of subclause (1) of that clause are fully satisfied and it is not open to the Commission to infer or speculate that the obligation could arise in any broader context. In short, the obligation arises out of, and is conditioned by, Clause 32A and nothing is said therein to suggest that it can arise from any other source. Nor does the heading of the clause suggest otherwise.

#### Conclusion.

It is clear from the submissions on behalf of the Applicant Union in this matter that what purports to be an application for interpretation pursuant to the provisions of section 46 of the Industrial Relations Act 1979 is in fact an invitation to the Commission to review the decision of the Full Bench of the Commission in the Grant Electrical case and, in general terms, express a view of what is meant by the provisions identified. In so doing, Mr Logan took the Commission to decisions of other courts in both Federal and State jurisdictions and invited conclusions different from those said by him to have been reached by the Full Bench of this Commission in the Grant Electrical case. In my opinion, it is not open to the Commission, as presently constituted, to embark upon such a course on an application pursuant to section 46 of the Act. Even if it did so, it would be bound by the decision of the Full Bench in the Grant Electrical case (see: *Nappy Happy Service (Appellant) v. The Federated Miscellaneous Workers’ Union of Australia, WA Branch (Respondent) (1993) 73 WAIG 2007 at 2014*).

Framed in the way that they are, it is not possible to answer questions (1) and (2) concerning Clause 32 other than to say that the meaning of the headings referred to in those questions is to be found in the provisions of the subclauses under those headings. It was not established that there is any ambiguity in those provisions and, in any event, as the Commission has not been asked whether those provisions would apply in a given set of circumstances, it is not possible to take the matter any further.

Similarly, in the case of the first two questions posed in relation to Clause 32A, the Commission, as presently constituted, is not in a position to say in general terms what the wording referred to means, other than to say it means what is said by the Full Bench of the Commission in the Grant Electrical case. To the extent that there is any uncertainty as to exactly what has been said in that decision, as it was submitted by both Mr Logan and Mr Dixon that there is, that issue has since been settled by the Full Bench of the Commission in *The Forest Products, Furnishing and Allied Industries Industrial Union of Workers, WA v. Dancroft Holdings Pty Ltd t/a Concept Contract Interiors (1994) 74 WAIG 1885* (hereinafter referred to as “the Dancroft case”). That matter concerned an appeal against a decision of an Industrial Magistrate who dismissed a complaint that a Mr Alvarez, who along with 12 others had been terminated due to insufficient work being available, had been refused severance pay to which he was entitled under the redundancy provisions of the relevant award which are in similar terms to the provisions the subject of these proceedings. In so doing the Industrial Magistrate held that the employer had not decided that it no longer wished the jobs in question to be done by anyone because the employees who were not terminated continued to do the job that the terminated employees had been doing. It was further held that the termination of Mr Alvarez was due to ordinary and customary turnover of labour because “his termination was due to a failure of the employer to win contracts which is clearly part of an ‘ordinary and customary turnover of labour’”.

In upholding the appeal in the Dancroft case, the Full Bench again reviewed in some depth the legislative history of the Federal TCR provisions and went to some length to address the meaning of the terms “... the employer no longer wishes the job the employee has been doing done by anyone ...” and “... ordinary and customary turnover of labour ...”. In the circumstances of the present case, it is worth repeating what the Full Bench said in its Reasons for Decision in that matter in relation to those two phrases.

“It is beyond question that the relevant provisions of Clause 20A had their genesis in the decisions of the Australian Conciliation and Arbitration Commission in the Termination, Change and Redundancy Case (1984) 8 IR 34 and (1984) 9 IR 115. Equally, there is no question that the provisions of subclause 20A(3) were intended to apply to employees who were made redundant within the meaning of that term as explained in *R. v. The Industrial Commission; ex parte Adelaide Milk Supply Co-Operative Ltd (1977) 16 SAR 6* (see: *Short v. F.W. Hercus Pty Ltd (1993) 46 IR 128, 137*). In handing down its award in the Termination, Change and Redundancy Case (supra), the Commission said at (1984) 9 IR 128 that it “did not intend the redundancy provisions to apply where an employee is dismissed for reasons relating to his/her performance, or where termination is due to a normal feature of a business”. Thus the Commission inserted into the award, of which Clause 20A is a copy, the requirement that the provisions of the clause were not to apply to the “ordinary and customary turnover of labour”. True it was, as the Respondent asserts, that the words were derived from the decision in *Shop, Distributive & Allied Employees’ Association (NSW) v. Countdown Stores (1983) 7 IR 273*. In that case, which concerned the provisions of the Employment Protection Act 1982 (NSW), the President of the New South Wales Industrial Commission noted at page 294 that there was a need to mark off collective dismissals by way of retrenchment on economic grounds “from the ordinary turnover of labour not related to the pressure of present economic recession”. Reference to the economic recession was made because the President had held that the provisions of the Act were principally designed to provide machinery to compensate for hardship of other employees as the result of being dismissed because of circumstances beyond their control “predominantly in the present economic recession”. It does not follow, as the Respondent contends, that the only persons who fall within the instant provisions of the Award are those who are made redundant as the result of general economic considerations rather than through economic considerations peculiar to the employer. Indeed, as the Australian Commission noted in the Termination, Change

and Redundancy Case (supra) at page 128 “we decided that there should not be any fundamental distinction, in principle, based on the cause of redundancy”. As Gray J observed in *McGarry v. Boonah Clothing Pty Ltd* (1993) 49 IR 66 at 77 “a broad view should be taken of the reach of the clause”.

In *Short v. F.W. Hercus Pty Ltd* (1991) 58 SAIR 868, Parsons SM of the Industrial Court of South Australia held that—

“... in using the expression ‘the ordinary and customary turnover of labour’ in the redundancy provision of the Metal Industry Award, the Full Bench intended to limit to (sic) right to severance pay to those employees whose jobs are no longer required by the employer to be done by anyone and this occurrence is not a normal feature of the business of the employer. Thus seasonal employees or intermittent employees such as building workers would be excluded from the operation of the redundancy provision as would other employees on fixed contracts or engaged for the duration of a specific contractual commitment of the employer. The redundancy provision seeks to distinguish between those particular employees and another category of employee who has an expectation of continuity of service. The redundancy provision compensates the latter category for the loss of non-transferable credits and the hardship and inconvenience of termination”.

With respect I agree with that interpretation. It is consistent with the general concept of redundancy, as explained in the Termination, Change and Redundancy Case (supra). Furthermore, it is consistent with the interpretation placed on similar words, albeit in a different context by Rich J in *Downs Distributing Company Pty Ltd v. Associated Blue Star Stores Pty Ltd (In Liquidation)* (1948) 76 CLR 463, which was referred to by the Supreme Court of Western Australia in *Douglas-Brown v. Isles In Re Vetter Trittler Pty Ltd (Receiver and Manager Appointed) (In Liquidation)* [(Unreported)—Coy No. 109 of 1991—2nd September 1992].

In the final analysis, whether a dismissal falls within the description of being in the ordinary and customary turnover of labour is largely a question of fact.”

.....

Although each case must be determined on its facts, the facts in this matter are not materially different from those considered by the Industrial Court of South Australia in *Short v. F.W. Hercus Pty Ltd* (supra) where an employee dismissed through a downturn in business and who was not replaced was held to come within the scope of an identical provision to that now in question, under Part II of the Metal Industry Award 1984. That decision was ultimately upheld by the Full Court of the Federal Court in *Short v. F.W. Hercus Pty Ltd* (1993) 46 IR 128. A similar decision was reached in *McGarry v. Boonah Clothing Pty Ltd* (supra) where large scale dismissals were found to have been effected in order to scale down the operations of the employer. Furthermore, in *Metals and Engineering Workers’ Union v. Bundaberg Foundry Engineers Ltd* [1991] 7 CAR 516 the Australian Industrial Relations Commission found that, although there was a substantial history of turnover of labour, an employee with a long and faithful history of service had a reasonable entitlement not to expect to be dismissed as part of that custom and thus was entitled to the benefit of a similar provision under Part I of the Metal Industry Award 1984 (see also: *Metals and Engineering Workers’ Union v. Orford Pty Ltd* [1991] 7 CAR 248).

It remains then to consider whether the learned Magistrate was correct in holding that the Respondent did not decide that it no longer wished the job being performed by Mr Alvarez to be done by anyone. Again with great respect to the learned Magistrate, he appears to have confused the “job” occupied by Mr Alvarez with the work he was undertaking. As pointed out by Parsons SM in *Short v. F.W. Hercus Pty Ltd* (1991) 58 SAIR 868 at 874 “the word ‘job’ in this context does not refer to the general category or class of work performed by the Applicant but

is directed to the particular duties required of the Applicant in accordance with his own particular contract of employment”. That view was accepted as being correct in both subsequent appeal cases. Much the same view was taken by the Full Bench of this Commission in *Amalgamated Metal Workers and Shipwrights Union of Western Australia v. Grant Electrical Industries Pty Ltd* (1989) 69 WAIG 1019 to which the Respondent referred. Furthermore, the same view is implicit in the decision in *McGarry v. Boonah Clothing Pty Ltd* (supra). It is clear, on the evidence, that the work performed by Mr Alvarez may well have been performed by the remaining employees, but the fact is, as is common ground, that the job or position he occupied was not filled by others.”

[supra at 1886/87]

In my view the answers to the first two questions posed in relation to Clause 32A are to be found in the above extracts from the Reasons for Decision of the Full Bench in the *Dancroft* case and the Commission is not in a position on an Application of the type now before it to take those matters any further.

While it is not certain from the statement of facts submitted in support of the Application in this case, it would appear that the circumstances which gave rise to the questions posed are little different from those described in the *Dancroft* case. If that is so, it would seem to me that had the questions now before the Commission been differently framed, they could have led to a finding that the provisions of paragraph (a) of subclause (1) of Clause 32A.—Redundancy, would have application. I stress, however, that whether or not this is the case would depend entirely upon the facts in the particular case.

The answer to the third question posed in relation to Clause 32A is able to be answered, in my view, by giving the language used in the Award its plain and ordinary meaning. When this is done, as submitted by Mr Dixon, it is clear that the obligation to pay monies pursuant to paragraph (a) of subclause (3) of Clause 32A arises in the circumstances described in paragraph (a) of subclause (1) of that Clause and not otherwise. The question must therefore be answered in the negative, but with qualification. The qualification arises because it cannot be said that persons terminated as a consequence of a definite decision taken by an employer in circumstances referred to in paragraph (a) of subclause (1) of Clause 32.—Introduction of Change, will never be entitled to severance pay as prescribed in paragraph (a) of subclause (3) of Clause 32A.—Redundancy. In most cases they probably will be so entitled. That issue would have to be determined, however, in the light of the facts in a particular case and by reference to the provisions of paragraph (a) of subclause (1) of Clause 32A. Any ambiguity that may have been said to exist in relation to the wording of that paragraph is now well settled by the Full Bench in the *Dancroft* case.

In the circumstances, the questions before the Commission are to be answered by a declaration in the following terms.

#### Clause 32.—Introduction of Change

##### Question 1

The meaning of the heading “Employer’s Duty to Notify” is to be found in the wording of subclause (1) of Clause 32.—Introduction of Change, and is otherwise in the context of the manner in which the question is framed not capable of any other answer.

##### Question 2

The meaning of the heading “Employer’s Duty to Discuss Change” is to be found in the wording of subclause (2) of Clause 32.—Introduction of Change, and is otherwise in the context of the manner in which the question is framed not capable of any other answer.

#### Clause 32A.—Redundancy

##### Question 1

The meaning of the words “where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone ...” is as most recently described by the Full Bench of this Commission in *The Forest Products, Furnishing and Allied Industries, Industrial Union of Workers, W.A. v. Dancroft Holdings Pty Ltd t/a Concept Contract Interiors* (1994) 74 WAIG 1885.

## Question 2

The meaning of the words "... ordinary and customary turnover of labour ..." is as most recently described by the Full Bench of this Commission in *The Forest Products, Furnishing and Allied Industries, Industrial Union of Workers, W.A. v. Dancroft Holdings Pty Ltd t/a Concept Contract Interiors (1994) 74 WAIG 1885*.

## Question 3

No—unless the person terminated is terminated for the reasons set out in paragraph (a) of subclause (1) of Clause 32A.—Redundancy.

Appearances: Mr F. Logan for the Applicant  
Mr H. Dixon (of Counsel) for the Respondent

## CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

s.47

Deletion of Respondents.  
No. 76 of 1980, Part 103.

Building Trades Award 1968 No. 31 of 1966.

COMMISSIONER A.R. BEECH.

8 April 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 Award 1968 No. 31 of 1966

namely—

Stramit Pty Ltd

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

AND WHEREAS at the 27 day of March, 1998 there were no objections to the making of such an Order;

NOW THEREFORE, I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred by the said Act, do hereby order that the following award be cancelled.

Concrete Masonry Block Manufacturing Award 1969 No.  
28 of 1969

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.  
No. 76 of 1980, Part 200.

Enrolled Nurses and Nursing Assistants (Government)  
Award No. R7 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

30 April, 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 Enrolled Nurses and Nursing Assistants (Government) Award No. R7 of 1978 namely—

Aston Recovery Hospital, 79 Colin Street, West Perth  
Dampier District Hospital, Dampier  
Ord Street Hospital, 15 Ord Street, West Perth  
Quo Vadis Hospital, Admiral Road, Byford  
Sunset Hospital, Beatrice Road, Dalkeith

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Parts 39, 40, 41 & 43.

Fruit Growing and Fruit Packing Industry  
Award No. R17 of 1979.

CHIEF COMMISSIONER W.S. COLEMAN.

30 April, 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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Cancellation of Award.  
No. 686 of 1977, Part 164.

Concrete Masonry Block Manufacturing Award 1969.  
No. 28 of 1969.

CHIEF COMMISSIONER W.S. COLEMAN.

8 April 1998.

*Order.*

WHEREAS the Commission, being of the opinion that there was no employee to whom the following award applies, did give notice on the 25 day of February, 1998 of an intention to make an Order cancelling such award;

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 Fruit Growing and Fruit Packing Industry Award No. R17 of 1979 namely—

A Wood of Walverdene Orchard, Kendenup 6323  
Blue Moon W.A. Pty Ltd of South Western Highway, Donnybrook 6239  
Burridge and Warren (WA) Pty Ltd of 29 Collins Street, Donnybrook 6239  
Westralian Fruit Exports Pty Ltd of Capel Road, Donnybrook 6239

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 171.

Furniture Trades Industry Award  
No. A6 of 1984.

COMMISSIONER A.R. BEECH.

30 April, 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 Furniture Trades Industry Award No. A6 of 1984 namely—

Lexcraft Furniture Manufacturers

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 184.

Government Officers Salaries, Allowances and Conditions  
Award 1989, No. PSA A3 of 1989.

CHIEF COMMISSIONER W.S. COLEMAN.

8 APRIL, 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 Government Officers Salaries, Allowances and Conditions Award 1989, No. PSA A3 of 1989 namely—

Western Australian Meat Commission

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 28.

Restaurant, Tearoom and Catering Workers'  
Award, 1979 No. R48 of 1978.

CHIEF COMMISSIONER W.S. COLEMAN.

30 April, 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 Restaurant, Tearoom and Catering Workers' Award, 1979 No. R48 of 1978 namely—

West Australian Newspapers Ltd, 133 St. George's  
Terrace, Perth WA 6000

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 23.

Retail Pharmacists' Award, 1966, No. 23 of 1965.

CHIEF COMMISSIONER W.S. COLEMAN.

8 April, 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 Retail Pharmacists' Award, 1966, No. 23 of 1965 namely—

Perth United Friendly Societies

Fremantle Friendly Societies  
Boulder United Friendly Societies  
Boans Limited

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

C.E. Bolt Pty Ltd, Albany  
Drew Robinson & Co, Albany  
G.S.R. Mineral Water Co. Pty Ltd, Albany  
[L.S.] (Sgd.) W.S. COLEMAN,  
Chief Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 196.

Shop and Warehouse (Wholesale and Retail Establishments)

State Award 1977, No. R32 of 1976.

CHIEF COMMISSIONER W.S. COLEMAN.

8 April, 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 Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, No. R32 of 1976 namely—

Cockburn Cement Ltd

Miss Maud Swedish Pastry House

Knox Schlapp Pty Ltd

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Parts 47—52.

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

CHIEF COMMISSIONER W.S. COLEMAN.

30 April, 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 Transport Workers' (General) Award No. 10 of 1961 namely—

Albany Transport Service

Bishop & Rees, Albany

B.K. Slater, Katanning

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 132.

Wool, Hide and Skin Store Employees'

Award No. 8 of 1966.

COMMISSIONER A.R. BEECH.

30 APRIL, 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 Wool, Hide and Skin Store Employees' Award No. 8 of 1966 namely—

Colyer Wilcox, 145 Parkes Road, Jandakot WA 6164

Dalgety and New Zealand Loan Ltd, 15 William Street, Perth WA 6000

I. Goldsvaig & Company Proprietary Limited, 29 Parry Street, Fremantle WA 6160

Joyce and Watkins, 15 Swan Street, Fremantle WA 6160

R.D. Turpin & K.N. Harley, T/A Turpin & Associates Exporters, Cockburn Road, Coogee WA 6166

Robert Jowitt and Sons Limited, 2 James Street, Fremantle WA 6160

Wenz and Company, Stirling Crescent, Hazelmere WA 6055

West Australian Woolgrowers Voluntary Co-operative Limited, Lot 23, Cockburn Road, Fremantle WA 6160

Woolsorters Proprietary Limited, Wood Street, Fremantle WA 6160

Wool Dumpers Western Australia Proprietary Limited, High Road, Melville WA 6156

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

## NOTICES— Award/Agreement matters—

Application No. 647 of 1998.

### APPLICATION FOR VARIATION OF AWARD ENTITLED "BUILDING TRADES AWARD 1968".

NOTICE is given that an application has been made to the Commission by The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Another under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed variation which relate to area of operation or scope are published hereunder.

1. Clause 3.—Scope—Delete this clause and insert in lieu—  
3.—SCOPE

This award shall apply—

- (1) To all workers (including apprentices) employed in the calling or callings set out in clause 10 of this award in the industries carried on by the respondents set out in the schedule attached to this award, and
- (2) To all employers employing those workers, but the Award shall not apply—
  - (a) to a worker covered by the Painters' (Shipping) Award No. 32A of 1961 as amended or replaced from time to time;
  - (b) to a worker employed in sandblasting or in painting structural steel work in an establishment of an employer bound by the provisions of the Metal Trades (General) Award No. 13 of 1965 as amended or replaced from time to time;
  - (c) to a worker employed on work coming within the scope of any award or industrial agreement in force at the date of this award or to a worker whose conditions of employment are regulated by any such award or industrial agreement;
  - (d) to a worker, not employed by a painting contractor or by a building contractor or not usually employed as a painter under this award, who is employed on work in which only one coat of paint or any other preparation used for preservative purposes applied;
  - (e) to a worker who paints petrol oil containers not exceeding fifty gallons capacity; or
  - (f) to a worker employed by Di-Met (WA) Pty Ltd in painting or applying protective coating in its workshop, to any plant, machinery, object or structure, not being a building or a part, in situ, of a building.
  - (g) Notwithstanding the exclusions contained in subclauses (a) to (f) of this clause and without limiting in any way the operation of these subclauses, the Award shall not apply to work performed by any worker falling within the scope of the following awards and registered industrial agreements;
    - (i) Pipe, Tile and Pottery Manufacturing Award No. R34 of 1978
    - (ii) Bristle Clay Tiles Agreement Ag. 287 of 1995
    - (iii) Heat Containment Industries (refractory Specialties) Award No. 3 of 1981
    - (iv) Heat Containment Industries Enterprise Agreement Ag. 59 of 1993
    - (v) Cement Tile Manufacturing Award No. 3 of 1966
    - (vi) Porcelain Workers Award No 1 of 1970
    - (vii) Brick Manufacturers Award No. 19 of 1979
    - (viii) Metro Brick (Cardup Enterprise Bargaining) Agreement 1994 Ag. 37 of 1995

- (ix) Metro Brick (Armada Enterprise Bargaining) Agreement 1994 Ag. 96 of 1995
- (x) Geraldton Brick Pty Ltd Enterprise Agreement No. Ag. 172 of 1996
- (h) to those employers bound by Appendix 4 of the Metal Trades (General) Award who employ employees covered under Appendix 4.
- (3) In relation to glass cutting & fitting not already covered by the award, machinery hire companies, ceramic floor & wall tiling, signwriting and stonemasonry, this award shall not apply to any employee whose work, had it been performed on the day of , 1998, would have been covered by any other award or industrial agreement of the Western Australian Industrial Relations Commission.
- (4) In relation to the industries of glass cutting & fitting not already covered by the award, machinery hire companies, ceramic floor & wall tiling, signwriting and stonemasonry, this award shall only apply to the named employers and their employees.

2. Schedule B—Respondents : Replace the current Schedule B with the following Schedule—

Aerated Water Manufacturers  
Agricultural Societies  
Aluminium Pre-Fabrication  
Breweries  
Brick Manufacturers & Distributors  
Caterers  
Ceiling Board Manufacturers  
Cement Manufacturers  
Private Colleges  
Confectionary Manufacturers  
Concrete Tank Builders  
Dairy Produce Processors  
Earth Moving Contractors  
Estate Developers  
Fertiliser Manufacturers  
Fish Processors  
Glass Cutting and Fitting  
Horse Racing Associations  
Hotels  
House Repairers & Renovators  
Industrial Gas Manufacturers  
Insulation Materials Manufacture  
Insurance Companies  
Joinery Manufacturers  
Local Government Authorities  
Machinery Hire Companies  
Meat Exporters and Frozen Food Stores  
Motor Vehicle Distributors  
Neon Sign Manufacturers  
Petrol & Oil Distributors  
Plastic Fabricators  
Poultry Processors  
Retail and Wholesale Distributors  
Roofing Contractors  
Ship Builders & Repairers  
Shop Fronts and Office Fitting Manufacture  
Signwriting  
Smallgoods Manufacturers  
Stonemasonry  
Swimming Pool Manufacturers and Equipment Suppliers  
Textile Manufacturers  
Ceramic Floor & Wall Tiling  
Theatres

### **Building Trades (General) Award—Respondents**

#### **Aerated Water Manufacturers**

Coca-Cola Bottlers (Perth) Pty Ltd  
19-21 Milne Road, KEWDALE WA 6105  
Crystal Softdrinks  
Clune Street, BAYSWATER WA 6053

#### **Agricultural Societies**

Royal Agricultural Society of WA  
Royal Showgrounds, CLAREMONT WA 6010

**Aluminium Pre-fabrication**

Jason Windows  
1 McDowell Street, WELSHPOOL WA 6106  
Walsh's Glass Pty Ltd  
200 Bannister Road, CANNING VALE WA 6155  
Coprul Aluminium  
8-10 Bradford Street, KEWDALE WA  
Avanti Glass  
24 Port Kembla Drive, BIBRA LAKE WA 6163  
Frontline Aluminium Windows  
21 Wellard Street, BIBRA LAKE WA 6163

**Breweries**

Swan Brewery Co. Pty Ltd  
25 Baile Road, CANNING VALE WA 6155  
Matilda Bay Brewing Co. Ltd  
130 Stirling Highway, NORTH FREMANTLE WA 6159

**Brick Manufacturers**

BGC Bricks  
121 Banister Road, CANNING VALE WA 6155  
Metro Brick  
Harper Street, CAVERSHAM WA 6055

**Caterers**

Fisher Catering Services  
Suite 23-25 Walters Drive, OSBORNE PARK WA 6017  
P & O Catering Services  
243 Beaufort Street, PERTH WA 6000

**Ceiling Board Manufacturers**

CSR Building Materials  
21 Sheffield Road, WELSHPOOL WA 6106  
Brady's Building Products  
18 Railway Parade, BAYSWATER WA 6053  
Boral Plasterboard  
12 Hoskins Road, LANDSDALE WA 6065

**Cement Manufacturers**

BGC Cement  
77 Vulcan Road, CANNING VALE WA 6155  
Cockburn Cement  
Russell Road (East), SOUTH COOGEE WA 6166  
Swan Portland Cement Ltd  
175 Burswood Road, BURSWOOD WA 6100

**Private Colleges**

Wesley College  
40 Coode Street, SOUTH PERTH WA 6151  
Christ Church Grammar School (Inc)  
Queenslea Drive, CLAREMONT WA 6010  
Methodist Ladies College  
365 Stirling Highway, CLAREMONT WA 6010

**Confectionary Manufacturers**

Blackpool Rock Candies  
16 Keegan Street, O'CONNOR WA 6163  
Fresh Food Industries  
10 Knock Place, JANDAKOT WA 6164  
Perth Candy  
3/50 Howe Street, OSBORNE PARK WA 6017

**Concrete Tank Builders**

AAA Tiger Concrete Tanks Pty Ltd  
Lot 101 Byron Road, ARMADALE WA 6112  
Amalgamated Concrete Tanks Pty Ltd  
16 Little John Road, ARMADALE WA 6112

**Dairy Produce Processors**

Peters & Brownes Group  
22 Geddes Street, BALCATTWA WA 6021  
Brownes Dairy Ltd  
299 Charles Street, NORTH PERTH WA 6006  
Fonti Dairy Foods Pty Ltd  
27 Howe Street, OSBORNE PARK WA 6017

**Earth Moving Contractors**

Thiess Contractors Pty Ltd  
256 St Georges Terrace, PERTH WA 6000  
Western National Earthmoving Corporation Pty Ltd  
Unit 7, 15-21 Collier Road, MORLEY WA 6062

**Estate Developers**

Summit Homes Group  
242 Leach Highway, MYAREE WA 6154

**Fertilizer Manufacturers**

Pivot Agriculture Ltd  
10 Fargo Way, WELSHPOOL WA 6106  
Organic 2000  
59 Safari Place, WANNEROO WA 6065

**Fish Processors**

Kailis Bros  
23 Catalano Road, CANNING VALE WA 6155  
Del Pty Ltd  
55 Armadale Crescent, COOLBINIA WA 6050

**Glass Cutting & Fitting**

Glass Repairs  
Unit 5, 40 Prendiville Drive, WANGARA WA 6065  
Action Glass & Aluminium  
83 Crocker Drive, MALAGA WA 6062  
Modern Glass

1 Gary Road, MADDINGTON WA 6109  
Peters Glazing Service  
12 Haller Road, BALCATTWA WA 6021

Tudor Glass & Glazing  
Unit 2, 31 Yampi Way, WILLETTON WA 6155  
Better Glass Co.  
399 Sevenoaks Street, CANNINGTON WA 6107

Clearview Glass & Aluminium  
18 Ilumba Way, NOLLAMARA WA 6061  
Cooling Bros. Glass Co. Pty Ltd  
179 Oxford Street, LEEDERVILLE WA 6007

Mr Glass Repairs  
10 Petrel Court, HUNTINGDALE WA 6110  
M & S Glass & Shower Screens  
Unit 2, 1919 Beach Road, MALAGA WA 6062

Mt Lawley Glass  
1070 Beaufort Street, BEDFORD WA 6052  
Aardvark Holdings WA  
Unit 8/211 Bannister Road, CANNING VALE WA 6155

Whitford City Glass  
27 Buckingham Drive, WANGARA WA 6065  
Pilkington Victor Glass  
79 McCoy Street, MYAREE WA 6154

Walsh's Glass  
200 Bannister Road, CANNING VALE WA 6155  
Armadale Glass & Mirrors  
253 Railway Ave, KELMSCOTT WA 6111

Accord Glass  
52 Peel Road, O'CONNOR WA 6163

Action Glass & Aluminium  
83 Crocker Drive, MALAGA WA 6062  
All Aussie Aluminium & Glass  
345 Belmont Avenue, BELMONT WA 6104

All Suburbs Glass & Glazing  
Unit 2, 201 Carr Place, LEEDERVILLE WA 6007  
Allied Glass Pty Ltd  
47 Duxon Road, ROCKINGHAM WA 6168

All Style Glass & Aluminium  
Unit 5, 40 Prendiville Drive, WANGARA WA 6065  
Alpha Armour  
3-5 Zanni Street, CANNING VALE WA 6155

Alpha Marine Windows  
3-5 Zannit Street, CANNING VALE WA 6155  
Avanti Glass  
24 Port Kembla Drive, BIBRA LAKE WA 6163

Williams Glass & Glazing  
Unit 5, & Cusack Road, MALAGA WA 6062  
Balcatta Glass & Glazing  
58 Erindale Road, BALCATTWA WA 6021

Nu-Look Glass & Aluminium Windows  
62 McCoy Street, MYAREE WA 6154  
Glass Doctor  
882 Albany Highway, EAST VICTORIA PARK WA 6101

Benora Glass & Aluminium  
Unit 7, 87 Erindale Road, BALCATTA WA 6021

Glazewell  
Unit 1, 2 & 10, 15 Dellamarta Road, WANGARA WA 6065

Glass Service  
82 Belmont Ave, BELMONT WA 6104

Bentley Glass  
Unit 4, 27 Sevenoaks Street, BENTLEY WA 6102

Buckingham Glass  
Shop 7, Cnr Railway Avenue and Gillam Drive,  
KELMSCOTT WA 6111

Carousel Glass & Glazing Service  
1A Gary Road, MADDINGTON WA 6109

Centurian Glass  
Unit 6, 11 Townsend Street, MALAGA WA 6062

Classic Glass  
4/24 Poletti Road, JANDAKOT WA 6164

Concept Glass  
Unit 5, 39 Delawney Street, BALCATTA WA 6021

Davey Glass  
404/396 Scarborough Beach Road, OSBORNE PARK WA  
6017

Design Glass Pty Ltd  
367 Sevenoaks Street, CANNINGTON WA 6107

Glass Products WA  
Cnr Albany Highway and George Way, CANNINGTON  
WA 6107

Quality Glass & Maintenance  
772 Beaufort Street, MT LAWLEY WA 6050

Speedy Glass  
106 Norma Road, MYAREE WA 6154

Dial-A-Glass  
Unit 2, 6 Ismail Street, WANGARA WA 6065

Diamond Glass  
Unit 2, 24 Irvane Drive, MALAGA WA 6062

Direct Glass & Aluminium  
Unit 2, 11 Macadan Place, BALCATTA WA 6021

Don Mok Glass & Aluminium Windows  
Unit 7, 16 Vale Street, MALAGA WA 6062

Double Glazing Australasia  
6 Chalkley Place, BAYSWATER WA 6053

Doubleview Glass  
253 Scarborough Beach Road, OSBORNE PARK WA 6017

E & E  
Unit 7, Lot 21 Sparks Road, HENDERSON WA 6166

Freeway Screens & Windows  
2 Ledger Road, BALCATTA WA 6021

Fremantle Glass Pty Ltd  
149 South Terrace, FREMANTLE WA 6160

General Glass  
Unit 4, 123 Burslem Drive, MADDINGTON WA 6109

Glass Services Pty Ltd  
82 Belmont Ave, BELMONT WA 6104

Glazewell  
15 Dellamarta Road, WANGARA WA 6065

Stirling Glass & Aluminium  
19 O'Malley Street, OSBORNE PARK WA 6017

Independent Glass & Glazing Pty Ltd  
Unit 3, 164 Abernethy Road, BELMONT WA 6104

Joondalup Glass & Glazing  
27 Buckingham Drive, WANGARA WA 6065

Kelmac Glass  
73 Forsyth Street, O'CONNOR WA 6163

K.T.S Glass & Glazing  
Unit 4, 91 Champion Drive, KELMSCOTT WA 6111

Maida Glass  
Unit 4, 27 Sevenoaks Street, BENTLEY WA 6102

Midland Glass  
173 Great Eastern Highway, MIDLAND WA 6056

Modern Glass  
376 Scarborough Beach Road, OSBORNE PARK WA 6017

Morley Glass & Aluminium  
49 Bassendean Road, BAYSWATER WA 6053

Premier Glass & Mirrors  
198 Star Street, WELSHPOOL WA 6106

Prompt Glass  
Unit 8, 211 Bannister Road, CANNING VALE WA 6155

Showerana  
Unit 2, 11 Yampi Way, WILLETTON WA 6155

Uniglaze  
4 Gordon Road (West), OSBORNE PARK WA 6017

Vic's Glass & Maintenance Service Pty Ltd  
399 Sevenoaks Street, CANNINGTON WA 6107

Osborne Park Glass  
24 Colray Ave, OSBORNE PARK WA 6017

Lakeside Glass  
Unit 10/7 Delage Street, JOONDALUP WA 6027

Port Glass & Glazing Service  
24 Mullings Way, MYAREE WA 6154

Recycled Glass  
Unit 4, 27 Sevenoaks Street, BENTLEY WA 6102

#### **Horse Racing Associations**

WA Trotting Association  
Nelson Crescent, EAST PERTH WA 6004

WA Turf Club  
70 Grandstand Road, BELMONT WA 6104

#### **Hotels**

Sheraton Hotel  
207 Adelaide Terrace, PERTH WA 6000

Hyatt Hotel  
99 Adelaide Terrace, PERTH WA 6000

The Vines Resort  
Verdelho Drive, THE VINES WA 6069

The Lord Forrest Hotel  
Symmons Street, BUNBURY WA 6230

#### **House Repairers & Renovators**

Apex Construction & Maintenance Pty Ltd  
10 Cleaver Street, WEST PERTH WA 6005

McAlister & McAlister Pty Ltd  
17 Pearson Way, OSBORNE PARK WA 6017

#### **Industrial Gas Manufacturers**

BOC Gases Australia Ltd—(originally C.I.G.)—to come  
back  
590 Hay Street, SUBIACO WA 6008

Air Liquide WA Pty Ltd  
276 Leach Highway, MYAREE WA 6154

Oxair Australia Pty Ltd  
355 Victoria Road, MALAGA WA 6062

#### **Insulation Materials Manufacturers**

Australian Fibre Glass Pty Ltd  
12 Dobra Road, YANGEBUP WA 6164

Thermacon 88 Insulation  
23 Faulkner Avenue, BELMONT WA 6104

Total Wool Insulation  
29 Welshpool Road, WELSHPOOL WA 6106

Bellis Australia Pty Ltd  
16 Keegan Place, O'CONNOR WA 6163

#### **Insurance Companies**

AMP  
140 St Georges Terrace, PERTH WA 6000

Prudential Corporation Australia Ltd  
76 Kings Park Road, WEST PERTH WA 6005

#### **Joinery Manufacturers**

Aley Richardson & Co.  
95 Wray Avenue, FREMANTLE WA 6160

Bunnings  
100 Pilbara Road, WELSHPOOL WA 6106

Canning Joinery & Cabinet Manufacturers  
22-24 Faulkner Avenue, BELMONT WA 6104

Mapp Bros Pty Ltd  
56 Edward Street, OSBORNE PARK WA 6017

Newmarket Joinery  
11 Rockingham Road, HAMILTON HILL WA 6163  
Del Riccio N & Son  
16 John Street, BAYSWATER WA 6063  
Kewdale Joiners Pty Ltd  
34 Stanhope Gardens, MIDVALE WA 6056

#### **Local Government Authorities**

Albany Council  
Mercer Road, ALBANY WA 6330  
Fremantle Council  
8 William Street, FREMANTLE WA 6160  
Perth Council  
141 St. Georges Terrace, PERTH WA 6000

Subiaco Council  
241 Rekeby Road, SUBIACO WA 6008

#### **Meat Exporters & Frozen Food Storers**

Australasian Country Fresh Meat Exporters Pty Ltd  
9/17 Boag Place, MORLEY WA 6062  
Floreat Meat Exporters Pty Ltd  
17 McLaren Street, SOUTH FREMANTLE WA 6162  
Harvey Meat Exports  
Seventh Street, HARVEY WA 6220

#### **Machinery Hire Companies**

AAA Spot On Hire Services  
69 Norma Road, MYAREE WA 6154  
Coates Hire  
18 Wheeler Street, BELMONT WA 6104  
Belmont Hire  
149 Francisco Street, BELMONT WA 6104  
Boral Contracting Pty Ltd  
63-69 Abernethy Road, BELMONT WA 6104  
Bayswater Builders Hire Pty Ltd  
239 Gnangara Road, WANGARA WA 6065  
BroomHall's Ezy Here  
6 Loftus Street, LEEDERVILLE WA 6007  
Cockburn Hire  
6 Hargreaves Street, BELMONT WA 6104  
Bees Hire & Sales Kenwick  
1726 Albany Highway, KENWICK WA 6107  
Lees Hire  
36 Railway Road, SUBIACO WA 6008  
Crommelins Handyman Hire & Sales  
139 Welshpool Road, WELSHPOOL WA 6106  
Wreckair Hire  
140 Welshpool Road, WELSHPOOL WA 6106  
Malaga Handy Hire  
6 Carson Road, MALAGA WA 6062  
Hire-all & Sales  
3 Winton Road, JOONDALUP WA 6027  
Smart Hire & Sales  
Cnr Bulwer & Fitzgerald Street, PERTH WA 6000

#### **Motor Vehicle Distributors**

Scarboro Toyota  
297 Scarborough Beach Road, OSBORNE PARK WA 6017  
City Motors  
505 Newcastle Street, PERTH WA 6000  
Shaks Holden Fremantle  
64 Queen Victoria Street, FREMANTLE WA 6160

#### **Neon Sign Manufacturers**

Perth Sign Co.  
135 Herdsman Parade, WEMBLEY WA 6014  
Claude Neon (Aust) Pty Ltd  
1/30 Walters Drive, OSBORNE PARK WA 6017  
Rainbow Neon Signs  
178 Colin Place, WEST PERTH WA 6005

#### **Petrol & Oil Distributors**

Ampol Petroleum Pty Ltd  
220 St Georges Terrace, PERTH WA 6000  
Amgas Pty Ltd  
178 St Georges Terrace, PERTH WA 6000

BP Oil  
543 Abernethy Road, KEWDALE WA 6105  
Shell Company of Australia Ltd  
22 Bracks Road, NORTH FREMANTLE WA 6159

#### **Plastic Fabricators**

Acrifab Display Products  
101 Albany Highway, VICTORIA PARK WA 6100  
Plastic Fabricators & Welders  
Unit 5/40 Oxleigh Drive, MALAGA WA 6062  
BCJ Plastic Products  
Unit 4/96 Hector Street, VICTORIA PARK WA 6100

#### **Poultry Processors**

Aussie Chicken  
Unit 6, 11 Vale Road, MALAGA WA 6062  
Bohemia Food Distributors Pty Ltd  
71 Howe Street, OSBORNE PARK WA 6017  
Inghams Enterprise Pty Ltd  
9 Baden Street, OSBORNE PARK WA 6017

#### **Retail & Wholesale Distributors**

Myer Stores Ltd  
200 Murray Street, PERTH WA 6000  
Aherns  
622 Hay Street, PERTH WA 6000  
Big W Discount Stores  
Karrinyup Shopping Centre, Karrinyup Road,  
KARRINYUP WA 6018

#### **Roofing Contractors**

James Hardie & Co. Pty Ltd  
25 King Edward Road, OSBORNE PARK WA 6017  
The Federation Roofing Co. (WA)  
19a Guildford Road, MT LAWLEY WA 6050  
Du Feu Metal  
55 Hector Street, OSBORNE PARK WA 6017  
Bower Roof Plumbing  
79 Essex Street, WEMBLEY WA 6014

#### **Ship Builders & Repairers**

Austal Ships Pty Ltd  
100 Clarence Ceach Road, HENDERSON WA 6166  
Fremantle Shipwriting Co. WA Pty Ltd  
8 Slip Street, FREMANTLE WA 6160  
Key Engineering  
41 Wood Street, FREMANTLE WA 6160

Sail Power Marine Chandlery  
23 Carrington Street, NEDLANDS WA 6009

#### **Shop Fronts & Office Fitting Manufacture**

Arcus Pty Ltd  
10 Roydhouse Street, WEMBLEY WA 6014  
Associated Shop Fitters Pty Ltd  
395 Victoria Street, MALAGA WA 6162  
Dakota Interiors  
23 Ruse Street, OSBORNE PARK WA 6017  
Co-ordinated Shop & Office Fit-outs  
Unit 8/11 Milford Street, EAST VICTORIA PARK WA 6101  
Ivo Industries Cabinet Makers  
Unit 8/42 Collingwood Road, OSBORNE PARK WA 6017  
Focus Shopfitters Pty Ltd  
139 Winton Road, JOONDALUP WA 6027  
K & R Jennings  
Unit 5/42 Prendiville Drive, WANGARA WA 6065  
Architectural Shopfitters  
5 Paddington Street, BAYSWATER WA 6053  
Lane Industries Pty Ltd  
20 Thurso Road, MYAREE WA 6154

#### **Signwriting**

A Sign Company  
16 Vahland Avenue, RIVERTON WA 6148  
Talbot Walsh & Co.  
86 Briggs Street, CARLISLE WA 6101  
Alphabetter Computer Cutting Services  
10 Drake Street, OSBORNE PARK WA 6017

Altona Industries Pty Ltd  
6a Baretta Road, WANGARA WA 6065

Anderson's Signs  
22/1 Baden Street, OSBORNE PARK WA 6017

Ascot Sign & Display  
14 Rio Street, BAYSWATER WA 6053

Authentic Signs Pty Ltd  
11 Anvill Way, WELSHPOOL WA 6106

Central Signs  
241 Beechboro Road, BAYSWATER WA 6053

Artform  
23 Buckingham Drive, WANGARA 6065

Total Sign Co.  
Unit 2 & 3, 194 Balcatta Road, BALCATTWA 6021

Norfolk Signs  
7 Sackville Terrace, SCARBOROUGH WA 6019

Anderson's Signs  
22/1, Baden Street, OSBORNE PARK WA 6017

Bullet Signs  
Shop 11/443 Albany Highway, VICTORIA PARK WA 6100

Autographics WA  
26a Collingwood Street, OSBORNE PARK WA 6017

Budget Signs  
Unit 5/96 President Street, WELSHPOOL WA 6106

Bulldog Signs  
18 King Edward Road, OSBORNE PARK WA 6017

Compac Marketing  
6 Packard Street, JOONDALUP WA 6027

Custom Signs  
27 Leake Street, NORTH PERTH WA 6006

Datawest  
Unit 1/24 Irvine Drive, MALAGA WA 6062

Down Under Signs  
31 Owen Road, KELMSCOTT WA 6111

Dynamic Signs  
Unit 1, 72 Clavering Street, BELMONT WA 6104

Express Signs  
38a Sundercombe Street, OSBORNE PARK WA 6017

Hall & Myer Signs  
5 Camden Street, BELMONT WA 6104

Indian Head Sign Co.  
291 Fitzgerald Street, NORTH PERTH WA 6006

Jason Signmakers  
54-58 Kurnall Road, WELSHPOOL WA 6106

JetCut  
7-11 Catalano Road, CANNING VALE WA 6155

Jiffy Signs  
Unit 2, 11-13 Gimpie Way, WILLETTON WA 6155

Nancarrow Signs  
208 Grand Promenade, BEDFORD WA 6052

Needham T & Co  
23a Montreal Street, FREMANTLE WA 6160

Peardon Signs  
Unit 5/79 Howe Street, OSBORNE PARK WA 6017

Printforce Signs  
9 Victory Terrace, EAST PERTH WA 6004

Rockingham Signwriters  
38b Hurrell Way, ROCKINGHAM WA 6168

Signwrite  
196 Carrington Road, HILTON WA 6163

The Sign Shop  
3/1297 Hay Street, WEST PERTH WA 6005

Sign Supermarket  
Unit 10/14 Farrall Road, MIDVALE WA 6056

Signlite Australia  
71 Buckingham Drive, WANGARA WA 6065

Signs R Us  
323 Great Eastern Highway, MIDVALE WA 6056

Signtalk  
Unit 8/354 Victoria Road, MALAGA WA 6062

Signtek Fabricators  
8 Midas Road, MALAGA WA 6062

Timbo Sign Co.  
Unit 2/35 Elmsfield Road, MIDVALE WA 6056

Toucan Sign & Design  
Unit 401/396 Scarborough Beach Road, OSBORNE PARK WA 6017

Varisigns  
55 McDonald Street (East), OSBORNE PARK WA 6017

Vital Line Corporate Signage  
Unit 5/92 Beechboro Road, BAYSWATER WA 6053

WA Signs  
73 Holder Way, MALAGA WA 6062

Woodpecker Signs & Graphics  
Unit 6, 40 Prendiville Drive, WANGARA WA 6065

**Small Goods Manufacturers**

Watsonia  
71 High Street, FREMANTLE WA 6160

Roediger Bros Pty Ltd  
182 Fitzgerald Street, NORTHAM WA 6401

D'Orsogna Ltd  
Cnr Leach Highway and Stock Road, PALMYRA WA 6157

**Stonemasonry**

Atlas Limestone  
356 Kew Street, CLOVERDALE WA 6105

Bernini Stone & Tiles Pty Ltd  
181 Hay Street, SUBIACO WA 6008

Lime Industries  
43 Hector Street, OSBORNE PARK WA 6017

Limestone Resources  
Parkland Road, OSBORNE PARK WA 6017

Limestone Building Block Co. Pty Ltd  
PO Box 60, APPECROSS WA 6163

Limestone City  
Lot 66, Parkland Road, OSBORNE PARK WA 6017

Exclusive Sandstone Products  
6 McDonald Crescent, BASSENDEAN WA 6054

Meteor Stone  
14 Furniss Road, LANDSDALE WA 6065

Formstone Australia Pty Ltd  
7 Winchester road, SPEARWOOD WA 6163

Ausita Constructions Pty Ltd  
Lot 2, 9 Dodd Street, HAMILTON HILL WA 6163

Bernini Stone & Tiles Pty Ltd  
181 Hay Street, SUBIACO WA 6008

Classic Solid Surfaces  
41 Sarich Court, OSBORNE PARK WA 6017

Classical Stone Co.  
Unit 10, 50 Banksia Road, WELSHPOOL WA 6106

Creative Marble Constructions  
2 Jade Street, MADDINGTON WA 6109

Exclusive Marble & Granite Pty Ltd  
Unit 2, 9 Sundercombe Street, OSBORNE PARK WA 6017

Marble & Granite Expo  
12 Rowallan Street, OSBORNE PARK WA 6017

Granite Construction Co.  
8 Koojan Avenue, SOUTH GUILDFORD WA 6055

Interceramics  
357 Oxford Street, LEEDERVILLE WA 6007

Sogenco Pty Ltd  
62 Winchester Road, MALAGA WA 6062

Status Marble & Granite  
16 Cocos Industrial Park, BIBRA LAKE WA 6163

WA Marble & Granite Co  
419 Scarborough Beach Road, OSBORNE PARK WA 6017

Indo Expo  
7/33 Hector Street, OSBORNE PARK WA 6017

United Stone Gallery  
Unit 3, 21 Stanford Way, MALAGA WA 6062

Marble & Cement Work (WA) Pty Ltd  
25 Felspar Street, WELSHPOOL WA 6106

GC Smith & Co  
Lot 12 Stockdale Road, O'CONNOR 6163

F & C Messina  
Unit 6 & 7, 354 Victoria Road, MALAGA WA 6062

Ital Marble & Granite  
Unit 5, 28 Vale Street, MALAGA WA 6062

Fraser Range Granite N.L  
Lot 3, Cnr Esplanade & Manning Street,  
SCARBOROUGH WA 6019

Granite Construction Co  
8 Koojan Avenue, SOUTH GUILDFORD WA 6055

Granite Warehouse  
31 Raymond Avenue, BAYSWATER WA 6053

Historium Furniture  
41 Sarich Court, OSBORNE PARK WA 6017

Rock Solid Products Pty Ltd  
10 O'Connor Way, WANGARA WA 6065

Silestone  
Unit 10/43 Hutton Street, OSBORNE PARK WA 6017

Universal Marble & Granite  
Unit 3, 33 Hector Street, OSBORNE PARK WA 6017

**Swimming Pool Manufacturers & Equipment Suppliers**

Southside Pool Service  
Unit 6, Cnr South Street and Bannister Road, CANNING  
VALE WA 6155

Pool Doctor  
25 Peregrine Drive, KINGSLEY WA 6026

Buccaneer Pools & Spas  
28 Belmont Avenue, BELMONT WA 6104

Aqua Technics  
10 Ferguson Street, KEWDALE WA 6105

Freedom Pools  
63 Winton Road, SOUTH JOONDALUP WA 6027

**Textile Manufacturers**

Birkmyre Pty Ltd  
16 Murchison, Terrace, EAST PERTH WA 6004

Grange Jaquard Pty Ltd  
Unit 1, 73 Holder Way, MALAGA WA 6062

**Ceramic Floor and Wall Tiling**

Tiles Expo  
324 Charles Street, NORTH PERTH WA 6006

Bathroom International  
199 Balcatta Road, BALCATTWA WA 6021

Bannister Tile Gallery  
Unit 3/180 Bannister Road, CANNING VALE WA 6155

Crosby Tiles  
46 Hector Road, OSBORNE PARK WA 6017

Ceramic Tiles  
10 Gibberd Road, BALCATTWA WA 6021

Ceramics International  
636 King Edward Road, OSBORNE PARK WA 6017

Trend Ceramics Pty Ltd  
98 Hector Street, OSBORNE PARK WA 6017

Federation Tile Factory  
1 Thorley Street, OSBORNE STREET WA 6017

Interceramics  
357 Oxford Street, LEEDERVILLE WA 6007

Total Ceramics  
Unit 14/3 King Edward Road, OSBORNE PARK WA 6017

Lucy Simich  
52 Hector Street, OSBORNE PARK WA 6017

European Ceramics  
18 Hector Street, OSBORNE PARK WA 6017

Myaree Ceramics  
91 Norma Road, MYAREE WA 6154

Fremantle Tile Gallery  
289 Stock Road, O'CONNOR WA 6163

O'Meara's  
28 Sundercombe Street, O'CONNOR WA 6163

Imported Ceramics  
59 Fitzgerald Street, NORTH PERTH WA 6006

Craft Decor  
1448 Albany Highway, CANNINGTON WA 6107

House of Ceramics  
267 Scarborough Beach Road, MT HAWTHORN WA 6016

**Theatres**

Ace Cinemas Pty Ltd  
1002 Hay Street, PERTH WA 6000

Dolphin Theatre UWA  
Stirling Highway, NEDLANDS WA 6009

Greater Union Organisation  
Lieve Street, INNALOO WA 6018

His Majesty's Theatre  
825 Hay Street, PERTH WA 6000

Hoyts Cinemas Ltd  
580 Hay Street, PERTH WA 6000

A copy of the proposed variation may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J.A. SPURLING,  
Registrar.

11 May 1998.

Application No. AG 69 of 1998

**APPLICATION FOR REGISTRATION OF  
AN INDUSTRIAL AGREEMENT**

ENTITLED "STATE SCHOOL TEACHERS' UNION OF  
W.A. CLERICAL STAFF AGREEMENT OF 1997"

NOTICE is given that an application has been made to the Commission by the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch 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.

**3.—DEFINITIONS**

(1) "Union" shall mean the Australian Services Union, Industrial Union of Workers, W.A. Branch

(2) "Employer" shall mean the State School Teachers Union of Western Australia (Inc.)

(3) "Employee" shall mean a person engaged on work of a clerical nature, but shall not include any person employed as an Industrial Staff member. This shall mean President, Senior Vice President, General Secretary, Advocates, Organisers, Women's Adviser, OHS Officer, Librarian.

**4.—AREA**

This Agreement shall have effect over the area comprised within the State of Western Australia

**5.—SCOPE**

This Agreement shall apply to the employer as defined in Clause 3 hereof in respect of their employees.

**7.—PARTIES BOUND**

This Award shall be binding upon—

The Australian Municipal, Administrative, Clerical and Services Union of Employees, (West Australian Clerical and Services Branch) and the State School Teachers' Union of W.A. (Inc.)

This Agreement shall cover approximately twenty employees.

A copy of the Agreement may be inspected at my office at National Mutual Centre, 111 St Georges Terrace, Perth

REGISTRAR  
30 April 1998.

## UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ayrton E Campbell-Henderson

and

Owners of Strata Plan 5767.

No. 1661 of 1997.

COMMISSIONER J F GREGOR.

24 April 1998.

*Reasons for Decision.*  
(Extempore)

On the 11 September 1997, Ayrton Campbell-Henderson (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 there were outstanding contractual benefits arising from a contract that he said existed between Kayzan Investments Pty Ltd A/T/F Wescom Unit Trust T/A Wescom Realty.

In a conciliation conference held on the 20 November 1997, by consent, the identification of the respondent was changed to the Owners of Strata Plan 5767 (the respondent). It may well be that the change of identification of the respondent could have prejudiced some of the claims of the applicant, because it seems that some of the answers that have been given in cross-examination during the hearing indicate that there may have been a separate contractual relationship with Wescom Realty, but because of the nature of the application that is an issue into which I cannot inquire.

However, be that as it may, the applicant says that he entered into an arrangement with the respondent to be caretaker of 227 Vincent Street and 128 Carr Street, North Perth. For the majority of the time his dealings were with Paula Lagrenade who, as I understand it, is a principal of Wescom Realty, but in these proceedings acts for the Council of the Owners of Strata Plan 5767.

The relationship is founded upon a contract which is not reduced to writing, but according to the applicant it includes the following ingredients—

- a salary of \$549 per fortnight
- 30 hours per week on the job
- payment of 50 percent of all telephone bills on presentation of accounts
- superannuation contribution of \$858.46 per annum paid by the respondent to AMP in March each year.
- reimbursement for personal expenses for consumables for operating machinery, for hardware and items less than \$15
- letting fees at the rate of 50 percent of one week's rent for each successful occupancy
- additional duties, when and if performed at the rate of \$15 per hour.

I note that a document he filed in the Commission on the 31 March the applicant lists some 18 heads of claim (*Exhibit C1*), some of which deal with the seven matters that he says are the fundamentals of his contract of employment. Others deal with matters which have not been pursued at hearing as a part of the claim for contractual entitlement. Some of them were discussed for the purpose of the applicant trying to get some answers from his employer, for example, about an alleged tardiness in the payment of his salary. I will make comments where necessary on these matters later in these Reasons.

Arising from the contract the applicant says that he is owed for telephone accounts in the amount of \$422.88 up until October 1997. He is also owed a further sum of \$289.02 for accounts that he has submitted since. He says that the amount of superannuation of \$858.46 was not paid on the due date to AMP. In addition there is an amount of \$423.81 for letting fees.

The Commission heard from Ms Lagrenade, who appeared for the respondent. She concedes that there is an arrangement between the parties in the form of a contract, the fundamentals of which are contained in a letter dated the 8 May 1997 (*Exhibit L1*). These include entitlement to be paid a salary, 6 percent superannuation, reimbursement of 50 percent of phone expenses and 4 weeks paid holidays per year.

The respondent, through Ms Lagrenade, specifically denies liability to letting fees and additional duties. According to her evidence Ms Lagrenade says that the letting fees are part of a private treaty that the applicant forms from time to time with people who are either letting or going into units. It is asserted that the Owners of Strata Plan 5767 have nothing to do with those arrangements.

Insofar as additional duties are concerned, Ms Lagrenade conceded that Wescom Realty has made arrangements with the applicant from time to time for him to perform additional duties, but he submits a price, a price is agreed and the work is performed. Her evidence is that the arrangement does not form a collateral contract to the contract of employment under investigation here, it is a separate arrangement between the applicant and other parties.

This means there is an agreement between the parties insofar as salary payments, 6 percent superannuation, reimbursement of 50 percent of phone expenses, payment of personal expenses and payment of superannuation. There is a dispute about letting fees and additional duties.

Before I examine the witness evidence and provide my analysis I indicate that the law to be applied in matters such as this is clearly set out in *Reginald Simons v Business Computers International Pty Ltd 1985 (65 WAIG 2039)* where the Acting President Edwards set out the task of the Commission in matters such as this. The ratio is that the Commission is to discover the terms of the contract and to give effect to its terms, as long as the contract is not the subject of an order or award of this Commission. This is a judicial act and the Commission is entitled to bring to its deliberation the understanding that these contracts are sometimes made between people who have not a sophisticated knowledge of the law. They may or may not express the contract in elegant terms or otherwise secure the contract in a way that a lawyer might. That is a reality the Commission is to bear in mind and I have done so in considering this case.

In all matters like this the Commission has to make judgments about the credibility of witness evidence. I have heard from both of the parties here today. I have no reason to believe that both of them are not telling me what they believe to be the truth in the matter. I do not think the applicant came here with a view of telling the Commission anything he does not truly believe to be the truth and I accept his evidence being that of a truthful person. Ms Lagrenade impresses me as a person of similar mind. The problem is their stories are different. In circumstances like this it is necessary to search for corroboration of one story or the other. The only corroboration I have about the form of the contract is in the letter in Exhibit L1.

The letter, under the heading Details of Your Salary and Payments, reads—

“Your current annual salary is \$14,000 per annum gross plus 6 percent superannuation. This is for a total of 30 hours per week. We also reimburse 50 percent phone expenses. You are entitled to 4 weeks' paid holidays per year. Your commencement of employment was 27th of March 1994. Sick leave is as per the award and is not paid out. It is purely for when you are sick and if you are on sick leave more than 2 consecutive days a doctor's certificate is required. We enclose a copy of the duties for the caretaker. This does not include the locking of laundry doors which has since been added by the committee of the council of managers.”

There is other information in the letter which is not relevant to the matters under review here.

I find that the fundamentals of the contract of employment are that the applicant would be paid a salary of approximately \$540 per fortnight for 30 hours work per week, 50 percent of phone expenses and 6 percent superannuation calculated on the total salary. In addition it was agreed that there would be reimbursement for personal expenses.

I also find the applicant is entitled to 4 weeks' paid holidays. There is a concession by the respondent that there is a considerable period of holiday pay accrued which is an entitlement he can take in due course. On the evidence before me I find that letting fees are not part of any arrangement between the parties in these proceedings. I cannot make a finding in favour of the applicant concerning extra duties, although I am certain at the moment there is no specific claim for those. He has told the Commission that there are some extra duties tied up with his claim for letting fees but he did not separate those, therefore I am unable to come to a conclusion what they were.

Under the terms of s.29(1)(b)(ii) of the Act I can give effect to those parts of the contract which I have found exist between the parties and I now turn to consider those. There is no claim for salary unpaid but I make the point that it is not acceptable in contemporary industrial relations for an employer to say on a number of occasions "Well, yes, we are a bit late with your pay". It is difficult for an applicant to get satisfaction on such a manner if the money is eventually paid because the cause of action disappears. The Owners of Strata Plan 5767 should properly organise their affairs if they wish to be an employer and pay their employees at the agreed times. Not to do so is an abrogation of their responsibility under the contract of employment. It is a practice which often leads to antipathy between the employee and the employer.

Concerning the claim for payment of 50 percent of telephone bills. By Exhibit L2, the respondent claims it has \$609 paid for the period 27 of October 1996 to the 27 November 1997. It says that there is an overpayment of \$358. I have tried to follow the mathematics that have occurred here. When one adds up 100 percent of all of the accounts submitted by the applicant, there is a total of \$1,219.91. That amount has been reduced to 50 percent which is \$609. Payments were made on the 31st of December 1996 of \$220.00; on the 1st of March 1997 of \$53.60; on the 8th of May 1997 of \$94.95; on the 8th of October 1997 of \$609.80 and the 4th of December 1997 of \$10.00, to a total of \$988.35. An overpayment arises, so it is argued, because there was only \$609.95 due.

The detail of alleged over payments has not been provided to the Commission. By the same token, the applicant has not led any evidence about how he arrives at his claim of \$422.88. What he says is that it is an amount due up until October 1997 and there has been no overpayment. He says there has been a further account for \$289.02 submitted. I am unable to make a finding that he is owed \$422.88. The onus of proof is on the applicant to prove his claim. I am able to make a finding that he is owed \$289.02, which I do, and an order will issue that he be paid that amount. The respondent admits that there were additional accounts but they were going to offset those. In the circumstances, I will issue an Order for \$289 which will not allow for offset and in that way hopefully justice is done concerning the other disputed overpayment. In other words, the applicant will get \$289.02 which I will round to \$289 in settlement of the contractual benefits claim.

Insofar as superannuation is concerned, the Commission has no power to enforce the Superannuation Guarantee Act (Commonwealth), however, there is consent that an amount of \$858.46 for superannuation will be paid by the 28 July 1998. The balance of the claims are dismissed. Minutes of Proposed Order will be issued to the parties.

Appearances: Mr A E Campbell-Henderson appeared on his own behalf.

Ms P Lagrenade appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ayrton E Campbell-Henderson  
and

Owners of Strata Plan 5767.

No. 1661 of 1997.

COMMISSIONER J F GREGOR.

8 May 1998.

*Order.*

HAVING hearing Mr A E Campbell-Henderson on his own behalf and Ms P Lagrenade 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 respondent pay to the applicant the sum of \$289 as a denied contractual benefit;
2. THAT all other claims for denied contractual benefits be and are hereby dismissed.

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Joseph Carberry

and

Troy Slamar trading as TDK Carting Contractors.

No. 2366 of 1997.

5 May 1998.

*Reasons for Decision.*

(Given extemporaneously at the conclusion of the proceedings, taken from the transcript as edited by the Commissioner.)

COMMISSIONER A.R. BEECH: I note that there is no appearance on behalf of the respondent. In this matter, the respondent is cited as TDK Carting Contractors and the identity of one of the individuals at TDK Carting Contractors is Mr Slamar. All of this information is contained in Mr Carberry's Notice of Application.

On the file is a Declaration of Service which is dated the 19th December 1997 and in that Declaration, Mr Carberry has stated under oath that on the 19th December 1997 he served the Notice of Application upon Mr Slamar at 4 Brookland Crescent, Marangaroo. On the 22nd January 1998 the Commission tried to convene a conference of this matter and we sent notification to Mr Carberry and to Mr Slamar and the address on that occasion was the address of TDK Carting Contractors, which is 17 Hester Way, Greenwood, which once again is the address for that body given in Mr Carberry's claim.

It is a fact that when the conference proceedings convened, there was no appearance on behalf of the respondent. On that occasion, Mr Carberry requested the application be listed for hearing and the matter was then set down for today. On the 23rd February and also on the 9th March, two Notices of Hearing were sent out to TDK Carting Contractors at 17 Hester Way, Greenwood and on the face of it those Notices of Hearing were properly sent. Certainly no mail has been returned to the Commission, and it seems to me therefore that TDK Carting Contractors has not only been properly served with a Notice of Application, it has also been duly served with the Notice of Hearing, as that is required under the Regulations and under the Act.

On the face of it therefore, there is no reason to doubt that TDK Carting Contractors knows of the application, knows that it is listed for today. On that basis, and pursuant to the Industrial Relations Act, 1979, I intend to proceed to deal with

Mr Carberry's claim even though the respondent has not attended, and that is because I think the respondent has been properly told of the application, and been told it is on today. If the respondent does not attend, that is a matter for it. There is nothing on the file to indicate any difficulty on its part in attending the hearing and in fact, on the Commission's record, there have been at least four attempts to contact Mr Slamar on either the direct number or the mobile telephone number supplied and there has just been no answer.

So having dealt with that formality, Mr Carberry, we are now ready to proceed even though the respondent is not here.

The Commission has before it a claim by Mark Joseph Carberry which is in two parts. Both parts relate to his employment with a respondent which has been cited as TDK Carting Contractors. A number of issues have arisen and I'll deal with those now. Firstly, as to the correct identity of the employer I am satisfied from Mr Carberry's evidence that it is likely that the correct identity of his employer is not TDK Carting Contractors as a legal entity but rather that TDK Carting Contractors is a business carried on by an individual, that individual being Mr Troy Slamar and it would seem to me that this application should really be directed to Mr Slamar trading as TDK Carting Contractors.

Accordingly, I intend to change the name of the respondent to reflect Troy Slamar trading as TDK Carting Contractors. In my view, it is quite proper for me to do so given that the documentation that is before me clearly shows that this claim was served upon Mr Troy Slamar by Mr Carberry on the 19th December 1997 and the correspondence, and indeed the Notice of Hearing that has been sent to the respondent, has been sent care of Mr Slamar. I cannot see that he could be in any way disadvantaged by citing him as the respondent so accordingly, that change will be made.

I now turn to the merits of the various claims. I note that the only evidence that I have before me is the evidence of Mr Carberry. I have already indicated that there is no appearance on behalf of the respondent. Mr Carberry gave his evidence under oath and I might say that, with respect to him, I found his evidence to be quite credible and that Mr Carberry struck me as being a most truthful person under oath and I also note those occasions when his evidence has been corroborated by the contents of his diary and also the various other documents that have been submitted.

I also find that it has been very much to Mr Carberry's credit that, for example, in relation to any money that may have been credited to his account in relation to the fuel that he paid for at Meekatharra he has been quite willing to reduce his claim in accordance with his memory to the amount of money that was, or the expense that was, incurred by him at Meekatharra, and given the absence of the respondent I find it very much to his credit as a witness that he was prepared to do so. I therefore accept Mr Carberry's evidence.

The first claim that has been made is a claim by Mr Carberry that he has been unfairly dismissed. I suspect, having heard his evidence that his claim would be made out. He had no warning that he was to be replaced by another driver and indeed he reported to a workplace in Naval Base on the last day of his employment intending to do the job that he had been given only to find that he had been replaced.

However, Mr Carberry has stated, for reasons that he has given, that he does not seek any compensation for the dismissal which occurred, he merely seeks the payment of his contractual benefits. Whilst those circumstances are somewhat unusual it is really up to Mr Carberry to decide what claims he wishes to pursue and which claims he wishes not to pursue and it is not for the Commission to take on Mr Carberry's claim on his behalf and do something with it that he does not wish to do.

Accordingly, there is no practical reason why I should give any further consideration to Mr Carberry's claim that he was unfairly dismissed because, even if I were to reach a conclusion that he was unfairly dismissed, he specifically asks for nothing to be done about it and for no compensation to be awarded. Accordingly, I won't take that matter any further.

I turn next to deal with Mr Carberry's claim that he has been denied benefits under his contract of employment. That claim falls under three headings. The first heading is that he claims

he has not been paid for effectively the last 13 days of his period of employment.

I turn to the evidence before me. I have already indicated my preparedness to accept Mr Carberry's evidence and as a result I find that Mr Carberry answered a newspaper advertisement sometime prior to the 27th October 1997 and as a result of following up that advertisement a meeting occurred between him and Mr Slamar at which the terms and conditions of employment were discussed. I am satisfied that while a number of terms and conditions of employment may not have been discussed, it was certainly discussed and agreed between them that Mr Carberry would be employed as a Truck Driver and he would be paid at the rate of \$150 per day for all time worked.

Mr Slamar, apparently at a later stage, approximately eight days into the employment, informed Mr Carberry that the rate in fact would be only \$100 a day because in Mr Slamar's opinion Mr Carberry was working in the metropolitan area as distinct from country trips. Mr Carberry in his evidence did not, in my view, give a free and willing consent to that change and it does seem to me on the evidence that Mr Slamar attempted to unilaterally change the terms of the contract of employment. I accept Mr Carberry's evidence that there was no distinction drawn at the time of the employment between the rate of wage of \$150 per day only if it was for country work and \$100 a day for other than country work. Accordingly, I find as a matter of fact that Mr Carberry's employment was at the rate of \$150 per day.

I am satisfied that Mr Carberry was employed between the dates of the 27th October 1997 and the final day of employment was the 25th November 1997. I also accept Mr Carberry's evidence that he was employed and worked for a total of 21 days during that time. In my view, therefore, Mr Carberry is entitled to be paid for 21 days worked at the rate of \$150 per day.

Mr Carberry has received one payment only, that payment being an amount of \$800. Although that was tendered to him by Mr Slamar as payment for eight days worked it cannot, in accordance with my finding represent payment for eight days worked. At the very least, even if there had been an agreement that the rate of wage would be \$100 rather than \$150, that agreement could not take effect prior to the date of the agreed change. In fact Mr Carberry worked for those eight days on the understanding it would be \$150 a day.

I therefore do not accept that \$800 is payment for eight days worked. Rather, I find that the payment of \$800 is for only five days worked and that effectively means that, out of those 21 days, Mr Carberry has been paid for only five days. It therefore seems to me that Mr Carberry is to be paid for a further 16 days at the rate of \$150 per day. It therefore seems to me that Mr Carberry is owed an amount of \$2400 being 16 days at \$150 per day. I am satisfied on the evidence that that is an entitlement under Mr Carberry's contract of employment and accordingly an order will issue in that sum of money.

Mr Carberry's next claim relates to his own money that he used at Meekatharra to put fuel into the truck that he was driving from Port Hedland back to Perth. I accept that as a result of the money credited to Mr Carberry's account by Mr Slamar subsequently, that although Mr Carberry used \$350 of his own money to put fuel into the truck, the subsequent payment by Mr Slamar of \$200 to him for that purpose means that Mr Carberry is owed \$150 out of that transaction. I am satisfied that that has occurred and is an entitlement that is due to him and accordingly an order will issue for \$150.

The final item is for an amount of \$38 which was incurred by Mr Carberry on the 28th October 1997 and they are for repairs made by Rockingham Auto Electrics to the Volvo truck owned by Mr Slamar that Mr Carberry was driving. I accept Mr Carberry's evidence, indeed I have no reason not to, that this particular truck was defective in the areas that he has mentioned and that in order to remedy that defect such that the vehicle is able to be driven on the roads in a manner that is not illegal and which incidentally might place Mr Carberry's own driver's licence in jeopardy, that that amount of money needed to be spent and further, that although it was a responsibility of Mr Slamar to have done that, Mr Slamar failed to do so notwithstanding that Mr Carberry drew that to his attention. I'm satisfied that Mr Carberry has endeavoured to seek payment

of the \$38 but that has not occurred and Mr Slamar has refused to pay that amount of money. I am therefore satisfied that a further order should issue for an amount of \$38.

That then satisfies all of the claims that I have before me and, Mr Carberry, they are the reasons why I am about to make this order. I have added up those totals and it comes to a total of \$2588. If you have followed what I have been saying you are in a position to check the accuracy of that total. Do you also reach that same amount?

MR CARBERRY: I do, Sir.

BEECH C: You do, yes. It seems to me then that the order that I issue should be as follows, that Troy Slamar forthwith pay Mark Joseph Carberry the sum of \$2588 being benefits and entitlements due to you under your contract of employment, and that is the order that I intend to issue. Is that sum of money and that format consistent with what has happened this morning?

MR CARBERRY: Yes, Sir.

BEECH C: It is, all right. Then an order will issue in that form and that effectively concludes these proceedings. Thank you. We will now adjourn.

Order accordingly.

Appearances: Mr M.J. Carberry appeared on his own behalf as the applicant.

No appearance on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Joseph Carberry

and

Troy Slamar trading as TDK Carting Contractors.

No. 2366 of 1997.

8 May 1998.

*Order.*

HAVING heard Mr M.J. Carberry on his own behalf as the applicant and there being no appearance on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT Troy Slamar forthwith pay Mark Joseph Carberry the sum of \$2588.00 being benefits and entitlements due to him under his contract of employment.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lynette Margaret Cockram

and

Kays Bag Stores (NSW) Pty Limited.

No. 1783 of 1996.

9 April 1998.

*Reasons for Decision.*

COMMISSIONER C.B. PARKS: The respondent operates retail stores throughout Australia and, so far as is material to the matter presently before the Commission, operates a retail store within the Whitford City Shopping Centre. This store commenced trading in September 1996 and the applicant, Mrs Cockram, commenced employment with the respondent as a casual salesperson at that time. On 4 December 1996 Mrs Cockram attended the store to commence work and was summarily dismissed upon being handed a facsimile, signed by Mr Barry Craig, transmitted from the Sydney office of the

respondent. The applicant was dismissed for her alleged involvement in the stealing goods from the Whitford store when on duty on Saturday, 30 November 1996. Mrs Cockram denies the alleged theft and claims that her dismissal from employment on that ground is unfair.

At the conclusion of the hearing, the Commission held that Mrs Cockram had been unfairly dismissed and that was declared to the parties. Further, the Commission reserved its decision regarding the relief sought and announced that written reasons on both matters would subsequently be delivered. These are those reasons.

On Saturday, 30 November 1996 Mrs Cockram and a junior salesperson were on duty at the Whitford store, the usual manager, Mrs C.A. Moray, was not in attendance that day she not having been rostered for duty. It is not in issue that at or about 1.00 p.m. on the Saturday the husband and daughter of the applicant entered the store and at one point Mr Cockram removed several wallets from the display stand, their daughter removed a child's backpack from the position where it was displayed and these items were discussed with Mrs Cockram. Mr Cockram and Miss Cockram subsequently departed the store with one of them carrying a plastic carry bag of the type provided by the store for a customer to carry a purchase from the store. Mr L.W. and Mrs P.I. Ferridge were present in the store when Mr and Miss Cockram arrived and departed shortly thereafter upon completing a purchase with the junior salesperson. The Ferridges being suspicious of the Cockram family's conduct, seated themselves at a vantage point outside the store so as to observe the subsequent actions of the Cockram family. They observed the departure of Mr and Miss Cockram from the store and that Mrs Cockram then moved to, and activated, the store cash register. The observations of Mr and Mrs Ferridge up to the time that Mr and Miss Cockram departed the store caused them to conclude that acts of theft had occurred. That Saturday evening Mrs Ferridge telephoned her brother in Hong Kong and reported to him regarding Mrs Cockram in order to have him relay that to his wife, Mrs Margaret Turner, a director of the respondent company.

Mrs Cockram was a casual salesperson who throughout her employment worked a number of hours on each Monday, Wednesday, Thursday evening, Friday, and each alternate Saturday, according to a regular roster. In accordance with that roster, Mrs Cockram worked at the store, as usual, on Monday, 2 December 1996. That day she purchased a straw bag and a purse-wallet from the store and the day otherwise passed without incident. On the morning of Tuesday, 3 December 1996, Mrs Cockram received a telephone call at home from Ms P.A. Liddelow who, acting on behalf of the Respondent and upon the direct instructions of Mrs M. Turner in Hong Kong, put to Mrs Cockram that she should resign from her employment, otherwise she would be dismissed. Mrs Cockram questioned why that was so and Ms Liddelow conveyed to her the extent of her understanding, that being, that it related to some incident involving her at or about 1.00 p.m. on the previous Saturday, the nature of which she was unable to describe because that information had not been provided to her. Mrs Cockram did not resign and Ms Liddelow did not effect a dismissal, but informed the applicant that she would discuss the matter with Mr Barry Craig in Sydney, whom she described as the general manager. Ms Liddelow, and subsequently Mr Cockram, telephoned Mr Craig, who had no knowledge of the incident or the action which had been taken in relation to Mrs Cockram. During the course of the conversation between Mr Cockram and Mr Craig, Mr Cockram commented to the effect that the respondent should heed the prevailing laws regarding the dismissal of an employee.

Two material telephone conversations later followed on Tuesday, 3 December 1996. The first of these was when Mr Craig contacted Mrs Cockram and indicated that the incident which had been referred to on Saturday, 30 November 1996 related to the visit of her husband and their daughter to the store on that day. According to Mr Craig, he explained to Mrs Cockram that two customers had reported the removal of a bag and a wallet in suspicious circumstances, impliedly stolen, and asked Mrs Cockram what she knew of that matter. Mrs Cockram says that Mr Craig made no mention of a bag and spoke to her only about the removal of a wallet, which she denied. During that conversation, Mrs Cockram did confirm with Mr Craig that her husband and daughter had visited the store and also

indicated that led to the purchase of a backpack from the store and proof of the purchase existed. Mrs Cockram later telephoned Mr Craig and it is the evidence of both of them that she said to Mr Craig that a plastic carry bag supplied by the store, which was in the possession of her husband when he departed the store, contained her daughter's surf-type wallet, which she had brought into the store, and it may have been the placement of that wallet in the plastic carry bag which had been observed by the two customers. During this last conversation, Mrs Cockram questioned whether she was to be dismissed and was told by Mr Craig to report for duty the following day, Wednesday, 4 December 1996, as rostered.

On Wednesday, 4 December 1996 Mrs Cockram reported for duty. She was immediately met by Ms Liddelow, who handed her the facsimile letter of dismissal, dated 3 December 1996, who declared that she had been instructed to hand such to Mrs Cockram and who declined to make any comment, again on instruction, when asked by Mr Cockram whether she had anything to say to Mrs Cockram.

Within days of Mrs Ferridge speaking to her brother in Hong Kong, she forwarded to the Sydney office of the respondent, by facsimile transmission, written reports made by her and her husband regarding the Cockram family and events on 30 November 1996. Mr Craig says he did not sight those reports and his knowledge of what occurred on that day is that which Mrs Turner related to him from Hong Kong. Those reasonably contemporaneous written reports were not in evidence before Commission. The essence of the testimony given by Mrs and Mrs Ferridge is that they observed Mrs Cockram approach her husband from the rear of the shop with a plastic carry bag, that together they discussed a handbag which had been removed from the display stand and that handbag placed into the plastic carry bag, followed by a second handbag. Following this, Miss Cockram removed a backpack from the display, put it on, and called her mother's attention to it. It then followed that the family moved towards to exit from the store and stopped at a display of wallets, where a number were removed and Mr and Mrs Cockram conversed with each other, followed by Mr Cockram dropping one wallet into the plastic carry bag, immediately following which he and Miss Cockram departed the store and hastily moved away from that location.

The Commission heard testimony from Mrs L.M. Cockram, her husband Mr G.E. Cockram and their daughter Miss R.S. Cockram. From their explanations of what occurred on the material Saturday the Commission is satisfied that Mr and Mrs Ferridge were wrong in what they believe occurred that day. It is clear that Miss Cockram purchased a container of confectionery from the Target store in the Whitford Centre at 12.37 p.m. that day. The receipt (exhibit 5) describes it as a "megacup" and Mr Cockram's description of it was a large plastic cup, which container Miss Cockram carried into the respondent's store when she and her father visited Mrs Cockram at or about 1.00 p.m. Some of the confectionery spilled to the floor of the store and that caused Mrs Cockram to provide a plastic carry bag, as supplied by the store, into which the container was placed to prevent further spillage. At some stage Mr Cockram made Mrs Cockram aware that their daughter needed to acquire a gift for a birthday party she was to attend and that led to Miss Cockram removing a backpack from where it had been displayed with others and inviting comment from her mother regarding its appropriateness as a gift. The decision was taken that it was appropriate. Operating procedure being not to provide customers with goods from the display, but to provide the item from stock held elsewhere, a backpack was obtained from the stock located on the side wall of the store near the rear. A backpack was removed from the stock shelf and placed into the plastic carry bag and the backpack that Miss Cockram had removed was returned to the display. Mrs Cockram and Mr Cockram stopped at the wallet display and a number of wallets were handled by Mr Cockram, but all were returned to the display. Mr and Mrs Ferridge observed a wallet being placed into the plastic carry bag, Mrs Ferridge was equivocal about it having done by Mr Cockram, whereas according to Mr Ferridge that was done by Mrs Cockram. Mr Cockram at one stage had been holding a wallet belonging to his daughter, which he believes he returned to her before handling the wallets on display. Miss Cockram says her father returned her wallet to her while he was looking at the wallets on display and she in turn put that wallet, her wallet, into the

plastic carry bag which then held three items, her container of confectionery, a backpack, and her surf-type wallet.

Mr and Mrs Cockram deny that either of them stopped to consider any handbags, or removed any handbags from their place of display. Mr and Mrs Ferridge first testified that Mr and Mrs Cockram had taken possession of two handbags because they observed the outline of them within the plastic carry bag. There was no initial indication from them that they had observed handbags actually being placed into the plastic carry bag. That suggestion did not arise until Mrs Ferridge said that Mrs Cockram had done so, in response to suggestive questions regarding bags from the advocate for the applicant. Notwithstanding this response by Mrs Ferridge, I believe it to be an injudicious reply, not one as to fact, but of an assumption borne out of suspicion and the belief that the outline of two handbags had been present. I am satisfied that Mr and Mrs Ferridge did not see all that occurred, they misinterpreted matters, and their recollection of events is not in the sequence they occurred. The outlines they observed on the plastic carry bag were those of the confectionery container and the backpack. On Monday, 2 December 1996 Mr Cockram purchased a bag and a purse-wallet through the store manager. It is extremely unlikely that a person prepared to steal from their employer would not take the opportunity to acquire such goods on the Saturday rather than purchase them as Mrs Cockram did. Each of the Cockrams was a credible witness and I am satisfied from their testimony that none of them stole handbags or a wallet from the store on 30 November 1996.

An employer is not required to prove beyond a reasonable doubt that an employee is guilty of stealing from the employer in order for the employer to dismiss an employee on that ground, and do so fairly. It is enough that the employer have reasonable cause to believe that the employee stole. In my view, the respondent employer did not have reasonable cause in relation to Mrs Cockram. No adequate investigation was undertaken. No reasonable attempt was made to verify the contents of the Ferridge's reports to Mrs Turner. Mrs Turner accepted them without question and immediately acted to have Mrs Cockram dismissed. Mr Craig made some enquiries of Mrs Cockram, but went no further. He did not attempt to speak to either Mr Cockram or Miss Cockram, whom he knew had both been present. Further, on the Saturday in question, Mrs Cockram had not been on duty alone, a junior salesperson had been on duty and no apparent effort was made to ascertain what she may have heard and/or observed. Finally, in one of the telephone conversations that Mr Craig had with Mrs Cockram on 3 December 1996, she suggested to him that a stocktake be undertaken. None was done and there is no suggestion that such would have been impracticable. Hence it is that I have concluded that there were several obvious and reasonable avenues of inquiry that the respondent could have pursued, and ought have pursued, which may have provided information independent of the statements made by the accusers and the accused. I have no hesitation in concluding that the respondent therefore did not have reasonable cause to believe that Mrs Cockram had stolen, or had been party to stealing, from the respondent and therefore her dismissal on that ground was without justification and unquestionably unfair.

The hearing of this matter was conducted over two days, the first, five months, and the second, seven months, after the date of dismissal, and that timing was greatly influenced by the applicant. The Notice of Application bringing the claim by Mrs Cockram to the Commission states that she was unsure whether she wished to be reinstated, and expresses her view that such would be impractical. Monetary compensation and other remedies were claimed. At the commencement of proceedings the applicant was granted leave to amend her application to pursue reinstatement in employment.

The case for the applicant did not address the matter of reinstatement, or its practicability, as a remedy, but focused upon showing that Mrs Cockram had suffered both a loss and injury warranting the award of monetary compensation to the maximum allowed by the Industrial Relations Act, 1979 (the Act). It was submitted on behalf of the respondent that reinstatement is impracticable for the reason that there is no position of employment to which the applicant may be returned because an employee was immediately engaged to replace her. That, of itself, would not deny reinstatement, however given the

length of time which has elapsed since the date of dismissal I am of the view it is impracticable to reinstate Mrs Cockram.

The Notice of Application states that the gross weekly wage paid to Mrs Cockram was \$250.00 per week. That was also said to be the sum of her wage by her agent who, by reference to the statutory limit of compensation allowable, put to the Commission that Mrs Cockram ought be awarded compensation in the amount she would have earned for a period of 26 weeks, that is, \$6500.00. It is the testimony of Mrs Cockram that her rate of payment was \$13.90 per hour, and that she usually worked between 16 and 20 hours per week, none of which was challenged by the respondent. Extension of that to weekly monetary equivalents results in the two wage levels of \$222.40 and \$278.40 and I think it reasonable to conclude that the range of hours to which these amounts relate are derived from the fact that Mrs Cockram worked on a Saturday as an additional day each alternate week. Given that these wage levels applied alternately from week to week, a true average wage of \$250.40 per week is the result. Mrs Cockram also told the Commission that shortly following her dismissal she gained limited employment with the employer she had prior to the respondent and from that source she had since earned, and continues to earn, \$64.40 per week. Her equivalent loss per week has been \$186.00 which means that at the final date of hearing she had experienced a loss of wages in the vicinity of \$7500.00. By the operation of s.23A(4) of the Act, an amount which the Commission may order be paid in relation to compensation is not to exceed six months of the employee's average earnings. In relation to Mrs Cockram that is \$6510, to the nearest dollar.

It is argued for the respondent that, given Mrs Cockram had been engaged as a casual employee, each day she worked for the respondent had been a separate engagement ie the relationship of employer and employee was created and ended each day. Hence when Mrs Cockram reported for duty on 4 December 1996 she was attending to commence a new engagement and, had she worked, that employment would have ended the same day and therefore she had no entitlement to any payment beyond that day. Hence that is the full extent of claimable loss, it is said. This proposition ignores the facts. Mrs Cockram, although designated "casual", clearly had an ongoing employment relationship according to an arrangement that she work regular days week to week. The exception to this was that additional hours of work might be arranged to meet busy trading periods, but that does not detract from the primary practice.. It is the loss arising from the termination of the ongoing employment that is to be considered, and given that, I am satisfied that Mrs Cockram ought be compensated to the maximum allowed.

The agent for the applicant has written to the Commission on two occasions regarding matters which require comment. On both occasions an award of interest is claimed as an addition to whatever monetary compensation the Commission might decide is warranted. The second letter also states that the wage of Mrs Cockram had been \$268.42 per week which is in direct conflict with the submissions and evidence before the Commission. Each letter also, in effect, invites the Commission to consider the propositions contained therein and make discretionary rulings on their substance ex parte, or alternatively advise whether the Commission requires that they be dealt with by further hearing. It would be quite wrong for the commission to consider such propositions raised this way and in the way invited, however I make the observation that there is a maximum amount that the Commission may order be paid. That will be awarded to Mrs Cockram.

Appearances: Mr R.W. Clohessy appeared on behalf of the applicant.

Mr C. Keys appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lynette Margaret Cockram

and

Kays Bag Stores (NSW) Pty Limited.

No. 1783 of 1996.

21 April 1998.

*Order.*

HAVING heard Mr R. Clohessy 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 orders—

THAT Kays Bag Stores (NSW) Pty Limited pay to Lynette Margaret Cockram compensation of \$6510.00, less appropriate taxation, within 14 days from the date of this order.

(Sgd.) C.B. PARKS,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Roger Alwyn John Cousins

and

Cannon Investments Pty Ltd trading as Travelshop

No. 2155 of 1997.

COMMISSIONER P.E. SCOTT.

5 May 1998.

*Reasons for Decision.*

THE COMMISSIONER: The Applicant alleges that he has been unfairly dismissed from his employment with the Respondent. That employment commenced on 12 May 1997 and terminated on 30 October 1997. The Applicant was engaged as a travel consultant and worked in the Mandurah Forum branch of the Respondent's travel business.

The Commission heard evidence from the Applicant and also from Alan Gregory Dodson, the managing director of the Respondent. The evidence before the Commission was that the Applicant was engaged on a one month probationary period and that during this probationary period and at its conclusion no matters were raised with the Applicant by the Respondent as being areas of concern with the Applicant's attitude or performance. Mr Dodson gave evidence that there were a number of matters of concern relating to the Applicant's attitude and behaviour which he took to be isolated incidents. Both he and the branch manager attributed these incidents in part to the Applicant only recently returning to the industry and to his learning to deal with the computer system. In September 1997, Mr Dodson raised with the Applicant an incident in which it was said that the Applicant had been abusive towards an employee of Covermore, a supplier of insurance within the travel industry. The Applicant is said to have acknowledged this incident and given Mr Dodson assurances that it was a once only incident and would not be repeated. There is agreement between the two witnesses that between then and 30 October 1997 no matters of dissatisfaction or concern were raised by the Respondent with the Applicant.

On 11 October 1997, the Applicant commenced two weeks leave and returned on 25 October 1997. During the Applicant's absence on leave, Mr Dodson became aware of other matters which caused him concern, and he considered them in light of the incident regarding the employee of Covermore. He had also previously heard about the Applicant conducting himself in an unsatisfactory manner when Mr Dodson's assistant, Mr Beveridge, had attempted to discuss the office layout with the Applicant. There was also a report of an altercation

with a client and a report of a threat to Qantas by the Applicant, saying that he would go to the media regarding a decision by Qantas which affected some of the Applicant's clients.

According to Mr Dodson, the final straw came when Warren Delvin of South African Travel Centre, who organised the Applicant's holiday, forwarded to the Respondent a copy of a letter which the Applicant had written to Mr Delvin (Exhibit 1). The letter was dated 26 October 1997 and was on the Respondent's letterhead. It contained complaints about the Applicant's holiday. Mr Dodson described the tone of the letter as aggressive and abusive.

Attached to the copy received by Mr Dodson was a letter, dated 23 October 1997, from the Applicant to another provider of part of the tour undertaken by the Applicant, a copy of which had been sent to the South African Travel Centre. This letter also complained about certain matters but it also referred to the Applicant as a travel agent, and he sought a full refund of the costs of that holiday (Exhibit 3). On 29 October 1997, the Applicant had again faxed a letter to Warren Delvin however, this letter was not on the Respondent's letterhead. In this letter, the Applicant expressed his dismay that he had not had an acknowledgment of his complaint nor any sign of a resolution of his problem. He said "this leaves me with no option at this stage other than to refer the issue to the Department of Consumer Affairs." The letter goes on to say that the Applicant found Mr Delvin's lack of response unacceptable and "as a colleague in the industry both unprofessional and unacceptable if not unbelievable".

Mr Dodson gave evidence that all of these matters demonstrated to him that the Applicant had a tendency to be abusive and aggressive towards others and that he used his position to deal with clients and suppliers in a way which was inappropriate and damaging to the Respondent's business. His use of the Respondent's letterhead without authority to carry out his complaint was a further cause for concern. Mr Dodson gave evidence that he considered all of these matters and concluded that the Applicant's attitude and approach were not appropriate in an employee of his business.

Mr Dodson arranged to see the Applicant on 30 October 1997, which was as soon as practicable upon the Applicant's return from leave. On 29 October 1997, he had prepared a letter to the Applicant identifying a number of instances where he said that the Applicant had ongoing problems with clients and suppliers and advising the Applicant that his employment was to terminate (Exhibit 4). This letter contained seven numbered and one unnumbered instances of "aggravation towards both customers and suppliers which will destroy our reputation if allowed to continue." It did not include reference to the correspondence with Mr Delvin, as that appears to have been drawn to Mr Dodson's attention after the letter was prepared.

The Applicant gave evidence that upon his return from leave, he understood that there were to be meetings between Mr Dodson and members of the staff on an individual basis at the head office and that his meeting was scheduled for 30 October 1997 at 1.00pm. He expected that this meeting would follow up on discussions held with Mr Dodson in September which might involve his being transferred to the Respondent's Rockingham office in a more senior position. However, when he arrived he asked Mr Dodson, in what appears to have been a fairly jocular manner, whether they were going out for lunch. Mr Dodson replied that no, they would be parting company. They then discussed a number of matters, the first being the Applicant's correspondence to Mr Delvin. Mr Dodson showed the Applicant the letter dated 29 October 1997 which set out the complaints against him and told him of the decision to terminate his employment. The Applicant described Mr Dodson as appearing to be reticent to give him the letter of dismissal, he gave it to him to read and took it back a number of times.

Mr Dodson then provided the Applicant with an opportunity to discuss the issues raised in the dismissal letter and the correspondence to Mr Delvin. The Applicant took that opportunity. The Applicant says in his evidence that he went through his position in respect of those matters. He says that most of the issues raised with him on that day had not previously been raised with him except the issue of his attitude to the employee of Covermore. This had been discussed in September but at that point Mr Dodson had lead him to believe that the issue was a minor one and was over and done with. He also says

that he acknowledged the complaint by Mr Dodson in the second last paragraph of the letter about the large amounts of time he had spent on organising his holidays. The Applicant had described the whole issue of his holiday arrangements as "a circus" and he agreed that he had not conducted that situation appropriately. He also says that he had apologised to Mr Dodson for that situation. The Applicant asked Mr Dodson what he had to do to get Mr Dodson to reconsider the situation and eventually Mr Dodson said he would do so. He said that he would consider everything and talk to the people concerned and that the Applicant was to phone him the next morning. Although Mr Dodson did not offer to reinstate the Applicant or withdraw the decision to terminate, he said that he could not make a decision at that time but would think about it. He advised the Applicant that it was not appropriate for him to return to work.

They did not speak on Friday 31 October 1997, but on Saturday 1 November 1997, Mr Dodson phoned the Applicant at home. They discussed the situation again. The Applicant offered to write to everyone concerned, to withdraw his complaint in the Small Claims Tribunal against South African Travel Centre, and to make apologies to appropriate persons. Mr Dodson said he would think about it again, and contact the Applicant on Monday.

However, by Monday, Mr Dodson had spoken to others including Covermore who had advised him that there were two further incidents involving the Applicant. He also received from South African Travel Centre a letter from the operator of the property about which the Applicant had complained. This letter was in response to enquiries made by Mr Delvin following the Applicant's complaints (Exhibit 3). This letter said of the Applicant that "his manners were absolutely atrocious", that he "chose to be verbally and almost physically abusive to Liz when Liz was on her own and the writer was away", and "his most violent scene was when once again I was not here and he was settling his bill. If anyone deserves suing he does." The Applicant's behaviour was described as "dreadful and abusive".

Mr Dodson considered the matter further. He came to the conclusion that his initial view had been correct, and he did not intend to put these new matters to the Applicant as they merely confirmed his view. He went ahead with the termination of employment.

The Applicant says that he had been unfairly dismissed because none of the events which contributed to the decision to dismiss him were raised with him prior to the decision being made to terminate his employment. The only matter discussed with him related to Covermore, and he had understood when the matter was discussed in September that it was not a major issue of concern. Further, he says that the letter from the property operators was not discussed with him, in spite of Mr Dodson's claim that he knew there were usually two sides to every story and would normally expect to give someone an opportunity to put his own side. He also says that the issue of his correspondence to Mr Delvin, which was supposed to be "the icing on the cake" was not mentioned in the letter advising him of his dismissal, (Exhibit 4) a letter dated the day before it was shown to him and discussed with him. The Applicant also disputes some of the incidents referred to by Mr Dodson which are said by Mr Dodson to justify the decision to terminate.

I have considered all of the evidence and submissions in this matter and have drawn my conclusions having had the benefit of observing the Applicant and Mr Dodson as they conducted their respective cases and gave evidence.

The approach to be taken by the Commission in considering a claim of harsh, oppressive or unfair dismissal is not to put itself in the position of deciding whether, if it had been in the Respondent's position, it would have terminated the Applicant's employment, or if it would have handled the matter differently. It is to decide whether the Applicant has discharged the onus of demonstrating that the Respondent has exercised its lawful right to terminate unfairly. The Commission is to decide whether the Applicant has received a fair go, taking account of all of the circumstances.

In this case, the Respondent had cause for complaint, that is, that it had an employee who demonstrated an attitude which was destructive of good relations with customers and

suppliers. I am satisfied that this was so. Initially, the Respondent gave the Applicant the benefit of a number of considerations such as his return to the industry and his unfamiliarity with the computer system. It accepted his assurances that the first Covermore incident would not be repeated. Then, over a period of time, a picture of the Applicant's approach and conduct emerged. It was graphically illustrated in the letter to Warren Delvin, on the Respondent's letterhead (Exhibit 1). The tone of this letter is not professional but is sarcastic, challenging, rude and provocative. Such conduct on the part of an employee strikes at the heart of his employment in that it poses a threat to the health of the employer's business by undermining the business's reputation and relationships. This letter was not an isolated matter but was typical of the matters complained about by the Respondent.

It is worth noting that the Applicant had acknowledged error, and offered to attempt to remedy some of the problems which arose. This does not erase his actions or his conduct. The Respondent was entitled to not accept those offers and to conclude that the Applicant's conduct had destroyed his confidence in the Applicant as an employee of the business. In such a case, termination of employment is justified.

The Commission is also to consider whether, in effecting the termination, the employer has provided the employee with natural justice. In this case, the Respondent had made the decision to terminate the Applicant's employment prior to discussing the matter with him. If at any stage during the process of the termination of employment it could be said that the Applicant was not given procedural fairness it is at this point and this point alone. However, subsequently, the Applicant was clearly provided with a number of opportunities to respond to the issues which were raised, and Mr Dodson undertook to reconsider. I am satisfied that he did genuinely reconsider, having heard the Applicant's side of the story. Even though the letter of 29 October 1997 indicated that the decision had already been made, at that stage it was not irreversible.

I find that the fact of the letter being dated 29 October 1997, and of it not containing reference to the correspondence with Mr Delvin are not of any significance. The correspondence with Mr Delvin was discussed and considered. It is not required that Mr Dodson should put to the Applicant subsequent matters such as the letter from the property operators. This letter simply confirmed Mr Dodson's already formed view.

In all of the circumstances, I find that, the Respondent did not treat the Applicant unfairly in the process of discussing the issues and making its decision to terminate the Applicant's employment. It has not been demonstrated that the Applicant was harshly, oppressively or unfairly dismissed.

APPEARANCES: The Applicant appeared on his own behalf Mr A G Dodson on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Roger Alwyn John Cousins

and

Cannon Investments Pty Ltd trading as Travelshop.

No. 2155 of 1997.

COMMISSIONER P.E. SCOTT.

5 May 1998.

*Order.*

HAVING heard the Applicant on his own behalf and Mr A G Dodson on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be, and is hereby dismissed.

[L.S.]

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jeffrey Derek Cusato

and

The Atlas Group Pty Ltd.

No. 1824 of 1997.

COMMISSIONER P E SCOTT.

17 April 1998.

*Reasons for Decision.*

THE COMMISSIONER: This is an application pursuant to s.29(1)(a)(i) of the Industrial Relations Act 1979 whereby the Applicant claims that he has been unfairly dismissed from his employment with the Respondent. The circumstances of his employment are that in February 1997 he responded to an advertisement placed by the Respondent for a plant operator. He was, however, engaged as a truck driver on brick delivery work. It was understood by him at that time that should there be no truck driving duties available on a particular occasion he could be required to do whatever duties were within his skill and capacity, provided that it did not include demeaning work. His employment commenced on 10 February 1997, on a three month probationary period, which he successfully completed.

On 30 April 1997, the Applicant was injured at his work. Upon the Applicant reporting the injury to his employer he was taken to a doctor, then to have x-rays done and was returned to his work place by the Respondent's Employee Relations Officer, Jeremy Knowles. However, he was not fit to continue with work, so he completed appropriate worker's compensation forms, and departed. The next day, he had an operation to deal with his injury and he was absent from work for a week or two. He returned to work and undertook normal duties. There appears to have been no particular difficulty immediately noticeable, however, after two to three weeks he developed regular and severe headaches. The Applicant claims that he told his supervisor and a number of other persons at his employment of his headaches and some provided suggestions for dealing with them. The matter only came to formal attention when in around late May, early June the Applicant had an argument with his supervisor at the weigh bridge. Approximately an hour before the end of his ordinary hours the Applicant reported to his supervisor that he had a very severe headache and wanted to finish early. His supervisor advised him that that was not possible in the circumstances. There was an argument between them and the Applicant walked out. According to the Applicant, the next day he advised his supervisor that he would be away for another few days.

After some unsuccessful visits to other doctors the Applicant went to a neurologist who identified the problem and commenced treating it. The Applicant was away for approximately a week. Upon his return on 9 June 1997, he had a discussion with Brian Rowe-Platts, the Human Resources Manager, who issued him with a first warning regarding his performance in that he had failed to notify his supervisor of intended absences on Wednesday 4 June and Friday 6 June 1997. The warning notice required that he significantly improve his performance in areas of work attendance, communication and attitude.

The evidence before the Commission was that Matthew Rigby, the Respondent's Personnel Officer, although not present during this warning being given to the Applicant, was in a room next door and heard the Applicant shouting. He says that he was aware of the Applicant storming out of the office and he thought that he ought intervene to see if he could be of some assistance in resolving the matter. He asked the Applicant about the problem and the Applicant explained to him the incident which had occurred in his discussions with his supervisor, the headaches and the stress he was suffering. He also advised Mr Rigby that he believed that he was being victimised. Mr Rigby appears to have encouraged him to be patient and in light of his rejection of the warning given to him, to fill out a grievance form. Mr Rigby provided him with the grievance form and, subsequently, investigated the situation over a period of a couple of weeks, speaking to the people involved. As a result, the written warning was withdrawn by Mr Rigby.

Mr Rigby's evidence was that he believed that this would be the best way to achieve a full return to work by the Applicant. It became obvious to Mr Rigby that a workers compensation rehabilitation programme was necessary, and Mr Rigby took over the Applicant's rehabilitation process in conjunction with Jeremy Knowles. Mr Rigby contacted Alison Megson, an occupational therapist, whose job it was to devise a rehabilitation programme in consultation with the Applicant, his doctors and the Respondent. The evidence was that Ms Megson consulted the employer as to what suitable work may be available, she assessed the work site and the work available, and consulted the doctor as to the medical aspects of the situation. She visited the work site on a number of occasions. The situation was reviewed on the basis of the Applicant's experiences of the work he was performing and its impact upon his injury.

The rehabilitation programme which was devised for the Applicant involved four hours work per day to begin with. Before any formal programme was documented, a number of duties were trialed. At the early stages of the programme, duties such as on site truck driving, truck spotting in the pit, fork lift driving, office duties, courier duties, stores and blowing down of bricks were all identified and approved as appropriate for the Applicant. Mr Rigby worked out a day to day programme with Ms Megson and with the operations manager. He says that it was a difficult task which took a lot of time and effort on his part and on the part of others within the organisation. The programme was formally commenced in late June/early July and was aimed at a graduated return to work for the Applicant.

Mr Rigby said in evidence that the Applicant was not co-operating, he was not notifying of his absences and when he did, he was not following the procedure required of him. On a couple of occasions he and the Applicant sat down and discussed the need for the Applicant to communicate what was occurring. The Applicant had expressed the view that all he had to do was tell somebody that he was not turning up, whereas the Respondent's view is that it was necessary that he should speak with someone who was familiar with the situation, being either Mr Rigby or Mr Knowles, he should advise them of the likely duration of his absence and what he intended to do to deal with the matter. As a result of that discussion the Respondent provided to the Applicant a letter dated 23 July 1997 which is said "to address issues raised on 9 July 1997, concerning company requirements for the notification of absences and general compliance with rehabilitation measures organised." (Exhibit 5)

This letter also notes that "to date we have encountered continued difficulties with your compliance to the rehabilitation measures and requirements implemented by the Atlas Group. This is delaying your successful return to full-time, pre-accident duties. Therefore, it is requested that you endeavour to co-operate with our efforts in this respect." The letter then goes on to direct him as to whom he is to contact and the times that this is to occur. His work roster was changed to facilitate these arrangements and the supervision of his rehabilitation.

During this time, the Applicant was allocated a number of duties. He appears to have resisted some of them or have been unhappy with the environment concerned ie. the pit directing duties appear to have been a difficulty for him in that initially there was no proper shelter for him, and he took his own car and sat in his car so as to enable him to perform those duties. Upon Mr Rigby becoming involved, more suitable accommodation was built for him. A comfortable, padded high back chair with arms was placed in this accommodation for him. It appears that for a number of reasons, this chair was removed and replaced with a plastic chair. The Applicant felt aggrieved by the removal of this chair and expressed the view that the employer deliberately removed from him something which he found both comfortable and useful in his undertaking his exercises as part of his rehabilitation. He also complained that his employer did not provide him the necessary equipment, and when it did so it was very slow and unenthusiastic. He cites examples of having raised with Mr Rigby that there was a lot of mud around and Mr Rigby arranged for a pair of gum boots for him. He was unhappy with these gum boots because they were second hand, somebody else's and not the right size. He also complained that the employer took a considerable length of time to provide him with a dust mask after he had requested one. This particular work is also said by him to have

been unsatisfactory in that it was some three hundred to four hundred metres from the nearest toilet facilities. He had to take his own drinking water to the site. When he had raised with his employer the distance that he needed to travel to get to and from the site, he was advised that he could either walk or catch a lift with any of the trucks returning from the pit. However, this was unacceptable to him. The Applicant has given the impression that he did not see this or other work as meaningful, and that it was designed only to keep him occupied.

One of the other duties allocated to the Applicant was to assist the safety officer. The safety officer gave him two essays to write about workplace safety matters, one being smoking and the other being falls from heights. The Applicant appears not to have understood that these were to be anything other than clerical duties to keep him occupied. However, it is said by the employer that they were to be used as part of the safety officer's work and an information resource. The Applicant took time to do these and during the process appears to have learned some use of the computer equipment. The Applicant is also unhappy about this particular arrangement in that, apart from his view that it was not meaningful work, he was having a number cups of coffee at his work station beyond what would normally be expected to occur during formal coffee breaks. A gentlemen came into the office and complained that he was drinking all the coffee and he shouldn't do so. This has also upset the Applicant.

A number of the other duties allocated to the Applicant were not accepted by him as suitable such as the blowing down of bricks in that this required a certain posture which he says aggravated his injury. He also complained when doing the blowing down work that he was in close proximity with smokers and that this was not acceptable to him. The stocktake work was said to also aggravate the injury. The forklift work is likewise said to be difficult. On one occasion, the Applicant was allocated to cleaning windows and he says that this also aggravated his injury. He is critical of his employer for placing him in duties which he says were not assisting in his rehabilitation. He also questions, by inference, whether there was any proper programme in place for his rehabilitation and appears to be of the belief that there was an adhoc arrangement that he would be allocated to duties which had not properly been considered in light of his condition.

There was evidence that on 27 August 1997, the Applicant, Ms Megson and Mr Rigby met to review the Applicant's progress. Ms Megson commenced the discussion by referring to a recent report by Dr Silbert, the neurologist, which indicated progress being made and the sort of work which could be done. There was a discussion about that situation. Mr Rigby then took the opportunity to advise the Applicant that although he had been given permission to take time off to see his lawyer on one occasion recently that this would not necessarily be so in the future and that he should do such things in his own time. Both Mr Rigby and Ms Megson say the Applicant then lost control, became very aggressive, abused and insulted them, saying that they were not addressing his problems, that Ms Megson didn't know her job and that Mr Rigby was hopeless. He was waving his arms aggressively and Mr Rigby and Ms Megson said that they felt physically threatened. It is said that the Applicant expressed the view that he would take whatever time he wanted and make whatever phone calls he needed to because it all related to his work. Mr Rigby and Ms Megson attempted to redirect the discussion to the issue of a return to work. However, it is said that the Applicant continued arguing, saying that they couldn't help him in his difficulty. There is conflict in the evidence as to how the meeting concluded. However, it would appear that Mr Rigby advised the Applicant that in his then current state of mind it would not be appropriate for him to be working on the site and that he should go home but would be paid for the time. Soon afterwards, Ms Megson, Mr Rigby and Mr Knowles were in the office discussing the situation when the Applicant came back in. Mr Rigby advised him that until he was satisfied that the Applicant was in a proper state to return to work, he would be stood down. The Applicant did not return to work for some days.

On 4 September 1997, there was a Conciliation and Review Conference conducted by Workcover Western Australia. The Applicant was represented by his solicitor. This conference

resulted in a number of agreements being reached between the parties including that—

- “1) The worker has agreed to report to the employer for work on Wednesday 10 September 1997 at the usual commencement time.
- 2) The worker has agreed to perform other work that may be allocated to him, other than truck driving.
- 3) The worker has raised concerns that he does not wish to be placed in work where he is likely to be subjected to inhaling cigarette smoke from others, ie. in confined areas or within immediate proximity to a smoker ie., working along side someone where he could inhale cigarette smoke.
- 4) The employer acknowledges that it does have a duty of care of its employees and does take care within reason to accommodate workers’ concerns.
- 5) With respect to the supplying of safety equipment, the employer says that it has no difficulty with this, that they do supply such, but it is open always to a worker to raise any query that they may have and if necessary should it be established that additional equipment is required, then it would be supplied.
- 6) It was agreed that the worker would be afforded the opportunity to perform a variety of duties so as to ensure that he is not subjected to one continuous mundane task.
- 7) ...
- 8) The employer has agreed to give further genuine consideration to reviewing the truck driver’s occupation that the worker was engaged in pre-accident, to see if something may be done in the future where by the worker could resume his normal occupation.
- 9) ...”

The final comment made by the conciliation officer in the record of this conference was that—

“However if the parties are now committed to a fresh start as has been indicated then the conference would have achieved a fair and reasonable outcome for all concerned.”

(Exhibit 8)

The applicant agreed that this was an accurate record of the conciliation and review conference.

The evidence was that, according to the doctor’s report, the only duty which the Applicant could not perform at that time was truck driving but it was agreed that he could undertake some work, accompanied by another truck driver. It was thought at this time that things were back on track and proceeding well. When the Applicant returned to work on Wednesday 10 September 1997, he did some fork lift duties in the yard then he was sent out to accompany another truck driver. On 11 September 1997, he did some deliveries, however he did not work all day, having reported a headache. The matter was reported to Doctor Silbert. On both the 11 and 12 September, the company contacted Dr Silbert to ascertain the Applicant’s capacity to work. Dr Silbert had said that the Applicant should not operate the fork lift tractor, otherwise any other duties appeared to be suitable. This was conveyed to Mr Rigby on 11 September 1997.

On 12 September 1997, the Applicant was re-allocated to the rehabilitation duties because of his headache on the previous day. He commenced duties at 7.00am doing blowing down of bricks. He did this work for a couple of hours and waited until the normal morning break. He gave evidence that he had developed a headache from this work because of the posture required to perform the work. The Applicant also was unhappy with the environment in the blowing down area because of the cigarette smoke. He was seeking to perform other duties so he went to Mr Rigby’s office at about 9.00am. His own and Mr Rigby’s accounts of the meeting vary in some important aspects.

Mr Rigby says that he advised the Applicant that this was the work that he was allocated and expected him to continue with the work. According to Mr Rigby, the Applicant gave no particular explanation for this desire for a change except that he was not happy doing the work. The Applicant gave no particular reasons. Mr Rigby asked the Applicant to go into the meeting room and wait. Mr Rigby then telephoned Dr Silbert

to ask if there were any problems with him performing the duty concerned. As there was no difficulty, Mr Rigby asked Jeremy Knowles and David Snape, the wages clerk, to come in and take notes. The Applicant was also asked to come back into the office. Mr Rigby asked the Applicant why he was not prepared to do the work allocated to him. Mr Rigby says that the Applicant said that he was not happy, that he is a truck driver, that the Respondent had to give him work that would make him happy. Mr Rigby’s version of the events is that he told the Applicant that they were trying to find other work for him but that this took time and he tried to convince him to return to work. Mr Rigby says that he told the Applicant that he had been given a lawful and reasonable instruction to perform his duty. He advised him that it would be serious misconduct if he refused to perform those duties and that his employment would terminate if he continued to refuse. He says that he told the Applicant this at least three times. The Applicant is said to have responded a number of times urging Mr Rigby to sack him.

The Applicant’s version is different in that he says that he was being provoked by Mr Rigby who he described as smirking in telling him that there was no change in duties available for him. He acknowledges that Mr Rigby told him that if he did not do the job that he would be sacked for misconduct. The Applicant says that he told Mr Rigby that “I cannot do this job and if you cannot give me another job you will have to sack me”. Accordingly, the Applicant was sacked for misconduct.

The evidence of Mr Knowles confirms the evidence of Mr Rigby.

The other evidence before the Commission includes copies of letters from Dr Peter Silbert, the Applicant’s neurologist who also gave evidence before the Commission. The first letter is dated 3 August 1997, and contains a description of the injury, the treatment programme and the Applicant’s treatment. It contains one sentence which says “we had a further discussion regarding work, and in the next week he is probably going to move into a more meaningful area of work which will be beneficial to him”. The next letter is dated 12 August 1997 and indicates the beginning of Dr Silbert’s awareness of any particular problem. He refers to the Applicant’s stress compensation claim but notes that he felt that the Applicant had a more positive attitude and was making slow progress in his rehabilitation. The letter also says—

“with regard to his work, he has been directing in the pit and I feel that over the next month he could gradually increase his hours, while at the same time graduating to alternative duties. Courier driving would be acceptable, but I would rather he did not do fork lift driving in view of the head turning and using the air gun in view of the posture required.

Also as his hours increase, “on site truck driving” is probably the next step as it is very different to the brick delivery that he was doing previously, in that it is less physical, but will gradually rehabilitate him back to that position.”

The next letter, dated 26 August 1997 notes that the headaches which the Applicant is now experiencing were different from those experienced over the past few weeks. He says that the Applicant—

“clearly describes how these develop at work when he becomes tense in his work environment. I had a long discussion with (the Applicant), and at the same time involved Matthew Rigby who is the Atlas Rehabilitation Officer. (The Applicant) is certainly pushing the work environment to the limits and as I indicated to him I feel that he is being unreasonable.”

...

“Jeff stated that he felt victimised at work, and extremely frustrated that because of his symptoms he has been limited in this ability to do weights, do the activities that he enjoys such as kick a football with his children. Even working on his car is difficult, as he felt that it would aggravate his pain.

From the point of view of what work he can undertake he can certainly do pit work, office work, on site driving, and I feel that now his neck is normal he can return to fork lift driving. Considering the complexities of his rehabilitation process, if he can tolerate these activities over

the next one or two weeks then I feel that he can return to his normal duties full time.”

The evidence of Dr Silbert included that he relied upon the expertise of Ms Megson, a qualified Occupational Therapist, to inform him of the sorts of duties which may be available to the Applicant in the circumstances of his injury. Dr Silbert also said that the duties allocated to the Applicant were acceptable, that earlier on he had some concern regarding use of the air hose to do the brick blowing down. He had spoken to Ms Megson about this. However, as he became better informed about all of the circumstances, he approved this particular work as part of the duties that could be performed by the Applicant. He acknowledged that there was always a need to listen to patients and consider their view point but he said that the Applicant's advice to him was never very clear. However, he said that the Applicant was under stress and frustrated going to work. Dr Silbert's evidence also included reference to video surveillance film having confirmed his views as to the Applicant's suitability to perform particular types of work which were those approved and included in the rehabilitation programme.

It is clear that the Applicant has experienced certain pain and suffering as a consequence of his work related injury. It has also affected his quality of life and removed him from performing work which he obviously enjoyed and, as part of his rehabilitation process, he was required to be more confined, and to work in and around the employer's premises rather than being at large in his truck. He was restricted in that he was supervised on a more regular basis, he was placed in circumstances which he did not find congenial to himself and he was required to undertake tasks which he did not see as being meaningful work. He became frustrated, suffered stress and had no confidence in those persons who were responsible for his rehabilitation.

Having said all that, however, it is clear to me that the Applicant had unreasonable expectations of his employer and what was possible in the rehabilitation process. It may be that things could have been done better, however, I am satisfied that serious efforts were made to assist the Applicant in a genuine attempt to do the right thing by him. A rehabilitation programme was drawn up in consultation with him, his employer and his doctor and was put in place to assist him, he was directed as to the duties he was to perform which, I am satisfied, were in accordance with that programme. An employee might have an expectation that an employer will provide him with both meaningful and satisfying work which is congenial to him but this is not always a reasonable expectation. An employee on a rehabilitation programme genuinely designed to achieve a full return to normal duties necessarily must expect from time to time the circumstances of the work he is undertaking will not necessarily be to his liking. It is all part of the process of finding work for him which he is able to perform and adjusting the process of rehabilitation according to what is found as a result of his performing that work. In some cases, employers may need to create work and they do so. This appears to have been what the Respondent has done in some aspects of the work undertaken by the Applicant, however, it is clear that the duties that he was asked to perform had at least some basis in the needs of the operation, although the Applicant clearly did not see it that way. In any event, none of the duties which the Applicant was being asked to perform were those which it was either unreasonable or unsafe for the Applicant to perform. None of them would have been for a long period. On the day of the termination of his employment, the Applicant was asked to return to work and other duties would be found for him. That was not unreasonable. The Respondent checked with the Applicant's doctor to ascertain whether or not this was acceptable in light of the Applicant's physical condition. The doctor confirmed that it was.

Based on all of the evidence, including the conduct of the Applicant over a period of time; his altercations with various people in various circumstances; discussions with him which required him to communicate more appropriately with the Respondent as to his absences, and his failure to do so; his reaction to both Mr Rigby and Ms Megson in their meeting with him to review his situation; and also the comments of Dr Silbert to the effect that the Applicant's attitude and approach were unreasonable, all satisfy me that his attitude was unreasonable.

The Applicant expected that his demands would be satisfied, in all circumstances and immediately. His view of the work on the day of termination was that he had done it for two hours and he expected a change. He expected this employer to provide that change to him immediately. His evidence indicates a frustration at having to wait on a number of occasions for things to be arranged for him. He made particular note of being asked to wait for 20 minutes here or half an hour there. His expectations of his employer were unreasonable and his conduct and response to the circumstances in which he found himself, albeit that those circumstances were unfortunate, frustrating and stressful for him, were unreasonable. On the day of termination the Applicant gave no particular reason for wanting a change in his work, he was reasonably asked to return to work while other arrangements were made, he refused repeatedly to return to work when given a lawful and reasonable instruction, and he did so in the face of the consequences being made clear to him. He acknowledged those consequences, and maintained his refusal. His employer was left with no option but to dismiss him in light of his actions. I am not satisfied that the dismissal of the Applicant was unfair in all of those circumstances.

I note that the Applicant's employment was terminated summarily for misconduct for wilful disobedience of a reasonable and lawful instruction when given a warning that such action would result in dismissal. Such conduct warrants summary dismissal as it goes to the heart of the contract between the parties. The authorities, including decisions of the High Court of Australia such as *Adami v Maison de Luxe Ltd (1924) 35 CLR 143* provide that disobedience of a lawful and reasonable instruction constitutes misconduct which warrants summary dismissal. Such conduct constitutes wilful repudiation of the contract of employment. (*Scharmman v APIA Club Ltd 1983 AILR 534*). In particular, when an employee is aware of the consequences of such refusal, as was the Applicant, and without any, let alone any reasonable excuse, such as a summary dismissal is justified.

In all of the circumstances I am unable to find that the Applicant has been unfairly dismissed from his employment and an Order dismissing the Applicant shall issue.

The final matter to be considered is the Respondent's claim for costs. As set out by the Full Bench in *Brailey and Mendex Pty Ltd trading as Mair & Co Maylands (1993) 73 WAIG 26*, the Commission in considering costs must determine such matters according to equity, good conscience and the substantial merits of the case. The Full Bench said that—

“part of the equity and good conscience includes what is settled law in industrial matters that costs ought not be awarded, except in extreme cases, (eg) where proceedings have been instituted without reasonable cause (see *Hospital and Benevolent Homes Award (1983) AILR 409* where costs were awarded in a matter where the applicant terminated the proceedings after putting the respondent to the expense of defending without obtaining an order).

In this case, that application has failed on its merits. This is not an extreme case, it is simply without merit. On this basis, I am not satisfied that costs are appropriate.

APPEARANCES: The Applicant appeared on his own behalf

Mr D M Jones appeared on behalf of the Respondent

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jeffrey Derek Cusato  
and

The Atlas Group Pty Ltd.  
No. 1824 of 1997.

COMMISSIONER P E SCOTT.

17 April 1998.

*Order.*

HAVING heard the Applicant on his own behalf and Mr D M Jones 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.) P.E. SCOTT,

[L.S.] Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michelle Teresa De Gois  
and

Julian Management Pty Ltd T/as Aardent Dental Centre.  
No. 2243 of 1997.

29 April 1998.

*Reasons for Decision.*

COMMISSIONER A.R. BEECH: Ms De Gois was employed by the respondent Company from 25th July 1995 until the 10th November 1997. She was dismissed by its Director, Dr J. O'Brien. She was given two weeks' notice to terminate her employment. Ms De Gois claims that the dismissal is unfair. In her application she gave the reason for unfairness as being that there had been no prior notice of unsatisfactory work performance, unsatisfactory work performance had never been discussed and that the details set out in the written letter of termination were not discussed except in a letter to her dated the 9th June 1997. At the commencement of the hearing, Ms De Gois sought, and was granted, leave to amend her claim. As amended, her claim is that the dismissal was unfair because the reason for her dismissal told to her at the time was different from the reasons subsequently given in the letter which confirmed her termination and that she had been required to train her replacement, who was a personal friend of Dr O'Brien.

Ms De Gois was employed as a receptionist for the Company's dental practice. The practice employed at the time three dentists, three dental assistants, Ms De Gois as a full-time receptionist, three part-time practice managers and one dental therapist. The Commission heard evidence from Ms De Gois herself. The respondent called evidence from Dr O'Brien and also Dr Archer, a dentist who operates from the practice, two of the part-time practice managers, and a dental nurse.

Ms De Gois bears the onus of proving her case. The only evidence in support of her claim is the evidence of Ms De Gois herself. She was represented by her father who informed the Commission that it had been the intention of Ms De Gois to call two witnesses in support of her claim. As to the first intended witness, the person did not attend the hearing. A Summons to Witness had been issued but it had only been taken out on the working day prior to the hearing and Ms De Gois admits that it is not clear whether it was properly served. A second person had been asked to be a witness but that person did not attend the hearing. No summons had been taken out by Ms De Gois requiring the attendance of that person. It is undeniable that the reason why the two persons did not attend to give evidence before the Commission is the poor preparation of Ms De Gois' case. Both parties had more than one month's

notice of the date of the hearing of this matter. Ms De Gois had ample opportunity to prepare her case and ensure that it was presented as she would have wished on the day of the hearing. It is entirely her own responsibility. At the commencement of the hearing, Ms De Gois sought an adjournment due to the failure of one of the intended witnesses to attend the hearing. In the circumstances it would have been quite unfair to the respondent to have granted that request and it was refused. The respondent had prepared its case and made arrangements for its evidence and its witnesses to be present on the day of the hearing. The prejudice to the respondent in the circumstances of this case if an adjournment had been granted far outweighed the prejudice to Ms De Gois in being required to continue given that she must be seen as responsible for the situation in which she found herself (*Myers v Myers* [1969] WAR 19). Further, the demands upon the Commission's time is such that adjournments are no longer able to be granted with the ease that may have occurred in earlier years. The Commission is entitled to be mindful of the effect of an adjournment on its resources and the competing claims of applicants in other cases awaiting hearing (*Sali v SPC Ltd* (1993) 116 ALR 625).

The evidence of Ms De Gois confirmed the dates that she worked, her duties and the events leading to her termination. Ms De Gois has worked in the dental industry for some eight years, principally as a dental assistant. However, following a motor vehicle accident she preferred to work as a dental receptionist. Thus, she worked for the respondent Company in that capacity. On Ms De Gois' evidence, she was very good at her work. She is adamant that she did not receive any kind of verbal briefings or warnings, or written warnings whatsoever, about the conduct of her work other than for a letter (exhibit 1) which is dated the 9th June 1997. That letter, which was from Dr O'Brien, referred to a discussion that both had had regarding Ms De Gois' performance and the preference Dr O'Brien had for Ms De Gois to work as a dental assistant to one of the dentists in the practice rather than continuing as a receptionist. The letter indicated that Dr O'Brien was happy with the technical aspects of Ms De Gois' work but Dr O'Brien stated that Ms De Gois needed to "lighten up with the patients and also to enrol the other staff in your workload". Dr O'Brien suggested some techniques to achieve this end, and felt that Ms De Gois could "come up to speed". The letter stated—

"Accordingly, you can remain at reception, for the time being, in order to improve these aspects of your duties rather than move into nursing, a change that is valid and reasonable in a multi-skilled team.

During the next 7 days we shall both review your problems and try to find solutions. Feel free to communicate your difficulties and achievements to me for our commitment is that patients and staff enjoy their time at the practice." (Exhibit 1)

The evidence of Ms De Gois is that at the conclusion of the seven days it was she who approached Dr O'Brien to review the matter. Her evidence is that Dr O'Brien stated that he was pleased with her performance. She believed that her dismissal was unfair because, after two and half years' service there had been no indication that her performance was poor or that her job was in jeopardy. She believed she had a good rapport with the clients and staff and she had been devastated by the dismissal.

Although Ms De Gois gave her evidence clearly and, in the main, positively, I did not find her evidence entirely persuasive. For example, she described the performance of her duties as a dental receptionist, describing how she would converse with patients, that she was friendly, would comfort them, be helpful, greet them and show good service. Her evidence also is that she had good relations with other members of staff. In her own words, Ms De Gois stated that she was "one hundred percent successful". However, towards the end of her cross-examination, and after a number of issues which the respondent gave notice that it would raise in its evidence had been put to her, Ms De Gois conceded that she could, at times, be a bit rude and abrupt. Further, from time to time she did ask one of the other staff members for assistance. This change in her evidence was quite pointed given the extremely positive and confident manner in which she had presented her evidence at first instance. As a consequence, I tend to the view that Ms De Gois held a more positive view of her manner of working and

the relationship she held with both patients and other staff than was in reality the case. Indeed, the fact that Dr O'Brien's letter of the 9th June 1997 referred to Ms De Gois' performance with patients and the need to enrol other staff, and imposed a seven day deadline to "review ... problems" and "try to find solutions" compels such a finding and is in marked contrast to Ms De Gois' evidence of her performance.

Thus, where aspects of Ms De Gois' evidence conflict with the evidence of witnesses called for the respondent, I generally prefer the evidence of the those witnesses to the evidence of Ms De Gois. For example, Ms De Gois gave evidence that at the beginning of the year in 1997 she requested a pay rise. It was refused. Her evidence is that the reason given to her by Ms Bradshaw was that the practice could not afford it. However, the evidence of Ms Bradshaw is that she, following instructions from Dr O'Brien, told Ms De Gois that she would not get a pay rise because she was not pulling her weight. Ms Bradshaw's evidence is consistent with the evidence overall that is the evidence of Ms De Gois. There is no evidence that the practice would not have been able to afford a pay rise. However, there is evidence, especially in exhibit 1 that Ms De Gois' performance was not entirely successful. I accept the evidence of Ms Bradshaw.

In June 1997 Ms De Gois had approximately one week off following a family bereavement. Ms De Gois had asked Ms Bradshaw for the time off due to this sad event however, Ms Bradshaw had not agreed to the time off due to the circumstances and the workload within the practice for that week. Ms De Gois' evidence is that although she attended for work she was too emotional and she therefore went directly to Dr O'Brien and asked for the rest of the week off. Dr O'Brien, unaware of the previous conversation between Ms Bradshaw and Ms De Gois, granted permission as long as it could be organised appropriately. On that basis, Ms Bradshaw gave permission to have the time off. Ms Bradshaw rang Ms De Gois the Wednesday of that week. Ms Bradshaw's evidence is that she told Ms De Gois the practice was not happy with her work, that Ms De Gois was being inconsiderate, that her attitude had been bad lately and things needed to improve. Ms Bradshaw hoped Ms De Gois would come back a different person. Ms Bradshaw is adamant that Ms De Gois understood what was being said. Ms De Gois' evidence of that conversation is quite different but where the evidence of Ms De Gois regarding that conversation and the evidence of Ms Bradshaw regarding that conversation differ, I prefer the evidence of Ms Bradshaw. Further again, I find it likely that Ms De Gois was abrupt with a patient who had attended late for an appointment by which time the dentist concerned had left for the day. Apparently the patient, Mr Honczarenko, later complained to the practice regarding the imposition of a fee for not attending the appointment. It is clear from the evidence that a fee may be charged at the discretion of the dentist for an appointment not kept. However the issue is not the appropriateness of the fee but the manner of Ms De Gois. The incident of itself is not significant but it is another example of my preferring the evidence of the respondent's witnesses.

I see no need to detail any of the other examples which were given. I am satisfied that there were very real concerns regarding Ms De Gois' manner in carrying out her duties as a receptionist. Indeed, the evidence of Dr Archer is quite compelling regarding the reservation she had regarding Ms De Gois from the beginning of Ms De Gois' employment. Dr Archer's evidence was not in any sense broken down under cross-examination and I accept it. Further, I also find that Ms De Gois was spoken to on several occasions regarding her poor work performance. As well as the letter from Dr O'Brien I accept the evidence of Ms Bradshaw, Ms Worthington and Ms Mammont in this regard. That evidence is corroborated by the evidence of Dr O'Brien himself. Although Ms De Gois submits that Dr O'Brien was unsure of particular dates and therefore his evidence is unreliable that conclusion does not necessarily follow. I found Dr O'Brien's evidence to be reliable when he related events which were within his direct knowledge. Whilst Dr O'Brien is nominally the employer in this matter, his evidence makes it plain that he delegates the day to day running of the practice to the practice managers. It is from the evidence of those practice managers, as well as the evidence of Dr O'Brien that I reach the conclusion that Ms De Gois ought to have been well aware of the misgivings with

which her performance was viewed. However, the evidence is that if she was spoken to she did improve her attitude, but only momentarily. I also find, however, that Ms De Gois refused to accept that any criticism was justified. Her evidence is plain that she did not consider that she needed to "lighten up". She didn't think there were any problems of the kind described in Dr O'Brien's letter which became exhibit 1. As she herself said, she didn't take much notice of the letter. She didn't take it as a warning. Indeed, she didn't take much heed of it at all. Her failure to do so is an example of her viewing her performance in a more positive light than the reality of her situation.

I therefore have reached the conclusion that Ms De Gois has not made out her claim of unfair dismissal. In particular, I find that the grounds for claiming unfairness which Ms De Gois herself put in the Notice of Application has not been made out. It alleges that she was given no warning of her dismissal. For the reasons that I have given, that is not the case. Ms De Gois may not have wanted to treat the comments made as warnings, but that was not the fault of the respondent Company in this matter. As to the amended grounds of her application, I do not accept that Ms De Gois was informed by her employer verbally that the reason for her termination that the practice was "off the boil". Rather, I accept the evidence of Dr O'Brien that if that expression was used, it was used in the context of the receptionist part of the practice. Further, I accept the evidence of Dr O'Brien that he explained the reasons for the termination as being the poor performance of her duties. These reasons were confirmed in writing to Ms De Gois subsequently (exhibit 3) and I therefore find, contrary to the allegation of Ms De Gois, that there is no difference of substance between what Ms De Gois was advised verbally and what was subsequently confirmed to her in writing.

It was also claimed by Ms De Gois that the dismissal was unfair because "the employer had planned to replace Michelle De Gois with Nita Allan" as early as June 1997. I find that there is no substance in the allegation. It is clear on the facts that following Ms De Gois' termination Ms Allan did not work at the practice. Rather, she was working for three weeks at the Surgicentre. Although Ms Allen did work at the practice after that period of time, it was only until the practice advertised for a proper and experienced dental receptionist. That position was filled in approximately February 1997 and Ms Allan's employment at the practice was for an initial fixed term, and then on a casual basis, until that time. I accept Dr O'Brien's evidence that Ms Allan did not have the experience which would make her suitable for that position. Accordingly, there can be no substance to the allegation made by Ms De Gois in her application. Although Ms De Gois sought to make an issue out of any relationship between Dr O'Brien and Ms Allan the evidence does not establish that Ms De Gois' dismissal was related to that fact and it is simply irrelevant.

Ms De Gois was paid all of her entitlements at termination. She was paid two weeks' notice. Further, Dr O'Brien offered to assist in finding alternative employment for her in another, smaller, dental practice. For her own reasons, Ms De Gois chose to not accept that final offer, however it is a fact that the offer was made and it is to the credit of Dr O'Brien that it was made. I find it rather saddening that Ms De Gois should use Dr O'Brien's offer to call into question his sincerity. She submits that he cannot both criticise her manner of work and her relationship with patients and offer to find alternative employment for her. However, once again, that conclusion does not necessarily follow. Dr O'Brien was quite positive about Ms De Gois' technical skills in her employment. It is entirely possible that she could have worked satisfactorily in a different environment notwithstanding Dr O'Brien's views of her manner. It is likely to be to the benefit of both the employer and the employee if the employer is able to find the employee satisfactory alternative employment. I have no doubt that it would have been to Ms De Gois' benefit, given that she wishes to remain in the dental industry, for the offer to have been made.

I have been unable to find anything in the facts of this matter which could lead to a conclusion that the dismissal of Ms De Gois was unfair and accordingly her claim will be dismissed.

The respondent seeks an order for the payment of costs. The costs sought relate to the costs of the witnesses, including Dr O'Brien and amount to \$5,200.00. Costs are not usually

awarded in this jurisdiction and should only be awarded in an extreme case (*Brailey v Mendex Pty Ltd t/a Mair and Co* (1992) 73 WAIG 26). I am not persuaded this is an extreme case. A case is not extreme merely because the applicant loses the case. Nor is it an extreme case because of any strength of views held by a party of the position of the other party. While the applicant's case necessitated an amendment to her grounds at late notice, I do not consider that the case as a whole can therefore be considered to be extreme. Accordingly, the application for costs is refused.

Appearances: Mr C. De Gois appeared on behalf of the applicant.

Mr L. Pilgrim appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michelle Teresa De Gois

and

Julian Management Pty Ltd T/as Aardent Dental Centre.

No. 2243 of 1997.

29 April 1998.

*Order.*

HAVING heard Mr C. De Gois on behalf of the applicant and Mr L. Pilgrim on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979* hereby orders—

THAT the application be dismissed.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Paul Fielding

and

Western Power Corporation.

No. 105 of 1997.

9 September 1997.

*Reasons for Decision—Jurisdiction.*

It is agreed that Mr Fielding was employed by Western Power Corporation from the 25th January 1982 to 31st December 1996. On the 2nd May 1996, Mr Fielding was advised in writing that his position as a Retail Service Manager was made redundant. At that time, he was employed pursuant to the *Western Power Interim Salaried Officers' Award 1995* ("the Award"). On the 3rd December 1996, Mr Fielding was offered and accepted permanent part-time employment pursuant to the Award effective from the 2nd December 1996. He resigned on the 4th December 1996, effective from the 31st December 1996. Mr Fielding claims that he has continuity of service from the 14th February 1977 due to his previous employment with the Public Works Department. He claims that it was an implied term in his contract of employment that he would receive the benefits of the *Redeployment, Retraining and Redundancy General Order* of this Commission (1994) 74 WAIG 552.

Western Power denies that there was such an implied term in Mr Fielding's contract of employment. For the purposes of these reasons for decision, Western Power also claims that the Commission does not have the jurisdiction to entertain his claim as the Award is an award of the Australian Industrial Relations Commission. For that reason, and other reasons relating to the Award, Western Power says that the Commission does not have the jurisdiction to deal with the claim. At the request of both

parties, this issue has been dealt with as a preliminary point. It is acknowledged by the parties that Scott C has dealt with a matter almost indistinguishable from this on the facts and found that the Commission does have jurisdiction (*Roy v. Western Power* (1995) 76 WAIG 209). The respondent argues that that decision was wrongly decided and that I should not follow it.

Section 29(1)(b)(ii) of the Act provides that an industrial matter may be referred to the Commission in the case of a claim by an employee 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.

I turn to the respondent's claim that there is no jurisdiction to deal with this matter. The respondent draws attention to section 152 of the *Industrial Relations Act, 1988* which is as follows—

"Where a State law or an order, award, decision or determination of a State industrial authority, is inconsistent with, or deals with a matter dealt within, an award, the latter prevails and the former, to the extent of the inconsistency or in relation to the matter dealt with, is invalid."

The respondent argues that a decision made by the Commission in this matter would alter, impair, detract or vary the Award or the settlement of industrial relations as reflected in the Award and would therefore be invalid. That submission would be correct where the decision made by the Commission is inconsistent with or deals with a matter dealt with in the Award. However, the Award does not contain provisions for redeployment, retraining or redundancy. I therefore find it difficult to see how a decision that there is a term in Mr Fielding's contract of employment that he would receive the benefits of the *Redeployment, Retraining and Redundancy General Order* would alter, impair, detract or vary the Award. The respondent relies upon the decisions of the Industrial Appeal Court in *Metropolitan (Perth) Passenger Transport Trust v. Gersdorf* (1981) 61 WAIG 611 and *Martindale v. BP Refinery (Kwinana) Pty Ltd* (1992) 72 WAIG 1263 but the facts in those matters were not the same as those in this matter. Both those matters were claims of unfair dismissal lodged by employees who were employed under federal awards. Those awards provided for the right to terminate their employment. The question to be answered in the matters was whether a power to direct re-employment by the former employer of a former employee whose employment has been terminated in accordance with the provisions of the award is consistent with the award. It was held that there was a direct conflict between those provisions and s.29(2)(a) of the Act as it then was. In this matter the Award is silent. The difference in the facts renders those cases less relevant to this matter.

It is agreed that an industrial dispute exists between two federal unions and the respondent as to the redeployment, retraining or redundancy entitlements of the respondent's employees. It is currently before the Australian Commission. As I understand the respondent's submission, that industrial dispute establishes an inconsistency with the matter before me and the industrial dispute before the Australian Commission. However, the industrial dispute before the Australian Commission will determine whether redeployment, retraining or redundancy entitlements are to apply to the employees of the respondent in the future. The matter before me is a claim that prior to his resignation on 4th December 1996 Mr Fielding had as a term of his contract of employment, an entitlement to a benefit under the *Redeployment, Retraining and Redundancy General Order*. That is a determination of a past right. I do not see an inconsistency here.

The Award does contain a dispute settling procedure in the following form—

"35. To facilitate the remedying or settlement of any dispute that cannot be satisfactorily resolved by the parties to this award, the matter or matters in dispute shall be referred to the Australian Industrial Relations Commission for determination."

If the matter before the Commission is "any dispute that cannot be satisfactorily resolved by the parties" to the Award then an inconsistency may arise from this Commission dealing with the matter because the Award provides that it should be dealt with in a particular manner. However, the matter before me is not a dispute between the parties to the award. It is

a claim by an ex-employee. The ex-employee is not a party to the award. The ex-employee is not able to refer his claim to the Australian Commission. A union is a principal in its own right and can be distinguished from an ex-employee, even if that ex-employee is eligible to belong to a union party to the award (*cf. Eljazzar v. BHP Iron Ore* (1996) 65 IR 40). I do not see the dispute settling procedure in the Award as being able to encompass the matter before me and I therefore find that there is no inconsistency arising from its provisions and any order which may issue in this matter.

The respondent next points to the fact that the Award is a paid rates award. It argues that a finding by this Commission that Mr Fielding had an implied term in his contract of employment regarding a matter not covered by the Award would thereby alter, impair or detract from it. However, in my view, this submission misses the point. An award may be a paid rates award. That is a question to be answered by considering its terms in light of the statutory definition. However, the fact that an award is a paid rates award does not of itself prevent parties from engaging in overaward benefits (*Comalco Aluminium (Bell Bay) Ltd v. O'Connor and Others* (No. 2) (1995) 61 IR 455 at 476). There may well be consequences for the award of the parties doing so but it does not lose its paid rates status just because the parties have engaged in overaward benefits. The fact that the Award is a paid rates award does not prevent a finding that there is a term in an employee's contract of employment which is not prescribed within the Award. I am therefore unable to accept the submission of the respondent that the paid rates status of the Award affects the jurisdiction of the Commission in this matter.

The respondent also submits that because Mr Fielding bases his claim on a General Order of this Commission, the Commission is prevented from dealing with the matter because the Commission is not able to entertain a claim that is a benefit arising under an order of the Commission. However, that submission would only be valid if the General Order was binding upon the respondent. If it was binding upon the respondent then the enforcement of that order would be a matter for the Industrial Magistrate and not the Commission. However, Mr Fielding does not claim that the General Order applied to his contract of employment according to its terms. Further, it did not bind the respondent. Once that is said the respondent's submission loses its force. It is not material to the matter before me whether or not the term that is implied is a term found in an order which is binding on others.

It follows that I am not satisfied that the jurisdiction of the Commission to entertain Mr Fielding's claim is ousted by the issues referred to by the respondent. Far from disagreeing with the decision in *Roy v. Western Power* I agree with it.

This matter will be further listed for hearing.

Appearances: Mr M.D. Kane appeared on behalf of the applicant.

Mr A.D. Lucev (of counsel), with him Ms M. Gregor (of counsel) and Ms L. Wyman appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION

Industrial Relations Act 1979.

Paul Fielding

and

Western Power Corporation.

No. 105 of 1997.

17 April 1998.

*Further Reasons for Decision.*

COMMISSIONER A.R. BEECH: On 9 September 1997 the Commission found that it had jurisdiction in this matter and it was set down for hearing as to merit. At the conclusion of Mr Fielding's case Western Power submitted that the Commission should refrain from further hearing this matter pursuant to section 27(1) of the Act. Western Power's submission is that the onus of proving this matter rests on the applicant and

that the evidence of Mr Johnstone and Mr Fielding together cannot support a positive finding that it was a term of Mr Fielding's contact of employment that he would be paid a redundancy payment upon his resignation from Western Power. What follows are my reasons for decision on that submission.

Mr Fielding was employed by Western Power Corporation from the 25th January 1982 to 31st December 1996. In approximately January 1996 a new branch structure was put in place in Western Power which showed the position held by Mr Fielding would become redundant. On the 2nd May 1996, Mr Fielding was advised in writing that his position as a Retail Service Manager was made redundant (exhibit 2). The letter informed him that it did not mean that he did not have a job. He would remain in the sales branch while he sought a new position on his current salary and conditions. The opportunities available to him included seeking voluntary redundancy. Mr Fielding took no positive action to formally express an interest in being offered redundancy until on the 7th November 1996 he telephoned Mr McKendry and left a message for him advising him he would seek a redundancy payment to leave Western Power. However, on the 11th November 1996 Mr McKendry advised Mr Fielding that Mr Fielding would not be offered redundancy. Mr Fielding endeavoured to have that decision reconsidered by Western Power. However, Mr Fielding's evidence is that on the 25th November 1996 he was advised informally by Mr Silcox, in his capacity as Manager, Human Resources, that Western Power's position would not change and that Mr Fielding would not be offered redundancy. By that stage Mr Fielding had been offered a position in employment outside Western Power and had decided he could not afford to pass up the opportunity. Mr Fielding had felt that his career prospects within the organization had been devalued over the previous 2 years and his health had suffered significantly. These considerations resulted in his decision to leave Western Power. Mr Fielding believed that if he were transferred to part-time employment this would have an effect upon his superannuation entitlements that might allow him to retain his employer contributions if he resigned. On the 26th November 1996, Western Power agreed in principle for Mr Fielding to transfer to part-time employment. He was transferred effective from the 3rd December. On the 4th December, Mr Fielding resigned effective from the 31st December 1996. Mr Fielding's evidence is that he resigned in the belief that the *Redeployment, Retraining and Redundancy General Order* of this Commission (1994) 74 WAIG 552 ("the general order") applied to him and that Western Power would be obliged to pay him a redundancy payment. Western Power held a view to the contrary and advised Mr Fielding of this when it acknowledged receipt of his letter of resignation. Mr Fielding's evidence acknowledges that he was aware at the time of his resignation that he would not be offered redundancy. Indeed, there is every reason to conclude from the evidence that Western Power valued Mr Fielding's services and wished to retain him in Western Power's operations. However, Mr Fielding felt that Western Power's appreciation of him had not manifested itself into the appropriate employment opportunities.

Mr Fielding had no formal written contract of employment. At the time of Mr Fielding's resignation he was employed pursuant to the *Western Power Interim Salaried Officers' Award 1995* ("the award"). The award did not contain any provision entitling him as of right to a redundancy payment. The general order did not apply as of right to Mr Fielding's employment. He claims that it was an implied term in his contract of employment that he would receive the benefits of the general order. In order for him to succeed he will therefore need to demonstrate that it was an implied term of his contact of employment that the provisions of the general order applied to him.

Evidence was given by Mr Johnstone, the State Director for the Association of Professional Engineers, Scientists and Managers, Western Australian Branch, and by Mr Fielding. Their evidence, and the documentary evidence, shows that Western Power has over a number of years applied redundancy schemes to employees made redundant. The various schemes have in general followed the general order other than for the payments to be made. Generally speaking, the severance payments made by Western Power have been in excess of those that would otherwise have been provided by virtue of the general order. Exhibit 24 is representative of Western Power's position. It is

a letter dated 23 April 1996 from the General Manager—Human Resources to the Australian Services Union stating—

“This letter formally notifies you that Western Power Corporation’s Executive has considered a redundancy package that will apply across the organisation.

The package will generally apply the provisions of the Western Australian Government Employees Redeployment, Retraining and Redundancy General Order as issued by the Western Australian Industrial Relations Commission in November 1993.

The General Order will be amended in regard to the provision contained in Clause 6, Selective Voluntary Severance or Early Retirement, at subclause 2. Western Power will apply an entitlement of up to a maximum of 46 weeks in lieu of the 45 weeks that currently exists in the Order.”

That letter is evidence that the general order will “generally apply” but the extent of its application is not clear. The evidence before the Commission does not permit the conclusion that the terms of the general order were applied in their entirety by Western Power. Significantly for the purposes of this matter, there is no evidence before the Commission that an employee of Western Power who resigned without having been offered redundancy would nevertheless be paid the severance payment prescribed by the general order. Mr Fielding’s evidence, and indeed the evidence of Mr Johnstone, acknowledges that on each occasion redundancies were initiated at Western Power, it was Western Power who offered redundancy to employees. His evidence of two occasions when he understood the terms of the general order were applied to salaried staff (at p.115) refers to staff being offered voluntary redundancy. Employees may have been invited to express an interest in being offered redundancy, as is the case in the letter to Mr Fielding of 2nd May 1996 (exhibit 2). However, Western Power retained the right to choose whether or not to offer it to an employee. Mr Johnstone’s evidence made it quite clear—

It was also indicated very clearly to us at the time that the expressions of interest were not binding on the employer.

(Transcript p.112)

Mr Kane may be correct in his earnest submission that an employee made redundant from Western Power would be entitled to some form of a redundancy payment as of right. Such a conclusion would be open given the history of Western Power paying a redundancy entitlement over many years to employees it has made redundant. However, Mr Fielding was not made redundant. It may well have been that in the first half of 1996 the position held by Mr Fielding was made redundant. But the point is well made that it is positions which are made redundant, not the individual who holds that position. It may well be that if a position is made redundant the incumbent will be offered a redundancy payment. However, if, as here, the incumbent is a valued employee whom the employer believes will continue to make a contribution to the organization, it does not necessarily follow that the employee will be made redundant.

Therefore, even if it is open to conclude, particularly from Exhibit 24, that the provisions of the general order were generally applied by Western Power in cases of redundancy, the Commission is not able to conclude that the specific provision claimed, that is, that an employee who elects to resign will be paid the redundancy payment, was a term of Mr Fielding’s contract of employment.

Reference was made to the authorities used for implying a term in a contract of employment. In Mr Fielding’s case the terms of his contract of employment were not comprehensively set out in writing. Rather, the parties relied on the provisions of the award. I accept that there ought not be a rigid approach in cases where there is not a formal contract, at least to the extent that the use of the word “formal” implies that the contract of employment is both in writing and comprehensive. In Mr Fielding’s case the actual terms of his contract of employment, and of the relevant award, were silent on the subject of redundancy payments whether payable upon resignation or upon being made redundant at the initiative of Western Power. Prior to considering any presumed or imputed term it is necessary to arrive at some conclusion as to the actual intention of the parties (*Byrne and Frew v. Australian Airlines Ltd* (1995) 69 ALJR 800 and see too the decision of the Full Bench of this Commission in *Ruth Lawson and Others v. Joyce Australia*

*Pty Ltd* (1995) 76 WAIG 20 at 23). I have already made clear in these reasons that I am unable to conclude that the intention of Western Power and Mr Fielding would be that a redundancy payment would be paid upon an employee electing to resign. Furthermore, such a provision would not be necessary for the reasonable or effective operation of Mr Fielding’s contract of employment in the circumstances of this case. The test in this matter is objective. The word “reasonable” in this context refers to it being reasonable for there to be such a provision implied in Mr Fielding’s contract of employment. It does not refer to whether or not it is reasonable that Mr Fielding ought receive a redundancy payment in the circumstances of this case. Such a term is not necessary for the reasonable operation of Mr Fielding’s contract of employment.

For the above reasons I am satisfied that the evidence before the Commission thus far will not permit the Commission to grant Mr Fielding’s claim. On that basis, it is not in the public interest to require the respondent to present its case. In the circumstances an order will issue dismissing this application.

Appearances: Mr D. Kane appeared on behalf of the applicant.

Mr A.D. Lucev (of counsel) and with him Ms M. Binet (of counsel) appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Paul Fielding

and

Western Power Corporation.

No. 105 of 1997.

17 April 1998.

*Order.*

HAVING heard Mr M. Kane on behalf of the Applicant and Mr A. Lucev (of counsel) and with him Ms M. Binet (of counsel) on behalf of the Respondent the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be dismissed.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Simon Peter Gavin

and

Robert Stephen Cocking  
T/A Batavia Motor Inne.

No. 1783 of 1997.

COMMISSIONER J F GREGOR.

23 April 1998.

*Reasons for Decision.*  
(Extempore)

The matter before the Commission arises from an application, which was filed on the 30 September 1997 when Simon Peter Gavin (the applicant) applied for an Order pursuant to s.29(1)(b)(i) and (ii) of the Industrial Relations Act, 1979 (the Act). The applicant sought ‘reputation restoration’ and a series of benefits to which he claims he was entitled under contract of employment which he said existed between him and Frostbites Nightclub, but which was later identified as Robert Stephen Cocking trading as Batavia Motor Inne (the respondent).

The applicant was allowed by leave to amend the claim when the application was before Parks C on the 15 January 1998. That left for determination a claim for contractual benefits only, the claim for unfair dismissal being abandoned. According to the file, the claims made by the applicant allege unpaid accommodation of \$475, removal costs from Kalgoorlie to Geraldton of \$1340, an alleged 4 weeks unpaid work of \$1600, removal costs Kalgoorlie to Perth of \$1600, making a grand total of alleged denied contractual benefits of \$5485.

The matter was before the Commission otherwise constituted by way of conference on the 15 January in Geraldton. The dispute was not resolved, and the file was reallocated to the Commission as constituted on or about the 30 January 1998. Subsequent upon receiving that file a Notice of Hearing was served upon S.P. Gavin at 48 Wooramel Way, Cooloongup, 6168 and R.S. Cocking trading as Batavia Motor Inne, Post O Box 58, Geraldton. That notice, to the original of which is affixed the stamp of the Registrar, appears on the file.

There was a further Notice of Hearing, which nominated the same place and time of hearing, issued on the 19 February 1998 to S.P. Gavin at Wooramel Way, Cooloongup WA. That notice, according to the file, was served by prepaid post on the 19 September 1998 in accordance with the service requirements of the Industrial Relations Commission Regulations 1985.

There was a further Notice of Hearing sent on the 10 March 1998, to Mr Gavin C/o 48 Wooramel Way, Cooloongup, WA, 6168. The effect of that notice was to change the time of hearing from 9.30 until 10.30. To that Notice of Hearing is affixed the stamp of the Registrar, and a notation from my Associate that the amended notice was faxed on the 10 March 1998 and was posted on that same day. There was a further amended notice sent on the 23 March 1998, which nominated that the time of hearing would be at 2.15pm on the 2nd of April.

My Associate has recorded on the transcript the events that relate to the failure of the applicant to appear today. On the file there are 15 notations of conversations with either the applicant or his parents concerning these proceedings. The most important one, I would suggest because this involves the applicant directly, occurred on the 31 March 1998. My Associate had, according to the running sheet and to the evidence she gave the Commission, spoken to the applicant's father on the 19, 25 and the 27 March, but on the 31 March the applicant rang and he advised that the respondent had rejected his 'offer' from which I take it that there was an offer to settle between the parties. He was then told that the applications would proceed to hearing.

According to my Associate and the file note, the applicant said that he was working and would not be able to be at the hearing. In any event he wanted the hearing in Perth. He was told then that he would have to write to the Commission both to seek an adjournment and set out why he thought the matter ought to be heard in Perth. The Commission would then consider the request. The applicant was told that he should make this request in writing. He told my Associate that he had immediate access to a fax machine and authority was given to her to file his request through that means. My Associate advised him of my chambers facsimile number to facilitate this.

There was no further contact from Mr Gavin or his family until today, when on my instructions my Associate rang the applicant's parents home, this because the Commission had been told that was the original address for service of notices relating to the application. My Associate was told that the applicant would not be attending the hearing. His mother said that Mr Gavin had been trying to contact the Commission. According to the file note and my Associate's recollection of the matter, the applicants mother was told that there was no record in the Chambers of any such contact.

There is no such record. I am able to conclude from the proceeding chronology of events that the applicant lodged a major claim against the respondent in this matter. Some of the claim, even on the paperwork, has a tenuous basis at the very least. For instance, he claims \$2000 for loss of reputation and restitution, clearly a matter outside the jurisdiction of this Commission. The claim is for a substantial sum of money, and the respondent has every right to treat the claim seriously as a claim which, if established, would cause it to pay a large amount

of money. The applicant is not in ignorance about what might be the repercussions of his failure to attend these proceedings. The record that I have recited is indicative that he was fully informed both of his rights and obligations to pursue his claim. It is open to conclude he has not taken notice of the implications for him for failing to pursue his claim.

The respondent now seeks an order for costs. Mr Jones, who appeared for the respondent, says the circumstances can be categorised as extreme on the grounds that there has been a complete disregard by the applicant to respond not only to his own application but to information given to him. He has not complied with any of the regulations, he has been given every opportunity to progress his case and has failed to do so. The circumstances are extreme because there has been a waste of public money and the respondent has been put to considerable expense.

On a number of occasions the Commission has considered whether it should award costs in such circumstances. First I need to deal with the application itself. This applicant clearly has not taken the opportunity to prosecute his claim. He has acted in the way he has against a background of knowledge about what may occur if he did not attend this hearing without obtaining from the Commission its authority for an adjournment.

To that extent, he has treated the Commission with disdain and he has decided for himself that he will not attend. It may be that he has a job and was unable to obtain release, but he did not give the Commission any opportunity to sympathetically consider his situation. He decided to make the decision for himself and remove from this Commission the ability to conduct its affairs in an orderly, economic and expeditious manner in the public interest. His conduct in this case creates a circumstance where the Commission has no alternative but to dismiss the claim for want of prosecution and an Order will issue to reflect such a finding and a dismissal.

Insofar as costs are concerned, the policy of the Commission is set out in *Brailey v Mendex Pty Ltd 1993 (73 WAIG 26, at page 27)*. In that case the Full bench established that the policy which is to be followed when applying the powers vested in the Commission in s.27(1)(c) of the Act is that costs are to be awarded in extreme cases.

There has been a complete disregard by the applicant of his obligations to pursue his claim; this in the circumstance where he has been given every opportunity to be present or otherwise seek adjournment. It is a matter of public interest that litigants in this jurisdiction are aware that matters need to be speedily dealt with and to that end the jurisdiction was created as substantially an own-costs jurisdiction. However, that approach of the Act is modified by s.27(1)(c) in cases where the conduct of one party or other can be said to be extreme.

The facts in this matter speak for themselves. Here was an opportunity given to the applicant to pursue his claim, a claim which even on its face has dubious chances of success, nevertheless, he was given the chance to pursue it. He did not do so, after more than the usual attempts by this Commission to advise him of his obligations and rights and in the face of warnings from the respondent that if he did not pursue his claim, that it would pursue reimbursement of costs under the Act.

From these circumstances, I find that this is a case where the categorisation of extreme applies and I intend to award costs. The amount of costs which have been put to me by Mr Jones does not include the costs of an agent. Section 27(1)(c) provides that the Commission may order any party to the matter to pay to the other party such costs and expenses, including expenses of witnesses as are specified in the order, but no costs shall be allowed for the services of any legal practitioner or agent.

The Commission has in the past awarded travelling costs for solicitors, or legal practitioners or agents. I intend to allow in part those travel costs that Mr Jones has claimed, that is a sum of \$269 for airfares for his attendance in Geraldton. I do not intend to allow the airfares for Mr Jones' client and a witness to attend upon him in Perth on the 24th for briefing. I do intend to allow a cost of \$50 each for the attendance at this hearing of the two witnesses for the respondent. In total the Commission awards the respondent \$369 in costs. Orders will

issue which will require \$369 to be paid within 21 days of the date of issue of the Order.

Appearances: No appearance on behalf of the applicant.  
Mr D Jones appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Simon Peter Gavin  
and

Robert Stephen Cocking  
T/As Batavia Motor Inne.

No. 1783 of 1997.

COMMISSIONER J F GREGOR.

5 May 1998.

*Order.*

Having heard Mr D Jones on behalf of the respondent and there being no appearance by or on behalf of the applicant, the Commission pursuant to the powers vested in it under the Industrial Relations Act, 1979 hereby orders—

1. THAT the applicant pay to the respondent the sum of \$369.00 within 21 days of the date of this Order.
2. THAT the application be dismissed for want of prosecution.

(Sgd.) J.F. GREGOR,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wayne Hampson  
and

Metro Meat International (Linley Valley Division).

No. 212 of 1997.

AND

George Gebski  
and

Metro Meat International (Linley Valley Division).

No. 213 of 1997.

AND

Michael William Bennett  
and

Metro Meat International (Linley Valley Division).

No. 217 of 1997.

COMMISSIONER J F GREGOR.

23 April 1998.

*Reasons for Decision.*  
(Extempore)

The Commission has before it three applications : Nos. 212 of 1997, Wayne Hampson v Metro Meat International (Linley Valley Division); 213 of 1997, George Gebski v Metro Meat International (Linley Valley Division); and 217 of 1997, Michael William Bennett v Metro Meat International (Linley Valley Division). Each of these applications was filed on the 3 February 1997. They have been subject to proceedings before the Commission on the 19 February 1997, the 19 December

1997, when the matter was brought on for mention, and today the 31 March 1998. The Commission has given the opportunity for the applicants to appear and be heard on these matters. Specifically the applications were called on for applicants to show cause why they should not be dismissed for want of prosecution. There was no appearance by any of the applicants.

Each of the applications has been extant for over a year. In the circumstances, the relief claimed would be unlikely to be granted in any event because of the lack of contemporaneity of the application to any potential reinstatement which is the primary remedy under the Industrial Relations Act, 1979 (the Act). I have therefore decided that in the public interest and pursuant to the powers of the Commission under s.27 of the Act each of the applications will be dismissed for want of prosecution. Orders will issue accordingly.

Appearances: No appearance on behalf of the applicants.  
Mr D Sash appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wayne Hampson  
and

Metro Meat International (Linley Valley Division).

No. 212 of 1997.

COMMISSIONER J F GREGOR.

23 April 1998.

*Order.*

HAVING heard Mr D Sash on behalf of the respondent and there being no appearance on behalf of the applicant, the Commission pursuant to the powers conferred under the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed for want of prosecution.

(Sgd.) J.F. GREGOR,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

George Gebski  
and

Metro Meat International (Linley Valley Division).

No. 213 of 1997.

COMMISSIONER J F GREGOR.

23 April 1998.

*Order.*

HAVING heard Mr D Sash on behalf of the respondent and there being no appearance on behalf of the applicant, the Commission pursuant to the powers conferred under the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed for want of prosecution.

(Sgd.) J.F. GREGOR,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael William Bennett  
and

Metro Meat International (Linley Valley Division).

No. 217 of 1997.

COMMISSIONER J F GREGOR.

23 April 1998.

*Order.*

HAVING heard Mr D Sash on behalf of the respondent and there being no appearance on behalf of the applicant, the Commission pursuant to the powers conferred under the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby dismissed for want of prosecution.

(Sgd.) J.F. GREGOR,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mohamed Tarek Ibrahim  
and

Fine Style Design Studio Pty Ltd.

No. 1790 of 1997.

12 January 1998.

*Reasons for Decision.*

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: The applicant alleges that he was unfairly dismissed from his employment with the respondent on the morning of 19 September 1997 and, in addition, that the payments made to him upon the termination of his employment failed to provide him a benefit which he is due under his contract of employment. That failure being the non payment for 7.5 days of work he performed in the period 8 September to 19 September 1997.

Mr Ibrahim entered into a relationship with the respondent as from Monday, 8 September 1997. For a period of one week thereafter he was to attend the premises of the respondent and train himself in the use of a particular drafting related computer program. The applicant embarked upon the training, without remuneration, at his own request, with the aim of convincing the respondent that he was suited for appointment to a position of employment which the respondent had advertised. Notwithstanding that original arrangement, Mr Ibrahim was given some productive work to perform during the intended training period and, as a consequence, the respondent employer undertook to pay Mr Ibrahim for the work done.

The week of self-training upon which the applicant entered, having commenced on 8 September 1997, was therefore due to expire on 14 September 1997. During this period, the parties did not enter into any arrangement to extend that training period beyond one week to account for the period Mr Ibrahim had, at the behest of the respondent, applied himself to productive work.

On or about Friday of the first week, or at the latest Monday of the second week, ie 15 September 1997, Mr L. Di Rosso, the General Manager, informed Mr Ibrahim that his progress had been satisfactory and that he was engaged as a "full time" employee. Given that Mr Ibrahim originally commenced the relationship as an unpaid trainee for a specified period; he performed productive work for part of that period and to that extent was to be paid as an employee; was later notified that his engagement was "full time", the purpose of this notification was to indicate to him that from that point onward his

status had changed to that of an employee with indefinite tenure. That brought with it the right to be remunerated accordingly, ie he became entitled to payment for whatever hours he worked as required in the week commencing 15 September 1997, calculated at the rate of \$673.11 for a completed 38 hour week. There is evidence that Mr Ibrahim worked the required daily hours on four days, and three hours on the fifth and final day of the working week. None of that time could be offset as unpaid training and he ought to have been paid for all of those hours. The Commission will therefore order that that be done. Each full day involved 7.6 hours of work and therefore the total hours worked in the second week was 33.4 hours for which proportionate payment was due.

No record has been kept of the hours of work Mr Ibrahim performed in the first week. He estimates it to be 2.5 working days, whereas the respondent estimates it at 2 working days. Given that the onus resides with the applicant to prove that which he claims and as this element of his claim no more than an estimate on his part, it would be unsafe to accept his estimate as more accurate than that conceded in the estimate by the respondent. I find that the applicant was engaged in productive work for two days in the first week, ie 15.2 hours, for which proportionate payment was due.

At termination Mr Ibrahim was paid for a total of 38 hours, ie \$673.11, whereas he ought have been paid for 48.6 hours, ie \$860.87. He has been underpaid \$187.76.

During the short period of the relationship between the parties, mention had been made to the applicant of an unpleasant odour emanating from within the room in which he and others worked. Mr Di Rosso and the applicant differ on the context in which such had been mentioned, but clearly the suggestion was made that the applicant was the source, or, by inference, he contributed to it. Mr Ibrahim was offended by what had been said. Further, in this period the applicant formed the view that the respondent expected and required its employees to work additional hours, that is, "overtime", without the payment of additional remuneration, which he considered to be unreasonable. The applicant had also become dissatisfied with the fact that he had not been provided a written contract of employment which he had requested. These matters combined caused Mr Ibrahim to become dissatisfied with the employment relationship.

On the evening prior to the date of termination, there was work for the applicant to complete which necessitated him working beyond his usual finish time that day. Mr Ibrahim objected to remaining to complete the work and indicated to Mr Di Rosso the reason for that was that his delayed departure would cause him to be late for a prearranged appointment. In response, Mr Di Rosso offered to transport Mr Ibrahim into the city, knowing that he would otherwise rely upon public transport, and in the belief that that would prevent him being late for his appointment.

There is substantial conflict between the testimony of Mr Ibrahim and Mr Di Rosso as to the content of conversation they had and in particular the nature and context of what has said immediately prior to, and that which brought about, the termination of the employment. The material areas of conflict were not adequately tested by either party.

According to Mr Di Rosso, on the evening of 18 September 1997 he made the applicant aware that the drafting work which would delay his departure related to a presentation to be given by the Managing Director and therefore he requested that Mr Ibrahim wait while he ascertained from the Managing Director, his brother, the importance and urgency of the work involved. Mr Di Rosso says he met with the Managing Director and returned shortly thereafter to speak with the applicant to find that he had departed. Mr Ibrahim confirmed to the Commission that Mr Di Rosso did ask him to wait, which he says he did for five or ten minutes and then departed without again meeting with Mr Di Rosso.

On 19 September 1997, the day that the employment of the applicant ended, Mr Di Rosso questioned why he had departed the previous evening. Mr Ibrahim described what Mr Di Rosso said so as to convey that his approach had been one of censure and demanding of an explanation. Mr Di Rosso indicated to the Commission that his posing of the question bore no over-tone of censure or demand.

According to the applicant's version of events, he reiterated the reason for departure that he gave the previous evening and their conversation regarding that matter ended and Mr Di Rosso departed from the room.

Mr Ibrahim says that Mr Di Rosso later returned to the room and at that time he, the applicant, complained to him that he was unhappy with aspects of his employment situation. Mr Di Rosso is alleged to have responded to the effect that because he was unhappy he should leave the employment. That he "should" leave, the applicant perceived to mean he was required to leave and hence he was dismissed.

Mr Di Rosso did not expressly address whether there had been two conversations with the applicant, however his testimony confirmed that Mr Ibrahim raised the matter of his unhappiness with the employment situation. According to Mr Di Rosso, Mr Ibrahim went further and also indicated he therefore "could" not continue the employment, a view he maintained although there was an attempt to persuade him otherwise. Mr Di Rosso imparted to the Commission that it is in the context that the applicant's attitude remained unchanged that he acquiesced with the view that it was appropriate for Mr Ibrahim to leave and made a statement to that effect.

Mr Di Rosso says he understood Mr Ibrahim wished to end the employment and that he had not wished to do so.

Mr Ibrahim clearly had a predilection to identifying what he perceived as his rights as an employee. This does not appear to have brought him into conflict with his employer. It is, however, indicative of his expressed distrust of the respondent employer, which apparently arises from some untoward experience he had with a past employer. This attitude of the applicant, coupled with his imperfect use and understanding of the English language, I believe caused him to misinterpret the statements made by others and to inadvertently mislead or confuse others through statements of his own.

Having seen and heard both the witnesses, I have no reason to doubt what Mr Di Rosso has told this Commission. By that I am not suggesting that the applicant has purposely set out to mislead the Commission. The applicant did not clearly express himself during the course of proceedings, nor did he always appreciate precisely what it was that was being said or put to him.

On the applicant's own evidence, his response to the question by Mr Di Rosso regarding his departure the previous evening was a reiteration of the reason given the evening before he had been asked to wait by Mr Di Rosso. Having received that answer, Mr Di Rosso was said to have departed and returned shortly later and at neither time did he adversely react to the answer given. It is therefore reasonable to assume that the answer satisfied him and that it is most improbable that such would have been the case had his question been directed towards censuring the applicant. Further, on the return of Mr Di Rosso, the reason for which remains unexplained, the applicant opened the exchange and complained of his unhappiness with the employment. Mr Di Rosso was not the initiator of that event, nor did he control its course.

On the morning of 19 September 1997 Mr Ibrahim told Mr Di Rosso that he was unhappy with his employment. That he felt that way has also been corroborated with what Mr Ibrahim said to Mr Fertch on that date. I am satisfied that the applicant expressed himself to Mr Di Rosso in a manner which caused him to believe that he, Mr Ibrahim, wished to end the employment.

In my view, Mr Ibrahim was the architect of his own misfortune, and that he terminated his own services on the morning of 19 September 1997. The employer did not initiate the termination and no other form of duress was present. There was no dismissal by the employer.

The respondent will be ordered to pay to Mr Ibrahim the \$187.76 underpayment of wages and that part of the application alleging unfair dismissal will be dismissed.

Appearances: Mr M.T. Ibrahim appeared in person.

Ms C.D. Natta appeared on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mohamed Tarek Ibrahim

and

Fine Style Design Studio Pty Ltd.

No. 1790 of 1997.

15 April 1998

*Order.*

HAVING heard the Applicant on his behalf and Ms C.D. Natta on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT Fine Style Design Studio Pty Ltd pay Mohamed Tarek Ibrahim underpaid wages of \$187.76.

THAT the claim of unfair dismissal and for monetary compensation in remedy thereof be dismissed.

(Sgd.) C.B. PARKS,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robert John Lawson

and

Lamar Nominees Pty Ltd trading as Whyman

Building Company Pty Ltd & Other.

No. 1183 of 1997.

COMMISSIONER J.F. GREGOR.

24 April 1998.

*Reasons for Decision.*

On the 27 June 1997 Robert John Lawson (the applicant) applied to the Commission for an order pursuant to section 29 of the Industrial Relations Act, 1979 (the Act). The Commission conducted various proceedings in the form of a conference on the 5 August 1997, a conference the 1 October 1997 for production of documents, a hearing took place on the 20 November 1997 at which time Counsel for the applicant sought leave to withdraw the claim. Leave was granted. At that hearing the advocates appearing for the first respondent and the second respondent gave notice that they would seek costs in the matter. They were directed that they should produce a detailed schedule of costs they seek, together with supporting submissions and file and serve that within 14 days of the hearing. At a further 14 days from that time the applicant was to file and serve its response. The Commission advised it would consider those written submissions and make a final decision on the matter of costs.

Later when the documentation had been submitted as directed and the Commission had received a request from Mr Heelan that the matter be listed to "afford us the opportunity of appropriate cross examination of him" (... the applicant) the matter was listed for hearing.

However the applicant did not appear. He advised the Commission on the 24 March 1998 that he had nothing to add to the written submissions that he had already filed and indicated that he would not attend the hearing.

The Commission has had the opportunity to consider the submissions by both of the advocates for the first and second respondents in this matter and the documentation they have submitted.

The essence of the submissions of Mr Heelan is that the application insofar as it related to the entities for whom he appeared was without foundation or merit and was simply

designed to cause those entities to incur substantial costs in the terms of both time and expenditure in defending an application which should never have been bought against them. Mr Heelan submitted that he had consistently adopted the position that his clients should not be part of the proceedings. On behalf of his client (the second respondent), Mr Sommerville submits that the regulations, by which I think he must mean the Industrial Relations Act Regulations 1985, make it clear that it is not competent for an applicant to withdraw the matter on the day of the hearing. He suggested that pursuant to s.27(1)(c) of the Act the Commission is allowed to "simply award costs" and there were exceptional circumstances in these cases which should convince the Commission that the power should be exercised.

The test to be applied in awarding of costs under s.27(1)(c) of the Act is set out in *Brailey v Mendex Pty Ltd 1993 (73 WAIG 26, @ 27)*. In that case the Full Bench established the policy which is to be followed. The policy is that costs can be awarded in extreme cases. It is clear that the situation involving Mr Sommerville's client does not fall into that category. If there can be criticism of the applicant that can be leveled at his decision to withdraw the application at the commencement of hearing. If he had given notice to the respondent at the same time as he advised the Commission that he intended to do so, the situation which provoked these applications for costs perhaps would not have occurred. The applicant's solicitors had advised the Commission on the evening before the hearing on the 30 March 1998 that he would seek leave to withdraw but as mentioned he did not tell the other parties. That in the circumstances can perhaps be categorised as discourteous, but in my view, it does not meet the test of extreme as to be met when considering applications for award of costs in this jurisdiction. It is true that Mr Heelan has consistently argued that his client (the first respondent) should not be part of the action, however no ruling was made upon that at any time nor was one sought by him. The applicant, through Counsel, had advised the Commission that the clients of Mr Heelan should not be involved in the hearing on the 30 March 1998. He had received a reply from the Commission which indicated that he should make such applications at hearing. It was clear from his correspondence that he intended to do so and that would have proceeded as a matter of routine. There was some responsibility on the second respondent to establish what the applicant really intended but in any event any fair minded view of the correspondence was that the application would be withdrawn at the hearing on the 30 March 1998, that Mr Heelan decided to attend ready to argue a full case was a matter for his judgement. The circumstances of this application do not create a situation where one could say they were extreme and on the tests that are to be applied as they are set out in *Brailey v Mendex Pty Ltd (ibid)* no award for costs will be made.

These proceedings will be concluded by an Order which will grant leave that the application be withdrawn and will dismiss the application for costs.

Appearances: No appearance on behalf of the applicant.

Mr T Heelan appeared on behalf of the first respondent.

Mr A Sommerville appeared on behalf of the second respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robert John Lawson

and

Lamar Nominees Pty Ltd trading as Whyman Building  
Company Pty Ltd & Other.

No. 1183 of 1997.

COMMISSIONER J.F. GREGOR.

24 April 1998.

*Order.*

Having heard Mr T Heelan on behalf of the the first respondent and Mr A Sommerville on behalf of the second respondent

and there being no appearance on behalf of the applicant, the Commission pursuant to the powers vested in it under the Industrial Relations Act, 1979 hereby orders—

1. THAT the application be and is hereby withdrawn.
2. THAT the application for costs be and is hereby dismissed.

(Sgd.) J. F. GREGOR,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Denis John Maher

and

Frances Robert Ridgwell trading as Bob Ridgwell.

No. 1846 of 1997.

COMMISSIONER P E SCOTT.

15 April 1998.

*Reasons for Decision.*

THE COMMISSIONER: By this application the Applicant alleges that he has been unfairly dismissed from his employment with the Respondent.

At the commencement of the hearing on 30 March 1998, the Respondent advised that the naming of the Respondent in the Application as filed was incorrect insofar as it is Francis Robert Ridgwell "trading as Bob Ridgwell" not "trading as The Cork Expert". He says that "The Cork Expert" was merely a promotional term. The name of the Respondent was amended accordingly.

The Applicant formally commenced employment with the Respondent on 12 November 1996. He had previously undertaken other work for the Respondent in less formal circumstances. The Respondent is engaged in the business of laying cork and timber flooring. The Applicant was not experienced in this type of work although he had previously worked in cabinet making and in other aspects of the building industry. The Respondent acknowledged that when the Applicant commenced employment, some of his skills from the cabinet making area were of use and value to him.

The Respondent conducts a small business and at the time of the Applicant's employment, it appears that he and, from time to time, casual employees or subcontractors, undertook work in the name of his business. He was introduced to the Applicant by his son who was known during the proceedings as Robert Junior. The Applicant and Robert Junior shared accommodation for some time and the Respondent gave evidence that he was appreciative of the Applicant accommodating his son, and of reports he received from the Applicant as to his son's progress because of his concern about certain aspects of his son's situation. However, after some time, he made it clear to the Applicant that what went on between his son and the Applicant was private between them and not of concern to him. There was also evidence that in early 1997, the Respondent suffered a collapsed lung and has other health problems. He says that all of his family and his doctor urged him to ease up and while there was a need to seek out and pursue work as he had previously done, he did not know if he could fulfil that work, and was looking to reduce the pressure on himself.

The Respondent says that his son was working in the business and was skilled in most aspects of the work including initiating and completing all tasks without supervision, however, he was not competent to do quoting at that stage.

For some time, the Respondent had been considering the future of the business and by early August 1997, he had made up his mind that he would reduce the size of his business, that he and his son could manage the work which would come up in the foreseeable future but that where additional labour was required he would use subcontract or casual labour. He says that he had discussed this with his wife.

On 12 August 1997, the Applicant and the Respondent, amongst others, were undertaking some work at Rottneest. It appears that the Respondent was critical of an amount of glue being found on skirting boards and complained about the matter. The Applicant says that he responded in a jovial manner, in accordance with the general tenor of banter between the employees and the Respondent, to the effect that he had done the cleaning up of glue in areas where the Respondent had previously been working. It appears that the Respondent became offended and angry by this response. He made comment to the Applicant to this effect. Although he says that he cannot remember the exact words he used because he was angry, he says that he commented to the Applicant that "perhaps you would be better looking for another employer." The Applicant responded "no I am quite happy working with you." According to both parties, the discussion did not continue but the Respondent is said to have apologised to the Applicant for language which he used, although he cannot recall the nature of this language.

The Respondent says that at this point his decision to reduce the size of the business to just himself and his son was reinforced. He did not advise the Applicant, other than in terms of the comment earlier referred to about the Applicant looking for another employer, that the Applicant's employment may be in jeopardy. He did not further discuss with the Applicant his concern about the way in which the Applicant had discussed the matter with him.

There were other occasions on which the Respondent was unhappy with the manner or conduct of the Applicant in that the Respondent believed that the Applicant was lacking in respect for him. On the other hand, the Applicant said that this was just part of the normal banter between them as work mates. In any event, the Respondent never discussed with the Applicant any dissatisfaction with the Applicant's general attitude and approach to him.

On the second last day of the Applicant's employment, the Applicant advised the Respondent's son, Robert Junior, that he would like him to move out of their accommodation, although he says that he made it clear to Robert Junior that he was in no hurry for this to take place. He suggested that it could take place in approximately four weeks when the contract, which I assume was the Rottneest job, was complete and Robert Junior was "cashed up".

The Applicant says that the next morning, on 12 September 1997, when he woke up, Robert Junior had packed his bags and was leaving. Later that day, the Applicant received a telephone call from the Respondent and he was to meet with him that evening. He did so and was asked "so what is all the drama about?". The Applicant says that he responded that there was no drama, he had simply asked the Respondent's son to move out. The Applicant said that he did not know whose idea it was for Robert Junior to move out straight away and the Respondent is alleged to have said that it was his (the Respondent's) idea. There was further discussion between the Applicant and the Respondent as to the progress of the job at Rottneest. Then the Respondent advised the Applicant that, due to the unacceptable level of stress he was experiencing and that he was downsizing his staff so that he was in complete control of every job, the Applicant's employment was to terminate. The Applicant was paid one week's pay in lieu of notice.

The Applicant alleges that the downsizing about which he was informed was not so and that other employees were brought in to finish the work which he should have been allowed to complete. There is dispute between the parties as to the Applicant's competence to complete the work without supervision. There were also some other matters between the parties which are not significant.

I have considered all of the evidence and the submissions of the parties in this matter. I am satisfied that the Respondent genuinely wished to reduce the size of his business and reduce the pressure he was under. That is quite a legitimate thing for the Respondent to do. In doing so, though, he must act fairly towards his employees. I am satisfied from the evidence, and the Respondent confirms, that he made the decision to terminate the Applicant's employment a month or so before termination took place. I am not satisfied however, that his comment to the Applicant in the face of an altercation between them, that the Applicant would be better looking for another

employer, constituted a warning which the Applicant could or should have taken seriously, particularly when the Applicant responded to the effect that he was quite happy working for the Respondent. There was no further discussion between them on that matter. In these circumstances, I find that it was unfair that the Respondent made the decision to terminate the Applicant's employment but took no action to advise the Applicant of this for some four weeks. The timing chosen for the termination of employment was not merely coincidental with the Applicant asking the Respondent's son to move out of their accommodation. The Respondent acknowledged that this played some, albeit small, part in his decision to terminate the employment at that time, although he believed that the situation which arose between his son and the Applicant was not all the Applicant's fault.

In these circumstances, I am satisfied that the Respondent has not treated the Applicant fairly. Further, it appears that the Respondent had some additional work to be undertaken subsequent to the Applicant's termination and did not offer this work to the Applicant, either as a casual employee as he had previously been or in any other capacity. There was no obligation upon the employer to offer that work to the Applicant as a subcontractor but certainly it fitted with the relationship they previously had for him to have been offered some casual work. I find that at least part of the Respondent's reasons for selecting the Applicant for termination, coinciding with the Respondent's decision to reduce his workforce and the pressures upon him, were associated with his views of the Applicant on a more personal level.

In all of these circumstances, I am satisfied that the Applicant has demonstrated that his dismissal has been unfair.

The next matter for consideration is the question of the remedy to be applied. The parties are in agreement that reinstatement would be impracticable and therefore the Commission is to consider compensation. The authority on such matters is the decision of the Full Bench in *Bradley Rickard Smith and CDM Australia Pty Ltd (78 WAIG 307)* which is that—

"primarily, the task is to ask what loss or injury is suffered by the aggrieved employee by the result of the dismissal. The answer to that involves a consideration of a range of factors and not merely a consideration of the income lost by the employee during the resultant period of unemployment.

...

"Accordingly the assessment of compensation will require consideration of the circumstances surrounding the dismissal as much as to the consequences of the dismissal to the employees. The overriding determinant must be what is fair and reasonable in all of the circumstances of the case; not just some of the circumstances. The application of these principles may well require, in fixing compensation, that regard be had to the conduct of the employee, particularly if by his conduct the employee puts the continuation of his employment in real jeopardy." (page 312)

In this particular case, I am not satisfied that the Applicant conducted himself in such a way as to put his continued employment in jeopardy. The Respondent may well have had sound commercial reasons for deciding to terminate the Applicant's employment but the manner in which the termination took place, with the Applicant being provided with no warning of the circumstances facing him, when the Respondent had made the decision a month or so before termination, was not of the Applicant's making. Further, it appears that the Respondent has allowed matters such as an altercation between himself and the Applicant, and later, a matter which he had previously advised the Applicant would be a private matter between the Applicant and the Respondent's son, to influence him as to the timing of the termination of employment.

I note that the Minimum Conditions of Employment Act 1993, at s.41, requires that where an employer has decided to make an employee redundant, the employee is entitled to be informed by the employer as soon as reasonably practicable after the decision has been made, and is to discuss with the employee such matters as the likely effects of the redundancy in respect of the employee and measures that may be taken to avoid or minimise that situation. This was not done by the Respondent.

In all of those circumstances, I am not satisfied that the Applicant played any significant part in the termination of his own employment.

In considering what compensation is payable to him, I note that the employment had been for less than one year. If one were to consider the normal sorts of redundancy payments which are made to employees, it is usual that employees with less than one years service receive no redundancy pay. So I take this into account. I also take account of the Respondent having lead the Applicant to believe that there would be work available for him in the future. I note that the Respondent says that this was for the purpose of being optimistic about the business, but it mislead the Applicant into believing that his employment was secure, when in fact it was not.

I also take account of the Applicant having sought other work since the termination of his employment, although he has not been successful in obtaining any long term employment. He has had some casual work at various jobs but nothing with any prospects for the future. In all of these circumstances, an amount equal to two week's pay is an appropriate amount of compensation for the Applicant. There is dispute between the parties as to the rate of pay which should apply in this regard. The Applicant gave evidence that his work at Rottneest from 10 July 1997 was paid at \$200.00 per day. When he was working in the metropolitan area he received \$594.35 per week. The evidence is that the Applicant did not spend all of his time at Rottneest from 10 July 1997 but alternated week about between Rottneest and Perth. On this basis, I think an amount for one week calculated at the Rottneest rate and one week at the Perth metropolitan area rate would be an appropriate amount of compensation. This amounts to a total of \$1594.35. An order shall be made accordingly.

APPEARANCES: The Applicant appeared on his own behalf

The Respondent appears on his own behalf

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Denis John Maher

and

Francis Robert Ridgwell trading as Bob Ridgwell.

No. 1846 of 1997.

COMMISSIONER P E SCOTT.

30 April 1998.

*Order.*

HAVING heard the Applicant on his own behalf and the Respondent on his own behalf, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. DECLARES that the Applicant has been unfairly dismissed from his employment with the Respondent; and
2. ORDERS that the Respondent shall pay to the Applicant an amount of \$1594.35 as compensation, such payment to be made within twenty eight days to the date of this Order.

[L.S.]

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ross Colin Osmond

and

Nationwide Field Catering

(Spotless Service Australia Ltd).

No. 888 of 1997.

COMMISSIONER S.J. KENNER.

5 May, 1998.

*Order.*

WHEREAS the applicant sought and was granted leave to discontinue the application, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the application be and is hereby discontinued.

(Sgd.) S.J. KENNER,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ross Colin Osmond

and

Nationwide Field Catering.

No. 888 of 1997.

9 April 1998.

*Order.*

WHEREAS on 8 May 1997 the applicant applied to the Commission for an order pursuant to section 29 of the Industrial Relations Act, 1979;

WHEREAS on 9 April 1998 the Commission convened a conference between the parties pursuant to section 32 of the Industrial Relations Act, 1979;

WHEREAS at the conference the parties consented to the Commission issuing orders in relation to interlocutory matters to facilitate the expeditious hearing of the application;

NOW THEREFORE by consent the Commission pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby orders—

- (1) THAT the applicant file and serve on the respondent further and better particulars of his claim alleging unfair dismissal by 17 April 1998.
- (2) THAT the respondent file and serve on the applicant by 22 April 1998 a notice of answer and counter proposal which shall in summary form specify the facts on which the respondent relies and admit or dispute, either with or without qualification, each part of the claim made by the applicant.
- (3) THAT each party give an informal discovery by serving its list of documents by 22 April 1998.
- (4) THAT inspection of documents be completed by 24 April 1998.
- (5) THAT the applicant and respondent file an agreed statement of facts (if any) no later than three working days prior to the date of hearing.
- (6) THAT the applicant and respondent file and serve an outline of submissions and any list of authorities no later than three working days prior to the date of hearing.
- (7) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S.J. KENNER,

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony Poli

and

Eagle Mining Corporation NL.

No. 2076 of 1997.

Charles B Bass

and

Eagle Mining Corporation NL.

No. 2077 of 1997.

COMMISSIONER P.E. SCOTT.

16 April 1998.

*Reasons for Decision.*

THE COMMISSIONER: These are applications pursuant to s29(1)(b)(i) and (ii) of the Industrial Relations Act 1979, by which the Applicants claim that they have been unfairly dismissed from their employment and that they are owed certain amounts pursuant to their contracts of employment, with the Respondent. Anthony Poli says that, at the time of the termination of his employment, he was the Respondent's executive chairman and chief executive officer and that he received a gross salary of \$265,000.00 per annum. His claim for compensation for unfair dismissal is for an amount equivalent to six months remuneration said to be \$214,140.00. His claim for unpaid contractual benefits amounts to \$534,754.00. Charles Bennett Bass claims that at the time of the termination of his employment he was engaged as executive director of the Respondent on a gross salary of \$220,000.00 per annum. His claim for compensation amounts to six months remuneration being \$160,350.00. His claim for denied contractual benefits equals \$441,555.00. The Respondent denies that the Applicants were unfairly dismissed from their employment and denies that contractual benefits are owed to the Applicants.

On 9th March 1998, the Commission heard from the parties as to the Respondent's application that proceedings be adjourned pending the outcome of proceedings in the Federal Court of Australia instigated by the Respondent against the Applicants. In those proceedings, the Respondent says that—

1. The Applicants were directors of the Respondent's business.
2. The directors, at a number of meetings of directors in 1997, resolved to pay to Mr Poli bonuses of \$130,000.00 and \$70,000.00 and to Mr Bass bonuses of \$50,000.00 and \$25,000.00.
3. These resolutions were passed at times when the directors had reason to believe that a takeover offer or takeover announcement was to be made in respect of the shares of the Respondent, or when such an offer or announcement had already been made.
4. The Applicants were paid those sums pursuant to those resolutions.
5. The agreements providing for those payments pursuant to the resolutions were unfair, or unconscionable having regard to the interests of the Respondent, within the meaning of s.740 of the Corporations Law.

The Respondent is seeking Orders from the Federal Court that, amongst other things, the agreements for those payments are void and that the Applicants repay to the Respondent the amounts concerned.

The Respondent says that the conduct of the Applicants in these matters is the basis of its decision to dismiss them, as such is an essential point to be determined, and that the Federal Court is the appropriate jurisdiction for consideration of the conduct of the Applicants. The Respondent says that in order for this Commission to consider the fairness or otherwise of the dismissals it will need to conduct a factual inquiry concerning whether the bonus payments received by each of the Applicants fell within the provisions of s.740 of the Corporations Law, whether those payments were unfair or unconscionable having regard to the interests of the company

and whether the other criteria laid down by s.740 have been met. The Commission cannot conclude that the Applicants have been unfairly, oppressively or unfairly dismissed without making finding as to s.740(5) of the Corporations Law, a matter which is required to be dealt with by the Federal Court.

The Respondent says that there are compelling public interests grounds in this case why the Commission should exercise its power to adjourn the hearing of the applications pending the outcome of the Federal Court proceedings, notwithstanding that those Federal Court proceedings may take some twelve months to be resolved, or that the Industrial Relations Act 1979 provides that one of the objects of the Act provides for the Commission to act expeditiously. It says that in circumstances of industrial disputes which have the potential to cause substantial disruption to the community such expedition is necessary, but that in this matter, particularly where the Applicants seek the sole remedy of monetary compensation and where they have substantial assets at their disposal, that the need for such expedition which would ordinarily arise, is not present. Reinstatement is not sought by either Applicant and therefore any delay will not prejudice the Applicants' rights in that regard. The Respondent says the only detriment to be suffered by the Applicants upon an adjournment is that payment of compensation for unfair dismissal and denied contractual benefits, if any, will be delayed. It is said that this does not weigh significantly in the balance when considered against the public interest of having a proper and orderly disposition of legal disputes.

The Respondent says that it is also contrary to the public interest for there to be the potential for there to be two different conclusions reached by proceedings in the Commission and Federal Court as to precisely the same factual material. There was also discussion as to whether, if the Commission were to proceed to determine the matter, the Applicants in the Federal Court proceedings may rely upon the doctrine of issue estoppel.

The Applicants seek that the matter be dealt with expeditiously and object to any adjournment. They rely upon the objects of the Industrial Relations Act 1979 where s.6 requires the Commission to act with a maximum of expedition. They rely also on fundamental principle at common law that justice delayed is justice denied. Further, the Applicants say that there is nothing in either of the statutes referred to by the Respondent which prevents the Commission from dealing with a s.29 application even though Federal Court proceedings are on foot. The Applicants drew parallels between matters proceeding in the Commission where essentially the same subject matter was being dealt with in matters the subject of criminal proceedings.

The Applicants say that the Corporations Law does not provide that there is exclusive jurisdiction to the Federal Court.

Further, the Applicants say that they were but two of four directors in the Respondent's company and that the resolutions referred to were passed by the independent directors of the Respondent constituting its audit committee, being directors other than the Applicants.

The Applicants claim that there is no misconduct on their part in their capacity as employees, and that s.740 of the Corporations Law does not require the Federal Court to make a finding of misconduct in relation to the conduct of employees. The Applicants say, too, that in their capacity as employees that they were unfairly dismissed simply because of the manner of termination which denied them procedural fairness. It said that even if the matters pursued in the Federal Court are determined in the Respondent's favour that procedural unfairness to the Applicants as employees is a matter for determination by the Commission. It is quite possible for the Commission to come to a view about the unfairness of the dismissal and the contractual entitlements without consideration or s.740 of the Corporations Law.

The Applicants say that the Federal Court matter may not be determined for a period of twelve months or so. Such a delay would not be appropriate in light of the objects of the Industrial Relations Act 1979. The Applicants responded to the Respondent's submission regarding estoppel saying that the terms of s.29 require the Commission to exercise arbitral not judicial power because the Commission is creating a future right either to reinstatement or to compensate. Such a matter

is not the enforcement of a past right. In such a case, the Federal Court would not be estopped.

The Applicants say that their financial situation should not be overstated and that it is inappropriate for the Respondent to compare them to boiler makers and others who were typically before the Commission, that in recent years a number of cases have been bought by professional and/or business persons and that the Commission ought not distinguish between applicants on the basis of their position in life.

It is said by the Applicants that they are seeking employment and in doing so are obliged to disclose to prospective employers the Federal Court proceedings. This disclosure prejudices them in the eyes of prospective employers. Section 29 proceedings can remedy that by finding that they were unfairly dismissed notwithstanding proceedings in the Federal Court. It is said that the Applicants are suffering stress as a result of the Federal Court proceedings and having to deal with the unfair dismissal claims but that by the Commission proceeding expeditiously, as it is required, that the stress upon the Applicants would be lessened by a decision resolving their claims.

In terms of prejudice, the Applicants say that the amounts of their claims against the Respondent significantly outweigh the amounts the Respondent is seeking to have ordered against them by the Federal Court. They are unable to earn interest on that money nor can they invest it in any way. In this jurisdiction, an award of interest is not available, therefore the Applicants will suffer prejudice by a delay. The Applicants also compared their financial situation with the profits made by the Company in the last financial year. On these grounds the Applicants say that they would suffer a substantial injustice by any delay in their claims being dealt with.

I have considered all of the submissions of the parties in reaching this decision.

It is noted that there is no claim for reinstatement, nor is there industrial action of the nature which requires expeditious action by the Commission, but disputes between the parties where the remedies sought are substantial amounts of money. These matters are not typical of the matters coming before this Commission due to the positions held by the Applicants and their responsibilities within the Respondent's business. It is not suggested that there is any particular financial imperative on the part of the Applicants. On the contrary, they are said to be of some means, although that should not cause their cases to be delayed.

The timing of the Federal Court proceedings being resolved is not known. It is not suggested that there is any particular delay caused by any of the parties but it would appear that the time involved is the normal time for such matters in the Federal Court.

The Commission was referred to a number of authorities dealing with the question of the adjournment of proceedings. Those matters dealt with applications for adjournment of civil proceedings where criminal proceedings are on foot. Such adjournments were usually sought by the employees concerned not, as in this case, by the employer. The Commission was referred to a number of decisions including *Schouten v Telestra Corporation Limited*, *Wilcox J. 49 IR 399 at 402* and *Hawthorne J. in Yost and Kirkbride v Mitsubishi Motors Australia Limited Nos. 688 and 689 of 1994*. Nothing was put to the Commission as to matters involving an application to adjourn due to civil proceedings. The principles set out in the decisions referred to the Commission include aspects relevant to criminal law and the protection of the rights of defendants in those criminal matters, such as the influence of publicity on juries, disclosure of the defence and the defendant's right to silence in those criminal proceedings. However, those decisions contained other principles of assistance including that the court's task is one of balancing of justice between the parties, taking account of all relevant factors, and of each case being judged on its own merits.

I note the Applicants' submission that this Commission is charged with acting expeditiously. However, it is also required by s.26 of the Industrial Relations Act 1979 to act according to equity, good conscience and the substantial merits of the case. This case involves claims for substantial amounts of compensation and contractual benefits by employees who, it is not

denied, are not without means. I weigh their need for resolution of their claims expeditiously with a proper process, a process to be conducted according to the proper sequence of matters to be considered. Indeed, the Applicants may suffer some prejudice by not having their applications resolved, possibly in their favour, and such delay may deny them a more speedy access to any possible award. I also note the stress said to be suffered by the Applicants by any delay in having their claims dealt with, including the implications for their finding alternate employment. However, even if the Commission were to proceed with their claims at this stage, there is no guarantee of success. Further, they would still need to await the outcome of the Federal Court proceedings, and still need to disclose those proceedings as they say they currently need to disclose them. Having noted these matters, I weigh them as part of the consideration involved in acting according to the requirements of s.26, and in balancing justice between the parties taking account of all relevant factors.

In this case, the relevant factors include that the Respondent relies upon alleged misconduct by the Applicants as the justification for their dismissals. Therefore, the first question to be determined is whether the Applicants have conducted themselves in the manner alleged by the Respondent. Everything else flows from that. The Respondent has taken action in the Federal Court pursuant to legislation which deals specifically with the type of conduct complained of by the Respondent, such legislation dealing with the law governing the operation of corporations. This is a matter specifically allocated by legislation of the Commonwealth of Australia as being appropriate to be dealt with by one of the number of courts specified within that legislation, this Commission not being one of those courts.

That is not to say that, in appropriate circumstances, this Commission should not make its own findings as to conduct which is the subject of other legislation, or that it will not do so in this matter, but rather, that in this case, the legislature has specifically dealt with the alleged conduct which is said to be at the heart of the dismissal of the Applicants. The appropriate Court ought deal with that matter before this Commission deals with the applications and the matters which follow from the alleged conduct, including those matters raised by the Applicants as to whether the alleged conduct was undertaken by the Applicants in their capacities as employees, or otherwise, whether in those circumstances the Applicants were afforded procedural fairness. These are consequential matters. The contractual benefits which may arise are, in most part, consequential upon findings related to the conduct of the Applicants.

As to the argument by the Applicants that the amounts claimed by them against the Respondent outweigh amounts claimed against them by the Respondent, those amounts relate to different matters. Nothing more can be read into the respective claims of the parties against one another than that the Applicants are pursuing amounts which arise from different causes than the amounts the employer is seeking to pursue against them. Accordingly, this is not a relevant consideration.

For these reasons, the hearing of these applications will be adjourned until the matters before the Federal Court are determined.

APPEARANCES: Mr A Lucev (of Counsel) on behalf of the Applicants.

Mr M Odes QC on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Hunter Tannahill

and

Gwydion Nominees trading as Greenwood Video.

No. 2263 of 1997.

COMMISSIONER P.E. SCOTT.

23 April 1998.

*Reasons for Decision.*

(Extempore)

THE COMMISSIONER: The background to this matter is that the Applicant claims, pursuant to section 29 of the Industrial Relations Act, that he was unfairly dismissed from his employment with the Respondent.

The Applicant was engaged in approximately March 1995 to work in the Respondent's video shop as the Manager. His evidence was that he worked some 30 hours per week which he described as being full time, and at the time of termination, received \$12.50 per hour. The Respondent also had working in the business a number of casual employees who received a lesser rate per hour than the Applicant.

The Applicant gave evidence that at no time during the period of his employment was he given any warning that his position was in jeopardy. He did, however, give evidence that there were discussions between himself and his employer which indicated that there was a need for improvement in the profitability of the business and he discussed with his employer a number of ways of reducing the costs and improving the productivity.

On the 13th of November 1997, the Applicant received a letter from the Respondent the relevant parts of which say—

"It is with much regret that I must terminate your employment at Greenwood Video. The financial situation of the shop is such that I cannot afford your wages and I will be working there myself fulltime. Your cheque contains your holiday pay entitlements and a week's pay in lieu of notice.

"I would like to thank you for your loyalty, commitment and hard work during your period of employment. It has been much appreciated."

The Commission has heard evidence from both parties as to the declining state of the business over the period of the last 5 years. It has heard of measures to increase the profitability and reduce the debts of the business, which are said to be quite substantial for a business of this nature. The measures which were taken include renegotiating the rent to reduce that cost, reducing staffing costs and reducing purchases.

Mrs Kemp, who described herself as one of the partners in the business, gave evidence that she and Mr Kemp discussed the situation towards the end of 1996, having received advice that the situation was in need of some radical action. They considered the possibility of terminating the Applicant's employment but at that point it seemed it would be better for Mr Kemp to continue working outside of the business and his income would be able to be used in assisting in the conduct of the business and dealing with its debts. However, as time went by it became clear that this was not going to resolve the problem and they received advice that it would be better for Mr Kemp to actually work in the business.

There is a conflict in the evidence in that the Applicant says that he was never advised that the meaning of Mr Kemp working full-time in the business would be that his own employment would terminate. He believes that he has been unfairly dismissed in that there could have been another way for the Respondent to have arranged its business and kept him in employment.

He also complains about the timing of the termination of his employment in that it occurred immediately prior to his taking some leave. He says that if he had received a longer notice period it would have made finding alternative employment easier.

Subsequent to the termination of employment, the Respondent discovered that the Applicant had not been given the

required period of notice and made an offer to him which would have remedied that matter. However, that has not been concluded at this stage and it would appear from the evidence of Mrs Kemp that the Respondent still owes to the Applicant 2 weeks pay, being that additional notice period. That is not a matter before me. However, I would assume that regardless of the outcome of this matter, that money will be paid to the Applicant.

There are a number of aspects of unfair dismissal claims that need to be considered. The first is that the onus lies on the Applicant to demonstrate that he has been unfairly dismissed. The second is that an employer has a right to terminate employment provided that it does so in a manner which is not unfair. There is another matter too, and that is that in effect the Respondent is saying that the Applicant's position was redundant.

I refer to a decision of the Industrial Appeal Court in *Gromark Packaging v Federated Miscellaneous Workers Union of Australia* at 73 WAIG 220. In his reasons for decision, Franklyn J noted—

"Where the workforce of a business is reduced because there is labour in excess of that reasonably required to perform the work available to the employer, then that reveals a situation of redundancy, leaving the decision for the selection of specific workers for termination of their employment to relieve that situation."

He goes on at page 225, to say—

"In a case where redundancy has been established, the onus is on the employee dismissed to establish that some other person should have been selected for dismissal before himself, and that is what was described by Brinsden J in *Australian Shipbuilding Industries* case as the comparative test."

In this particular case, I am satisfied that the Respondent was in such a position as to require that something be done to reduce its labour costs. It is for the employer to determine how it will arrange the staffing of its business. It is not for this Commission to interfere in that except to the extent that it is done unfairly.

In this case the Applicant was aware of the difficulties which the Respondent's business was experiencing and I am satisfied that there was a genuine difficulty in that regard. The Respondent was entitled to decide to re-arrange the way in which its business was staffed. The question is whether or not the Applicant has discharged the onus to establish that there ought to have been some other way of arranging the staffing of the business.

I am satisfied that the Respondent was entitled to decide that Mr Kemp ought work directly in the shop and, in effect, take over the management of the shop. For the operational needs of the business, which included having a number of employees available who are familiar with the business and who are able to change their hours at short notice, and further who attract a lower rate of pay which would enable the Respondent to reduce costs by reducing one of its largest cost, the Respondent wished to supplement Mr Kemp's full time employment with casuals. These were legitimate considerations. So in that regard, I am not satisfied that the Applicant has discharged the onus placed upon him to demonstrate that there should have been a different way of staffing the business determined, which would have included retaining him, as well as Mr Kemp, and one other casual.

I must say that I have some sympathy with the Applicant as to the timing of the termination of employment but in reality there is never a good time to terminate someone's employment. It is often said that employees are more likely to find other employment while they are still in employment and that may be so. The Respondent appears to have made the decision to terminate the Applicant's employment in early November and moved to implement that decision on the 13th of November, immediately prior to the Applicant going on leave. It may be that that could have been done differently, but I am not satisfied that it was an unfairness such as to warrant consideration in light of all of the circumstances in this matter.

In all of these circumstances I am not satisfied that the Applicant has demonstrated that his dismissal has been harsh, oppressive or unfair such as to warrant the intervention of the

Commission. On that basis there will be an order dismissing the application.

APPEARANCES: The Applicant on his own behalf  
Mrs C Kemp on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Hunter Tannahill

and

Gwydion Nominees trading as Greenwood Video.

No. 2263 of 1997.

COMMISSIONER P.E. SCOTT.

23 April 1998.

*Order.*

HAVING heard the Applicant on his own behalf and Mrs C Kemp 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.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Justina S E Yeap

and

Chunagon Company Limited T/A  
Chunagon Japanese Restaurant.

No. 808 of 1997.

COMMISSIONER J.F. GREGOR.

17 April 1998.

*Reasons for Decision.*

On the 26 April 1997 Justina Yeap (the applicant) applied to the Commission for an order pursuant to s.29 of the Industrial Relations Act, 1979 (the Act). She claimed that she had been dismissed from employment with Chunagon Japanese Restaurant (Chunagon) and that the dismissal was harsh, unfair and oppressive. The Commission conducted a conciliation conference pursuant to s.32 of the Act on the 27 May 1997 but the matter was not then resolved. It was listed for hearing. Hearings occurred on the 22 August 1997 and the 16 February 1998 and the decision was reserved. Shortly put the parties positions are as follows.

Mr Crossley, who appeared for the applicant, said she claimed she had been unfairly, harshly and oppressively dismissed in that she believed that she was constructively dismissed on or about the 2 April 1997. This submission by Mr Crossley is passing strange because if it is correct then the application which was filed on the 29 April 1997 is out of time as is specified in s.29(2) of the Act which requires a referral by an employee under s.29(1)(b)(i) cannot be made more than 28 days after the day on which the employee's employment was terminated. Mr Crossley then submits, admitting that the issue is confusing, that the applicant's last day of work was on the 21 April 1997. It appears that submission is made on the basis that the applicant was on annual leave which came to an end on or about the 21 April 1997. On that day the applicant returned to the premises of Chunagon but was asked to leave. If the dismissal took place on the 21 April 1997 as seems to be suggested by Mr Crossley, the argument that there was a constructive dismissal is hard to follow, however I will return to that matter later in these Reasons. Essentially the submission

is that the applicant was employed for about 2½ years. She worked extremely long and unusual hours. She started as a cleaner and worked her way up to become a manager of the front of house of Chunagon. There had been no complaints about her work. When she was dismissed no reasons were given to her. The termination was done in a way that was unfair.

The applicant gave evidence. She told the Commission that because she had no experience she started as a casual worker although she eventually became a full time employee rising to the position of head waitress. Later she was appointed as assistant manager, then manager. The applicant gave evidence about the circumstances relating to an application for a liquor licence where Chunagon wished her to be the appointed approved manager after the previous approved manager had left. It was the applicant's evidence that Robert Renting the General Manager of Chunagon filled in the application forms for appointment of the applicant as approved manager under the Liquor Licensing Act. During that process she told him that she had criminal convictions but he took no notice of her and filled the application form in as if she had no convictions. Later during the Liquor Licensing hearing of the approved manager application her criminal record became known and the application was refused on the basis of that record and because the Deputy Director of Liquor Licensing was not satisfied that applicant had been ...'totally honest in all her responses' (see *Exhibit C2*). The applicant says that after the hearing Mr Renting said nothing to her about her employment status. She claims she never received any warnings from Mr Renting about either her work performance or her attitude. While she admitted there were some difficulties in her relationship with Mr Renting who categorised her as hard to get along with, she denied that she was.

In Examination in chief the applicant told Mr Crossley that in January 1997 she attended a meeting with Mr Renting and some other executives. There was an argument at that meeting. Around about that time Mr Renting gave the applicant warnings about her attitude towards repairmen who worked at the premises from time to time. In February 1997 Mr Renting told the staff that he had hired a manager who would take control of both front of house and kitchen operations. This meant the new manager would be senior to the applicant. The applicant still remained as restaurant manager but she reported to the new manager. According to the applicant there was some friction between her and the new manager, Mr Joe Azzaro. The applicant said that in March 1997 between the 4th and the 11th she was asked by Mr Azzaro to resign. It was around this time the applicant made written reports to senior company officers in Japan (see *Exhibits C4, C5 and C6*). As far as the applicant was concerned those communications were innocuous because they were merely a report to Japan about what was going on. The applicant related how she had told Mr Renting that she had been sexually harassed by Mr Azzaro but for cultural reasons she did not complain to Mr Azzaro. She claimed there were similar complaints from other staff about Mr Azzaro's behaviour as well.

Mr Crossley submitted to the Commission a reference in favour of the applicant from Mr Renting (*Exhibit C6*). The applicant admitted she asked for the reference but she claimed she never told Renting she was leaving. But she told him that she had an interview for a new position. It was wrong of him to assume she was leaving because she had asked for the reference. She recalled that Mr Azzaro asked her whether she had been for an interview and asked whether she was leaving Chunagon. She responded that she might leave by the end of April provided she could find a job. This conversation was confirmed by Mr Azzaro in a letter dated the 25 March 1997 which is, formal parts omitted, as follows—

This letter is to confirm our conversation on Friday 21st, regarding your request to terminate your employment by the end of April 1997.

As I suggested to you, I thought that that date would not be acceptable to management, and I confirm our discussions of Sunday 23rd that it would suit us better for you to make arrangement(sic) to leave on Tuesday the 2nd April 1997.

We are prepared to offer you 2 weeks pay in lieu from this date as well as the holiday pay owing to you.

We thank you for your support and efforts over the past few years and wish you every success in the future.

Should you require further verbal references in your efforts to secure a position please do not hesitate to call either Robert Renting or myself.

(Exhibit C7)

During her Examination in chief the applicant did not directly say that the letter was either incorrect or did not accurately reflect the conversation with Mr Azzaro. All she could remember was that when she asked for a reference from Mr Renting, Mr Azzaro knew about the request and told her Chunagon would like to help by having a letter of reference delivered to her. Soon after this meeting the applicant had an application for annual leave authorised by her colleague Mr Tommy Ueda. This had effect giving her leave from the 31 March to the 20 April 1997. The applicant said she took the leave. This precipitated a communication from Mr Azzaro to Mr Renting (see *Exhibit C10*) which informed him that the applicant had been asked to return Chunagon property, that she had been told that she is no longer required to come to work, that she had refused to meet with him over the past few days and had rostered herself off on annual leave from 31 March 1997. On the same day Mr Azzaro asked the accountant of Chunagon to prepare the final pay for the applicant (*Exhibit C11*). The applicant did not immediately receive her pay because on the 4 April 1997 she received a letter from Mr Renting (*Exhibit C12*) which required her to account for a petty cash float of \$500.00. The letter indicated that until she had done so her final pay would not be released. The applicant said in her Examination in chief that the circumstances of her dismissal had been a terrible mistake however she had not contacted Mr Renting about it. She conceded that Chunagon may have believed that she was leaving on the 2 April 1997, because they wanted her out.

The applicant called Ms Jessie Woie Leng Lim as a witness. I do not intend to summarise her evidence because it does not touch upon any of the issues which are germane to the matters which must be determined by the Commission. The same can be said about the evidence of witness Ms Momoko Kumagai other than to say that Ms Kumagai said she was confused because the applicant told her that she wanted to work at Chunagon but the manager Mr Azzaro had told Ms Kumagai the applicant had already left. The applicant had told her she was going on leave but then in a meeting Mr Azzaro had told her (Kumagai) something complete different. Evidence was heard from Mr Ong Gek Ho. The thrust of his evidence was that he thought that the applicant was on holiday but Mr Azzaro the manager said that she had finished her employment. He also gave evidence about the method of obtaining approval for annual leave at Chunagon.

The final witness for the applicant was Mr Paul Ian Moss. He was employed over most of the time that the applicant had worked at Chunagon. He had no knowledge of complaints about her work. Mr Moss was asked a number of questions by Mr Crossley about events he had not witnessed, however he did have knowledge that staff were informed about Mr Azzaro's appointment and that he would be coming into the restaurant as manager. Mr Moss was not told that he had to report to Mr Azzaro directly. He recollected that the applicant and Mr Azzaro did not hit it off, there was some tension between them though he never saw them working together. Mr Azzaro was not in the restaurant in a working capacity.

During the hearing Mr Crossley agreed with the Commission that most of the evidence he led from Mr Moss was irrelevant. That which was relevant concerned when the applicant had told Mr Moss that Mr Azzaro was a 'little bit free' with his hands and she had complained about this a couple of times. His only knowledge about similar complaints from other female employees was third hand. Around about the 28 March 1997 Mr Moss was told by Mr Azzaro the direction the restaurant would be taking. Later he was told that there were plans to terminate the applicant's employment within about a week of the 13 March 1997. Mr Moss asked Mr Azzaro why and he was told that a new front of house manager would be coming in. Mr Azzaro also told him that the applicant had asked for a reference, she would likely be leaving within a short period and perhaps there would not be a need to terminate her employment. Notwithstanding Mr Azzaro's request not to, during

a visit to the applicant's residence Mr Moss had recounted this information to the applicant.

Mr Moss also gave evidence that it was a usual practice that if the applicant was taking holidays her application would be approved by Tommy Ueda. Mr Moss did not have any discussions about the issue with Mr Azzaro. They did discuss rosters which had been prepared by the new manager Kate Bodycoat. During the conversation Mr Azzaro had told Mr Moss that the applicant was not taking annual leave but had finished up on the 30 March 1997. This meant her services were already at an end when she went on 'leave' and would not be coming back. There were concerns about the petty cash float and he was involved in discussions with Mr Azzaro about that issue.

Above is a sufficient resume of the evidence led on behalf of the applicant for the purpose of these Reasons.

There were two witnesses called on behalf of the respondent, Robert James Renting and Joseph Azzaro. Robert Renting is an accountant by profession and was, at the relevant time, described in correspondence as General Manager. He had direct responsibility for the running and maintenance of the restaurant and all issues of management and administration. He told the Commission that in 1997 application was made under the Liquor Licensing Act for appointment of the applicant as approved manager. The applicant was then responsible for the dining room, including the serving of liquor. She was the obvious choice to hold the position as approved manager under the Liquor Licensing Act so an application was prepared in conjunction with her. Mr Renting said that he went through the various points on the form with the applicant. He knew it was important that the information on the form was accurate, particularly questions where a yes or no answer whether the applicant had criminal convictions was required. It was Mr Renting's evidence that the applicant never revealed to him that she had any criminal convictions. It was not possible that he misconstrued or misunderstood that she denied that she had a criminal record.

At the hearing before the Deputy Director of Liquor Licensing to determine where the applicant was a fit and proper person to be approved manager the police advised that she had been convicted of indictable offences. It was a complete revelation to Mr Renting. He related that when he taxed her with why she had not told him about the convictions, she claimed that she had, and alleged he had said to her they were irrelevant. Mr Renting was extremely disappointed that the applicant did not raise the matter with him. As a result of these events Mr Renting immediately advised the Directors of Chunagon in Japan. Their response was that they wanted her dismissed immediately. He did not believe at the time that Chunagon had reasonable grounds to dismiss her and explained this to the Directors who accepted his advice. Later in March 1997 there was a visit by two Directors from Japan. The issue of the applicant's work performance was raised and discussed at length in the context of the overall performance of Chunagon. The outcome was that there was another directive from the Directors that the applicant be dismissed. Again Mr Renting informed them that he still believed that there were no sustainable grounds to summarily dismiss her.

In the meantime on the 4 March 1997 Mr Renting had appointed Mr Azzaro. He had asked Mr Azzaro whether there had been any reaction to the appointment from the applicant. Mr Azzaro had indicated he was having problems getting the confidence of not only the applicant, but all of the staff. Mr Azzaro had experienced a high degree of frustration getting the applicant to understand how he wanted the restaurant to work. After discussion with the Japanese Directors Renting had informed Mr Azzaro that he was under pressure to dismiss the applicant. When the Directors returned to Japan a further directive came to him from the Chairman that she was to be dismissed. Once again he informed his principals it was inappropriate in the circumstances.

Mr Renting told the Commission that he did have the discretion to terminate the applicant's employment but he chose not to do so. What he did do was instruct Mr Azzaro to keep detailed records about the applicant's performance at work. Any problems were to be discussed with her and the discussions were to be documented. Mr Azzaro wanted to dismiss her but Mr Renting had vetoed that because he was not satisfied that there were appropriate procedural rules in place. There

needed to be just cause for dismissal, that was not present, so there could be no dismissal at that time.

Mr Renting recalled that he had been asked by the applicant for a reference. He received a phone call from her when he was absent from the State. He had informed the applicant because he was not in the State it was inconvenient to prepare the reference immediately, but she insisted that it be prepared and made available that day. Although he thought it inappropriate he asked to have his secretary prepare it. In due course the applicant was given a reference. Mr Renting had reported the conversation between the applicant and himself to Mr Azzaro. The implications of the request for the reference and the way that the applicant wanted it worded raised issues in the mind of Mr Renting. He did not want staff morale to fall and affect customer service. If a senior member of staff resigned the result could be that Chunagon may be left undermanned. He therefore directed Mr Azzaro to negotiate with the applicant a reasonable time frame for her resignation. At the same time he told Mr Azzaro he had given the applicant an undertaking she could have reasonable time off to attend employment interviews and that Mr Azzaro was to cooperate with her and ensure that happened.

Mr Azzaro later reported to him that discussions had taken place about the applicant leaving the employment of Chunagon. The end result was that the applicant was to resign and finish her employment at Chunagon on the 2 April 1997. In consideration of her resigning on that day rather than a later date of her own choosing, she was to be paid two weeks additional pay. Those arrangements were confirmed in writing (see *Exhibit C7*). The letter had been prepared by Mr Azzaro on Mr Renting's instruction. Various accounting functions were undertaken to make up the final pay and delete the applicant's name as a signatory for documentation and dealings with the bank. All of this correspondence was prepared between the 25 to 30 March and was copied to Mr Renting.

Evidence was given concerning problems with the petty cash float. Mr Azzaro contacted Mr Renting early in April and told him that he was concerned because the applicant had resigned and the petty cash float in her care was missing. Mr Renting issued an instruction to the Chunagon accountant to hold the release of the applicant's final pay until the cash float was found. A letter was sent to the applicant informing her that she had to account for the funds. The following weekend the cash float was returned to the restaurant by persons unknown. In cross examination by Mr Crossley, Mr Renting said that immediately on completion of the Liquor License Board hearing he issued instructions to the Chunagon accountant to do a complete review of procedures and audit all cash returns to ensure there was no cash being withheld from the business by employees. He denied his concerns of dishonesty were unfounded.

The Commission also heard evidence from Joseph Azzaro. He said he had been employed in March 1997 as manager at Chunagon. His responsibilities were that of a restaurant manager with total responsibility for front of house as well as the kitchen and budgeting. His brief was to re-establish Chunagon in the market place. He had said that his relationship with the applicant was a little strained but that was not unexpected in the circumstances. He understood her position and he felt he could overcome any problems she had, given time and trust. Part of his responsibilities were to monitor staff performance including the applicant's. Mr Azzaro recalled a meeting with Mr Moss concerning the applicant's employment clearly because it happened soon after a conversation he had with Mr Renting who was out of State at the time. As a result of the phone call he received from Mr Renting he formed the opinion that the applicant may not be wanting to stay with the company. He informed Mr Moss in confidence to assess how he (Moss) would be able to cope if the applicant was to leave the following week. Mr Azzaro did so because he needed support having only been in the business a couple of weeks. He disclosed to Mr Moss some information that had come from Japan via Mr Renting and that was to the effect that Chunagon was not happy with the applicant.

Mr Azzaro later discussed the applicant's desire to leave with her. He obtained a copy of the reference written by Mr Renting and gave it to the applicant. He then had a discussion with her about her intentions. She had told to him that she was going for some interviews, she had been approached by other restaurants. He then offered her his help. He covered shifts for

her while she went to interviews. At that time he asked her when she was leaving. She said she was not sure. The topic came up again later. It did so because he was concerned about maintaining proper staff levels. Two or three days later he asked her again. Again she said she was not sure and then she came back and said she would like to leave on the 30 March 1997 which was some five or six weeks away. The applicant asked for his response to her proposal and he told her that he did not think it was appropriate, it was too long a time to have someone in the restaurant who wanted to leave.

Again Mr Azzaro spoke to Mr Renting and it was decided that the applicant would be given notice to finish. She would be paid all that was due to her plus an ex-gratia payment of two weeks. This meant she would get a months pay when she left. Mr Azzaro confirmed the dates in a letter (*Exhibit C7*). The letter was not presented to the applicant as being non-negotiable although it did accurately disclosed the company's position. There was no doubt in his mind at all that she was going to leave. All of what had gone on before contributed to that view. The applicant came and asked for a reference then went to interviews. He covered her shifts while she was out on these interviews, she came back and told him that the interviews went well. This had all the portents of a person who was intending to leave.

The applicant was to leave on the 30 March. On the 28 and 29 March 1997 Mr Azzaro heard that she was sick. She did not come to work on either day. Around that time there was a roster posted. Mr Azzaro noticed that the applicant had prepared the roster. It showed her as on annual leave. This surprised him. He should have been at least informed, if not asked his approval. He rang the applicant at home to find out what the situation was and why she was going on leave. The conversation became heated. He told her that he would have a cheque for her when she returned from annual leave but as far as he was concerned she was finished as at 30 March 1997.

About this time Mr Azzaro had conversations with members of staff which should have led them to draw the conclusion that the applicant was not coming back. The applicant's duties were taken over by a new employee. Mr Azzaro refuted that Mr Ueda was empowered to approve the applicant's request for annual leave. Mr Azzaro was the restaurant manager and Mr Ueda was responsible to him. He had not delegated authority to Mr Ueda to approve leave for anyone. When the applicant came to the restaurant on the 21 April he was flabbergasted because he thought she had finished up. He asked what she was doing and she told him she was back to work. He had immediately said 'Well you don't work here any more' and asked her to remove herself from behind the reception desk. He told her to leave, she said she would not, the conversation became heated and he told her that he would call the police. She invited him to do. She asked for a meeting with Mr Renting which he organised to take place the next day. He informed her of the venue and time and she left the restaurant. He went to the meeting as arranged the next day but she did not attend.

The test for ascertaining whether a dismissal is harsh, oppressive or unfair is stated by the Industrial Appeal Court in *Undercliffe 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 contract of employment has been exercised so harshly, 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 a dismissal is unfair.

In *Shire of Esperance v. Mouritz (1991) 71 WAIG 891* and *Byrne v. Australian Airlines (1995) 65 IR 32*, 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.

In his submissions Mr Crossley referred the Commission to some case law of the Australian Federal Court concerning constructive dismissal. The relevant cases in the jurisdiction are *Attorney General WA v. WA Police Officer's Union of Workers 1995 (75 WAIG 3166)* and *Swan Yacht Club Inc. v. L Bramwell*

1997 (78 WAIG 579). In view of my findings I do not need to canvass these other than to say in his judgement in *Attorney General WA v. WA Police Officer's Union Kennedy J* observes that the position for the purposes in that case is summarised in a judgement of Stephenson LJ in *Sothorn v. Franks Charlesly & Co (1981) IRLR 278 at 280—*

“Did he trip or was he pushed? Was it murder or was it suicide? I know that such a simple consideration of starkly contrasted alternatives is too often outlawed by authority in deciding the issue of dismissal *vel non*. Even if the question, ‘Was the employee dismissed?’ cannot always be answered by answering the question, ‘Who really terminated his contract?’ the real answer to the second question gives the right answer to the first question in this case.”

So the question to be answered in this matter is who really terminated the contract of employment. Before I apply the facts to law, I first make findings on witness creditability.

I have observed the applicant in the witness box for a considerable period. The transcript will show that I raised the question of relevance on a number of issues canvassed by Mr Crossley during his examination in chief of the applicant. Even if I discount the potential for confusion in the witnesses answers due to the erratic Examination in chief, I still conclude that I find it hard to accept that she has truthfully related all of the relevant incidents to the Commission. I formed the view that the applicant was not at all adverse to crafting her version of the facts to fit the story that she presented to the Commission. I observe that there appeared to be no difficulty with language. In the circumstances I have considerable disquiet about the quality of her evidence. I do not have any difficulty accepting the evidence of the rest of the witnesses called on behalf of the applicant. They related the facts as best they remember them. However there is little support for the applicant's version of events from them.

Insofar as the evidence led on behalf of Chunagon is concerned, Mr Renting, the General Manager was clear and concise in his evidence. Much of evidence led from Mr Renting on behalf of Chunagon had been confirmed in writing and therefore there was contemporary support for his memory. I see no reason to find that Mr Azzaro, who was a key communicator on behalf of Chunagon in its dealing with the applicant, has not told the Commission the truth to the best of his memory. This leads me to conclude, and I so find, that where the evidence presented on behalf of the applicant varies from that presented by witnesses for the respondent I accept the evidence of the respondent.

I commence my analysis of the issues for determination in this application with the observation that much of the evidence led for the applicant by Mr Crossley, particularly that relating to the history of the applicant's service, does little to assist the Commission in the determination of the issues that are central to this case. The Commission raised this with Mr Crossley during the proceedings and he agreed that although much of the evidence may have been irrelevant it was in his view, necessary background. The important events are those that happened around the time of termination. That is, who really terminated the contract?

I have been able to consider all of the evidence that has been presented by the parties in this case both through submissions from the advocates and through the *viva voce* evidence. I have concluded that on the balance of probabilities what occurred is as follows: The applicant was employed by Chunagon first on a part time basis doing cleaning and other duties. She worked her way through positions in the restaurant until she became a manager. Her difficulties with her employer commenced after she had reached that position. A watershed in the relationship is the application which was lodged by Chunagon under the Liquor Licensing Act to have the applicant appointed as the approved manager for Chunagon. I accept Mr Renting's versions of those events. He interviewed the applicant and in her presence filled in the application forms which are necessary to be completed under the terms of the Liquor Licensing Act. I prefer his recollection of the discussion between him and the applicant at that time. I find that she did not tell him about her criminal record. I am fortified in this view having observed Mr Renting in the witness box and having exposure to his characteristic of confirming events in writing. He is an

experienced accountant who would more likely than not been well aware of the importance of correct and accurate completion of the Liquor Licensing forms. He told the Commission, and I accept his evidence, that this was an action he had taken many times. He was well aware of the need to ensure that the applications were accurate. He knew, and I accept his evidence to that effect, that having a criminal record would be fatal to achieving a determination of a fit and proper person under the Liquor Licensing. I find that he did not know that the applicant had a criminal record which would bar her under the terms of the Liquor Licensing Act from being an approved manager and I accept his evidence that he was surprised when that evidence was presented by the police during the Liquor Licensing Act hearing.

The decision of the Deputy Director of Liquor Licensing (*Exhibit C2*) gives weight to this view of the evidence. The Deputy Director decided there would be little purpose in proceeding with prosecution of the applicant through failure to disclose her convictions because of the insight provided by Mr Renting into the circumstances surrounding completion of the forms. Clearly the Deputy Director was prepared to accept the evidence of Mr Renting as do I. I also accept that Mr Renting was so concerned about the implications of the disclosure that he immediately caused an audit to be made of the financial affairs of Chunagon restaurant, and that he advised his principals in Japan. I also accept his story that he was instructed from Japan to terminate the services of the applicant but upon his advice that instruction was rescinded.

Mr Renting gave a series of advices to his principals about termination of the applicant's services. In my view those advices disclose considerable knowledge of contemporary employment law in Australia. In short, Mr Renting gave his principals the proper advice about whether or not Chunagon could terminate the services of the applicant. I accept the evidence that Mr Renting's principals in Japan later asked that the applicant be dismissed and again they were advised that should not occur. It is not surprising against such a background that Mr Renting had the discussions with Mr Azzaro about the applicant's future with the respondent.

Turning to the evidence of Mr Azzaro, I accepted that Mr Azzaro was of the belief that during his discussions with the respondent which occurred late in March, that she told him she was thinking about leaving her employment with Chunagon. He was so sure that was so that he wrote to the applicant on the 25 March 1997 confirming their conversation of the 21 March 1997 which he said related to a request by the applicant to terminate her employment by the end of April. He had recorded in his letter that the date was not acceptable to Chunagon because it was too far in the future. He did so because in his managerial experience it was not good business practice to have an employee on a period of five to six weeks notice attempting to run a restaurant, particularly a restaurant such as Chunagon with its unique style of clientele. He had confirmed in his letter to the applicant on the 25 March 1997 that it would be acceptable for her to finish on the 2 April 1997. He tried to encourage her to leave on that date by offering two additional weeks pay which, in the circumstances of a normal termination, Chunagon would not have been obliged to pay. In other words he offered an incentive for her to leave on the 2 April 1997. He also gave some indication of the style of the conversation he had with the applicant by thanking her for her efforts and support and wishing her success. It must be remembered that Mr Azzaro did this after Mr Renting had written a reference for the applicant and after Mr Azzaro had been instructed he should help facilitate her attendance at interviews during the notice period by covering shifts for her.

What happened after the conversation between Mr Azzaro and the applicant was that she submitted a leave application form. This happened six days after the letter in which it was confirmed that she would leave on the 2 April 1997. The applicant had Mr Ueda sign that application. In her evidence she said that this was the way that leave applications were normally approved. In my view that procedure has been used by her as a mere convenience. The reality is that Mr Ueda was no longer the person who was authorised to approve such applications. The applicant should have taken her application for leave to Mr Azzaro. She did not. Instead she had Mr Ueda sign her leave application form and Mr Azzaro knew nothing

about it. She then drew up a roster which rostered her off until the 21 April 1997.

In other circumstances it would be passing strange that the roster would end at the time that the applicant originally wanted to finish her contract of employment. However after consideration of all of the facts it is not so strange. What I think happened on the balance of probabilities is the applicant knew that she was to finish on the 2 April 1997, she decided she did not want to do this so she contrived a situation by having Mr Ueda sign her application for annual leave and then herself creating a roster where it would appear as if she was still employed. I find that she did this to frustrate the arrangement she had made with Mr Azzaro to terminate her contract of employment. I find that the contract of employment was terminated by consent on or about the 2 April 1997 and that the applicant was given two weeks ex-gratia payment to secure that arrangement. It matters not that Mr Azzaro, who having seen the roster later, became a little confused about what was happening and said her annual leave would be paid later. On the 21 April 1997 when the applicant presented at the premises of Chunagon, she was not an employee and Mr Azzaro was within his rights to ask her to leave.

In view of my findings concerning the date that the contract of employment finished, I need to consider its effect upon the competence of the application before the Commission. By s.29(2) of the Act an employee who refers a matter under s.29(1)(b)(i) cannot make a referral more than 28 days after the date on which the employee's employment terminated. In this instance the termination took place on the 2 April 1997 and the application was filed on the 29 April 1997. I therefore find that the application is not competent because it is out of time and it must be dismissed on those grounds.

However if I am wrong I need to consider the circumstances of the termination. This can be simply examined. The termination came about as a result of a series of discussions between the applicant and Mr Azzaro and Mr Renting on behalf of Chunagon. Mr Renting prepared a reference for the applicant at her request because he thought she was going to leave. She pressured him for the reference to be given to her quickly to support her in an application she had made to another employer. Mr Renting instructed Mr Azzaro to assist the applicant during the notice period by covering for her if she wanted to go to employment interviews and he did so. There is no evidence to the contrary. There is every indication that the story suggested to the Commission by Chunagon is correct. The applicant had decided to go, she was actively seeking other employment, she was given every assistance to do so. This arrangement has all the hallmarks of an employer giving assistance to an employee who has given notice of employment and is seeking a new position. There is nothing in the evidence which would suggest that the employer has tried to contrive a dismissal as is suggested by Mr Crossley in his submissions that there has been a constructive dismissal. In any event none of the circumstances in this case are at all comparable to concept of constructive dismissal as is explained by Kennedy J in the *Attorney General v. WA Prison Officer's Union (ibid)* or by the Hon. President in *Bramwell v. Swan Yacht Club (ibid)*. It is a misunderstanding of the ratio of those decisions to suggest otherwise. In short there is no dismissal here. The jurisdiction of the Commission under s.29 only arises if an industrial matter is referred to the Commission in the case of a claim by an employee that he or she has been harshly, oppressively or unfairly dismissed from his or her employment. There was no dismissal, therefore the jurisdiction, as it is conferred on the Commission by s.29(1)(b) is not enlivened. Therefore if I am wrong concerning the competence of the application it must be dismissed for want of jurisdiction.

Finally, if I am wrong in both of my previous findings it is clear from the evidence in this matter that here is an employee whose behaviour, particularly in respect of honesty, is under question by her employer. Mr Renting had protected her on a number of occasions when his principals had asked for her termination. He did so, in my view, because he had a proper understanding of the industrial laws which were applicable. Every opportunity was given to the applicant by this respondent. It is clear that Chunagon was quite happy that the applicant was to leave and was prepared to assist her if that was at all possible, but it did not dismiss her and if it could be said that the actions of the employer amounted to a dismissal, in all of

the circumstances it cannot be that the dismissal was unfair. I so find.

I summarise my findings as follows. The application was incompetent because it is out of time. Secondly, if it is not out of time there is no dismissal so the jurisdiction of the Commission under s.29 is not enlivened. If I am wrong on both of those counts there is no unfairness in the dismissal in any case and the application will be dismissed.

Appearances: Mr T Crossley appeared on behalf of the applicant.

Mr P Arns, of Counsel, appeared on behalf of the respondent.

---

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Justina S E Yeap

and

Chunagon Company Limited T/A  
Chunagon Japanese Restaurant.

No. 808 of 1997.

COMMISSIONER J.F. GREGOR.

17 April 1998.

*Order:*

HAVING heard Mr T Crossley on behalf of the applicant and Mr P Arns, of Counsel, 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.) J.F. GREGOR,

[L.S.]

Commissioner.

---

**CONFERENCES—  
Matters arising out of—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kalgoorlie Consolidated Gold Mines Pty Limited  
and

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

No. C 124 of 1998.

CHIEF COMMISSIONER W.S. COLEMAN.

20 April, 1998.

*Order:*

HAVING heard Mr J. Flood on behalf of the Applicant and Mr D. Hicks on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch also the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Mr M. Lourey on behalf of the Australian Workers' Union, West Australian

Branch, Industrial Union of Workers and by consent, the Commission hereby orders pursuant to Section 44 (8) of the Industrial Relations Act, 1979—

THAT notwithstanding the State Wage Decision in Matter No. 940 of 1997 and the Order that had application from 14 November, 1997, that wage rates for employees covered by Kalgoorlie Consolidated Gold Mines Award, 1996, No. A2 of 1996 shall be those set out in Clause 10 (as set out in 76 WAIG 2628) of the Award until the Award is cancelled and replaced by the Kalgoorlie Consolidated Gold Mines Award, 1998, No. A1 of 1998.

(Sgd.) W.S. COLEMAN,

[L.S.] Chief Commissioner.

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

Main Roads Western Australia.

No. C 173 of 1997.

COMMISSIONER P.E. SCOTT.

5 May 1998.

*Order.*

WHEREAS this is an application pursuant to Section 44 of the Industrial Relations Act 1979 filed on the 11th day of June 1997; and

WHEREAS the Commission, having heard from the parties and pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

That Application No. C 173 of 1997 be divided into two parts, to become Application No. C 173 of 1997 which shall relate to the issue of special rates allowance and Application No. C 173A of 1997 which shall relate to the appropriate classification of R Macale.

(Sgd.) P.E. SCOTT,

[L.S.] Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia  
Incorporated

and

Director General, Ministry of Justice.

No. PSAC 23 of 1998.

PUBLIC SERVICE ARBITRATOR  
COMMISSIONER J F GREGOR.

23 April 1998.

*Order and Direction.*

WHEREAS on the 30 March 1998 the Civil Service Association (CSA) applied to the Public Service Arbitrator for a conference pursuant to section 44 of the Industrial Relations Act, 1979; and

WHEREAS on the 21 April 1998 the Arbitrator conducted a conference between the parties on the issues raised by the application; and

WHEREAS at the conference the Arbitrator was told that the Public Trustee had introduced qualifications barriers on existing positions without notification and or consultation with the CSA and its members; and

WHEREAS the CSA averred that the action of the Public Trustee in introducing qualifications barriers was in contravention of the Public Service Award, the enterprise agreement and accepted concepts of competency based management; and

WHEREAS it was also submitted that the action of the Public Trustee breached the human resources standards as published by the Commissioner of Public Sector Standards; and

WHEREAS in reply to the allegations of the CSA the Public Trustee told the Arbitrator that the qualifications barriers have been introduced after existing employees had been given an opportunity to apply for positions without barriers; and

WHEREAS the Arbitrator was told it was necessary for the Public Trust Office to remain competitive with private industry service deliverers and it was therefore necessary for it to be able to demonstrate to potential clients that it had officers who were appropriately professionally qualified; and

WHEREAS the Public Trustee was unable to recollect whether he had specific conversations with officers and or the CSA concerning his action; and

WHEREAS after hearing the parties the Arbitrator formed a view that there had been insufficient consultation between the parties on this matter and that the introduction of the qualifications barriers by the Public Trustee in the manner in which he had, may prima facie be in breach of instruments and law governing the employment relationship; and

WHEREAS the Arbitrator may at or in relation to a conference under section 44 make such suggestions and give such directions as considered appropriate including with respect to industrial matters to give such directions and make such orders as in the opinion of the Arbitrator prevent the deterioration of industrial relations in respect of the matter in question until conciliation or arbitration has resolved that matter; and

WHEREAS the Arbitrator has concluded that it is appropriate that Orders and Directions be given to assist conciliation or arbitration of the dispute; and

WHEREAS the Arbitrator verbally published the terms of Orders and Directions intended to be made and the parties were granted the opportunity to speak to the Minutes of those Orders; and

WHEREAS the parties did not wish to speak to the Minutes;

NOW THEREFORE pursuant to the powers invested in it in section 44(6)(b)(a) of the Industrial Relations Act, 1979 the Public Service Arbitrator does hereby Direct and Order—

1. THAT the Public Trustee forthwith remove the qualifications bars that have been placed on any position within the Public Trust Office for a period of 30 days from the date hereof.
2. THAT the parties are directed to confer with an aim to resolving the dispute.
3. THAT in effecting any change which may arise out of negotiations, the Public Trustee is to comply with all relevant instruments and law governing the employment relationship.
4. THAT liberty to apply to rescind or vary the Order on 48 hours notice is reserved to either party.

(Sgd.) J.F. GREGOR,

[L.S.] Public Service Arbitrator.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wesfi Manufacturing Pty Ltd

and

Forest Products Furnishings and Allied Industries, Industrial  
Union of Workers, WA.

No. C 267 of 1997.

COMMISSIONER P E SCOTT.

16 April 1998.

*Memorandum.*

WHEREAS this is an application pursuant to section 44 of the Industrial Relations Act filed on the 16th day of September 1997; and

WHEREAS on the 27th day of November 1997, the 23 day of January 1998 and the 6th day of March 1998 the Commission convened conferences for the purpose of conciliating between the parties;

WHEREAS during the conference convened on the 6th day of March 1998 the parties agreed that a memorandum be issued by the Commission in accordance with section 44 (8)(d) and therefore the Commission according to the powers conferred on it under the Industrial Relations Act, 1979 issues the following Memorandum of Understanding—

MEMORANDUM OF UNDERSTANDING

WHEREAS a verbal warning given to Mr Murray Flynn on the 11th day of September 1997 relating to unsafe work practices has been placed on his personal file; and

WHEREAS the union disputes the facts surrounding the warning and the appropriateness of the warning; and

WHEREAS the Commission conducted conferences on the 27th day of November 1997 and the 23 day of January 1998 and the 6th day of March 1998 without the matter being resolved; and

WHEREAS the Commission records that the parties does not accept each others position; and

WHEREAS the Commission had advised that it may not be in the public interest for the matter to be referred for arbitration as the time to assess the warning is when and if the employer takes further action that relies upon the giving of the warning; and

WHEREAS the Commission has directed that this Memorandum be placed on Mr Murray Flynn's file; and

WHEREAS the Commission records that neither party will be prejudiced with respect to any further action that may be necessary to be taken and the final outcome of this matter.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

**CONFERENCES—  
Matters referred—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Argyle Diamond Mines Ltd.

No. CR 238 of 1995.

21 April 1998.

*Order.*

WHEREAS on 28 August 1995 the application cited herein was filed in the Commission pursuant to section 44 of the Industrial Relations Act, 1979 (the Act) was referred for hearing and determination; and

WHEREAS on 17, 18, 19 and 26 October 1995 the matter was listed for hearing; and

WHEREAS following upon proceedings on 17 October 1995 the parties arrived at an agreement in principle to settle the matter and proceedings were adjourned sine die; and

AND WHEREAS, following upon enquiries by the Commission, on 20 April 1998 the applicant informed the Commission in writing that the "...matter has been resolved satisfactorily and we wish to have the file closed...";

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.

(Sgd.) C.B. PARKS,

[L.S.]

Commissioner.

**CORRECTIONS—**

WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 9 of 1996.

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1173 of 1995 dated the 16th day of May 1996.

B E T W E E N

Anglican Homes for the Ages (Inc) and Others  
Appellants

and

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

BEFORE—

JUSTICE FRANKLYN (PRESIDING JUDGE).

JUSTICE ANDERSON.

JUSTICE SCOTT.

31 March 1998.

*Correcting Order.*

WHEREAS an error occurred in Order No IAC 9 of 1996, which issued on 30 September 1997, the following correction is therefore made—

“Delete” paragraph 1 of the order and “Insert” in lieu thereof the following—

- 1 The decision of the Full Bench to insert in the Aged and Disabled Persons' Hostels Award 1987 the enterprise flexibility provisions contended for by the union and order 3(b) of the Full Bench of 16 May 1996 giving effect to that decision be set aside.

(Sgd.) J.A. SPURLING,

[L.S.]

Clerk of the Court.

WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 10 of 1996

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1174 of 1995 dated the 16th day of May 1996.

B E T W E E N

Homes of Peace  
Appellant

and

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

BEFORE—

JUSTICE FRANKLYN (PRESIDING JUDGE).  
JUSTICE ANDERSON.  
JUSTICE SCOTT.

31 March 1998.

*Correcting Order.*

WHEREAS an error occurred in Order No IAC 10 of 1996, which issued on 30 September 1997, the following correction is therefore made—

“Delete” paragraph 1 of the order and “Insert” in lieu thereof the following—

- 1 The decision of the Full Bench to insert in the Hospital Employees (Home of Peace) Consolidated Award 1981 the enterprise flexibility provisions contended for by the union and order 3(b) of the Full Bench of 16 May 1996 giving effect to that decision be set aside.

(Sgd.) J.A. SPURLING,  
Clerk of the Court.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 11 of 1996.

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1175 of 1995 dated the 16th day of May 1996.

B E T W E E N

P & O Health Services  
Appellant

and

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

BEFORE—

JUSTICE FRANKLYN (PRESIDING JUDGE).  
JUSTICE ANDERSON.  
JUSTICE SCOTT

*Correcting Order.*

WHEREAS an error occurred in Order No IAC 11 of 1996, which issued on 30 September 1997, the following correction is therefore made—

“Delete” paragraph 1 of the order and “Insert” in lieu thereof the following—

- 1 The decision of the Full Bench to insert in the Crothall Hospital Services (W.A.) Pty Ltd

Award the enterprise flexibility provisions contended for by the union and order 3(b) of the Full Bench of 16 May 1996 giving effect to that decision be set aside.

(Sgd.) J.A. SPURLING,  
Clerk of the Court.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 12 of 1996.

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1176 of 1995 dated the 16th day of May 1996.

B E T W E E N

St John of God Hospital and Others  
Appellants

and

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

BEFORE—

JUSTICE FRANKLYN (PRESIDING JUDGE).  
JUSTICE ANDERSON.  
JUSTICE SCOTT.

31 March 1998.

*Correcting Order.*

WHEREAS an error occurred in Order No IAC 12 of 1996, which issued on 30 September 1997, the following correction is therefore made—

“Delete” paragraph 1 of the order and “Insert” in lieu thereof the following—

- 1 The decision of the Full Bench to insert in the Enrolled Nurses and Nursing Assistants (Private) Award No 8 of 1978 the enterprise flexibility provisions contended for by the union and order 3(b) of the Full Bench of 16 May 1996 giving effect to that decision be set aside.

(Sgd.) J.A. SPURLING,  
Clerk of the Court.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 13 of 1996.

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1177 of 1995 dated the 16th day of May 1996.

## B E T W E E N

St John of God Hospital and Others  
Appellants

and

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

BEFORE—

JUSTICE FRANKLYN (PRESIDING JUDGE).

JUSTICE ANDERSON.

JUSTICE SCOTT.

31 March 1998.

*Correcting Order.*

WHEREAS an error occurred in Order No IAC 13 of 1996, which issued on 30 September 1997, the following correction is therefore made—

“Delete” paragraph 1 of the order and “Insert” in lieu thereof the following—

- 1 The decision of the Full Bench to insert in the Private Hospital Employees' Award 1972 the enterprise flexibility provisions contended for by the union and order 3(b) of the Full Bench of 16 May 1996 giving effect to that decision be set aside.

(Sgd.) J.A. SPURLING,  
Clerk of the Court.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL APPEAL COURT.

Industrial Relations Act 1979.

Appeal No. IAC 14 of 1996.

IN THE MATTER OF an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1183 of 1995 dated the 16th day of May 1996.

## B E T W E E N

Delron Cleaning Pty Ltd and Others  
Appellants

and

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

BEFORE—

JUSTICE FRANKLYN (PRESIDING JUDGE).

JUSTICE ANDERSON.

JUSTICE SCOTT.

31 March 1998.

*Correcting Order.*

WHEREAS an error occurred in Order No IAC 14 of 1996, which issued on 30 September 1997, the following correction is therefore made—

“Delete” paragraph 1 of the order and “Insert” in lieu thereof the following—

- 1 The decision of the Full Bench to insert in the Hospital Workers (Cleaning Contractors—Private Hospitals) Award 1978 the enterprise

flexibility provisions contended for by the union and order 3(b) of the Full Bench of 16 May 1996 giving effect to that decision be set aside.

(Sgd.) J.A. SPURLING,  
Clerk of the Court.

[L.S.]

**PROCEDURAL DIRECTIONS  
AND ORDERS—**WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

INDUSTRIAL RELATIONS ACT, 1979)

Ashley Todd Mitchell

and

United Credit Union Ltd.

No 76 of 1998.

16 April 1998.

*Order.*

WHEREAS on 13 January 1998 the applicant applied to the Commission for an order pursuant to section 29 of the Industrial Relations Act, 1979;

WHEREAS on 7 April 1998 the applicant filed a summons to witness directed to the Chief Executive Officer, United Credit Union Limited, 15-19 Cambridge Street, Leederville pursuant to Regulation 83 of the Industrial Relations Commission Regulations 1985;

WHEREAS on 14 April 1998 the respondent filed a notice of application to set aside the above mentioned witness summons pursuant to Regulation 84 of the Industrial Relations Commission Regulations 1985;

WHEREAS on 16 April 1998 the Commission convened a conference between the parties pursuant to s32 of the Industrial Relations Act, 1979;

WHEREAS at the conference a number of interlocutory matters between the parties were concluded informally by consent;

NOW THEREFORE by consent the Commission pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby orders—

- (1) THAT the summons to witness directed to the Chief Executive Officer, United Credit Union Limited, 15-19 Cambridge Street, Leederville, be and is hereby set aside
- (2) THAT the notice of application to set aside the summons to witness directed to the Chief Executive Officer, United Credit Union Limited 15-19 Cambridge Street Leederville, be and is hereby discontinued.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

**NOTICES—  
Appointments—**

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 on me by s. 85(6) of the Industrial Relations Act 1979, DO HEREBY NOMINATE the HONOURABLE ROBERT JOHN McARTHUR ANDERSON, a

Judge of the Supreme Court of Western Australia to be Acting Presiding Judge of the Western Australian Industrial Appeal Court from 1 May 1998 to 31 May 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 7th day of April 1998.

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 on me 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 Ordinary Member of the Western Australian Industrial Appeal Court from 1 May 1998 to 31 May 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 7th day of April 1998.

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 on me by s. 85(6) of the Industrial Relations Act 1979, DO HEREBY NOMINATE the HONOURABLE GRAEME FREDERICK SCOTT, a Judge of the Supreme Court of Western Australia to be Acting Deputy Presiding Judge of the Western Australian Industrial Appeal Court from 1 May 1998 to 31 May 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 7th day of April 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 (Construction) Award 1987 No. R14 of 1978,

namely

Trittons Albany, Casey Corner Road, Albany

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 44 on all correspondence.

Dated 4 May 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 Electrical Contracting Industry Award No. R22 of 1978,

namely

Lake Grace Electrical Service, 38 Bennett Street, Lake Grace WA 6353

S. & J. Industries Pty Ltd, Central Road, Tom Price WA 6751

Wormald International (Aust.) Pty Ltd, 72 Belgravia Street, Belmont WA 6104

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 203 on all correspondence.

Dated 12 May 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 Hospital Salaried Officers' (Dental Therapists) Award, 1980 No. R27 of 1977,

namely

E.B. Thompson, 139 Fitzgerald Street, Geraldton WA 6530

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 147 on all correspondence.

Dated 4 May 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 Motel, Hostel, Service Flats and Boarding House Workers' Award, 1976 No. 29 of 1974,

namely

Highway Marquis Motel, 234 Albany Highway, Albany, 6330.

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 57 on all correspondence.

Dated 4 May 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 Security Officers' Award No. A25 of 1981,

namely

- (1) Canine Security, Shop 16, Commercial Centre, Kewdale Road, Kewdale
- (2) Electro Guard Security, 95 Fairway Street, Nedlands
- (3) Metropolitan Security Service, 1 Price Street, Subiaco
- (4) Store Protection Agency of W.A., 556 Hay Street, East Perth
- (5) Wormalds Security, 27 Moore Street, East Perth

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 Parts 195 & 204 on all correspondence.

Dated 4 May 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 Soft Furnishings Award No. A23 of 1982,

namely

Curtain City, Shop 2 Karrinyup Shopping Centre,  
Karrinyup

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 114 on all correspondence.

DATED 4 May 1998.

J. SPURLING,  
Registrar.

**RAILWAYS CLASSIFICATION  
BOARD—  
Matters dealt with—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
LABOUR RELATIONS LEGISLATION AMENDMENT  
ACT, 1997

Variation of the award to give effect to Sections 34(1) and (2) of the Labour Relations Amendment Act 1997

No R 1 of 1998

RAILWAYS CLASSIFICATION BOARD  
COMMISSIONER P E SCOTT (CHAIRPERSON)  
MR P BOTHWELL (BOARD MEMBER)  
MR F D MUNYARD (BOARD MEMBER)

16 April 1998.

*Order.*

HAVING heard Mr D. Johnston on behalf of the Western Australian Government Railways Commission trading as Westrail, the Railways Classification Board, pursuant to the powers conferred on it under the Labour Relations Amendment Act 1997, hereby orders that—

That the Railway Officers Award 1985 be varied in accordance with the following Schedule and that such variation shall have effect on and from the 16th day of April 1998.

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

Schedule.

1. Clause 13.—Inspections By General Secretary: Delete this clause and insert the following in lieu thereof—

13.—INSPECTIONS BY GENERAL SECRETARY

(1) The General Secretary or such other accredited representative of the Union desiring to enter onto railway premises on bona fide Union business concerned in the maintenance of the Award and appropriate working conditions shall be given entry if such person makes application to the officer-in-charge of the depot or station and states the nature of their business. Provided that the General Secretary or other accredited representative of the Union cannot enter any part of the premises of the Commission unless the Commission is the employer or former employer of member of the Union.

(2) The General Secretary or other accredited representative of the Union shall have the power to inspect the time and wages records of an employee or former employee of the Commission subject to the provisions of this clause.

(3) The Commission may refuse the General Secretary or other accredited representative of the Union access to records if—

- (a) the Commission is of the opinion that access to the records by the General Secretary or other accredited representative of the Union would infringe the privacy of persons who are not members of the Union; and
- (b) the Commission undertakes to produce the records to an Industrial Inspector within 48 hours of being

notified of the requirement to inspect by the General Secretary or other accredited representative of the Union.

(4) The power of inspection may only be exercised by the General Secretary or other accredited representative of the Union authorised in accordance with the rules of the Union to exercise the power.

(5) Before exercising a power of inspection the General Secretary or other accredited representative of the Union shall give reasonable notice of not less than 24 hours to the Commission.

(6) An Industrial Inspector shall give extracts from records produced to that Industrial Inspector pursuant to an undertaking referred to in subclause (3) (b) to the Union as soon as is practicable after the records are so produced.

(7) An extract referred to in subclause (6)—

- (a) shall be of such matters as are prescribed by regulations made by the Governor;
- (b) shall be made in the prescribed manner; and
- (c) shall not include information in respect of a person who is not a member of the relevant organization.

(8) Upon request, a free pass will be issued to the General Secretary of the Union, but the pass may be withdrawn at the employer's discretion. Such pass shall be used exclusively for Union work in connection with the operations of the Commission but not for political purposes.

## NOTICES— Union matters—

Industrial Relations Act 1979.

### PUBLICATION OF APPLICATION PURSUANT TO SECTION 72A.

Application Number 775 of 1998 has been lodged pursuant to Section 72A of the Industrial Relations Act 1979 the Civil Service Association of Western Australia (Incorporated) and is published hereunder.

The application has been listed before the Full Bench at 10.30am on the 27th of July 1998.

Any person who wishes to be heard shall file a notice of application to be heard in accordance with Form 1, setting out the grounds upon which the person claims sufficient interest to be heard in relation to the application and serve it on the applicant at least 7 days before the above date of hearing in accordance with Regulation 101A of the Industrial Relations Commission Regulations 1985.

J. A. SPURLING,  
Registrar.

11th May 1998.

### Form 1

Industrial Relations Act 1979.

IN THE WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

No. 775 of 1998

### NOTICE OF APPLICATION

TO: **NOT APPLICABLE**

(name and address of respondent/s—attach schedule if space insufficient)

TAKE NOTICE THAT **THE CIVIL SERVICE ASSOCIATION OF WESTERN AUSTRALIA (INCORPORATED), 445 HAY STREET, PERTH WA 6000**

(name and address of applicant/s—attach schedule if necessary)

### HAS THIS DAY APPLIED TO THE FULL BENCH FOR ORDERS PURSUANT TO SECTION 72A OF THE ACT TO THE FOLLOWING EFFECT: SEE SCHEDULE A

(state object of application—for example, conference, award, amendment or interpretation of a specified award or as the case may be)

The grounds on which the application is made are—**SEE SCHEDULE B**

(give details attach schedule if necessary)

THE STAMP OF THE  
WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS  
COMMISSION  
6 MAY 1998  
J. A. SPURLING Registrar



(Affix Stamp of Commission) KAREN-FAYE FRANZ

.....  
Applicant's signature

THE APPROPRIATE FEE IS TO BE PAID UPON LODGEMENT OF THIS APPLICATION

This notice must be completed by the applicant, signed and, where necessary, sealed by him, and a written statement of claim or other adequate description of the subject matter of the application must be attached.

For endorsements see back hereof

### SCHEDULE "A"

#### ORDER SOUGHT

1. That the Civil Service Association of Western Australia (Inc) ("the CSA") henceforth have the right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the Metropolitan Health Service Board ("the MHSB") or by any other Western Australian State Government person, enterprise or corporation in the Perth Dental Hospital or any other such entity or unit howsoever described or named (including Perth Dental Hospital and Community Dental Services) which provides any of the services provided by Perth Dental Hospital or the Dental Services Branch of the Health Department of Western Australia as at 6 May 1998 (referred to collectively as the "Dental Hospital") to the exclusion of any other organisation of employees registered under the *Industrial Relations Act 1979* (as amended) ("the Act"), save for persons eligible for membership of the Australian Liquor, Hospitality and Miscellaneous Workers Union (WA Branch), the Western Australian Branch of the Australian Medical Association (Inc) or the Australian Nursing Federation Industrial Union of Workers and provided that—

- (a) where from time to time the provision of dental services is devolved from the management and control of an individual Public Hospital Health Service such that the individual Public Hospital Health Service has permanent management and control of employees and the provision of dental services at that Public Hospital Health service only, then union eligibility, award and industrial coverage for such employees may be determined by the identity of the employer of persons providing services at the said Public Hospital Health Service; and
- (b) the Hospital Salaried Officers Association of Western Australia (Union of Workers) ("the HSOA") shall retain the concurrent right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) (including those listed in Schedule A of its Rules) employed by the MHSB in the Dental Hospital who as at 6 May 1998 were financial members of the HSOA until such time as they resign, retire or are permanently transferred or redeployed from the Dental Hospital or cease to be a member of the HSOA.

## SCHEDULE "B"

1. The Full Bench has jurisdiction pursuant to Section 72A of the Industrial Relations Act 1979 to grant the order sought.

2. A number of salaried employees employed in professional, administrative, clerical, technical and supervisory capacities by the Metropolitan Health Services Board affected by this application are members of the CSA.

3. The CSA has over its historic coverage of such employees facilitated in such enterprises a high degree of industrial harmony, efficiency and productivity.

4. Such coverage would be consistent with and present an opportunity for furtherance of State legislation and general principles for the rationalisation of industrial representation in enterprises. The order would create single or limited effective Union representation at any given time in the specified enterprises.

5. The CSA is equipped to give its existing and prospective members the industrial and other services which they require.

6. The CSA has structures which permit the participation of its members in the affairs of the organisation.

7. Historically the CSA has provided impetus in relation to public health sector employees positions in matters of award entitlement, etc.

8. In the circumstances the CSA will be an effective and efficient representative of the affected employees' interests and concerns.

9. The CSA has had historical coverage of employees employed in the Perth Dental Hospital and Dental Services Branch.

10. The CSA recognises that the HSOA has constitutional and industrial coverage of certain employees employed in the Perth Dental Hospital and recognises that the HSOA should continue to have concurrent rights to represent constitutionally and industrially the interests of those employees who were financial members of the HSOA as at 6 May 1998 employed in the Perth Dental Hospital until such time as the said HSOA financial members resign, retire or are permanently transferred or redeployed from the Perth Dental Hospital and Community Dental Services or cease to be members of the HSOA.

11. Both the CSA and its members will be directly affected by any orders which may be issued by the Full Bench on this issue and therefore have a direct interest.

---

Industrial Relations Act 1979.

PUBLICATION OF APPLICATION PURSUANT TO  
SECTION 72A

Application Number 768 of 1998 has been lodged pursuant to Section 72A of the Industrial Relations Act 1979 the Hospital Salaried Officers Association of Western Australia (Union of Workers) and is published hereunder.

The application has been listed before the Full Bench at 10.30am on the 27th of July 1998.

Any person who wishes to be heard shall file a notice of application to be heard in accordance with Form 1, setting out the grounds upon which the person claims sufficient interest to be heard in relation to the application and serve it on the applicant at least 7 days before the above date of hearing in accordance with Regulation 101A of the Industrial Relations Commission Regulations 1985.

J. A. SPURLING,  
Registrar.

11th May 1998.

---

Form 1

Industrial Relations Act 1979.

IN THE WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

No. 768 of 1998

NOTICE OF APPLICATION

TO: Not applicable

TAKE NOTICE THAT The HOSPITAL SALARIED OFFICERS ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS) of 8 COOLGARDIE TERRACE, PERTH, WA 6000 has this day applied to the Full Bench for an Order pursuant to Section 72A as per attached Schedule "A".

The grounds on which the application is made are (See attached Schedule "B")



Signed

Christopher D. Panizza  
Signature of Applicant

(Affix stamp of Commission)

THE APPROPRIATE FEE IS TO BE PAID UPON  
LODGEMENT OF THIS APPLICATION

This notice must be completed by the applicant, signed and, where necessary, sealed by him, and a written statement of claim or other adequate description of the subject matter of the application must be attached.

For endorsements see back hereof.

## SCHEDULE A

## ORDERS SOUGHT

1. That the Hospital Salaried Officers Association of Western Australia (Union of Workers) ("the HSOA") henceforth have the right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) (Including those listed in Schedule A of its Rules) employed by the Metropolitan Health Service Board ("the MHSB") in the Graylands Selby-Lemnos and Special Care Health Service ("the GSL") to the exclusion of any other organisation of employees registered under the Act, provided that the Civil Service Association of Western Australia ("the CSA") shall retain the concurrent right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the MHSB in the GSL who as at 6 May 1998 were financial members of the CSA until such time as they resign, retire or are permanently transferred or redeployed from the GSL or cease to be a member of the CSA.

2. Subject to Order 1 herein that the CSA henceforth have the right to represent constitutionally and industrially the interests of all salaried employees (being professional, administrative, clerical, technical and supervisor employees) employed by the MHSB in the GSL who as at 6 May 1998 were financial members of the CSA until such time as they resign, retire or are permanently transferred or redeployed from the GSL or cease to be a member of the CSA save for persons eligible for membership of the Australian Liquor, Hospitality and Miscellaneous Workers Union (WA Branch), the Western Australian Branch of the Australian Medical Association Inc or the Australian Nursing Federation Industrial Union of Workers.

## SCHEDULE B

The grounds on which the applications are made are—

1. The order sought is one which it is open to the Full Bench to make under, Section 72A of the Industrial Relations Act 1979 (as amended) ("the Act").
2. The order sought is consistent with the objects of the Act.

3. The order sought, if granted, will further the objects of the Act.
  4. The order sought is consistent with the objectives of the Western Australian Industrial Relations Commission's ("the Commissions") wage fixing principles.
  5. The applicant has the right to represent the majority of Professional, Administrative, Clerical, Technical and Supervisory (PACTS) employees employed by Health Service Providers in Western Australia and has exclusive coverage of such employees (excluding Nurses, Medical Practitioners and Leading Hands) in Public Hospital and Health Services.
  6. Union rationalisation will aid ongoing reform in the health industry.
  7. The applicant is equipped to represent the industrial interests of the employees referred to in Schedule A because the applicant will promote and facilitate successful enterprise bargaining in relation to PACTS employees within the health industry in Western Australia.
  8. The order sought will facilitate the industrial representation of the employees of Health Service Providers in the Public Sector in Western Australia.
  9. The order sought reflects the structure of the Public Hospital and health Service industry.
  10. The order sought, when applied together with appropriately structured awards and agreements, will facilitate the industrial representation of the employees sought to be covered., and the industrial management of such employees.
  11. The HSOA recognises that the CSA has had constitutional and industrial coverage of certain employees in the GSL and recognises that the CSA should continue to have concurrent rights to represent constitutionally and industrially the interests of those employees employed in the GSL by the MHSB who as at 6 May 1998 were financial members of the CSA until such time as they resign, retire or are permanently transferred or redeployed from the GSL or cease to be members of the CSA.
  12. The HSOA and its members will be affected by any orders which may be issued by the Full Bench and therefore have a direct interest in this matter.
-