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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

Dampier Salt Operations Ltd  
(Respondent).

No. 1986 of 1998.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
COMMISSIONER J F GREGOR.

23 August 1999.

### *Reasons for Decision.*

THE PRESIDENT: This is an appeal by the abovenamed organisation of employees against the decision of the Senior Commissioner given on 20 October 1998 in matter No CR 214 of 1998. The appeal is against the whole of the decision.

It is properly brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

The appellant organisation seeks that the decision be quashed.

### GROUND OF APPEAL

The grounds of appeal, as amended by leave at the hearing, are as follows (see page 2A of the appeal book (hereinafter referred to as "AB"))—

1. The Senior Commissioner erred in holding that the facts as found constituted an "assault" by Baron on Cockrill and thereby determined the application on a wrong basis.
2. If, which is denied, the facts as found constitute an "assault" by Baron on Cockrill the exercise of the Senior Commissioner's discretion miscarried in that it was not reasonably open to him or any fair minded

or even handed person to conclude that termination of Baron's employment was not a harsh, unjust or unreasonable exercise of the employer's legal right to terminate the contract in all the circumstances of the case."

### BACKGROUND

The decision appealed against was the dismissal of an application by the abovenamed appellant organisation, then the applicant. By an application pursuant to s.44 of the Act, the appellant organisation sought the resolution of a dispute between the appellant and the respondent by the reinstatement of a long-term employee of the respondent, and one of its members, namely Mr Robert Michael Baron. The dismissal occurred on or about 29 June 1998, following an incident which took place at the premises of the respondent on 3 June 1998.

Mr Baron was suffering a stress related illness and was the recipient of workers' compensation payments at the time. His doctor had advised him not to participate in an investigation of an alleged incident which occurred on 3 June 1998 involving Mr Baron and his supervisor, Mr Kevin Russell Cockrill. Mr Baron was sent to Perth to have his condition evaluated.

The respondent company believed that he was able to participate in an investigation which it was conducting of the incident of 3 June 1998. It is fair to say that the respondent, on several occasions, invited Mr Baron to participate in its investigation. Mr Baron remained, when the memorandum of matters for determination was issued, namely 27 July 1998, under treatment by his doctor. The respondent company did not start an investigation until a week after the alleged incident.

The appellant organisation was of the opinion that the respondent company had acted hastily because it appeared from its inaction at the time that there was no case to answer which would relate to termination.

The appellant organisation and Mr Baron both denied that any assault occurred. Indeed, there was evidence that Mr Baron was not an aggressive individual, but, indeed, was very different.

The appellant organisation said that the allegation made against Mr Baron by the respondent was a concoction and part of a conspiracy by senior officers of the respondent to get rid of him because he was an active member of the appellant organisation and one of the few people whose employment was still covered by the relevant award, the Dampier Salt Award 1990, rather than by an individual agreement.

It was claimed that the dismissal was unfair, and reinstatement of Mr Baron was therefore sought.

There was a conflict in evidence relating to the incident of 3 June 1998. There was evidence from Mr Baron himself. There was evidence on behalf of the respondent by Mr Kevin Russell Cockrill, the maintenance superintendent for the respondent at the respondent's Lake MacLeod operation. There was evidence from Mr Robert Edward Ward, an employee of the respondent from 1980 to 1995, and a shop steward during that time.

There was also evidence for the respondent from Mr Greg Mashford, manager, maintenance and engineering for the respondent at the Lake MacLeod operation, as well as Mr Peter Charles Kibble, manager, personnel services for the respondent.

Mr Baron had been employed by the respondent as a mechanical tradesperson for approximately 18 years until about 29 June 1998. His employment was then terminated with five weeks pay in lieu of notice on the grounds that he allegedly assaulted his supervisor, Mr Cockrill, a maintenance superintendent, on 3 June 1998.

Mr Cockrill said that he had on 3 June 1998 questioned Mr Baron concerning an unauthorised ADO on 29 May 1998. Mr Perry, the co-ordinator of the respondent, also questioned him about it.

Mr Baron said that both Mr Cockrill and Mr Perry were firing questions at him, and he did not regard this as very satisfactory.

Mr Cockrill then took with him the calendar and roster for May and June 1998 to the workshop where Mr Baron was carrying out maintenance work. He laid them out on a bench near where Mr Baron was working and asked Mr Baron to show him how he had an entitlement to the ADO in question. Mr Cockrill said that Mr Baron's response was to come over to the bench, take hold of the roster, screw it up, grab Mr Cockrill's open-necked shirt by the collar and thrust the roster down his front. In doing so he made contact with Mr Cockrill's chin and scratched his neck. Mr Baron then said "I should not have done that", and Mr Cockrill said "No you shouldn't have", and said that he was going to report the matter.

Mr Baron, however, said that when he was shown the roster, he saw that it was the wrong roster, being for June 1998 not May 1998, and he screwed the roster up, threw it on the floor, turned his back on Mr Cockrill and went back to work.

Mr Cockrill reported the matter to Mr Kibble, who reported it to the departmental manager, Mr Mashford. Mr Mashford, Mr Kibble and Mr Cockrill met and decided to call on Mr Baron for an explanation.

Mr Baron did not arrive for work that day but sent in a medical certificate saying that he was unfit for work for approximately one week because of stress and anxiety. He was suspended on full pay pending an investigation of the matter, and, indeed, he did not return to work until the time he was dismissed because of medical certificates saying that he was unfit for work.

Mr Mashford, one week after the incident, telephoned Mr Baron to ascertain his version of what had occurred. Mr Baron said that he was not well enough to explain the position. Mr Baron's doctor, when Mr Mashford rang him, told Mr Mashford that Mr Baron was devastated by the incident, without saying what the incident was. Mr Mashford asked Mr Baron in two letters dated 12 and 19 June 1998 to participate in the investigation saying that the company viewed the matter as important. There was no medical certificate provided to say that Mr Baron was not fit to explain the position.

By letter dated 26 June 1998, Mr Mashford advised Mr Baron that, because of his failure to advise that he would participate in the respondent's investigation, he was forced to accept that Mr Baron would not participate in Mr Mashford's investigation. Accordingly, that letter terminated his employment as at 29 June 1998 with a simultaneous deposit of five weeks pay in lieu of notice in his bank account.

I quote hereunder two significant paragraphs of the letter (see page 136(AB))—

"The conclusion that I have reached as a result of my investigation is that you assaulted your Superintendent, Mr Kevin Cockrill, at work on Wednesday 3 June 1998 while your Superintendent was in the course of his duties for Dampier Salt.

I view this as a matter of the utmost gravity and have decided that the only appropriate course of action open to me is to terminate your contract of employment with Dampier Salt."

There was substantial evidence in writing of Mr Baron's good character.

#### COMMISSION'S FINDINGS AND CONCLUSIONS

The Commissioner observed that this case largely turned on the facts. The Commissioner found as follows—

- (1) The more he heard from Mr Cockrill, the more convinced he was that Mr Cockrill was telling the truth.
- (2) Mr Baron was unable to give as much detail of the incident as Mr Cockrill, nor did he sound as convincing as Mr Cockrill.
- (3) Mr Kibble and Mr Mashford supported Mr Cockrill to a substantial degree.
- (4) Mr Baron, on his own admission, was angry enough to walk out on the meeting of 3 June 1998 and angry enough to screw up the roster and throw it on the floor.
- (5) The Commissioner found it somewhat odd that a man who, by his own admission had had a litany of problems with the respondent over a long period of time regarding ADO's, should the next day be so stressed and anxious that he is unable to come in to work.
- (6) He accepted that it was out of character for Mr Baron to act in this way, but nonetheless accepted that he did so act.
- (7) Mr Baron was given a fair opportunity to be heard. He was invited on at least two occasions in writing and two others verbally to participate in the inquiry, but there was no medical evidence, at least after the first week, to suggest that he was unable to participate in the inquiry.
- (8) The inquiry was not required to be kept alive for forever and a day.
- (9) Even if there were a procedural irregularity of the kind of which the appellant complained, he was far from convinced that the respondent acted unfairly in the accepted industrial sense.
- (10) Unfairness in procedure is but one factor to be taken into account.
- (11) The dismissal was not established to be unfair.

#### ISSUES AND CONCLUSIONS

The decision in this matter, at first instance, was a discretionary decision, as that term is defined in Norbis v Norbis (1986) 65 ALR 12 (HC). Unless, therefore, the appellant establishes that the exercise of the discretion at first instance miscarried, then the Full Bench may not interfere with the decision appealed against (see House v The King (1936) 55 CLR 499 (HC) and Gromark Packaging v FMWU 73 WAIG 220 (IAC)).

A number of findings were made by the Senior Commissioner resulting from his having seen and heard a number of witnesses, and the conclusions as to their credibility which he reached. These are not to be readily overturned unless the Senior Commissioner misused his advantage in seeing the witnesses (see the principle often cited by the Full Bench of this Commission, and as expressed in Devries and Another v Australian National Railways Commission and Another (1992-1993) 177 CLR 472 and see also State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq) (1999) 73 ALJR 306).

There are a number of issues with which I wish to deal. It was submitted on behalf of the appellant that the statement made by Mr Cockrill to an insurance assessor contained no reference to a matter referred to in his evidence, namely a welt or abrasion caused by Mr Baron pushing the roster down the front of his shirt.

In a statement made two weeks after the incident on 15 June 1998 (see pages 228-229 (AB)) he did not mention any injury occurring at the time, but does say, in the same statement, that

when he reported the incident to Mr Mashford he pointed out marks on his neck to Mr Mashford, and had his wife check the scratches which he had received. He also said in evidence that when pushing the roster down his shirt Mr Baron made contact with his chin and neck (see page 148 of the transcript at first instance (hereinafter referred to as "TFI")). He said that he received two scratches to the neck. He felt the effects of "the lump on the chin". He also felt pain in his neck that night when he was having a shower (see also pages 168, 169 and 180-182 (TFI)) (see also Mr Kibble's evidence at page 218 (TFI)). That evidence is not evidence which, in my opinion, reduce the finding as to the credibility of Mr Cockrill's and Mr Kibble's evidence, given the totality of their evidence, and the Senior Commissioner's advantage in seeing the witnesses in the witness box.

It was open to the Senior Commissioner to find, that consistent too with the action of forcing a crumpled piece of paper down a buttoned shirt, Mr Cockrill's neck was scratched.

It was submitted that if this were an assault at all, (and part of the submission was that the injury if caused was not intended, but was incidental to the stuffing of the paper down Mr Cockrill's shirt), then it was extremely minor. For example, not even a shirt button was torn off. It was submitted that the incident was minor and no regard was paid to that fact in deciding whether the dismissal was fair and involved a fair go all round.

It was also submitted that the respondent wanted to get rid of Mr Baron for some years. Mr Baron refused a contract, adhered to the award, and had refused a subsequent offer of voluntary redundancy. He had been involved too in a dispute about ADO's.

The Commissioner did observe that there was no doubt that Mr Kibble and Mr Mashford were glad to see Mr Baron go, but the Commissioner found that Mr Mashford and Mr Kibble's evidence was not coloured by that consideration.

The submission was, too, that the Commissioner had no regard to the fact that the company wanted to get rid of Mr Baron for four years; and that this led them to seize upon a minor incident and blow it up out of all proportion to enable them to achieve his dismissal. It was also submitted that no regard was had to his length of service (18 years) and that he is a very competent tradesman (according to Mr Cockrill (see page 209 (AB))). However, Mr Cockrill said that there was a productivity problem and his peers seemed not to treat him seriously.

The Commissioner accepted the evidence of all those persons whose statutory declarations were filed to the effect that what Mr Baron did was out of character. However, the Commissioner observed that people do act out of character. As was submitted to the Full Bench, the fact that the act was out of character meant that it was unlikely that such an act would occur again. Indeed, I would add, there was no evidence of Mr Baron having committed any such act or indeed having been disciplined in the past 18 years of his employment. Further, there was no evidence of any prior warnings to him about his conduct.

Further, one other factor which might be taken into account was whether there might be another way of dealing with the dismissal. It was the Commissioner's duty to take into account all of the present and relevant circumstances (as Franklyn J said in *BHP Iron Ore Limited v TWU 73 WAIG 529 at 530(IAC)*, cited in *AFMEPKIU v John Holland Construction & Engineering Pty Ltd 79 WAIG 1302 at 1312 (FB)*)—

"...As was said by the learned authors of "The Law of Employment" Macken, McCorry (sic) and Sappideen (3rd ed) at 275—

"In determining whether the dismissal is unfair the tribunal must have regard to all the relevant circumstances relating to the particular employee. These include not only matters specifically related to the employee's work record but also whether the applicant will be able to find alternative employment and the financial and social consequences of dismissal. The question whether a dismissal is harsh, unjust or unreasonable is determined having regard to the circumstances at the time of dismissal."

I apply that approach hereunder.

No account seems to have been taken of the fact that immediately after the incident he acknowledged his fault. Indeed, there were medical certificates tendered to support this fact, and uncontradicted at that (see exhibits 3.4 (AB)). His failure to participate in the investigation is a matter which was explained by his state of stress.

Put shortly, however, the Commissioner failed to give any or any sufficient weight to the very minor nature of the assault, including the lack of real injury, the lack of evidence of force and the fact that the injury suffered was incidental to the act of shoving the paper down Mr Cockrill's shirt. Against that, of course, is the consideration that the pushing the paper down his superior's shirt was a serious act not to be lightly condoned or considered to be trivial. However, it arose in circumstances of some significant differences concerning the ADO roster, Mr Baron was not a person whom steps were taken to retain, his behaviour and service overall was good and lengthy, the act was very much out of character and unlikely therefore to recur, he expressed regret immediately, and there was no consideration given to an alternative means of dealing with him. (His failure to make himself available for the investigation was somewhat cancelled out by the evidence of his condition.)

In my opinion, Mr Baron's length of service and good character and the question of dealing with him differently than by dismissal were not considered or were not given weight or sufficient weight. In any event, in general terms, the exercise of the discretion at first instance resulted in an overtly unreasonable outcome. (Since the question of the fairness or validity of the dismissal being carried out whilst he was under treatment was not directly raised, I do not consider it.)

The exercise of the discretion, having regard to all of the circumstances of the case, miscarried for those reasons. I would therefore uphold the appeal. I would make a finding that the dismissal was unfair for the reasons which I have advanced. I would suspend the operation of the decision made at first instance and remit the matter to the Commissioner at first instance to hear and determine according to law whether there should be an order for reinstatement or re-employment or compensation.

**CHIEF COMMISSIONER W S COLEMAN:** On 3 June 1998 the appellant's member Mr Baron was involved in an incident at work with his supervisor Mr Cockrill over an entitlement to an authorised day off duty. This subsequently led to Mr Baron's employment being terminated by the respondent. In the initial proceedings the issue was whether or not Mr Baron had assaulted his supervisor.

After a discussion with his supervisor and the office coordinator over an absence from work on 29<sup>th</sup> May Mr Baron left the office stating that he was not going to answer questions from two people at the same time. He was subsequently approached at this workstation by Mr Cockrill who laid out a copy of the roster and calendar on the work bench. It was Mr Cockrill's evidence that he asked Mr Baron to show him how he had an entitlement to the day off on 29<sup>th</sup> May. Mr Cockrill said that Mr Baron's response was to come over to the bench, take hold of the roster, grab Mr Cockrill's open shirt by the collar and thrust the roster down his front. In the course of this Mr Cockrill claimed that Mr Baron had made contact with his chin and had scratched his neck. It was Mr Cockrill's evidence that Mr Baron stated that "I should not have done that". To this Mr Cockrill replied "no you shouldn't have". He informed Mr Baron that he was going to report the matter.

Mr Baron denied this incident and claimed that when Mr Cockrill presented him with the documents and asked him about his absence from work on 29<sup>th</sup> May, Mr Baron had noticed it was the wrong roster. It was for June. He then screwed it up, threw it on the floor and walked away from Mr Cockrill. Mr Baron subsequently presented a medical certificate covering an absence from work due to stress and anxiety. He was suspended on full pay pending an investigation. He never returned to work and by letter dated 26<sup>th</sup> June 1998 was advised that an investigation conducted by the respondent (which Mr Baron had not participated in) had concluded that Mr Baron had assaulted his supervisor Mr Cockrill and that his contract of employment was terminated.

The Senior Commissioner decided that, having the benefit of hearing and observing the parties and their witnesses over

three days, Mr Cockrill was telling the truth. On the basis of all of the circumstances, particularly having regard to the reason for dismissal and enquiries pursued by the respondent, he considered that the respondent was entitled to act the way it did. The Senior Commissioner was not convinced that the respondent acted harshly, oppressively or unfairly.

The decision whether a dismissal from employment is harsh, unjust or unfair is an exercise of discretion. However the finding of fact that gave rise to the dismissal was the assault alleged by the respondent but denied by the appellant.

The first ground of appeal asserts that the Senior Commissioner erred in holding the facts as found constituted an "assault" and thereby the application was determined on the wrong basis. Where the finding depends to a substantive degree on the credibility of witnesses, the finding must stand unless it can be shown that the advantage of seeing the witnesses has been misused or that the Commissioner at first instance acted on evidence which was inconsistent with facts incontrovertibly established by the evidence or which was glaringly improbable (*Devries and Another v. Australian National Railways Commission and Another* (1992-93) 177 CLR 472).

Here the evidence before the Commission at first instance identified the nature of the physical contact sustained by the supervisor. (See transcript page 149 and 150). Furthermore in my view it is not an answer to say that that the assault was of the most minor nature. It is clear from the decision that the physical contact was accompanied by a degree of anger. It was an assault in the workplace against the employee's supervisor. In any event the Senior Commissioner, was not confronted with an argument that while there had been physical contact this had been insufficient to warrant a finding of assault. There was a complete denial that it had occurred. The finding necessarily comprehended the extent to which physical contact had been made.

In my view the finding made by the Senior Commissioner should not be disturbed. Ground 1 should be dismissed.

The second ground of appeal goes to the exercise of discretion. In *Gromark (Packaging v. FMWU)* (1993) 734 AIG 220 at 223) it is noted that—

"The decisions in *Norbis v. Norbis* (1986 161 CLR 513) and *House v. The King* (1936) 55 CLR 499 are concerned with the principles governing interference by an appellate Court with the exercise of a discretionary judgment at first instance. *Norbis* adopted the statement of principle expressed in *House v. The King* (supra) at 504-505. They each emphasise that there must, as an indispensable condition, be an error of law or fact before intervention warranted, the nature of which error may, in a particular case, not be discoverable but is evidenced by a decision which is unreasonable or plainly unjust. They also declare that it is not enough that the appellant tribunal, had it been in the position of the primary judge, would have taken a different course."

In the absence of any apparent error of law or fact the appellant relies on a list of matters going to the members length of service, his character and the nature of his relationship with the respondent over his continuing attachment to the Award to show that the decision was "unreasonable or plainly unjust". Or, as expressed in the lexicon of industrial relations that Mr Baron had not been given a fair go all round.

These matters were not ignored by the Senior Commissioner. However, albeit that Mr Baron's actions were "out of character" it was open to the Senior Commissioner that the termination of his employment was not harsh, oppressive or unfair given the nature of the assault on his supervisor.

I would not uphold Ground 2.

The appeal should be dismissed.

COMMISSIONER J F GREGOR: On 20 October 1998, the Commission at first instance issued its Reasons for Decision in No. CR 214 of 1998. The Decision was in response to an application brought under s.44 of the Industrial Relations Act 1979. It concerned a dispute between the appellant in these proceedings and the respondent over the failure of the respondent to reinstate Robert Michael Baron. An incident took place between the parties in Dampier on 3 June 1998, after which the respondent tried to ascertain from Mr Baron his side of the

story. Mr Baron did not respond and was dismissed on 29 June 1998.

The incident involved an alleged assault by Mr Baron upon a supervisor. Both the appellant and Mr Baron say no assault occurred. In an attempt to ascertain the true events relating to the assault the respondent invited Mr Baron to put to it his version. It was alleged by the appellant that Mr Baron suffered because of his continual refusal to enter into an employment relationship with the respondent in a form other than the Dampier Salt Award 1990. It was said that Mr Baron became isolated because of his continuous refusal which led to officers of the respondent acting in concert to cause to Mr Baron's dismissal.

The reason for dismissal involved an incident where a supervisor took a calendar and roster to Mr Baron's work to discuss an issue concerning a day off. The supervisor alleged that Mr Baron screwed up the roster and thrust it down his open neck shirt. In doing so, he made contact with the supervisor's skin and scratched his neck. Mr Baron immediately said that he should not have done that and the supervisor agreed. He told Mr Baron that he was going to report the matter. After the report was made, Mr Baron was called in for an explanation. He was not at work that day. Mr Baron had a medical certificate saying that he was sick for one week due to stress and anxiety. Pending an investigation, he was suspended on full pay. Mr Baron did not return to work before he was dismissed. All of his absences were supported by medical certificates. On 26 June 1998, Mr Baron was advised that his failure to indicate that he would participate in the investigation resulted in his services being terminated.

The appellant appealed against the whole Decision and seeks that it be quashed. The Grounds of Appeal were amended at hearing and are as follows—

1. "The Senior Commissioner erred in holding that the facts as found constituted an "assault" by Baron on Cockrill and thereby determined the application on a wrong basis.
2. If, which is denied, the facts as found constitute an "assault" by Baron and Cockrill the exercise of the Senior Commissioner's discretion miscarried in that it was not reasonably open to him or any fair minded or even handed person to conclude that termination of Baron's employment was not a harsh, unjust or unreasonable exercise of the employer's legal right to terminate the contract in all the circumstances of the case".

The Decision at first instance was discretionary. The principles relating to discretionary judgements are well known but for the purposes of these Reasons, I express the principles as they appear in *House v. The King* (1936) 55 CLR 499 at 504 more fully than usual—

"It is not enough that the judges composing the appellate court consider that, if they had been in the position of the primary judge, they would have taken a different course. It must appear that some error has been made in exercising the discretion. If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matter to guide or affect him, if he mistakes the facts, if he does not take into account some material consideration, then his determination should be reviewed and the appellate court may exercise its own discretion in substitution for his if it has the materials for doing so. It may not appear how the primary judge has reached the result embodied in his order, but, if upon the facts it is unreasonable or plainly unjust, the appellate court may infer that in some way there has been a failure properly to exercise the discretion which the law reposes in the court of first instance. In such case, although the nature of the error may not be discoverable, the exercise of the discretion is reviewed on the ground that a substantial wrong has in fact occurred"

In *Norbis v. Norbis* 65 ALR 12, the High Court of Australia has adumbrated upon these principals in the following way—

"The sense in which the terms "discretion" and "principle" are used in these remarks needs some explanation. "Discretion" signifies a number of different legal concepts (see, for example, the discussion in *Pattenden*: The

Judge, Discretion, and the Criminal Trial (1982) at 3-10). Here the order is discretionary because it depends on the application of a very general standard—what is “just and equitable”—which calls for an overall assessment in the light of the factors mentioned in s 79(4), each of which in turn calls for an assessment of circumstances. Because these assessments call for value judgements in respect of which there is room for reasonable differences of opinion, no particular opinion being uniquely right, the making of the order involves the exercise of a judicial discretion. The contrast is with an order the making of which is dictated by the application of a fixed rule to the facts on which its operation depends”.

“The principles enunciated in *House v. R* were fashioned with a close eyes on the characteristics of discretionary order in the sense which we have outlined. If the questions involved lend themselves to differences of opinion which, within a given range, are legitimate and reasonable answers to the questions, it would be wrong to allow a court of appeal to set aside a judgment at first instance merely because there exists just such a difference of opinion between the judges on appeal and the judge at first instance. In conformity with the dictates of principled decision-making, it would be wrong to determine the parties’ rights by reference to a mere preference for a different result over that favoured by the judge at first instance, in the absence of error on his part. According to our conception of the appellate process, the existence of an error, whether of law or fact, on the part of the court at first instance is an indispensable condition of a successful appeal”.

As I understand the principles they mean that discretionary orders contain characteristics which lend themselves a difference of opinion which within a range are legitimate and reasonable answers to the questions that are posed. If the answers are within that range it is wrong for a Court of Appeal to set the judgement aside because of a difference of opinion with the judge at first instance. It is an indispensable condition for a successful appeal that there be an error of law or fact on the part of the tribunal at first instance.

I draw attention to these principles because in my respectful view, the appellant focused its attack on the decision at first instance because its opinion differs from the one held by the Commissioner at first instance. Firstly, I consider the emphasis the appellant places on the use of the word “assault” in the Reasons for Decision. The appellant contends that if there was an assault it was extremely minor. It was inappropriate of the Senior Commissioner to label the incident as an assault and elevate the assault to where it was dispositive of the case. I cannot see how one can draw that conclusion on a reasonable reading of what the Commissioner at first instance did. Assault is “*an act that threatens physical harm to a person (whether or not actual harm is done)*” (*the Australian Concise Oxford Dictionary of current English—2<sup>nd</sup> Edition ISBN0 19 553442 5*). This is really an attack on the use of the word ‘assault’. The plain English meaning of ‘assault’ does not support the contentions of the appellant. In other words, the appellant has a different opinion concerning the meaning of the word ‘assault’. In my respectful view, the Commissioner at first instance, made a finding as to what happened which was open to him. Correctly, he categorised that as an assault. To extrapolate the word in its context to mean serious, as the appellant has done, is merely his opinion. Albeit be it a difference of opinion with the Commissioner at first instance. That is not sufficient in my view, on applying the principles in *Norbis v. Norbis (ibid)*, to overturn the Decision.

The second major flaw in the appellant’s case is its description of the Decision itself as the product of an unworldly approach. As soon as this attack is made, the appellant is calling into question the philosophical framework that the Commissioner at first instance adopted. It is entirely a matter of opinion whether the Decision was unworldly or not. The Commission, in a discretionary decision applying concepts of equity, good conscience and substantial merits, is entitled to have an opinion within reasonable bounds as to the proper conclusions to be drawn from the facts.

The Commission at first instance heard this matter over three days. It made clear choices between the evidence that was

presented to it by the competing parties. It should be born in mind that Mr Baron never admitted the incident as described by the respondent. The learned Senior Commissioner, after hearing the evidence, made a choice as to whose evidence he believed. He accepted the evidence led by the respondent, which he was entitled to do. There can be no criticism of the Senior Commissioner on the basis that the Decision was extempore. The case had proceeded for an extended period. The Commissioner had more than adequate time to absorb the arguments of the party. More importantly, he was able to observe the witnesses and had the advantage of observing demeanour and emphasis given to words by the various witnesses. In my view, that should not be replaced by a random selection of quotations from the transcript which taken collectively in this case, skewed the chronology in a way that assisted the appellant’s position.

In my opinion, there is no reason to substitute a view in place of that expressed by the Commission at first instance. According to the authorities it is an indispensable condition that there be an error in law or fact. The appellant has not demonstrated that either are present.

The appeal should be dismissed.

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

Order accordingly

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

Mr D S Ellis (of Counsel), by leave, and with him Mr D Cronin (of Counsel), by leave, on behalf of the respondent.

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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

Dampier Salt Operations Ltd  
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No. 1986 of 1998.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
COMMISSIONER J F GREGOR.

23 August 1999.

*Order.*

This matter having come on for hearing before the Full Bench on the 14th day of July 1999, and having heard Mr D H Schapper (of Counsel), by leave, on behalf of the appellant and Mr D S Ellis (of Counsel), by leave, and with him Mr D Cronin (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 August 1999 wherein it was found that the appeal should be dismissed, it is this day, the 23rd day of August 1999, ordered that appeal No 1986 of 1998 be and is hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,

President.

[L.S.]

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WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kim Anthony Fitzpatrick  
(Appellant)

and

Baulderstone Clough Joint Venture  
(Respondent).

No. 268 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.

CHIEF COMMISSIONER W S COLEMAN.

COMMISSIONER S J KENNER.

20 August 1999.

*Reasons for Decision.*

THE PRESIDENT: This is an appeal by the abovenamed appellant employee against a decision by the Senior Commissioner made on 9 February 1999, dismissing the application made by the abovenamed appellant pursuant to s.29(1)(b) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") in respect of an alleged unfair dismissal from his employment by the respondent, which occurred on or about 25 November 1998.

The claim was opposed by the respondent who asserted that the appellant's employment was, at all material times, governed by a Federal agreement in conjunction with a Federal award.

GROUND OF APPEAL

It is against that decision that the appellant now appeals on the following grounds—

1. The learned Senior Commissioner erred in fact and his discretion miscarried, in determining that the applicant was "forum shopping".
2. The learned Senior Commissioner should have determined that the applicant was in the process of identifying the appropriate forum.
3. The decision of the learned Senior Commissioner was unreasonable and plainly unjust for the following reasons—
  - a. The decision to dismiss the application was premature in that the applicant had not determined which jurisdiction he wished to proceed in;
  - b. The decision was premature in that the applicant was not satisfied that he would be able to proceed with his application in the Australian Industrial Relations Commission;
  - c. Parties to an application cannot consent to jurisdiction;
  - d. A challenge to jurisdiction can arise at any stage in a proceeding;
  - e. Even if there is no challenge to jurisdiction, by a party, a court or tribunal must determine whether or not it has jurisdiction to hear a proceeding;
  - f. It is possible that the applicant's employer may not be held to be a constitutional corporation. If so the applicant may not be able to pursue his application in the Australian Industrial Relations Commission due to absence of jurisdiction;
  - g. Due to the time limitations for applications in the Western Australian Industrial Relations Commission and the Australian Industrial Relations Commission and the complexity of the (sic) ascertaining the correct jurisdiction, for employees, who's employment is regulated by a federal instrument, there may be a period of time, outside of the time limits, for making application, in which an applicant does not know the correct jurisdiction;
  - h. The learned Senior Commissioner failed to have regard to he(sic) possibility that the

applicant may not be able to pursue his application in the Australian Industrial Relations Commission;

- i. The learned Senior Commissioner failed to have regard or proper regard for the interests of the applicant;
- j. The learned Senior Commissioner forced the applicant to elect to make his claim in one tribunal or the other in circumstances where the applicant was still not sure which tribunal was the one which could deal with the application;
- k. The learned Senior Commissioner was advised, by the Applicant's Counsel, that jurisdiction had not been dealt with in the Australian Industrial Relations Commission even though there had been a meeting before a person appointed by the Australian Industrial Relations Commission (Mr Negus);
- l. The learned Senior Commissioner was advised, by the Applicant's Counsel, that a conference was listed, before a Commissioner of the Australian Industrial Relations Commission on 25 February 1999. The learned Senior Commissioner was informed, by the Applicant's Counsel, that it was expected that any jurisdictional issues would be resolved at that time and that it was likely that an election could be made after that conference.
4. The learned Senior Commissioner's discretion miscarried in that he failed to act in accordance with equity and good conscience.
5. The learned Senior Commissioner should have found that there was no abuse of process at all and no prejudice to the respondent because the applicant did not press the learned Senior Commissioner to deal with the application.
6. The respondent had already answered the application at the time the decision was made and therefore would not have been put to additional expense in that regard.
7. The learned Senior Commissioner erred by having regard to irrelevant matters in reaching his decision: namely by finding that there would be undue hardship on the respondent when there was no evidence that there would be undue hardship on the respondent."

There was an unobjected to application to file and serve appeal books out of time, which the Full Bench granted.

BACKGROUND

The respondent hereto (being the respondent also at first instance) had filed a notice of answer opposing the claim by the applicant made by the application referred to above which was filed on 7 December 1998. By that notice of answer, the abovenamed respondent had asserted that the appellant had commenced proceedings in the Australian Industrial Relations Commission (hereinafter referred to as "the Australian Commission") alleging that his dismissal was unfair and seeking relief under the Workplace Relations Act 1996 (Cth).

It was common ground that, at the time the matter came before the Senior Commissioner, proceedings had been commenced by the appellant in the Australian Commission, whereby he alleged that his dismissal from employment was unfair and he sought relief under the Commonwealth Workplace Relations Act 1996.

The respondent submitted that the application should be dismissed as an abuse of process. The basis of that submission was that the application was essentially the same as that before the Australian Commission and that the respondent should not have to face the prospect of having to answer the claim in both jurisdictions.

It was the appellant's submission at first instance that the option of pursuing his claim in the jurisdiction should be kept open in case there were technical reasons why the application before the Australian Commission could not proceed on its merits.

This was opposed by the respondent on the basis that to do so would send a message that the Commission would countenance duplicate applications regarding the same matter.

The appellant was prepared to consent to an order staying further proceedings in this application, pending the outcome of the application before the Australian Commission.

The Commission decided, after hearing the parties, to exercise the power vested in the Commission to dismiss the application under s.27(1)(a) of the Act, as a non-application.

The proceedings in the Australian Commission at the time of the hearing at first instance had been listed for a conciliation conference. In addition, it was acknowledged before the Senior Commissioner at first instance that there was then no jurisdictional challenge being mounted in the Australian Commission to its jurisdiction. Further, however, I should observe that it is and was open to the Australian Commission itself at any time to raise the question of its jurisdiction.

It was not, in fact, submitted before the Senior Commissioner at first instance by any party that there was no jurisdiction in the Australian Commission.

#### SENIOR COMMISSIONER'S FINDINGS

The Senior Commissioner made a number of findings and reached a number of conclusions—

- (1) Apart from the impact on the respondent, it is not in the public interest that there be two virtually identical claims between the parties in different tribunals at the same time.
- (2) It is not an answer to say that the applicant will refrain from prosecuting one of the claims whilst it prosecutes the other.
- (3) Further, whilst it might seem prudent for the appellant to cover all eventualities by lodging concurrent applications, that arrangement imposes an undue hardship on the respondent who must go to additional expense and trouble to answer identical claims in separate jurisdictions. (The Senior Commissioner observed that this was not just and equitable).
- (4) In the case of proceedings before the Commission, it is patently clear that Parliament imposed a time limit on those sorts of proceedings so that they be dealt with expeditiously.
- (5) Industrial tribunals have frowned on the practice of "forum shopping" of the kind revealed on this occasion. (The Senior Commissioner cited the following authorities as examples; Melbourne v J C Techforce Pty Ltd (1998) 44 AILR 11-102, Brunning v Kingmill (Australia) Pty Ltd (1988) 44 AILR 5-183 and Ciseros v Wadeock Pty Ltd (1997) 42 AILR 5-133(6)).
- (6) That the arrangement of lodging two concurrent applications imposed an undue hardship on the respondent which was put to added expense and trouble having to answer identical claims before separate tribunals.
- (7) That the appellant, having elected to prosecute the proceedings before the Commission, should not be allowed to proceed further with the proceedings in the Commission which was an abuse of process and the application should be dismissed.

#### ISSUES AND CONCLUSIONS

This was a discretionary decision as that type of decision is defined in Norbis v Norbis (1986) 65 ALR 12 (HC). Accordingly, unless an error in the exercise of the discretion is established by the appellant in accordance with the principle laid down in House v The King [1936] 55 CLR 499 (HC) (see also Gromark Packaging v FMWU 73 WAIG 220 (IAC)), the Full Bench cannot interfere with the decision. The appellant was entitled as a matter of law to file applications in the Australian Commission and in this Commission.

The reasons for filing an application in this Commission after the application was filed in the Australian Commission as expressed was that the second application had to be filed in the Commission to preserve the applicant's position if the application in the Australian Commission was struck out for lack of jurisdiction. I should add that there was no evidence of any

challenge to jurisdiction in the Australian Commission. However, this would not preclude the Commission raising the question itself.

In addition, there might be other reasons why the matter might be struck out in the Australian Commission, which also has nothing to do with the determination of merits.

There were assertions from the bar table by Mr Randles, counsel for the respondent, as to what would be the position of the respondent in the proceedings in the Australian Commission, but these cannot be considered because of the application of s.49(4) of the Act.

It is clear that the appellant's making of the second application did not represent forum shopping. I say that because, on what was before the Senior Commissioner at first instance, it was made clear that the application was made to preserve the applicant's position if the matter could not be heard and determined in the Australian Commission. The applicant was not seeking to preserve a position whereby the applicant could proceed on the merits in the Commission here if the application in the Australian Commission having been heard and determined on its merits did not end in a result favourable to the applicant. The applicant's position was, to some extent, supported by the applicant's willingness to have the second application stayed pending the hearing and determination of the proceedings in the Australian Commission. Certainly, any attempt to take proceedings in this Commission after the matter had been heard and determined on its merits in the Australian Commission would, in my opinion, be an abuse of process and merit a dismissal. This was not, however, the case.

The general principle is that a court can and will interfere whenever there is vexation and oppression to prevent the administration of justice being prevented for an unjust end (see Moore and Others v Inglis (1976) 50 ALJR 589 at 591 per Mason J (HC)). His Honour cited with approval the reasons for judgment of Sir Gorell Barnes P in Logan v Bank of Scotland (No 2) [1906] 1 KB 141 at 150, and also Slough Estates Ltd v Slough Borough Council [1968] ChD 299 at 314-315 per Ungoed-Thomas J (see also AEEFEU and Others v SCM Chemicals Ltd 75 WAIG 2507 at 2508 per Sharkey P and Henry v Henry (1996) 70 ALJR 480 at 484 per Brennan CJ and at 488 per Dawson, Gaudron, McHugh and Gummow JJ and the cases cited therein).

Where two actions are brought by a person against the same person in different courts governed by the same procedure, it is, prima facie, vexatious to bring those two actions where one will lie (see Moore and Others v Inglis (HC) (op cit) and Logan v Bank of Scotland (op cit), as well as AEEFEU and Others v SCM Chemicals Ltd (op cit)).

The onus lies upon the party who brings a second action to show that it is not brought vexatiously. I apply those principles.

In my opinion, where a time limit of 28 days exists, as it does under s.29(2) of the Act, in relation to a claim for unfair dismissal by the applicant, and where there is a risk that an application in the Australian Commission will fail for lack of jurisdiction or because, for some other reason, the Australian Commission is prevented hearing and determining the matter on its merits, then it is not vexatious and it is not forum shopping for an applicant to make a second application.

Such an application should, therefore, not be dismissed under s.27(1)(a) of the Act, unless and until the Australian Commission hears and determines the application on its merits, or otherwise finally disposes of it, and a proper decision of this Commission under s.26 and s.27 requires that dismissal.

When, however, the application in the Australian Commission has been heard and determined on its merits, then it would usually be an abuse of process for an identical application or a substantially similar application in this Commission to proceed.

I am satisfied that the appellant was not forum shopping and that the Senior Commissioner at first instance erred in so finding. I am also satisfied that the appellant established that the application brought within a strict time limit to preserve the appellant's right was not vexatious. Indeed, it was not found at first instance to be vexatious.

Next, I am satisfied that it is prudent for an applicant to cover all reasonable eventualities by lodging concurrent

applications in relation to unfair dismissals in the Australian Commission and in this Commission when the applicant's ability to seek relief in respect of an alleged unfair dismissal is at risk and when both tribunals have jurisdiction, as they have.

A proper application of s.26(1)(a) of the Act and proper consideration of the interests of the applicant under s.26(1)(c) compel that conclusion.

The application was not vexatiously lodged, in any event, nor was there any other reason to say that the lodging should be condemned. I would not follow the authorities cited above if they say the contrary.

The applicant, is, in my opinion, entitled to protect his position and if that is something which inconveniences the respondent then that is a lesser consideration in the face of the prospect of the loss of any remedy to the applicant. The inconvenience to respondents in these cases is a matter for resolution by the relevant Parliament or Parliaments.

However, in my opinion, too, the applicant having filed the two applications in this case cannot succeed, having regard to s.26(1)(a), s.26(1)(c) and s.27(1)(c) of the Act. In a situation where he can establish to this Commission's satisfaction that there is a challenge to the jurisdiction likely to be mounted in the Federal Commission or some other matter of sufficient import which would prevent the likelihood of the matter being heard and determined on its merits by the Australian Commission, the application in this Commission should be stayed.

In this case, the applicant did not establish that there was any challenge to the jurisdiction or any other reason why the matter would not be heard and determined in the Australian Commission on its merits. The fact that the Australian Commission might raise the matter was not at all canvassed in that jurisdiction, so far as I am aware, nor was it suggested that this was likely to occur. There was not sufficient reason to say that the second application should remain afoot, having regard to the fact that the applicant did not deny the likelihood of the matter being heard and determined finally in the Australian Commission, and having regard to s.26(1)(a), s.26(1)(c), s.27(1)(a), s.6(a), s.6(c) and s.6(g) of the Act.

The Senior Commissioner at first instance, therefore, dismissed the application and did not err in doing so. Had there been a pleading challenging the jurisdiction, federally, or sufficient likelihood that the question of lack jurisdiction in the Australian Commission would be raised by the Commission or by the respondent then the result should have been different. The Senior Commissioner, having found as he did on the material before him, did not err in so doing.

I am not satisfied that there was any denial of natural justice, or if there was that the matter could possibly have been decided differently if such natural justice were not denied, having regard to Stead v State Government Insurance Commission [1986] 161 CLR 141 (HC).

I have considered all of the relevant material, authorities and submissions. For those reasons, I find no error as alleged, no ground of appeal made out and no error in the exercise of the discretion at first instance. I would dismiss the appeal.

CHIEF COMMISSIONER W S COLEMAN: I have had the advantage of reading the draft reasons for decision of the President. I agree that the Senior Commissioner's discretion did not miscarry in dismissing the application pursuant to section 27(1)(a) of the Industrial Relations Act 1979.

In some circumstances it may be prudent for an applicant uncertain of the jurisdictional boundaries between the Industrial Relations Act 1979 and the Workplace Relations Act 1996 to lodge applications under both statutes. However once it is apparent that there are no technical issues which prevent the matter being considered on its merits in the tribunal in which proceedings first commenced, it would seem to be oppressive to maintain the other application merely as insurance. There is the danger that the threat of another application may interfere with the administration of justice. This was not the case in the circumstances of the matter that gave rise to this appeal. However there was nothing to indicate that there was some jurisdictional limitation on the tribunal in which the matter first commenced.

COMMISSIONER S J KENNER: The grounds of appeal in this matter, the background to the proceedings and the Senior

Commissioner's findings at first instance, have been set out in detail in the reasons for decision of His Honour the President and I need not repeat them on this occasion.

The short point arising on this appeal, is whether the Senior Commissioner erred in dismissing the application at first instance pursuant to section 27(1)(a) of the Industrial Relations Act 1979 ("the Act"), on the grounds that the appellant had earlier commenced unfair dismissal proceedings in the Australian Industrial Relations Commission ("AIRC") for essentially the same relief. It was common ground between the appellant and the respondent, that in the proceedings before the AIRC, the respondent had not raised any challenge to the AIRC's jurisdiction to entertain the unfair dismissal application in that jurisdiction.

#### Principles

It is a general principle that in circumstances where a party has commenced proceedings in different jurisdictions that are governed by essentially the same procedure, and the same relief is available, that the second set of proceedings will prima facie be regarded as vexatious. In *Moore and Another v Inglis* (1976) 50 ALJR 59 the High Court considered this issue in the context of proceedings brought by a party in both the Supreme Court of the Australian Capital Territory and in the High Court. Mason J observed as follows at 591—

*"The principal issue is whether, in the light of all the circumstances which I have outlined, the commencement by the plaintiff of the proceedings in this Court should be held to be vexatious and oppressive or to be an abuse of the process of the Court within the meaning of O.63, r 2. In McHenry v Lewis (1982), 22 Ch D 397, at p408 Bowen L J referred to "the general principle that the Court can and will interfere whenever there is vexation and oppression to prevent the administration of justice being perverted for an unjust end". After quoting this passage, Sir Gorell Barnes P in Logan v Bank of Scotland (No 2), (1906) 1 KB 141, at p150 went on to say: "For instance, in this country, where two actions are brought by the same person against the same person in different Courts governed by the same procedure, and where the judgements are followed by the same remedies, it is prima facie vexatious to bring two actions where one will lie..."*

The onus lies on the party who has commenced the second proceedings, to establish that those proceedings were not vexatiously commenced. It is the commencement of the second proceedings that, in my view, in applying the authorities referred to above, creates the abuse of process. In these circumstances, in my opinion, it is not the case that the Commission should countenance the commencement and maintenance of concurrent proceedings in both the AIRC and the Commission for unfair dismissal, unless good reason exists why this should be so. An example of where good reason may exist, is in the case where there is a real and serious prospect of a jurisdictional difficulty in the first set of proceedings. In that event, a party would have a sound defence to any application to stay or dismiss proceedings on the basis of an abuse of process, in that the party would be doing no more than preserving it's right to bring the action in a tribunal of competent jurisdiction.

In the circumstances before the Commission at first instance, it was not, and in my opinion with respect, could not have been seriously contended, that there was a jurisdictional impediment to the AIRC proceeding to hear and determine the appellant's application in that jurisdiction. There was certainly nothing before the Senior Commissioner to suggest this was so. On the basis of what was before the Senior Commissioner at first instance, it could not be concluded that the appellant discharged the onus on it to show that the commencement of the second set of proceedings in the Commission was not vexatious or otherwise an abuse of process of the Commission. In my view, it is not a good reason to commence two sets of proceedings merely on the basis that the applicant keep it's options open, as it were, in the event there may arise a subsequent but presently unarticulated issue as to jurisdiction.

I am not persuaded that the Senior Commissioner erred in the exercise of his discretion, such that the Full Bench should interfere with the exercise of that discretion on appeal: *Norbis v Norbis* 65 ALR 12.

In my view, none of the appeal grounds have been made out and I would dismiss the appeal.

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

Order accordingly

Appearances: Mr D Howlett (of Counsel), by leave on behalf of the appellant.

Mr A Randles (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kim Anthony Fitzpatrick  
(Appellant)

and

Boulderstone Clough Joint Venture  
(Respondent).

No. 268 of 1999.

BEFORE THE FULL BENCH

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

20 August 1999.

*Order.*

THIS matter having come on for hearing before the Full Bench on the 22nd day of July 1999, and having heard Mr D Howlett (of Counsel), by leave, on behalf of the appellant and Mr A Randles (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 20th day of August 1999 wherein it was found that the appeal should be dismissed, it is this day, the 20th day of August 1999, ordered that appeal No 268 of 1999 be and is hereby dismissed.

By the Full Bench

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

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kamel Lebeidi trading as  
Sugar Gum Restaurant  
(Appellant)

and

Rebecca Aimee Napoli  
(Respondent)

No. 261 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
CHIEF COMMISSIONER W S COLEMAN  
SENIOR COMMISSIONER G L FIELDING

1 September 1999.

*Order.*

THIS matter having come on for hearing before the Full Bench on the 1st day of September 1999, and there being no appearance by or on behalf of the appellant and having heard Ms Y D Henderson (of Counsel), by leave, on behalf of the respondent, it is this day, the 1st day of September 1999, ordered and declared as follows—

- (1) THAT the applications herein by the appellant to extend time to file appeal books out of time be and are hereby dismissed.

- (2) THAT appeal No 261 of 1999 filed herein on the 25th day of February 1999 against the decision of the Commission in application No 1778 of 1998 made on the 8th day of February 1999, be and is hereby dismissed.

By the Full Bench,

(Sgd.) P.J. SHARKEY,

President.

[L.S.]

**FULL BENCH—  
Procedural Directions and  
Orders—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Managing Director, South Metropolitan College of TAFE  
Appellant

and

The Civil Service Association of Western Australia  
Incorporated  
Respondent.

No 585 of 1999.

and

No FBA 1 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
COMMISSIONER J F GREGOR  
COMMISSIONER S J KENNER.

18 August 1999.

*Order.*

This matter having come on for hearing before the Full Bench on the 18th day of August 1999, and having heard Mr D J Matthews (of Counsel), by leave, on behalf of the appellant and Ms M C Lynn (of Counsel), by leave, on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 18th day of August 1999, ordered by consent that appeals No 585 of 1999 and No FBA 1 of 1999 be heard together on Monday, the 4th day of October 1999 at 10.30 am.

By the Full Bench

(Sgd.) P. J. SHARKEY,

President.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Harold Summerfield  
(Appellant)

and

Shire of Katanning  
(Respondent).

No. FBA 5 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY  
SENIOR COMMISSIONER G L FIELDING  
COMMISSIONER C B PARKS.

26 August 1999.

*Order.*

This matter having come on for hearing before the Full Bench on the 26th day of August 1999, and having heard Mr D Howlett

(of Counsel), by leave, on behalf of the appellant and Mr S R Edwards (of Counsel), by leave, on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 26th day of August 1999, ordered by consent that appeal No FBA 5 of 1999 be and is hereby adjourned pending the hearing and determination of appeal No IAC No 5 of 1999 in the Western Australian Industrial Appeal Court, or until further notice.

By the Full Bench

(Sgd.) P.J. SHARKEY,

President.

[L.S.]

## COMMISSION IN COURT SESSION— Matters dealt with—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Rail Tram and Bus Industry Union of  
Employees, Western Australian Branch

and

The Western Australian Government Railways Commission.  
No. CR 358 of 1998.

COMMISSION IN COURT SESSION

COMMISSIONER A.R. BEECH.

COMMISSIONER C.B. PARKS.

COMMISSIONER P.E. SCOTT.

10 August 1999.

*Supplementary Reasons for Decision.*

AT the Speaking to the Minutes, Westrail raised a number of matters. It suggested that the use of the term “unlikely” in Order 3(b) will be ambiguous. Westrail believes that the term “unlikely” may depend upon the context in which it is used. It considered that the order to issue should also require consideration of the other elements of risk assessment in relation to the performance of work. It raised an issue concerning the Commission’s jurisdiction to deal with matters of promotion in the public sector and takes issue with the reference to a denial of “track access permits”.

As the Reasons for Decision noted, particularly at page 12, the conclusion reached by the Commission is based upon the context of the work that each of the 4 employees would have otherwise performed had it not been for Westrail’s policy in relation to their insulin-dependent diabetes. Each of those 4 employees must now be assessed on an individual basis to determine the likelihood that any of them may have a hyper- or hypoglycaemic attack at work. If it is unlikely, using the ordinary meaning of that word, that any of the 4 employees will have a hyper- or hypoglycaemic attack at work then it will have been unfair to have denied that employee the opportunity to perform the work which he otherwise would have performed in his classification, or in the classification to which he would have been promoted. That conclusion necessarily takes into account the evidence before the Commission regarding the classifications concerned and the nature of the work to be performed. The order does not apply to any other classification.

The Commission acknowledges, at page 12, that the reason why the 4 employees were denied track-access work was by virtue of their insulin-dependent diabetes. For that reason, they did not meet Westrail’s medical standards. In each case, their track-access permit was also withdrawn, thus denying them the licence to perform track-access work. The wording in the order reflects this conclusion.

Westrail also raised the jurisdiction of the Commission to deal with matters of promotion in public sector employment due to the provisions of s. 23(2a) of the Act. The short answer to the issue is that the Commission is not by this order proposing to require Westrail to promote any person, and the issue does not arise on this occasion. Indeed, the issue may never arise if the parties are able to agree that an employee who was unfairly denied promotion by reason of his insulin-dependent diabetes has that unfairness remedied by Westrail itself now promoting that person to the position he otherwise would have held. The Commission also notes that although the denial of promotion for 2 of the 4 employees was always a live issue before the Commission, no question of the Commission’s jurisdiction to order promotion by way of remedy was raised during the course of the hearing. In order to clarify the purpose of Order 3 which adjourns the application, its wording has been altered to provide that if the matter is returned to the Commission it may be for the purpose of asking the Commission to consider ordering the promotion by Westrail of an employee from the date that employee had been refused promotion by reason of his insulin-dependent diabetes.

The order now issues.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Rail Tram and Bus Industry Union of  
Employees, Western Australian Branch

and

The Western Australian Government Railways Commission.  
No. CR 358 of 1998.

10 August 1999.

*Order.*

HAVING heard Mr R. Wells and Ms J. Kaur on behalf of the applicant and Mr D. Johnston and Ms Drimatis on behalf of the respondent, the Commission in Court Session, pursuant to powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

THAT—

1. The 4 employees referred to in these Reasons for Decision be individually assessed to establish the likelihood that any of them will suffer a hypo- or hyperglycaemic attack while at work.
2. The parties confer on the manner of individual assessment in accordance with these Reasons for Decision.
3. This application be adjourned on the basis that it may be re-listed at the request of either party to either –
  - (a) determine the manner of individual assessment of the 4 employees; or
  - (b) in the event that the individual assessment demonstrates that it is unlikely an employee will suffer a hypo- or hyperglycaemic attack while at work, to consider ordering the promotion of an employee who was denied promotion and/or the payment by Westrail of the wages and other earnings which would have been earned by that employee from the date the employee was denied track-access or refused promotion.

COMMISSION IN COURT SESSION

(Sgd.) A.R. BEECH,

Commissioner.

[L.S.]

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

and

The Honourable Minister for Labour Relations  
(Intervener).

No. 1144 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

19 August 1998.

*Reasons for Decision.*

**INTRODUCTION**

THE PRESIDENT: This is an application by the abovenamed intervener, the Honourable Minister for Labour Relations (hereinafter referred to as "the Minister").

The Minister, by her application, applies to discharge Order 9 of the directions and orders of the Commission, constituted by the President, made on 23 June 1998, on the following grounds—

- a. The application is not competently made pursuant to either s.66 or any or other provision of the Act;
- b. Further, and in the alternative, in the present proceedings the President does not have jurisdiction to make an order restraining the persons specified in Order 9 of the Orders from taking the action specified in Order 9 of the Orders, nor any other order in the nature of an injunction;
- c. Further, and in the alternative, in the present proceedings the President does not have jurisdiction—
  - i. To judicially review the enactment of Part IIIA of the Act;
  - ii. To make any declaration as to the validity of Part IIIA of the Act; or
  - iii. To restrain the respondent from performing the statutory duty imposed by s.84D of the Act on the ground that s.84D of the Act, or any other provision in Part IIIA of the Act, is invalid; and
- d. The balance of convenience does not favour the making of Order 9."

Order 9 of the Directions and Interim Order of 23 June 1998 reads as follows—

"(9) THAT by way of interim order and until the hearing and determination of application No 1144 or further order, the respondent, all of its officers (including its Secretary) and all of its employees and agents do act in compliance with the rules of the said respondent, and are hereby restrained from making any notification of any kind pursuant to Part IIIA of the Industrial Relations Act 1979 (as amended) and, in particular s84D hereof."

I heard detailed submissions in this matter, all of which I have considered.

The instant application is not made pursuant to any liberty to apply given to the parties to the substantive application herein, on 23 June 1998.

That is because that order was made before the applicant in this application (the intervener) was given leave to intervene, or indeed applied for such leave.

The only evidence from a witness was the evidence by Mr William Ernest Charles Game, deposed to by affidavit sworn on 22 June 1998. Mr Game is the Secretary of the respondent organisation, the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch. Annexed to that affidavit is a number of documents, including a copy of an affidavit sworn by Mr Game on 22 June 1998 and filed in application No 1145 of 1998.

**ISSUES, FACTS, FINDINGS OF FACT AND OTHER  
FINDINGS**

Relevantly, Mr Game deposed in the affidavit of 22 June 1998—

- (a) That on 12 June 1998 he instructed Mr Carl Young, an industrial advocate with the respondent organisation, to notify the Commission of the respondent organisation's "Federal Log" application. Such notification was effected by the annexed letter of 12 June 1998 to the Registrar (Exhibit 2(C)).
- (b) That the Registrar had written a letter to Mr Game (Exhibit 2(E)), annexed to the affidavit of 22 June 1998, pursuant to Part IIIA of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act"), requiring further information and referring to the "possibility of a monetary penalty" if there were no compliance.
- (c) That Mr Game believes that Part IIIA of the Act is inconsistent with the "constitutionally guaranteed freedom to speech and action on political matters".
- (d) That Mr Game believes that Part IIIA of the Act is "inconsistent with s.109 of the Commonwealth Constitution".
- (e) That Mr Game is required under the rules of the respondent organisation to act lawfully and to protect and advance the interests of its members. Indeed, he is liable to penalty under the rules if he does not.
- (f) That, if he acts lawfully, Mr Game will be liable "under other statutes".
- (g) That, further, the respondent organisation, if Mr Game acts unlawfully, will be "penalised under various statutes". He deposes that the penalties include fines and/or deregistration under the Act.
- (h) That the respondent organisation and Mr Game are now in an untenable position concerning the notification requirements of Part IIIA of the Act.

It should be reiterated that the respondent organisation did not oppose the interim orders sought by the applicant, Mr Barbour. I am satisfied and find that Mr Game is required to act lawfully, as is the respondent organisation. Both are also required to act in accordance with the rules of the respondent organisation. To so find is axiomatic. I find that Mr Game is required, as an officer of the organisation, to comply with its rules, as I have said. Nothing to the contrary was submitted, nor could it conceivably be.

I would also observe that there was no evidence of any resolution of any governing body within the respondent organisation that there not be a notification under s.84D of the Act. I do note, also, that the letter of 12 June 1998 (Exhibit 2(C)) referred to above is claimed by the respondent organisation to be, in fact, a compliance with its duty under s.84D.

It is appropriate here to also refer to s.61 of the Act, which reads as follows—

"61. Upon and after registration, the organization and its members for the time being shall be subject to the jurisdiction of the Court and the Commission and to this Act; and, subject to this Act, all its members shall be bound by the rules of the organization during the continuance of their membership."

I should also, for convenience sake, set out here the text of s.84D, and I do so—

"84D. (1) An organization shall, not later than 7 days after receiving received notice under section 84C, notify the Registrar in writing of—

- (a) the nature of the relevant dispute;
- (b) the name and address of each State employer who is named as a party to the alleged

- industrial dispute in the notification given under section 99 of the Commonwealth Act;
- (c) the title by which each award or industrial agreement which binds the State employer and to which the State organization is a party is known and the date on which the award was made or the industrial agreement was registered; and
  - (d) such other details as may be prescribed by regulation by the Governor.

Penalty: \$5,000

(2) If an organization is guilty of an offence against subsection (1), any officer of the organization who is in any way, directly or indirectly, knowingly concerned in or a party to the contravention of that subsection, is guilty of an offence and liable to a penalty of \$1,000.

(3) It is a defence in any proceeding under subsection (1) for the organization to prove that, apart from the notice of the alleged industrial dispute received under section 84C, it did not know, and could not reasonably be expected to have known, that notification of the alleged industrial dispute had been given under section 99 of the Commonwealth Act."

It is also quite clear from Mr Game's affidavit that he sees a conflict between the duty of the organisation and his duty as its Secretary under the rules, with the duty said to exist under Part IIIA and particularly s.84D of the Act.

#### Is the application and are the orders sought therein within the jurisdiction of the Commission?

The substantial submission on behalf of the intervener is that Order 9 was made outside jurisdiction and, one assumes also, outside power.

#### The Section

S.66 of the Act confers (by s.66(2)) jurisdiction on the President in the following terms—

"(2) On an application made pursuant to this section, the President may make such order or give such directions relating to the rules of the organization, their observance or non-observance or the manner of their observance, either generally or in the particular case, as he considers to be appropriate and without limiting the generality of the foregoing may—"

(S.66(2)(a) to (f) inclusive follow and it is not necessary to reproduce the text of those provisions here.)

I considered that jurisdiction most recently in CEEEIPPU v The Registrar (No 1181 of 1998) (unreported Decision of the Commission, constituted by the President, delivered 27 July 1998). In the Reasons for Decision therein, I referred to s.66(2) of the Act, which I have quoted above. S.66(2)(a) to (f) prescribe particular heads of powers and the exercise of jurisdiction so conferred. Orders are within the jurisdiction of the Commission, constituted by the President, as they are applied for or made, if they relate to the rules of an organisation, their observance or non-observance or the manner of their observance. If orders or directions sought or made are not such orders, then there is no jurisdiction to entertain an application or to make orders which do not comply with the words of s.66(2).

In CEEEIPPU v The Registrar (op cit), I referred to the meaning of the word "relate" in s.66(2) of the Act and to various authorities and held—

"Accordingly, jurisdiction exists to make orders as prescribed in s.66(2) and s.66(2)(a) to (f) inclusive, but only if the orders have reference to or some relation to or connection with an organisation's rules, their observance or non-observance or the manner of their observance."

Those observations are applicable here.

#### Main Submission

The main submission under this head, on behalf of the intervener, is that Order 9 does not relate to the rules of the respondent organisation, their observance or the manner of their observance. It was submitted that the rules referred to in the Schedule to the application, namely Rules 3 and 5, are not sufficient to support orders within jurisdiction. In fact, what is submitted is that the present applications represent a direct

challenge to the validity of Part IIIA of the Act on the ground of its constitutional validity. Therefore, so the submission went, the question of validity of Part IIIA is not a matter which relates to the rules of the respondent organisation, their observance or non-observance or the manner of their observance. In short, the orders sought are to the effect that Order 9 of 23 June 1998 is an order made outside the jurisdiction of the President.

For the parties to the application proper, it was submitted that the question raised was whether it was lawful for the respondent organisation, its officers, agents or employees to comply with s.84D of the Act.

#### The Relevant Rules—Rules 3 & 5

Rule 3, which reads as follows, requires the organisation to act lawfully—

"The objects of the Union shall be to protect and further the interests of members by lawful means and in particular:..."

In that sense, I do not think Rule 3 is a mere signpost as objects in statutes are, or most of them. A fair reading of Rule 3, in the context of the whole of the rules, is that the rule is not an object in the sense in which an object is usually described in a statute. In its terms, Rule 3 is a command to act lawfully in the interests of the organisation and specifically its members. That is, the respondent organisation is required to protect and further the interests of the members, but to do so only by lawful means. Whether lawful means more than just "in accordance with the law", I will consider later in these reasons.

It is axiomatic that an officer whose power derives from the rules of an organisation should act lawfully, in the sense of complying with the law or not acting contrary to the law, as should the organisation.

As to Rule 5 of the respondent organisation's rules, that provides for the government of the organisation.

The rule requires that the State Conference take all steps within the organisation necessary to achieve any and all objects of the respondent organisation. One of those objects requires the respondent organisation to act lawfully, as I have observed.

Rule 5.4.1.1 prescribes the Executive Committee's role. Rule 5.4.1.1 reads as follows—

"The Executive Committee shall generally serve the purpose of an executive body of the State Council. It shall, subject to the powers of the State Conference and the State Council, carry out particular responsibilities allocated to it under these Rules and take all steps necessary and in accordance with these Rules to strengthen the Union and further the interests of the members."

I emphasise the words "in accordance with these rules", which includes a direction to act lawfully in Rule 3.

The question is whether the organisation, its officers, agents and employees are acting lawfully if they comply with s.84D of the Act, the submission being that Part IIIA, in particular, is invalid in the face of the Constitution. It was submitted, that to act in compliance with s.84D, given that the respondent organisation asserts that Part IIIA is invalid in the face of the Constitution, and it would result in an unlawful act. To do so would, therefore, be to act contrary to the rules, if further notification were made under the rules. The respondent organisation also relied on its already having complied with the requirements of s.84D, so it was submitted, and as I have observed.

One submission on behalf of the intervener was that the question of unlawfulness did not arise in this matter.

As I understood the submission for the intervener, it was this. The compliance with s.84D of the Act was a lawful act required by an existing valid statutory requirement under pain of penalty for non-compliance. Further, until Part IIIA was found invalid, if in fact it ever was, presently, as a matter of law, the respondent organisation was bound to comply with the provision. Indeed, as I understood the submission, not to comply with s.84D or the provisions of Part IIIA would be an unlawful act. At first blush, there might be some merit in that argument.

That at best, if Part IIIA of the Act or s.84D in particular were invalid, the act of notification would arguably not be

unlawful, but would be an act not required by the law and would have no statutory validity, nor would it be required by the law, if Part IIIA were later found to be invalid in the face of the Constitution. Further, a failure to comply would not be an omission requiring the respondent organisation liable to penalty either if Part IIIA were found to be invalid or s.84D were found to be invalid in the face of the Constitution. However, an act to the detriment of the organisation by making a notification which, as a matter of law, was not required as not being in the interests of the organisation (see Rule 3), would be contrary to the rules and the duty of officers under the rules, and, therefore, the organisation. Because of S.61 of the Act, that would be categorised as an unlawful act.

I say that because there is a competing requirement and that is that the members of the respondent organisation are bound by its rules, by virtue of s.61 of the Act, as is the respondent organisation. Some assistance can be derived, too, from finding the meaning of the word "lawful" to discover the answer as to whether an argument as to lawfulness exists.

"The natural meaning of the word "lawful" depends, of course, on the context in which the words is used. It may mean, simply, "permitted". In this sense, an act is lawful when it can be done without infraction of the law, and so of a lawful trade or purpose. Another use is in the sense of supported by the law, e.g., lawful authority, excuse or impediment; but it seems to me that, in some connections, the word implies a quality of being "legally enforceable"."

(See *Crafter v Kelly* [1941] SASR 237 at 243 per Napier J.)  
(See also *Taikato v R* (1995) 139 ALR 386 at 412 per Kirby J.)

It is to me quite clear, from Mr Game's affidavit evidence and from the submissions of the parties, that what I am being asked to decide here is whether the obligations which Mr Game perceives are his, as an officer of the respondent organisation and consequently are the respondent organisation's obligations under its rules, are what bind the organisation because s.84D of the Act purports to impose other obligations and that is a provision which is said, on behalf the respondent organisation and Mr Barbour, to be invalid.

I am of the opinion that the nature of the problem could have been more specifically raised in evidence, but it is clear, from Mr Game's uncontradicted evidence, that he says that what is raised is the question whether the organisation can properly, under its rules, decide not to notify when there is an obligation to comply with the rules and decisions made under the rules or whether s.84D and Part IIIA of the Act are valid and require a notification to be made as a matter of law. If the latter is the case, then there is an obligation, as a matter of law, to comply.

In short, I am being asked whether the observance of the rules, as Rule 3 and 5 require it, and that includes the duty of an officer of the organisation, require compliance with an allegedly invalid statutory provision when there is another provision, s.61 which, with reference to the rules and the duties of an officer or member of an organisation under the rules, requires otherwise. The order made because of that is one directly related to the rules, their observance and the manner of their observance.

The other side of the question is, of course, whether s.84D of the Act requires non-observance of the rules if there is a conflict with Part IIIA. That, of course, depends on whether Part IIIA is valid or not. It would be a much clearer issue if there were a resolution of the organisation requiring non-compliance of s.84D, but on the evidence, as I have already observed, it is clear enough that a question arises as to whether the organisation and its officers acting on its behalf are compellable, under s.84D, as a matter of law, or whether, as a matter of their own perception of their duty on behalf of the organisation and acting for the organisation, they are not compellable under the rules to give the notification required. "Lawful" has the meaning, in my opinion, compellable or enforceable at law in Rule 3, it is arguable, as well as the more common meaning of in accordance with the law.

It is, therefore, quite plain, for those reasons, that Order 9 is an order made relating to the rules of the organisation, their observance or non-observance, because, on an interim basis, the order requires the respondent organisation to act in

accordance with its own requirements under its rules rather than to comply with s.84D of the Act. As I have observed above, Order 9, in its terms, is an order to comply with the rules of the respondent organisation. That part of it which restrains the respondent organisation, its officers, agents and employees from making notification under s.84D of the Act is complementary only.

There is a further, and perhaps alternative, issue. It was submitted that the order made did not relate to the respondent organisation's rules because an order that a person could not comply with the requirement of an Act (in this case s.84D), which requirement to comply was supported by liability to a penalty, was an order which was not one under s.66(2) of the Act.

The rules require the organisation and those who are its government, its officers, agents and employees to act lawfully. Even if Rule 3 did not say so, that would be the case. The organisation would be required to act lawfully under its rules. Acting lawfully involves, inter alia, complying with the rules (see s.61 of the Act). As a matter of law, persons are required to comply with the rules. It would seem to me that that also would involve compliance with a lawfully and validly made resolution under the rules. Of course, it would be a much clearer situation if there were competent resolutions or a resolution of any of the governing bodies requiring members not to act unlawfully and make a notification under s.84D. Nonetheless, it is clear enough that what is submitted to me is that the respondent organisation should not, upon Mr Barbour's application, be permitted to make notification as an unlawful matter, when there is no legally enforceable obligation to do so.

It was, of course, submitted by Mr Mitchell that, even if Part IIIA of the Act was decided by me to be invalid, the act of notification is not an act which would, therefore, be unlawful. Of course, it would be unlawful were it to occur in the face of a resolution and there was no valid requirement for it to do so. Nonetheless, if a s.61 direction or resolution required compliance with the rules as against Part IIIA, whilst the validity of Part IIIA was in question, then it would be unlawful to comply with that provision, arguably.

It seems to me, too, that *Patrick Stevedoring Operations No 2 Pty Ltd v MWU* (1998) ALR 642 at 658 (HC) is not authority to the contrary. That is because s.61 of the Act casts a statutory duty to comply with an organisation's rules. S.84D of the Act casts an obligation on the organisation to comply with its provisions.

Thus, the two obligations remain in collision, because one party asserts that there is a valid obligation not to comply with s.84D of the Act, because the rules require compliance with that and Part IIIA is not the law. By the other argument, s.84D requires a notification to be made by the organisation. There are two conflicting positions, each of which is based on the effect of two competing sections of the Act, and the duties cast on the respondent organisation by them, if any (see also Part IIIA). Indeed, the similarity can be gauged from the fact that not only does s.84D prescribe a penalty for non-compliance, but a breach of s.61 might properly be the subject of an action for enforcement under s.84A of the Act, also resulting in that penalty, if a breach of a provision were proven. There was no question of the validity of the law which applied in *Patrick Stevedoring Operations No 2 Pty Ltd v MWU* (op cit), nor were there competing legal obligations.

In my opinion, too, the giving of notice under s.84D of the Act affects the rights and liabilities of the respondent organisation and its members, because it pre-empts the Commission's decision as to the validity of the rules, and, by requiring the respondent organisation to do what it says it is not required to do. The giving of notice, therefore, involves a foreclosure on the application and an order preventing the giving of notice prevents a foreclosure on the result of the application.

#### Direct Attack

It was submitted, on behalf of the intervener, that the application represented a direct attack on Part IIIA of the Act on the ground of its constitutional invalidity and that the validity of that part of the Act was not a matter which related to the rules of the respondent organisation. I agree, as I think I did in discussion with Mr Mitchell during his address, that the

application is an attack on the validity of Part IIIA. If it were a direct attack, then the application would not, in any way, be one which sought orders authorised by s.66(2) of the Act. Further, of course, if it did not seek orders sought by s.66(2), it could properly be characterised as a direct attack.

However, the application seeks orders, and Order 9 of 23 June 1998 is an order of that type, which could not be characterised as direct attacks on Part IIIA of the Act and do not require the Commission, constituted by the President, to judicially review the Act. For the reasons which I have just given, there is no direct attack. There is, in the course of hearing and determining a competent application under s.66 of the Act, a submission that I decide, as a matter of law, the validity of Part IIIA in the face of the Commonwealth Constitution. That is a question which I can competently decide in the course of this equally competent s.66 application.

### Injunction

A further submission was that the orders sought, and, indeed, Order 9 as made, as I understand the submission, were orders in the nature of injunctions restraining a person complying with a statutory duty, that is, the statutory duty to make notification under s.84D of the Act. To that extent, the orders sought and Order 9 were not orders relating to the respondent organisation's rules and outside jurisdiction and power, so the submission went.

I would observe, however, that s.66(2) of the Act confers specifically and expressly wide jurisdiction and power on the Commission, constituted by the President, to make orders. I have referred to that jurisdiction above. A signpost to the width of that power and, indeed, the President's jurisdiction conferred by s.66(2) is contained in the objects of the Act and, in particular, s.6(e) and (f). The power is wide enough to enable the President, within jurisdiction, to make interim or final orders which are injunctive. This does not depend upon any non-existing inherent power, but upon the actual words of s.66. The power is simply and widely expressed and so is the jurisdiction. The President is enabled to make orders, provided that they relate to the rules of an organisation, as defined, their observance or non-observance. Order 9 is such an order. It is difficult to see how the Commission could validly be deprived of its jurisdiction and power to make orders when s.66 clearly confers a specific power which includes a power to make orders of an injunctive nature and the clear jurisdiction to make such orders.

There is indubitably jurisdiction and power to order persons to comply with the rules of an organisation, or to order an organisation to comply with the rules of an organisation, otherwise there would be no necessity to refer specifically to the observance of rules in s.66 of the Act.

Further, s.61 of the Act reinforces this view. That specifically requires organisations and their members to comply with the rules and it is entirely necessary that a mechanism for compliance with the rules be provided, which is so provided in s.66 of the Act. Indeed, the Registrar has an interest and perhaps a duty to apply for orders for compliance with rules of organisations in certain circumstances, the Registrar having the right to make applications under s.66.

### Industrial Matter

It was also submitted that this matter was not an "industrial matter", as defined in s.7 of the Act. Of course, there is no requirement that the matter be an "industrial matter", because s.66 of the Act is a separate section which confers jurisdiction, by its own words, on the President, constituting the Commission. Jurisdiction in conciliation and arbitration depends on the words "industrial matter", as defined, and s.23, and the constitution of the Commission is different from what is in s.66 matters. The jurisdiction conferred on the President is of the type conferred on Industrial Courts and refers to the jurisdiction of the Commission differently constituted. S.141 of the old Conciliation and Arbitration Act 1904 (as amended), which is in similar terms to s.66, demonstrates this. Under s.66 of the Act, the President sits in a judicial capacity, exercises judicial function and, indeed, sits as a Court in the proper sense of that word.

Therefore, because of what I have said above, I am of the opinion that s.66 confers its own particular jurisdiction on the

President and there is no need to have to resort to found jurisdiction to the definition of "industrial matter".

### Conclusion

There was plainly jurisdiction and power in the Commission to make Order 9 for all of those reasons.

### BALANCE OF CONVENIENCE

The balance of convenience, under s.26(1)(a) and (c) of the Act, requires that, whilst that collision between statutory duties is in existence, then the maintenance of the status quo ought to be preserved. That is reinforced by the disputed assertion that, in any event, there has already been a compliance with s.84D, as a matter of the evidence, arguably. It is not to the point to submit that there is no detriment to an organisation, in particular this organisation, until s.84E proceedings are complete and the Registrar mentions that matter in correspondence when a failure to comply with s.84D renders an organisation or an officer liable to penalty.

### FINALLY

I will dismiss the application by the intervener to discharge Order 9 dated 23 June 1998. I do so for the reasons which I have expressed above, having considered all of the relevant material and all of the submissions and authorities, and having regard to s.26(1)(a) and s.26(1)(c) of the Act, as my reasons reveal.

I do have some doubt that the application by an intervener in these proceedings is a competent application in any event, given the ambit of the intervener's interest. However, it is not necessary for me to make any judgment on that matter at present.

Order accordingly

APPEARANCES: Mr A Lovell, as agent, on behalf of the applicant

Mr C Young on behalf of the respondent

Mr R Mitchell (of Counsel), by leave, on behalf of the intervener

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

and

The Honourable Minister for Labour Relations  
(Intervener).

No. 1144 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

19 August 1998.

*Order.*

THIS matter having come on for hearing before me on the 13th day of August 1998, and having heard Mr A Lovell, as agent on behalf of the applicant and Mr C Young on behalf of the respondent organisation and Mr R Mitchell (of Counsel), by leave, on behalf of the intervener, and having reserved my decision on the matter, and reasons for decision being delivered on the 19th day of August 1998 wherein I found that the application to discharge Order 9 of the orders made on the 23rd day of June 1998 should be dismissed and gave reasons therefore, it is this day, the 19th day of August 1998, ordered that the said application be and is hereby dismissed.

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

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

and

The Honourable Minister for Labour Relations  
(Intervener).

No. 1144 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

8 September 1998.

*Consent Order.*

THIS matter having come on for hearing before me on the 8th day of September 1998, and having heard Mr A Lovell, as agent, on behalf of the applicant and Mr C Young on behalf of the respondent organisation, and Mr R Mitchell (of Counsel), by leave, on behalf of the intervener and having made such an order as is necessary or expedient for the expeditious and just hearing and determination of the matter herein, and the parties herein having waived their rights pursuant to s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 8th day of September 1998, ordered by consent as follows—

- (1) THAT application No 1144 of 1998 be adjourned sine die.
- (2) THAT the matter may be relisted upon 48 hours' notice in writing by any party or the intervener to the Commission and to the other party or the intervener, as the case may be.
- (3) THAT the matter may be relisted upon the Commission's own motion.

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

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

Nos. 1144 and 1145 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

3 August 1998.

*Directions.*

THIS matter having come on for hearing before me on the 28th day of July 1998, and having heard Mr A Lovell, as agent, on behalf of the applicant and Mr C Young on behalf of the respondent organisation and Mr R Mitchell (of Counsel), by leave, on behalf of the Minister for Labour Relations, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter and the parties herein having waived their rights under s.35 of the Industrial Relations Act 1979 (as amended), it is this day, the 3rd day of August 1998, ordered and directed as follows—

- (1) THAT the application that Order 9 of the interim orders made on the 23rd day of June 1998 be set

aside be and is hereby listed for hearing and determination at 9.00 am on Thursday, the 13th day of August 1998.

- (2) THAT the applicant and respondent herein do file and serve any answer and counter proposal to the said application within seven days hereof.
- (3) THAT the parties and the intervener do herein file and serve their outlines of submissions and lists of authorities before 4.00 pm on Monday, the 10th day of August 1998.
- (4) THAT there be liberty to apply upon 48 hours notice.

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

Nos. 1144 and 1145 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

30 July 1998.

*Reasons for Decision.*

THE PRESIDENT: These applications came on for further directions on 28 June 1998, pursuant to the interim orders issued by me dated 23 June 1998.

In the meantime, on 14 July 1998, a Notice of Application for leave to intervene was filed on behalf of the Minister for Labour Relations. Also contained in the Notice was an application to set aside Order 9 of the interim orders made by me on 23 June 1998.

I gave leave to Mr Mitchell of Counsel to appear on behalf of the Minister, because the application for leave to intervene plainly raised questions of law in relation to which the Commission would benefit from the assistance of Counsel. My opinion was borne out by the submissions which followed, on behalf of both parties and the applicant for leave to intervene.

The grounds on which leave to intervene were sought were as follows—

- "1. Pursuant to section 30 of the Act, the Minister may, by giving the Registrar notice in writing of his intention to do so, and by leave of the Commission, intervene on behalf of the State in any proceedings before the Commission in which the State has an interest;
2. The State has an interest in these proceedings as they involve a challenge to the validity of Part IIIA of the Act and seek orders restraining persons from complying with the requirement of that Part."

No answer to the application has been filed, but oral opposition was expressed.

The application is made under s.30(1) of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act"), which reads as follows—

- "30. (1) The Minister may, by giving the Registrar notice in writing of his intention to do so, and by leave of the Commission, intervene on behalf of the State in any proceedings before the Commission in which the State has an interest."

The Minister has given the Registrar notice in writing of his intention to intervene in accordance with the Act and copies of that notice have been acknowledged to have been served on the parties hereto.

It is interesting that s.27(1)(k) of the Act enables the Commission to permit intervention in terms of any person who has, in the opinion of the Commission, sufficient interest in a matter.

By way of contrast, the Minister has to establish that the State has an interest (under s.30 of the Act). Whether there is a practical difference is not necessary to consider on this occasion, the case for the Minister on this application was that the State had an interest because the proceedings involved a challenge to the validity of a portion of the Act, namely Part IIIA.

Further, an order restraining persons from complying with the requirements of that Part had been sought. Indeed, on an interim basis, such orders had been made.

Mr Lovell, for the applicant, submitted that his client had no objection to the Minister being given leave to intervene in the proceedings proper, but not in relation to the question of the interim orders. (The Minister sought to apply to set the interim orders aside.)

There was also a submission that there should be an adjournment of the application for leave to intervene whilst notice was given of the matters sought to be raised by the Minister, in accordance with s.78B of the Judiciary Act 1903 (Cth) (hereinafter referred to as "the Judiciary Act"), about the Minister's proposed intervention.

It was also submitted, on behalf of the respondent organisation, that there was no sufficient interest to enable the Minister to intervene, because the question before the Commission related, at least at the interim stage, to compliance with the rules of the respondent organisation.

Further, it was submitted that the Minister had no sufficient interest, as required by s.30 of the Act, in the matter at all.

Firstly, since Exhibit 3 is evidence that the Attorney-General for this State was given notice under s.78B of the Judiciary Act of these proceedings in the form of Annexure 4 to the Affidavit of Avon Francis Lovell (Exhibit 3). That form gives more than adequate notice of these proceedings and their nature as required by s.78B.

Further, the notice of intention to intervene and the application to set aside the interim orders do not raise any matters which require a fresh notice under s.78B of the Judiciary Act.

I am not, therefore, satisfied that there is any need to adjourn the hearing to enable notice under s.78B of the Judiciary Act to be given.

Next, I turn to whether the State has sufficient interest to enable the Minister to intervene.

First, it is to be observed that the application for substantive relief and the application for interim relief although, of course, separate applications, are all part of the same proceedings, although incorrectly separately numbered.

It is axiomatic that one cannot make an interim order except in substantive proceedings in which final orders are sought. Accordingly, and obviously, the proceedings before the Commission are constituted by applications Nos 1144 and 1145 of 1998.

They have been properly treated as one application. They constitute the proceedings before the Commission, within the meaning of s.30(1) of the Act.

The Minister must establish that the State has an interest and an interest in the conduct and outcome of the proceedings in which the Minister seeks to intervene.

That may be a lesser requirement than that contained in s.27(1)(k) of the Act (see *R v Ludeke and Others; Ex parte Customs Officers' Association of Australia, Fourth Division* [1985] 155 CLR 513 (HC)).

In my opinion, the State has an interest and a clear interest in proceedings where the validity of State legislation is in question, as it is here.

Insofar as it is necessary for the Commission to determine whether such an interest exists, then it does so exist in this case for the reason which I have just expressed.

I am therefore satisfied that the State of Western Australia has an interest and that the Minister has a right to intervene under s.30(1) of the Act, and will declare so.

It is not to the point that notice has been given to the Attorney-General for Western Australia under the Judiciary Act. It is not compulsory for the Attorney-General to seek leave to intervene. The Minister still has a right to intervene if s.30(1) of the Act is complied with. No doubt, as a matter of practicality, both Ministers would not seek leave to intervene. In this case, they have not.

The Minister's application to set aside interim order 9 needs to be decided, including the competence of such application, not the least because no liberty to apply was given to the Minister in the interim order of 23 June 1998.

I will direct that that application be listed for hearing and determination. I also have it in mind to direct that any answer to that application be filed and served within seven days. If none is filed, I would assume that the applicant and respondent do not seek to oppose such application.

I would wish, further, to direct that all outlines of submissions in relation thereto be filed and served at least 48 hours before the hearing and determination of such application.

If the parties or the intervener do not indicate that they wish to be heard in relation to such proposed directions, I will assume that they do not object to such directions and will proceed to, within two days of the date hereof, make the same. At the same time, I will assume that the parties also waive their rights under s.35 of the Act in relation to the making of such directions.

I will issue an order now giving leave to the Minister to intervene, in the terms of his application.

Order accordingly

APPEARANCES: Mr A Lovell, as agent, on behalf of the applicant

Mr C Young on behalf of the respondent organisation

Mr R Mitchell (of Counsel), by leave, on behalf of the Minister for Labour Relations

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

Nos. 1144 and 1145 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

30 July 1998.

*Declaration.*

THESE matters having come on for hearing before me on the 28th day of July 1998, and having heard Mr A Lovell, as agent, on behalf of the applicant, Mr C Young on behalf of the respondent organisation, and Mr R Mitchell (of Counsel), by leave, on behalf of the Minister for Labour Relations, and having reserved my decision on the matter, and reasons for decision being delivered on the 30th day of July 1998, it is this day, the 30th day of July 1998, declared that leave be and is hereby granted to the Minister to intervene in application Nos 1144 and 1145 of 1998.

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

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

Nos. 1144 and 1145 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

26 June 1998.

*Reasons for Decision.*

INTRODUCTION

THE PRESIDENT: These were applications by the applicant for interim orders, directions, and orders against the respondent organisation under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter called "the Act"). They were heard together by consent.

I am satisfied that the applicant was, at all material times, a member of the respondent organisation and that the respondent organisation was, at all material times, an organisation, as that is defined in the Act. I, therefore, had jurisdiction on that basis, all other things being equal, to hear and determine the application.

I gave directions for various interlocutory steps to be taken, for necessary notices to be given under the Judiciary Act 1903 (Cth) and, inter alia, for the further hearing and determination of these matters.

I was satisfied that these were the proper directions to make, by virtue of my powers and in the exercise of my discretion under s.27 of the Act, and having regard to s.26.

THE APPLICATION

By the application in this matter, put generally, the applicant seeks orders that the respondent organisation, its officers, agents and employees act in accordance with their rules rather than the requirements of Part IIIA of the Act, because Part IIIA is contrary to express provisions of the Constitution and contrary to rights implied also in the Constitution.

The substantive matter before me on this occasion was an application for interim orders (application No 1145 of 1998) in the following terms—

"That until the issues raised in application No. 1144 of 1998 have been heard and determined, or by further Order of the Commission, the respondent by its State secretary, officers employees or agents of any kind whatsoever do act according to the rules of the respondent and are hereby restrained from making any notification of any kind purporting to be made pursuant to Part IIIA of the WA Industrial Relations Act and in particular pursuant to s84D."

The respondent organisation did not oppose the application. Both the applicant and respondent organisation relied on the evidence of William Ernest Charles Game sworn on 22 June 1998 and filed herein. Mr Game is the Secretary of the respondent organisation, an organisation which, as a matter of record, has a counterpart Federal body (under s.71 of the Act), insofar as it is necessary to so observe for the purposes of this application.

I am satisfied that the respondent organisation has about 5,000 financial members, of whom 3,000 members are employed in the electrical contracting industry and that their terms and conditions of employment are governed by the Electrical Contracting Industry Award No R22 of 1978 and various State registered agreements. They are also covered apparently by federally registered certified agreements. I am also satisfied that the applicant is employed in that industry.

It is the case, too, that Part IIIA of the Act came into operation on 29 May 1998. That is the part of the Act which is claimed to be invalid in the face of the Commonwealth Constitution.

On 12 June 1998, Mr Game directed Mr Carl Young, who is an employee of the respondent organisation, to notify the Registrar of the Federal organisation's "Federal log" applications. There was such notification in a letter of that date (see exhibit 2(C)).

On 19 June 1998, Mr Game was served with the abovenamed applications Nos 1144 and 1145 of 1998.

On 17 June 1998, the respondent organisation received a letter dated 16 June 1998 from the Registrar requiring notification to be completed in accordance with Part IIIA of the Act (see exhibit 2(E)).

The respondent organisation has, in the meantime, sought certain details from the Federal organisation.

The Registrar, in that letter, raised the possibility of a monetary penalty being imposed if the respondent organisation failed to notify the Registrar as he required.

Mr Game, in his affidavit, expressed his concern that he, as the Secretary, is required under the respondent organisation's rules to act carefully and to advance the interests of its members.

He deposed that if he failed to do either, he would be liable to a penalty, suspension, a fine or expulsion under the rules of the respondent organisation.

On the other hand, he deposed, if he acted unlawfully, he would be liable to a fine and the respondent organisation liable to penalties including deregistration and monetary penalty.

Mr Game also deposed that the respondent organisation covers electricians, inter alia, in the construction industry, and that, at the respondent organisation's State Council meeting held on 17 June 1998, various Councillors raised their concerns about the legislation and the reaction of members to any change in their employment conditions and organisation (union) coverage.

I should add that, at the conclusion of addresses, I gave leave to the applicant's agent to amend the application herein to rely on an allegation that Part IIIA of the Act was invalid as against the Commonwealth Constitution, due to the operation of s.109 of the Constitution.

The affidavit contained a quantity of argumentative material, much of which was put to me also by way of submission.

PRINCIPLES FOR THE GRANT OF INTERIM ORDERS  
AND SUBMISSIONS

The principles which the President will apply in deciding whether to make interim orders under s.66 of the Act are well settled. I was referred to those principles as they appear in *Jeakings v SSTUWA and Another* 78 WAIG 1131. Those principles are as follows—

1. Applications for interim orders must be decided, having regard to s.26(l)(a), s.26(l)(c) and where relevant, s.26(l)(d) of the Act.
2. Such applications must be decided, too, having regard to the objects of the Act.
3. It is for the applicant to establish that an interim order or orders should be made.
4. The following other factors will be relevant—
  - (a) That there is a substantial case to be tried.
  - (b) That the detriment to the applicant, if the order is not made, should outweigh the detriment to the respondent, if the order is made.
5. As a general rule, the consequences of making the order should not be irreversible.
6. It is relevant to consider the promptness or otherwise of the application and any other relevant factors.

Is there a substantial case to be tried?

Before I turn to submissions and any conclusions in this matter, it is necessary to examine at least some of the sections in Part IIIA of the Act and the matters of law on which the application is founded.

Part IIIA of the Act requires, inter alia, notification by an organisation (as defined in the Act) to the Registrar in writing of the nature and other details of a dispute notified by a

Federal organisation, under s.99 of the Workplace Agreements Act 1996 (Cth), and where a State organisation has a branch of the Federal organisation as its Federal related body.

That would seem, prima facie, to be the case with the respondent organisation (see s.84B, C and D of the Act).

If the required notification is not made under s.84D of the Act, an organisation and an officer of such an organisation may separately incur penalties.

Further, failure to comply with s.84D of the Act may, without going into detail, lead to applications to the Full Bench seeking orders to have a State organisation like the respondent struck out as a party to any award or agreement and another organisation substituted in its place (see s.84F and G of the Act).

Further, the Full Bench may cancel the rights of the related State organisation with respect to whom the application is made (see s.84G of the Act).

The "cancelled organisation" may be required to refund certain membership dues (see s.84K of the Act).

What was asserted as a fact from the bar table as part of its case and not controverted, by the advocate for the respondent organisation, was to the following effect.

The applicant contended that Part IIIA of the Act was invalid in the face of the implied right of freedom of political communication contained in the Constitution (see *The Registrar v CEEEIPPU 78 WAIG 2366*). This was because he could be deprived, so it was submitted, of the instrument of political expression of his selection, if the organisation were deprived of its coverage of him as an electrician in "an electrician's union". This could occur, as it was submitted, because the respondent organisation might be required, through its officers, to make a notification under s.84D of the Act, particularly if that notification were contrary to the interests of the organisation and, therefore, against its rules. That is as I understood the submission.

Cancellation of award coverage was submitted, and even submitted to be the likely result which would follow a failure to make a s.84D notification. That was the case for both parties.

Further, the case is that Part IIIA of the Act, if an order is made, the applicant can be deprived of membership in an organisation which he has selected as an organisation which is to be an instrument of the exercise of his right to freedom of political communication, and the exercise of the right is thereby burdened. Insofar as that is the case, there is a serious issue to be tried.

It was also submitted that Part IIIA of the Act was invalid because of the implied right of equality before the law contained in the Constitution. Further, it was submitted primarily on behalf of the respondent organisation, but also on behalf of the applicant, that because, in particular, the respondent organisation had a counterpart Federal body (see *The Registrar v CEEEIPPU* (op cit)).

Very little was said to persuade me that the implied right of equality before the law, insofar as it has manifested itself, was invaded by Part IIIA of the Act. On what was submitted to me, I do not find that there was a serious issue to be tried on that ground.

It was also submitted that Part IIIA of the Act was invalid by virtue of s.109 of the Constitution, and having particular regard to the relationship between the Federal organisation and the respondent organisation and also to the Workplace Relations Act 1996 (Cth). On the submissions made to me, there was sufficient to enable me to say that there was a serious issue to be tried.

On what was submitted to me, and it is unnecessary and undesirable for me to go into detail at this stage, there is a serious issue to be tried covering the operation of s.109 of the Constitution and Part IIIA of the Act. I so find.

That was asserted as evidence and I accept it.

It is unnecessary and indeed undesirable to, at this time, canvass in detail the questions of law referred to in submissions. I also accept that the submission raises a serious issue to be tried.

### Detriment

The detriment to the applicant, if an order were made by the Full Bench, would be plainly the deprivation of membership in an organisation which he had chosen, inter alia, to act as an instrument of political communication on his behalf.

That detriment would only be suffered, however, if the Full Bench made an order under s.84F and G of the Act that cancellation occur.

Further, if such orders were made, then the respondent organisation would also suffer detriment. This is not then a case of weighing up detriment between the parties. There is a coincidence of interest between them and the prospect of detriment being occasioned to both if I did not make the interim order sought. I did raise with the advocates the question of whether, since no penalty had been imposed or no application made to the Full Bench under Part IIIA of the Act, an order might be premature.

I am presently satisfied that an order which prevents the commencement of a series of events which might lead to the detriment which could occur, is not premature, in the circumstances of this case.

### Other Matters

Further, the consequence of the making of the order sought is not irreversible. The application, as I find, was made promptly. It has also been palpably established to be in the interests of both parties and of the respondent organisation's members and officers that such an order should be made and also consistent with the objects of the Act which appear in s.6.

The equity, good conscience and substantial merits of the case also lie with a decision to make the order sought for those reasons.

### Jurisdiction

I raised with the advocates the question whether, having regard to s.66(2) of the Act, the application was within jurisdiction, and more particularly whether the order sought was one which was within jurisdiction.

S.66(2), in its first four lines, reads as follows—

"On an application made pursuant to this section, the President may make such order or give such directions relating to the rules of the organization, their observance or non-observance, either generally or in the particular case, as he considers to be appropriate and without limiting the generality of the foregoing may—"

By Rule 3 of the respondent organisation's rules (exhibit 1), the objects are, inter alia, as follows—

"The objects of the Union shall be to protect and further the interests of members by lawful means and in particular—

- 3.1 To uphold the rights of the organisation of labour and to improve, protect and foster the best interests of its members."

In my opinion, since the orders which I am required to make go to the question of whether the Act requires the organisation and/or its officers to act contrary to the interests of the organisation and/or its rules, and/or unlawfully in complying with the rules, particularly through officers carrying out their duties, as officers, then I have and had jurisdiction under s.66(2) of the Act to make the order sought.

### CONCLUSIONS

I made the interim order which I made, for those reasons.

I would add that the findings which I have made and the conclusions which I have reached in making this decision would not, obviously, bind me upon the final hearing and determination of this application.

APPEARANCES: Mr A Lovell, as agent, on behalf of the applicant

Mr C Young on behalf of the respondent

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Barbour  
(Applicant)

and

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

Nos. 1144 and 1145 of 1998.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

23 June 1998.

*Directions and Interim Order.*

THIS matter having come on for a directions and interim orders hearing before me on the 22nd day of June 1998, and I having heard Mr A Lovell, as agent, on behalf of the applicant and Mr C Young on behalf of the respondent organisation, and having given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, and having determined that such reasons for decision as are necessary will issue at a date to be fixed, 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 23rd day of June 1998, ordered and directed as follows—

- (1) THAT the applicant herein have leave to file and serve an amended notice of application in application 1144 of 1998 within 48 hours of the date hereof upon the respondent hereto and upon the Registrar.
- (2) THAT the applicant within 3 days make notifications pursuant to s78B of the Judiciary Act 1903(Cth).
- (3) THAT the respondent have leave to file and serve any request for particulars of the application within 10 days hereof together with any amended answer and counter proposal.
- (4) THAT the applicant do file and serve any answer to such request for particulars within 14 days thereafter.
- (5) THAT the applicant do file and serve any request for particulars of the answer within 7 days thereafter.
- (6) THAT the respondent do file and serve any answer to that request within 7 days thereafter.
- (7) THAT the applicant do file and serve within 28 days of the date hereof an affidavit as to service and as to replies to the notices issued pursuant to s78B of the Judiciary Act 1903(Cth).
- (8) THAT there be liberty to apply upon 48 hours notice.
- (9) THAT by way of interim order and until the hearing and determination of application No 1144 or further order, the respondent, all of its officers (including its Secretary) and all of its employees and agents do act in compliance with the rules of the said respondent, and are hereby restrained from making any notification of any kind pursuant to Part IIIA of the Industrial Relations Act 1979 (as amended) and, in particular s84D hereof.
- (10) THAT there be liberty to apply upon 48 hours notice.
- (11) That a copy of this order be served by the applicant or his agent upon the Registrar forthwith.
- (12) THAT application No 1144 of 1998 be and is hereby listed for a further directions hearing at Perth at 9.30 am on Tuesday the 28th day of July 1998.
- (13) That application No 1144 of 1998 be and is hereby listed for hearing and determination at Perth at 10.30 am on the 8th, 9th and 10th days of September 1998.

(Sgd.) P.J. SHARKEY,

President.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Clark Mosson  
(Applicant)

and

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

No. PRES 4 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

11 August 1999.

*Reasons for Decision.*

THE PRESIDENT: This is an application by Mr Brian Clark Mosson, who was in recent times a financial member of the abovenamed respondent organisation, which is an organisation as that is defined in s.7 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). The application is brought under s.66 of the Act. By his own assertion, he remains a member, but not a financial one according to the respondent organisation. In any event, it is not disputed that I have jurisdiction in relation to this application within the meaning of s.66(1)(a) of the Act.

The core of his complaint is that he was prevented from nominating for election to office in the respondent organisation. This was done by the Returning Officer, namely the Australian Electoral Commission, through one of its officers, Mr Kevin D Franklin (see the letter, exhibit 10, written by Mr Franklin to the applicant on 13 July 1999). It was common ground that an election is taking place for office in the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia Western Australian Branch (Communications, Electrical, Plumbing Union) Electrical Division, the branch of a federally registered organisation (see also exhibit 4).

The applicant says that he was eligible or should have been eligible by virtue of rule 4.6 of the rules of the respondent organisation. Further, as I understand it, he says that there should have been a decision as to his eligibility to the effect that he was eligible to nominate.

The respondent organisation has a counterpart federal organisation which exists by virtue of, *inter alia*, s.71 of the Act and an order of the Full Bench of 1 September 1995 in application No 658 of 1995 (exhibit 12C). By virtue of a certificate of the Registrar under s.71(5) of the Act, the provisions of the Act relating to elections for office within an organisation do not from 1 September 1995 apply in relation to offices in the "Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch". Further, the Registrar's certificate (exhibit 12B) is to the effect that from 1 September 1995 the persons holding office in the Western Australian Branch of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Electrical Division, an organisation registered under the provisions of the "Industrial Relations Act 1988", shall, for all purposes, be the officers of the "Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch".

The primary submission by the advocate for the respondent organisation is that there is no jurisdiction in the President of this Commission under s.66 of the Act to hear and determine the application before the Commission. The submission was that because of the certificate of the Registrar, and because of the existence of the federal branch of the federally registered organisation under s.71(5) of the Act, that elections for persons holding office in the federal organisation are elections for all purposes for the offices of the State organisation, the respondent organisation in these proceedings.

S.71(5) of the Act reads as follows—

“(5) Where, after the coming into operation of this section —

- (a) the rules of a State organization are altered pursuant to section 62 to provide that each office in the State organization may, from such time as the Committee of Management of the State organization may determine, be held by the person who, in accordance with the rules of the State organization’s Counterpart Federal Body, holds the corresponding office in that body; and
- (b) the Committee of Management of the State organization decides and, in the prescribed manner notifies the Registrar accordingly, that from a date specified in the notification all offices in the State organization will be filled in accordance with the rule referred to in paragraph (a),

the Registrar shall issue the State organization with a certificate which declares —

- (c) that the provisions of this Act relating to elections for office within a State organization do not, from the date referred to in paragraph (b), apply in relation to offices in that State organization; and
- (d) that, from that date, the persons holding office in the State organization in accordance with the rule referred to in paragraph (a) shall, for all purposes, be the officers of the State organization,

and the certificate has effect according to its tenor.”

Put simply, therefore, the respondent organisation’s submission is that the election which is occurring and in relation to which the Australian Electoral Commission Returning Officer, Mr Franklin, has decided that the applicant is ineligible to nominate, is one held in accordance with the rules of the federal organisation. I am satisfied that the Returning Officer was purportedly appointed under the federal rules. I am satisfied, too, that the application is not an application seeking orders or directions relating to the rules of an organisation (as defined in s.7 of the Act) “their observance or non-observance in the manner of their observance ...” within the meaning of s.66(2) of the Act. This is the case, even though the results of that election then represent an election to offices in the state organisation, the respondent organisation.

There was nothing submitted to suggest that the certificate issued by the Registrar is invalid. That means that the election which occurs pursuant to the rules of the federally registered organisation and for offices in the federally registered organisation, including its branch in this State, stands as an election for office pursuant to the state rules. However, the election is in the first place to office in the federal organisation. Eligibility to nominate for such election, therefore, is determined in accordance with the federal rules.

Since s.66 of the Act gives the Commission, constituted by the President, jurisdiction in relation only to the rules of the state organisation, I was satisfied that I have no jurisdiction to inquire into the rejection of the applicant’s nomination. Even if that were not so, having regard to rule 4.6.1 of the rules of the respondent organisation and exhibit 11, a record of the applicant’s membership and his financial position reveals that he was not eligible, having not applied for exemption in relation to all of the periods in respect of which he was unemployed. I considered all of the evidence and all of the submissions carefully.

For those reasons, I dismissed the application.

Appearances: Mr B C Mosson on his own behalf.

Mr C Young and with him Ms K Stewart on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Clark Mosson  
(Applicant)

and

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

No. PRES 4 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

5 August 1999.

*Order:*

THIS matter having come on for hearing before me on the 5th day of August 1999, and having heard Mr B C Mosson on his own behalf and Mr C Young, and with him Ms K Stewart on behalf of the respondent, and having determined that my reasons for decision will issue at a later date, it is this day, the 5th day of August 1999, ordered that application No PRES 4 of 1999 be and is hereby dismissed.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Clark Mosson  
(Applicant)

and

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

No. PRES 4 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

23 July 1999.

*Order:*

THIS matter having come on for hearing before me on the 23rd day of July 1999, and having heard Mr B Mosson on his own behalf and Mr C Young on behalf of the respondent, and having made such orders and given such directions as are necessary or expedient for the expeditious and just hearing and determination of this matter, it is this day, the 23rd day of July 1999, ordered and directed as follows—

1. THAT the respondent herein do provide to the applicant herein within 5 days of the 23rd day of July 1999 discovery and inspection of all relevant documents in its custody, power or possession including—
  - (a) any relevant computer print out(s) and computer records;
  - (b) letter(s) from the Department of Social Security to the respondent in relation to the applicant’s unemployment status.
2. THAT the application herein be and is hereby adjourned for hearing and determination to 10.30 am on Thursday, the 5th day of August 1999.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Teresita Byrne  
(Applicant)

and

Federated Liquor and Allied Industries Employees' Union of  
Australia, WA Branch, Union of Workers

and

Burswood Nominees Pty Ltd

and

Burswood Resort (Management) Pty Ltd  
(Respondents).

No. PRES 6 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

17 August 1999.

*Reasons for Decision.*

THE PRESIDENT: This is an application by Ms Teresita Byrne to which the respondents named are the Federated Liquor and Allied Industries Employees' Union of Australia, WA Branch, Union of Workers (hereinafter referred to as "the LTU"), Burswood Nominees Pty Ltd and Burswood Resort (Management) Pty Ltd.

The application is one purporting to be brought under s.66 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") by Ms Byrne who claims to be a member of the first named respondent organisation. The respondent organisation is an organisation, as that is defined in s.7 of the Act.

The second and third named respondents are said to be employers, employing a number of persons at the Burswood Casino in this State.

The applicant alleges breaches of the rules of the LTU, and seeks an inquiry into an election of officers of the Committee of Management of the LTU which occurred in 1997. Further, she alleges that any industrial agreement which might, in the near future, be entered into between Burswood and the LTU might be ultra vires the rules of the LTU and would be contrary to the implication of rules of the LTU for reasons alleged in Schedule C to the application.

A number of final and interim orders are sought.

When this matter came on for a directions hearing and for a hearing of the application for interim orders, a submission was made on behalf of the first respondent, supported by the second and third respondents, alleging that I had no jurisdiction to hear and determine the application pursuant to s.66(1)(a) and (b) of the Act.

S.66(1)(a) and (b) read as follows—

"66. (1) The following persons may apply to the President for an order or direction under this section—

- (a) a person who is or has been a member of an organization; or
- (b) a person who has applied for and not been admitted to membership in an organization; or"

The substance of the submission was that Ms Byrne was not, nor had she been a member of an organisation or, in any event, was not established to be and that, therefore, there was no jurisdiction in the President to hear and determine the matter. It ought to be said that, unless a person who is categorised in s.66(1) of the Act as a person who may apply to the President for an order or direction under the section applies, then the President does not have jurisdiction to entertain the application.

A number of affidavits were filed in this matter. They were as follows—

- (a) Two affidavits of the applicant, Teresita Byrne, sworn 4 August 1999 and 10 August 1999 respectively (exhibits 3A and 3B).

- (b) An affidavit of Helen Margaret Creed, the Western Australian Branch Secretary of The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch (hereinafter referred to as "the ALHMWU"), an organisation registered federally pursuant to the provisions of the Workplace Relations Act 1996 (Cth), sworn on 5 August 1999 (exhibit 2).

- (c) An affidavit of David Joseph Kelly sworn on 10 August 1999 (exhibit 4).

(All the abovenamed were filed and produced on behalf of the applicant.)

- (d) There was also filed, on behalf of the first named respondent, an affidavit of Eugene Leslie Fry, its Secretary, sworn on 11 August 1999 (exhibit 5).

- (e) On behalf of the second and third respondents, an affidavit of Paul Anthony Kennedy, sworn on 11 August 1999 was filed (exhibit 6).

There was evidence from the bar table in relation to this matter also.

It was Mr Le Miere's submission that I was confined only to the evidence contained in the affidavits which were referred to by Mr Farrell, of Counsel for the applicant, (and I assume by other Counsel and myself during the course of proceedings). His submission was that, if I were to refer to other evidence to which they had not referred, it would be necessary to raise these matters with Counsel. I have to say that I do not agree with that submission. All of the contents of the affidavits were in evidence and I am entitled to examine them and consider the evidence.

As part of the background of this matter, I would observe that the ALHMWU is currently taking action in the Federal Court of Australia against the LTU, Mr Eugene Leslie Fry and others.

The proceedings are named Jeffrey Paul Lawrence v Eugene Leslie Fry and Others (No NG 189 of 1998). That case was heard by Justice French in the Federal Court on 23, 24 and 25 June 1999 and His Honour's Judgment stands reserved.

It was common ground that, in that case, the ALHMWU is claiming that property currently claimed as belonging to the LTU is properly the property of the ALHMWU. The property claimed falls into two broad categories, one being books, records and chattels and the other consisting of membership and the right to the continuing income flow of the consequence of membership. Indeed, part of the ALHMWU's claim is that 504 persons whom the LTU claims to be members of that organisation are in fact members of the ALHMWU and not members of the LTU.

The claim was based on the following—

- (a) These persons signed cards admitting them to membership of the "Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch" ("FAIEU") which was one of the predecessor organisations to the ALHMWU. In 1992, the ALHMWU came into being after the amalgamation of the Federated Miscellaneous Workers' Union ("FMWU") and the FAIEU.
- (b) These persons paid membership fees into accounts belonging to and in the name of the ALHMWU.
- (c) These persons have, for all intents and purposes, been treated as members of the ALHMWU.

Evidence to that effect appears in the affidavit of Ms Helen Margaret Creed.

Further, Annexure "HMC2" to Ms Creed's affidavit is an outline of the submissions made to French J in the Federal Court. In particular, paragraph [9.6] reads as follows—

"It appears that until 28 November 1997 all union dues including PRD payments were into an account in the name of the LHMU. From 28 November 1997 onwards Mr Fry redirected all the union dues into a different account in the name of the State LTU until 9 April 1998. This last date corresponds with the first of the consent orders made by the Federal Court. From that date on the union dues are deposited into yet another account in the name of the State LTU."

That was relied on in submissions.

In submissions from the bar table, it was accepted by all Counsel that the method of disposing of union dues might not necessarily be in accordance with the Federal Court order, but might be coincidental in time with such an order, but that, in any event, Mr Farrell conceded there was no evidence that the process, described in that paragraph of the outline of submissions, was any different now than what it had been, the evidence being that Ms Byrne was continuing to pay contributions.

The Commission was referred to the affidavit of Mr Jeffrey Paul Lawrence, the applicant in proceedings in the Federal Court, which affidavit was in evidence in the Federal Court, as I understand it and which annexed a form of membership application which bears the heading "Federated Liquor and Allied Industries' Employees' Union of Australia, Western Australian Branch, Union of Workers" (annexure HMC9). Annexed also to the affidavit of Mr Fry is annexure ELF-1 which was a similar document actually signed in 1994 by the abovenamed applicant.

Ms Byrne's own first affidavit, exhibit 3A, contains evidence from Ms Byrne which states in paragraph 2—

"I have been a member of the Federated Liquor and Allied Industries Employees Union of Australia, Western Australian Branch, Union of Workers ("LTU") for approximately the last five (5) to six (6) years."

In addition, she has been assisted in certain employment matters by the LTU.

There was a submission that perhaps the LTU would be estopped from denying that she was a member, but not a great deal was submitted in support of that proposition and I am not persuaded that estoppel lies in the face of the rules. In any event, I considered all of the evidence, including the evidence adduced for the applicant that she is not and was not a member.

The applicant relies on rule 21 of the rules of the respondent organisation which, in its relevant parts (see exhibit 1), clauses 21(a) and (b) read as follows—

" 21. CONDITIONS OF MEMBERSHIP

- (a) A person shall become a Member of the Union by signing an Application Form, and by paying the appropriate contributions to the Secretary or other authorised Collector; provided however, that if a payment has been made, membership shall not be invalidated because an application form has not been completed.
- (b) The person applying shall (subject to the exceptions hereinafter contained) be and be deemed to become a member of the Union as from the date of the day of receipt of such Application Form or contributions by the Secretary."

Union rules are to be read in accordance with the principles laid down in a number of cases, including HSOA v Honourable Minister for Health 61 WAIG 616 (IAC) and R v Aird; Ex parte AWU [1973] 129 CLR 654 (HC). I do so now.

What the rule plainly means, on a fair reading, is that a person becomes a member of the first named respondent by signing an application form and by paying the appropriate contribution to the Secretary or other authorised collector.

There is a proviso that, if a payment has been made, membership shall not be invalidated because an application form had not been completed.

Mr Cuerden submitted, on behalf of the LTU, that there must be evinced an intention to join.

In addition, as Mr Le Miere submitted, clause 21(b) really prescribes the date from which membership is to run. (I agree with that. Its words mean nothing more).

The applicant's case was that she has been continuing to pay contributions to the Secretary of the respondent LTU, Mr Fry. The evidence is that contributions were paid to the federal organisation and directed into the accounts of the state organisation by Mr Fry and that there is nothing to suggest that anything different occurred.

It is, as Mr Le Miere submitted, of no assistance to the applicant that she, herself, deposes, without evidence to the contrary, that she is in fact a member of the LTU when her contributions have been paid to another organisation, namely

the federal organisation. I am not satisfied that the payment of contributions by the applicant to the federal LTU (which are, and as I understand it, continue to be so paid) become contributions to the state LTU because they are reduced from the accounts of the federal LTU to the state LTU. The outline of submissions on behalf of the ALHMWU referred to above and Mr Farrell's concession that the mode of payment has not changed is evidence of that. Further, her own case is that, as a matter of fact and of law, her right to belong to the LTU is in question.

I am not satisfied, either as a matter of fact or of law, that she is or has been a member of the LTU. I find that I have no jurisdiction to hear and determine the application. There is no evidence either that Ms Byrne applied to join the state LTU and was refused membership. I will, therefore, dismiss the application.

Appearances: Mr R D Farrell (of Counsel), by leave, and with him Mr D Kelly on behalf of the applicant.

Mr M D Cuerden (of Counsel), by leave, on behalf of the first named respondent.

Mr R L Le Miere (of Queens Counsel), by leave, and with him Mr R Bathurst (of Counsel), by leave, on behalf of the second and third named respondents.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Teresita Byrne  
(Applicant)

and

Federated Liquor and Allied Industries Employees' Union of  
Australia, WA Branch, Union of Workers

and

Burswood Nominees Pty Ltd

and

Burswood Resort (Management) Pty Ltd  
(Respondents).

No. PRES 6 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

12 August 1999.

*Order.*

THIS matter having come on for a further directions hearing before me on the 12th day of August 1999, and having heard Mr R D Farrell (of Counsel), by leave, and with him Mr D Kelly on behalf of the applicant and Mr M D Cuerden (of Counsel), by leave, on behalf of the first named respondent, and Mr R L Le Miere (of Queens Counsel), by leave, and with him Mr R Bathurst (of Counsel), by leave, on behalf of the second and third named respondents, and having determined that my reasons for decision will issue at a later date, it is this day, the 12th day of August 1999, ordered that application No PRES 6 of 1999 be and is hereby dismissed.

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

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Old Ferry Company Pty Ltd  
(Applicant)

and

Mario Gino Bertelli  
(Respondent).

No. PRES 5 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

11 August 1999.

*Reasons for Decision.*

THE PRESIDENT: This is an application by the abovenamed applicant, Old Ferry Company Pty Ltd, whereby it seeks, pursuant to s.49(11) of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), an order from this Commission staying the operation of the decision of the Commissioner at first instance, made in application No 1808 of 1998, on 24 June 1999. (The Notice of Appeal identified the wrong date of the order.) The order was deposited in the Registry on 25 June 1999, and the Notice of Appeal, which was lodged on 9 July 1999, would appear to be against the whole order. No answer has been filed in the matter but Mr Bertelli, the abovenamed respondent, appeared to oppose the application.

THE APPEAL

The Notice of Appeal was lodged by the abovenamed applicant on 9 July 1999 and there is a Declaration of Service, evidencing service on the respondent on 12 July 1999.

The applicant, in its grounds of appeal, inter alia, alleges that the order to pay to Mr Mario Gino Bertelli the sum of \$5,400.00 as compensation for the unfairness of the dismissal was without jurisdiction. Put briefly, the applicant company alleges that the Commissioner erred in law in finding that the Commission had jurisdiction pursuant to s.29(1)(b)(i) of the Act to hear and determine the matter when the applicant, at first instance, named a separate and incorrect legal entity as the employer.

The order is made against "Old Ferry Company Pty Ltd". The application at first instance, according to the file, is addressed to "Boat Torque 2000, (formerly Boat Torque Cruises Pty Ltd)" (my underlining), and the Declaration of Service at first instance evidences service, in October 1998 on a date not specified, upon "Managing Director Boat Torque 2000".

At first instance, there was an order that Old Ferry Company Pty Ltd be substituted as the respondent in that application (see the order of 24 June 1999).

I am satisfied that, since the applicant was a party to the proceedings at first instance and is an appellant, that there is sufficient interest to enable the applicant to validly make this application. Further, I am satisfied that the appeal has been instituted, within the meaning of s.49(11) of the Act.

The law relating to stays has been canvassed in this Commission in a large number of cases, one being Gawooleng Dawang Inc v Lupton and Others 72 WAIG 1310, and another, CSA v WA Centre for Pathology and Medical Research and Another 76 WAIG 60.

1. It is for the applicant to establish that an order should be made, having regard to s.26(1)(a), s.26(1)(c) and sometimes s.26(1)(d) of the Act.
2. The applicant must establish, having regard to the principle that a successful "litigant" should not be lightly deprived of the fruits of his/her/its litigation, that there is a serious issue to be tried.
3. Further, the applicant must establish that the balance of convenience is in favour of granting a stay.

The appeal is based on the fact that there was no jurisdiction in the Commission to hear the substantive case because the applicant at first instance named a separate and incorrect legal entity as the employer.

Secondly, the requirement that the applicant pay monies to Mr Bertelli pursuant to an order which would be subsequently quashed gave rise to an undesirable consequence in the normal course of events, mainly the ability of the applicant to recover monies from Mr Bertelli so that the balance of convenience, it is submitted, is in favour of granting a stay.

S.27(1) of the Act enables the Commission, inter alia, to—

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

...

(l) allow the amendment of any proceedings on such terms as it thinks fit;

(m) correct, amend, or waive any error, defect, or irregularity whether in substance or in form;

...

(v) generally give all such directions and do all such things as are necessary or expedient for the expeditious and just hearing and determination of the matter."

The application for a stay was filed on 14 July 1999. It was served on 19 July 1999. The application to relist it was made only on 4 August 1999.

The submissions in support of the application essentially were that there was a serious issue to be tried because the Commission had no jurisdiction to make an order against Old Ferry Company Pty Ltd, a separate entity in its own right, more than 28 days after the date of the dismissal, namely 11 September 1998.

Mr Bertelli asserted that (and it was not denied) he was unaware that his employer was not Boat Torque Cruises until the hearing and cited documents which indicated otherwise. His claim was against Boat Torque Cruises Pty Ltd which changed its name to "Old Ferry Company Pty Ltd" on 29 April 1998, retaining however the same corporate entity.

A company called "Banwell Pty Ltd" apparently traded as "Boat Torque 2000". Mr Bertelli was said to think that that entity, whoever it was, was his employer. Both companies appeared before the Commission at first instance and the Commissioner eventually found that the above named applicant was Mr Bertelli's employer and that the Commission had jurisdiction to entertain Mr Bertelli's claim. The Commissioner also substituted the name of the abovenamed applicant as respondent.

Further, the Commissioner, for the reasons expressed, made that order, preserving the corporate veil of the two companies to which I have referred, which, to paraphrase, he found to be associated companies.

On the question of the balance of convenience, Mr Mackey, of Counsel for the applicant, submitted that there was such a strong chance of the appeal succeeding that such a consideration should lead to a finding that the balance of convenience favoured the applicant. Mr Bertelli submitted that twelve months had expired since his dismissal, that the amount of the order was not large, that (uncontradicted) he had been unemployed for twelve months, and that he needed the money.

I am satisfied that that is the case and so find. In my opinion, there is a serious issue to be tried involving questions of jurisdiction, powers under s.27 of the Act, estoppel and other generic questions, the ability to pierce the corporate veil, at least.

I have a great deal of sympathy for Mr Bertelli, but in the light of that finding and the likelihood of his having difficulty in repaying the amount of the order, I propose to grant the application for a stay on conditions which I invited the parties to consider and comment upon in the course of the hearing of this application, and which will form part of the minute of proposed orders which I will issue.

I so find, notwithstanding my taking into account the substantial delay since Mr Bertelli was dismissed.

Of course, if my orders are not complied with and the monies not paid into the trust account directed to be opened, then the operation of the order is no longer stayed.

In the event that the appeal is not listed expeditiously, I would hear any application to revoke or vary this order.

I make it clear that my findings and observations are made for the purposes of this application only and do not and cannot

relate, affect or influence any findings which the Full Bench might make upon the hearing of the appeal.

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

Mr M G Bertelli on his own behalf as respondent

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Old Ferry Company Pty Ltd  
(Applicant)

and

Mario Gino Bertelli  
(Respondent).

No. PRES 5 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

13 August 1999.

*Order.*

THIS matter having come on for hearing before me on the 11th day of August 1999, and having heard Mr A N Mackey (of Counsel), by leave, on behalf of the applicant and Mr M G Bertelli on his own behalf, and I having reserved my decision on the matter, and reasons for decision being delivered on the 11th day of August 1999, it is this day, the 13th day of August 1999, ordered and declared as follows—

- (1) THAT the applicant has a sufficient interest as required by s.49(11) of the Industrial Relations Act 1979 (as amended) ("the Act") and was therefore entitled to apply for the orders which appear hereunder.
- (2) THAT appeal No FBA 10 of 1999 has been instituted within the meaning of s.49(11) of the Act.
- (3) THAT the order made by the Commission on the 24th day of June 1999 in application No 1808 of 1998 be and is hereby wholly stayed pending the hearing and determination of appeal No FBA 10 of 1999, or until further order, subject to and conditional upon the applicant complying with the orders and conditions hereinafter expressed.
- (4) THAT the applicant herein shall, on or before the 18th day of August 1999, pay the total of the amount of \$5,400.00 ordered to be paid by the Commission in its said order of the 24th day of June 1999 in application No 1808 of 1998 into a bank account offering the best obtainable interest rates.
- (5) THAT account shall be opened by agreement by the person to be nominated in writing to the respondent by the applicant and by the respondent or his nominee on or before the 18th day of August 1999 aforesaid.
- (6) THAT such account shall be in the joint names of and shall be jointly administered by the applicant and the respondent or their nominees on behalf of the parties.
- (7) THAT if any dispute as to the administration of the said account shall arise the same shall be referred forthwith to the Registrar of the Western Australian Industrial Relations Commission for the time being, whose decision in the matter shall be final and bind all persons referred to in order (6) hereof.
- (8) THAT all or any liability for taxes or charges of any kind which might become due and payable in respect of such account shall be discharged by the applicant who shall indemnify the respondent against any claim in respect of the same.
- (9) THAT all administration expenses in respect of the said account shall be paid forthwith by the applicant.
- (10) THAT in the event of any failure to comply with all or any of these conditions then there shall be liberty

to apply on 48 hours notice to revoke this order or any part thereof, and/or for any other necessary orders or directions.

- (11) THAT in the event of the appeal herein being dismissed then the monies in such account, including any interest earned by the same, shall be paid forthwith without any deduction to the abovenamed respondent.
- (12) THAT in the event of the appeal herein being upheld then the monies in such account, including any interest earned by the same, shall be paid forthwith without any deduction to the abovenamed applicant.
- (13) THAT the President may at any time upon application by any party hereto and without affecting the generality of his ability to give further directions—
  - (a) Fix further conditions.
  - (b) Direct that the account be administered by a person or persons in lieu of the persons referred to in order (6) hereof.
  - (c) Vary these orders.
- (14) THAT there be liberty to apply on 48 hours notice in relation to clarification of this order or for any ancillary orders or directions necessary to achieve what these orders require, save and except in relation to decisions made by the Registrar and pursuant to order (7) hereof.
- (15) THAT the applicant forthwith serve a copy of this order on the Registrar.

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Old Ferry Company Pty Ltd  
(Applicant)

and

Mario Gino Bertelli  
(Respondent).

No. PRES 5 of 1999.

BEFORE HIS HONOUR THE PRESIDENT  
P J SHARKEY.

2 September 1999.

*Order.*

THIS matter having come on for hearing before me on the 2nd day of September 1999, and having heard Mr A N Mackey (of Counsel), by leave, on behalf of the applicant and Mr M G Bertelli on his own behalf, 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 2nd day of September 1999, ordered that the order issued in application No PRES 5 of 1999 on the 13th day of August 1999 be varied as follows—

- (1) By substituting for the existing paragraph 5 therein a new paragraph 5 to read—
 

“(5) THAT account shall be opened by the applicant on or before the 18th day of August 1999.”
- (2) By substituting for the existing paragraph 6 therein a new paragraph 6 to read—
 

“(6) THAT such account shall be in the name of Old Ferry Company Pty Ltd as trustee for the applicant and the respondent.”

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

## AWARDS/AGREEMENTS— Application for—

### AMCOR BEVERAGE CANS, CANNINGVALE OPERATIONS, ENTERPRISE BARGAINING AGREEMENT 1999/2001. No. AG 104 of 1999.

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

Amcor Beverage Cans, Canning Vale Operations.

AG 104 of 1999.

Amcor Beverage Cans, Canningvale Operations, Enterprise  
Bargaining Agreement.

COMMISSIONER S J KENNER.

26 August 1999.

*Order.*

HAVING heard Mr G Sturman on behalf of the applicant and  
Mr M Beros 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 Amcor Beverage Cans, Canningvale  
Operation, Enterprise Bargaining Agreement as filed in  
the Commission on 9 June 1999 in the terms of the  
following schedule be and is hereby registered as an  
industrial agreement.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

#### 1.—TITLE

This Agreement shall be known as the AMCOR Beverage  
Cans, Canningvale Operation, Enterprise Bargaining Agree-  
ment 1999/2001.

#### 2.—ARRANGEMENT

The Agreement is arranged as follows—

Subject Matter	Clause No.
Annual Leave	14
Arrangement	2
Background	6
Casuals and Contractors	16
Consultation	11
Continuous Improvement	10
Date & Period of Operation	4
Employee Training and Development	12
Gainsharing	19
Grievance Resolution Procedure	13
Incidence and Parties Bound	3
No Extra Claims	23
Occupational Safety, Health and Environment	9
Operational Clause	22
Outcomes	8
Production Coverage	15
Redundancy Agreement	17
Relationship to Parent Award	5
Remuneration	18
Renewal of Agreement	21
Signatures	12
Title	1
Vision	7
Work Flexibility and Work Organisation	20

#### 3.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall apply at the premise located at 153-  
159 Bannister Road, Canning Vale, Western Australia, 6155  
and be binding upon—

a. AMCOR Beverage Cans, Canningvale Operations;

- b. All employees of AMCOR Beverage Cans, Canningvale Operations a division of Amcor Limited covered by the terms of the awards referred to in Clause 5 – Relationship to Parent Award;
- c. Automotive, Food, Metals Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch;
- d. The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

(2) This agreement covers 26 employees.

#### 4.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the 1st March 1999 and shall remain in force for a period of 2 years.

The parties will apply to the Western Australian Industrial Relations Commission to cancel the agreement on the 1st March 2001 unless it is renewed or varied at that time.

#### 5.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Can Manufacturing (Production and Maintenance Amalgamated Industries Pty Ltd) Award 1985 and the Metal Trades General Award No. 13 of 1965 provided that there is no inconsistency, the terms of this agreement shall prevail to the extent of the inconsistency.

#### 6.—BACKGROUND

This agreement has been negotiated between the parties taking into account the needs of both the business and the employees.

The process of negotiation was to establish the important business issues and then to identify the issues, which were of concern to the affected employees in their ability to effectively meet the business objectives.

The cornerstone of this agreement are two fold and are set on the individual and team outcomes whilst at all times ensuring that they are closely linked to the business outcomes.

This will be achieved through the detailed and agreed initiatives set out in this agreement.

#### 7.—VISION

The parties to this agreement have endorsed the Vision for Amcor Beverage Cans and commit to ensuring that the Vision is promoted amongst all employees of the Company.

The Vision is: To provide an injury free workplace where employees enjoy job security and satisfaction. The ability through semi-autonomous work groups to have a positive impact on safety, the environment, quality and performance. Through being outcome focussed, ensure the viability of our business.

#### 8.—OUTCOMES

Amcor Beverage Cans business outcomes are two fold. It is intended to set individual and team outcomes whilst at all times ensuring that there is synergy with our business outcomes.

Employee Outcomes—

- (1) No injuries.
- (2) Job security.
- (3) Job satisfaction.
- (4) Financial security
- (5) Responsibility.
- (6) Lifestyle.
- (7) Utilisation of skills and talents.
- (8) Input to achieve business outcomes.
- (9) Recognition of service.
- (10) Trust and co-operation.
- (11) Consultation and communication.
- (12) Increased skill levels

Business Outcomes—

- (1) No injuries.
- (2) No customer complaints.
- (3) Meeting all external audit requirements (safety, environmental, quality, process, and administration).

- (4) Business viability.
- (5) Increased sales.
- (6) Lowest manufacturing cost.
- (7) Employee development.
- (8) Recognition for achievement of outcomes.
- (9) Focussed and committed semi-autonomous workforce.
- (10) Employee acceptance of autonomy, responsibility and accountability.
- (11) Continuous improvement culture.
- (12) Documented/Fact based decision-making.

#### 9.—OCCUPATIONAL SAFETY, HEALTH AND ENVIRONMENT

All employees recognise the significant change in the culture, attitudes and systems regarding Occupational Health and Safety at Amcor Beverage Cans, Canningvale operation over the past two years.

All employees are committed to the AMCOR No Injuries Policy as set out in the Vision (Clause 7).

In the event of an employee repeatedly offending Amcor Beverage Cans agreed Occupational Health and Safety procedures then in line with the reinforcement procedure his/her continued employment with the organisation will be evaluated.

All parties to this agreement are committed to the ongoing development of safe systems of work and this will achieve this by—

- (1) Developing a plan and document all actions.
- (2) Encourage employees to document hazards.
- (3) Risk assessment and hazard identification.
- (4) Implementing the “5s” system for housekeeping.
- (5) Defined injury management programs.
- (6) Addressing all recommended actions from third party reviews.

The parties will measure the success by—

- (1) Number of risk assessments and hazard reports completed and closed out.
- (2) Meeting set target dates.
- (3) First aid treatment rates.
- (4) Lost Time Injury Frequency and Severity.
- (5) Absenteeism.
- (6) Third party review results.

#### Quality

As with safety employees directly influence quality. All parties to this agreement recognise that manufacturing the product to our customer’s satisfaction is a key to the business success and viability. This will be achieved by—

- (1) Documenting all non-conformances and corrective actions.
- (2) 100% completion of all process checks.
- (3) ISO 9002 compliance.
- (4) Addressing all customer feedback reports.
- (5) Addressing all recommended actions from third party reviews.
- (6) Ensuring suppliers understand the business requirements.
- (7) Ensuring commitment to the quality system.
- (8) Ensuring the quality system meets needs of the business
- (9) Ensuring process capability.

The parties will measure the success by—

- (1) Customer returns.
- (2) Customer feedback.
- (3) Quarantine product.
- (4) Third party review results.
- (5) Internal review results.
- (6) Process capability.
- (7) Process inspection rate.

#### Plant Performance

All employees recognise the need for the Amcor Beverage Can, Canningvale operation to be the most cost-effective manufacturer of 2 piece aluminium cans in Australia and the Southern Hemisphere. The areas we can directly influence this outcome is plant performance. The agreed outcomes for plant performance are—

- (1) 2 million cans per day.
- (2) Total factory spoilage 2%.
- (3) Lowest possible can weight.
- (4) Budgeted raw material usage.
- (5) Meeting budgeted unit costs.
- (6) Implementing preventative maintenance programs.
- (7) Documenting all actions using the Plan Do Check Act (PDCA) method.
- (8) Utilising Quality/Statistical Tools.

The parties will measure the success by—

- (1) Finished goods production.
- (2) Can weights.
- (3) Raw material usage.
- (4) Budgeted unit cost.
- (5) Preventative maintenance planned Vs Actual.
- (6) Review major non-conformance on a monthly basis for evidence of the “PDCA” methodology.
- (7) We will measure our implementation rate of Quality/Statistical tools on a monthly basis.

#### 10.—CONTINUOUS IMPROVEMENT

All parties to this agreement are committed to searching for areas where improvements can be made and implementing such improvements as part of this Agreement. It is agreed that all parties must continually question the methods and be open to new and innovative systems, technology and processes that focus on achieving the business outcomes. The parties’ plans and decisions will be made, wherever possible, on hard data/facts and we will measure the business performance post implementation.

#### 11.—CONSULTATION

All parties recognise consultation is a key vehicle to ensure a committed and contented workforce achieving the agreed outcomes. The parties will achieve this outcome by—

- (1) Developing a communication/information system.
- (2) The achievement to both individual and business outcomes will be communicated on a monthly basis to the teams.
- (3) The management team will consult with any employees subject to this agreement, who are effected by changes which occur during the life of this agreement. Such consultation shall occur as follows—
  - (i) JCC for operational issues that affect the majority of employees.
  - (ii) Shifts/Teams for team related issues.
  - (iii) Individual employees for issues that affect individuals.

The parties will measure our success by—

- (1) Measuring planned Vs actual of meetings
- (2) Surveying employees to measure their satisfaction of our communication processes.
- (3) Measuring the employees level of understanding of the business plan.

#### 12.—EMPLOYEE TRAINING AND DEVELOPMENT

To assist the process a business needs analysis will be undertaken. This will focus on work team skills and individual skills. A skills audit will be undertaken. From this a training plan will be developed. The parties recognise the difficulty in undertaking on the job training and therefore will target to use external providers for all training. Where possible all training will meet nationally recognised standards. Training will continue to focus on the following areas—

- (1) Leadership Development.
- (2) Occupational Safety, Health and Environmental.
- (3) Quality Systems and Procedures.

- (4) Problem Solving.
- (5) Communication.
- (6) Technical and Engineering.

The parties will measure the success—

- (1) Measuring the planned training Vs actual on a monthly basis.
- (2) Training feedback forms.

#### 13.—GRIEVANCE RESOLUTION PROCEDURE

All employees have a responsibility to raise and discuss workplace related issues as soon as they arise.

The following procedure will be used if any grievance arises—

- (1) The matter is discussed between the employee and his immediate coordinator.
- (2) If resolution is not reached, the matter is referred to the Manufacturing Manager.
- (3) If resolution is not reached, the provisions of clause 34 of the Metal Trades General Award Avoidance of Industrial Disputes will apply.

The employee may seek assistance of a Union representative at any stage of these discussions.

#### 14.—ANNUAL LEAVE

One employee per shift may take annual leave at any time. If a second successive employee requests annual leave, this will require approval by a senior management representative.

A maximum of 200 hours leave entitlement for each employee will be carried unless prior approval is agreed with the Manufacturing Manager or his representative.

The employees agree to the ongoing annual leave reduction program for employees who currently have in excess of 200 hours.

Annual leave will be taken as follows—

- (1) At least 2 weeks continuous annual leave.
- (2) At least 1 week continuous annual leave
- (3) Remaining may be taken as single days (up to a maximum of five single days in a year).

#### 15.—PRODUCTION COVERAGE

There will be no agreed running levels under the term of this agreement, neither can one be set. The Process Systems Employees, on day-shift, may be utilised for any additional coverage on shift.

#### 16.—CASUALS AND CONTRACTORS

If the need arises the use of casual or contract labour to undertake activities normally performed by our employees it will be discussed with the relevant management representative and the union representative and the JCC representative.

#### 17.—REDUNDANCY AGREEMENT

The parties to this agreement are committed to reviewing the current Redundancy Agreement and if it is deemed necessary the agreement will be amended accordingly. The current agreement will remain in place until this is achieved

#### 18.—REMUNERATION

A remuneration system that encourages and rewards a safe and quality focussed performance based culture is the basis of our remuneration system.

A three percent base rate wage increase is to be paid, effective 1<sup>st</sup> March 1999.

A further three percent base rate increase is to be paid effective 1<sup>st</sup> March 2000.

The current system is based on an average rostered hours per week over a 12 month period. Included in the rostered hours are—

1. Rostered manufacturing hours (average per week).
2. Two rostered business and employee development hours (average per week).
3. Two extra rostered hours (average per week) available for production if required due to performance or sales issues. If a further manufacturing requirement occurs the business and employee development hours will be utilised.

4. Employees may work up to 48 hours on day shift or night shift in any one week.
5. Dayshift employees work the average hours worked by the shift employees on a Monday to Friday basis.

The following table indicates the paid hours for sales volume at Amcor Beverage Cans Canningvale based on an output of 1.76 million cans per day, 10 public holidays and one week for annual overhaul.

Bracket	Volume Sales (million)	Hours per week
1	240-279	40
2	280-299	42
3	300-319	44

The system is designed for the operation to work between three and four days per week. Start and finish of shifts may vary to meet commercial and operational needs. Any changes to rosters will be undertaken after consultation.

If the manufacturing performance exceeds the outlined expected output rates, Budgeted unit costs are met, and inventory is between 20 and 35 million the working week will be reduced accordingly. For the working week to be reduced by two or more hours our agreed quality and housekeeping standards must be met.

Should the average hours rostered exceed the paid hours, over the 12 month period, the employees will not be disadvantaged, and will be remunerated at the rate of Double Time.

The JCC will review the effectiveness of the remuneration system on a three monthly basis and will display, on the notice board, a graph of the actual average hours worked each quarter.

#### 19.—GAINSHARING

Employees may earn additional income above the base rate increases on the achievement of agreed Key Performance Indicators.

Gainsharing for all employees will be based on three core areas of Key Performance Indicators (KPI's). Safety, Quality and Performance.

The KPI's will be implemented for a 12 month period after which a review will be undertaken which result in the existing indicators remaining and/or new indicators or targets being agreed and implemented following consultation with all employees.

The KPI's for the first 12 months are—

Safety:	Housekeeping Training
Quality:	Check Frequency Customer Complaints
Performance:	Cans per Man Hour Spoilage

Safety and Quality will be measured over three month periods with a total pool per employee of \$250.00 (per period) if all targets are met.

The pool will be split evenly across the four indicators, ie, maximum of \$63.50 per indicator per quarter.

Performance will be measured over a weekly period, with a variable pool calculated using the agreed methodology.

A gainsharing document will be developed to support the system. The document will list the KPI's targets measurement and calculation systems. This will be communicated to all employees.

#### 20.—WORKPLACE FLEXIBILITY AND WORK ORGANISATION

The employees commit to flexibility in working hours to meet operational requirements. Dayshift employees, for example, will work on shift to enhance and up skill other employees and to attend to maintenance issues. Twenty four hour coverage, on annual overhauls, will be provided if required.

#### 21.—RENEWAL OF AGREEMENT

The JCC will commence a review and renegotiation of this agreement three months prior to the expiry of this agreement. Any new agreement would reflect the changes detailed in this agreement as a minimum.

## 22.—OPERATIONAL CLAUSE

It is recognised that during the lifetime of this agreement situations may arise that would require a change to the current working arrangements. If this becomes apparent to senior management this will be communicated to all parties to this agreement, where the parties will meet as soon as practicable, to resolve any issue.

## 23.—NO EXTRA CLAIMS

During the life of this agreement there will be no additional claims made on the Amcor Beverage Cans operation by the employees or employee representatives.

## 24.—SIGNATURES

Signed for and on behalf of Amcor Beverage Cans, Canningvale Operations a division of Amcor Limited

(Sgd.)

Dated: 19 May 1999

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

(Sgd.)

Dated: 19 May 1999

Signed for and on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Engineering and Electrical Division WA Branch.

J. D. FIALA

Dated: 20 May 1999

**ARROW HOLDINGS KENWICK FACTORY  
INDUSTRIAL AGREEMENT.  
No. AG 105 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Arrow Holdings Pty Ltd.

AG 105 of 1999.

Arrow Holdings Kenwick Factory Industrial Agreement.

COMMISSIONER S J KENNER.

31 August 1999.

*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 Arrow Holdings Kenwick Factory Industrial Agreement as filed in the Commission on 15 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,

[L.S.]

Commissioner.

Schedule.

## 1.—TITLE

This Agreement will be known as the Arrow Holdings Kenwick Factory 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. Clothing and Footwear
12. Training Leave, Recognition of Prior Learning
13. Seniority
14. Sick Leave
15. Pyramid Sub-Contracting
16. Drug and Alcohol, Safety and Rehabilitation Program
17. Income Protection
18. Union Membership
19. No Extra Claims

Appendix—Drug and Alcohol, Safety and Rehabilitation Program

## 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 Arrow 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 in the Kenwick Factory or the Kenwick premises on work covered by the terms of the Building Trades Award 1968, Award No. 31 of 1966, (the "Award"). There are approximately three (3) tradespersons and labourers covered by this agreement.

## 5.—DURATION

This Agreement shall commence from the first pay period on or after the 1<sup>st</sup> July 1999 and shall continue in effect until 1<sup>st</sup> July 2001.

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 the Award.

## 7.—SINGLE ENTERPRISE

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

## 8.—RELATIONSHIP WITH AWARDS

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

## 9.—ENTERPRISE AGREEMENT

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

## 10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate payable to each employee on the following basis—

1. On and from 1 January 2000, an increase on the hourly rate payable to employees as the commencement of the agreement of 50 cents per hour.
2. On and from 1 July 2000, a further increase of 50 cents per hour.
3. On and from 1 January 2001, a further increase of 50 cents per hour.

### 11.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each tradesperson 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.

### 12.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

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

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

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an 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 tradespersons and labourers 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.

### 13.—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.

### 14.—SICK LEAVE

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

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

### 15.—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.

### 16.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

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

### 17.—INCOME PROTECTION

It is agreed that all tradespersons and labourers will be covered by the 24 hour accident policy with a 14 day waiting period as of 1<sup>st</sup> July 1999.

### 18.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

### 19.—SITE WORK

It is agreed that yard employees will be given the first option of working on sites where special conditions or agreements apply superior to this Agreement. Employees choosing to go to work on such sites will not lose their seniority in the Kenwick Factory and shall return to that position. It is agreed that other tradesmen and labourers (labour trades) may be put on to fill that void for a set period of employment.

### 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.

Signed for and on behalf of—

The Unions:	BLPPU	(Sgd.) _____
		Date: 8/6/99
		(Sgd.) _____
		WITNESS
	CMETU	(Sgd.) _____
		Date: 8/6/99
		(Sgd.) _____
		WITNESS
The Company:		(Sgd.) _____
	<i>Company</i>	SIGNATURE
	<i>Seal</i>	Date: 1/6/99
		HARRY ZAURS
		PRINT NAME
		(Sgd.) _____
		WITNESS

### APPENDIX —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 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.
- 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/dismitted 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.

**AUSFORM CONSTRUCTION INDUSTRIAL  
AGREEMENT.  
AG 103 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.  
Industrial Relations Act 1979.

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

Dunstar Holdings Pty Ltd and Colin Geoffrey Williams  
and Maree Elizabeth Williams trading as  
Ausform Construction Company.

AG 103 of 1999.

Ausform Construction Industrial Agreement.

COMMISSIONER S.J. KENNER.

31 August 1999.

*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 Ausform Construction Industrial Agreement as filed in the Commission on 9 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

Schedule.

## 1.—TITLE

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

## 2.—ARRANGEMENT

1. Title
  2. Arrangement
  3. Area and Parties Bound
  4. Application
  5. Duration
  6. Dispute Settlement Procedure
  7. Single Enterprise
  8. Relationship with Awards
  9. Enterprise Agreement
  10. Wage Increase
  11. 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. Union Membership
  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 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 Dunstar Holdings Pty Ltd and Colin Geoffrey Williams and Maree Elizabeth Williams trading as Ausform Construction 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 three (3) employees covered by this agreement.

## 5.—DURATION

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

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

## 6.—DISPUTE SETTLEMENT PROCEDURE

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

### 7.—SINGLE ENTERPRISE

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

### 8.—RELATIONSHIP WITH AWARDS

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

### 9.—ENTERPRISE AGREEMENT

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

### 10.—WAGE INCREASE

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

### 11.—SITE ALLOWANCE

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

### 12.—INDUSTRY STANDARDS

#### 1. Redundancy

On work that is carried out on sites where the Principal Contractor has a registered or certified agreement the Company will immediately increase its payments to \$50 per week per employee. On all other work the Company will make payments of \$25 per week per employee.

#### 2. Superannuation

- (i) The Company will immediately increase its level of payment to \$60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

- (ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

### 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.

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

On work that is carried out on sites where the Principal Contractor has a registered or certified agreement, the following terms will apply—

- A training allowance of \$12.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.
- Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year, pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

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

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an 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.

- 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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

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**

(Sgd).....

Date: / /

(Sgd).....

**WITNESS**

**CMETU**

(Sgd).....

Date: / /

(Sgd).....

**WITNESS**

The Company:

(Sgd).....

**SIGNATURE**

Date: / /

*Company Seal*

R. WILLIAMS

**PRINT NAME**

(Sgd).....

**WITNESS**

APPENDIX A—WAGE RATES

	Date of Signing	1 August 1999
	Hourly Rate	Hourly Rate
	\$	\$
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory		
Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

APPRENTICE RATES

	Date of Signing	1 August 1999
	Hourly Rate	Hourly Rate
	\$	\$
<b>Plasterer, Fixer</b>		
Year 1	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
<b>Painter, Glazier</b>		
Year 1 (.5/3.5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33
<b>Signwriter</b>		
Year 1 (.5/3.5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
<b>Carpenter</b>		
Year 1	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
<b>Bricklayer</b>		
Year 1	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
<b>Stonemason</b>		
Year 1	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
<b>Rooftiler</b>		
6 months	9.91	10.04
2 <sup>nd</sup> 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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.
- 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 \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.90
Above \$2.17m to \$4.55m	\$2.25
Over \$4.55m	\$2.85

##### Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

#### 4.2 Projects Located Within West Perth (as defined)

##### New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

##### Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.60
Above \$2.17m to \$4.55m	\$1.80
Over \$4.55m	\$2.05

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 \$2.17m	\$1.30
Above \$2.17m to 6m	\$1.60
Above \$6m to \$11.98m	\$1.85
Above \$11.98m to \$24.43m	\$2.05
Above \$24.43m to \$60.5m	\$2.35
Over \$60.5m	\$2.55

“**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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

#### 14. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

#### 15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds \$35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

#### 16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 not withstanding that forecasts may have been below that level. The nurse

shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

#### 18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson's wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1 <sup>st</sup> year	42%
2 <sup>nd</sup> year	55%
3 <sup>rd</sup> year	75%
4 <sup>th</sup> year	88%

### BAINS HARDING INDUSTRIES (MANUFACTURING DIVISION) ENTERPRISE BARGAINING AGREEMENT. AG 113 of 1999.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bains Harding Industries Pty Ltd

and

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

AG 113 of 1999.

Bains Harding Industries (Manufacturing Division)  
Enterprise Bargaining Agreement.

COMMISSIONER S J KENNER.

18 August 1999.

*Order.*

HAVING heard Ms L Avon-Smith on behalf of the applicant and Mr G Sturman 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—

- (1) THAT the Bains Harding Industries (Manufacturing Division) Enterprise Bargaining Agreement as filed in the Commission on 16 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.
- (2) THAT the Bains Harding Industries (Manufacturing Division) Enterprise Bargaining Agreement, No. AG 89 of 1997 be and is hereby cancelled.

[L.S.] (Sgd.) S.J. KENNER,  
Commissioner.

#### 1.—TITLE

This Agreement shall be known as the "Bains Harding Industries (Manufacturing Division) Enterprise Bargaining Agreement".

#### 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Objective
4. Area and Scope
5. Parties Bound
6. Date and Period of Operation
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Casual Employees
10. Sick Leave
11. Commitments

12. Hours of Work
13. Grievance Settlement Procedure
14. Remuneration
15. Productivity Improvements
16. Other Productivity Improvement Measures
17. Confidentiality and Secrecy Deed
18. Probationary Period
19. Contractors
20. Wages
21. Signatories to Agreement

### 3.—OBJECTIVE

It is the objective of the employer and the employees to make the Bains Harding Manufacturing Division a highly efficient and competitive manufacturer, excelling in safety, productivity, quality and customer service.

It is recognised by the employer and the employees that the achievement of these objectives will lead to an improvement in the profitability of the company and its customers and thereby the employment security and working conditions of all employees.

It is also recognised that both the employer and all employees have an equal responsibility to ensure these objectives are realised and that the Consultative Committee has a major responsibility to assist in the implementation of changes required to realise the objective.

### 4.—AREA AND SCOPE

This Agreement shall apply to all employees employed by the Manufacturing Division of Bains Harding Industries (The Employees) who are engaged in positions covered by the Parent Award.

### 5.—PARTIES BOUND

5.1 This Agreement shall apply to—

- (a) Bains Harding Industries Pty Ltd Manufacturing Division (The Employer); and
- (b) The Employees (an estimated 35 employees); and
- (c) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch (The Union).

### 6.—DATE AND PERIOD OF OPERATION

6.1 This Agreement shall operate for a period of 24 months from the date the Agreement is executed by all parties and will continue after this time until renewed or replaced or cancelled.

6.2 The parties shall endeavour to commence negotiations for replacement, renewal or cancellation of the Agreement no earlier than three months prior to its expiry date.

### 7.—RELATIONSHIP TO PARENT AWARDS

7.1 This Agreement shall be read and interpreted wholly in conjunction with Part 1 of the Metal Trades (General) Award 1966 No 13 of 1965 as it exists at the date this Agreement is executed ("Parent Award").

7.2 Where there is any inconsistency between this Agreement and the Parent Award, the Agreement shall prevail to the extent of such inconsistency.

### 8.—SINGLE BARGAINING UNIT

8.1 For the purposes of this Agreement a single bargaining unit shall be established by way of a Consultative Committee comprised of—

- (a) Three Employer representatives; and
- (b) Three representatives elected from the workforce.

### 9.—CASUAL EMPLOYEES

9.1 (a) In the case of a casual employee, the period of notice of termination shall be one hour.

- (b) If the required notice of termination is not given, one hour's wages shall be paid by the employer or forfeited by the employee.

9.2 For the purpose of this Agreement an employee shall be deemed to be casual—

- (a) If the expected duration of the employment is less than three months; or
- (b) If the notification referred to in Subclause (6) of Clause 6—Contract of Service in the Metal Trades

(General) Award No. 13 of 1965 is not given and the employee is dismissed, through no fault of the employee, within three months of commencing employment;

- (c) If the employee is employed for a specific seasonal or short term demand, provided that the employee's employment does not exceed six months without a break in employment.

9.3 After continuous employment of three months with Bains Harding Industries, a casual who is not employed for a specific seasonal or short term demand shall become a permanent employee. Accruals for annual leave and sick leave will commence from the date the employee's employment becomes permanent.

### 10.—SICK LEAVE

Notwithstanding the provisions of Clause 24—Absence Through Sickness in the Metal Trades (General) Award, it is a condition of employment an employee shall not be entitled to payment for sick leave unless, other than in extraordinary circumstances, the absence is reported to a Supervisor or Manager prior to 8.00am on the day in question.

### 11.—COMMITMENTS

1.1 The parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

1.2 Parties to this Agreement shall oppose any application by others to be joined to this Agreement.

1.3 There shall not be any further wage increases for the life of this Agreement.

### 12.—HOURS OF WORK

12.1 Ordinary Hours of Work/General Flexibility Provisions

The ordinary hours of work shall be 38 per week, worked in accordance with this clause.

- (a) Ordinary working hours may be averaged out over a cycle longer or shorter than one week.
- (b) By agreement between the employer and a group of employees affected, the ordinary hours may be worked on any day of the week, to a maximum of 5 days which must be consecutive.
- (c) For all employees, ordinary daily hours, except when on shift work shall be worked between 6.00am and 6.00pm, or some other spread of hours as mutually agreed between the employer and individual employees or groups of employees but the actual working hours shall not exceed 12 ordinary hours work on any day and shall be consecutive, except for a meal break.
- (d) When changes to ordinary working hours are deemed necessary, consideration shall be given to the following issues—
  - (i) the most productive and efficient operation;
  - (ii) maximum utilisation of plant;
  - (iii) personal needs and family responsibilities;
  - (iv) fair application of flexible working arrangements for all employees;
  - (v) reasonable notice of any prospective change.
- (e) For employees who work on a Tuesday to Saturday roster the following shall apply—

#### Overtime

Clause 14(1)(c) and (d) of the Parent Award will apply in relation to work done on Sundays and Mondays.

#### Public Holiday's

The intent of clause 23(1)(b) of the Parent Award will apply by substituting the following: When a Public Holiday falls on a Sunday or Monday the holiday shall be observed on the next succeeding Tuesday and when Boxing day falls on a Monday or Tuesday the holiday shall be observed on the next succeeding Wednesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

### 12.2 Rest Breaks

- (a) Employees shall not be required to work for more than six hours without an unpaid break of 30 minutes. The timing of the rest break may be changed by agreement to suit operational requirements.
- (b) Each employee shall be allowed a paid rest break of 10 minutes, including wash-up time, to be taken at a time and in a manner determined by the section supervisor to ensure minimal disruption to production.
- (c) Where an employee works for more than ten hours he or she will be allowed a second paid rest break of 10 minutes to be taken at a time and in a manner determined by the Section Supervisor to ensure minimum disruption to production.

### 13.—GRIEVANCE SETTLEMENT PROCEDURE

13.1 Where a question, dispute or difficulty arises with respect to this Agreement, the matter shall initially be discussed between the employee concerned and his/her immediate supervisor. The employee may elect to have representation during the discussions.

13.2 Where the matter of concern remains unresolved, it shall then be referred to the Consultative Committee for discussion. The employee may be accompanied during these discussions by the shop steward or a person of their choice. The parties shall initiate steps to resolve the grievance as soon as possible. Reasonable time frames shall be maintained when dealing with issues and prompt attention shall be given to resolving matters.

13.3 If the grievance cannot be resolved after following the procedures outlined herein, either party may refer the matter to the Western Australian Industrial Relations Commission.

13.4 Employees will continue to work without involvement in any form of industrial action such as bans, limitations, stoppages or lockouts while discussions to resolve any dispute are taking place.

### 14.—REMUNERATION

#### 14.1 Increase in the Base Rate

The Employer agrees that an additional 4% will be paid over the period of the Agreement as follows—

- (a) 2% payable on June 1, 1999.
- (b) An additional 2% payable on June 1, 2000.

#### 14.2 Bonus Payments

An additional 2% per annum will be available to all employees through a productivity bonus as follows—

- (a) The bonus scheme operates individually in relation to medical treatment incidents, absenteeism and quality. The system operates collectively across each operating unit in relation to housekeeping & safety.
- (b) The bonus will be paid monthly in arrears through the weekly payroll system;
- (c) The amount of the bonus will be determined by performance in relation to four Key Performance Indicators. See 15.0 below;
- (d) The bonus will be allocated over the five Key Performance Indicators as follows—

Key Performance Indicators	% of Normal Weekly Earnings
Medical Treatment Incidents	0.50
Absenteeism	0.50
Quality	0.50
Housekeeping/Safety	0.50
<b>TOTAL</b>	<b>2.0%</b>

- (e) Normal weekly earnings are defined as gross pay for the normal hours of work as defined in Clause 12 above. The bonus is not payable on overtime payments.
- (f) The Consultative Committee will meet within two weeks of the end of each month to review performance and calculate the amount of bonus payable for the preceding month.
- (g) At the completion of each twelve month period 50% of the aggregate of the bonus paid during that period will be added to the base rate.

### 14.3 Insurance Cover

Employees will have personal accident insurance journey cover to and from their place of work from the date this Agreement is signed by all parties. This cover shall be no less than provided to employees in other operations of the company in WA.

In addition, Income Protection Insurance is available to those employees who elect to take advantage of this option. The premium will be deducted from weekly earnings through the payroll system.

### 15.—PRODUCTIVITY IMPROVEMENTS

The following Key Performance Indicators will form the basis of the productivity bonus—

KPI	TARGET
Medical Treatment Incidents	Zero
Absenteeism	Zero
Quality	Zero
Housekeeping/Safety	≥ 80%

#### 15.1 Medical Treatment Incidents

The objective is to eliminate from the workplace accidents resulting in injury to any person.

Upon completion of each calendar month during which the target for MTIS Is achieved a bonus will be payable to all employees. The amount of the bonus will be calculated in accordance with Clause 14.2 above.

#### 15.2 Absenteeism

The objective is to eliminate unnecessary absences from work including abuse of the sick leave scheme. The target will be to achieve a 100% attendance record. The target has therefore been set at zero.

All absences from work, including sick leave, will be referred to the Consultative Committee who will assess each case on it's merits. The Consultative Committee will develop objective criteria for the assessment of each case.

Absences that are considered by the Consultative Committee to be genuine will be removed from the calculation. Any other absences will result in the cancellation of that portion of the bonus for that month.

Upon completion of each calendar month during which the target for absenteeism is met a bonus will be payable to all employees. The amount of the bonus will be calculated in accordance with Clause 14.2 above.

#### 15.3 Quality

The objective is to eliminate mistakes which result in the use of additional labour and/or materials, the late delivery of product to our customers or the production of a product that does not conform to our customer's specification.

Non-Conformance Reports (NCRS) will be used to record all such incidents. Upon completion of each calendar month during which the target for quality is met a bonus will be payable to all employees. The amount of the bonus will be calculated in accordance with Clause 14.2 above.

The Consultative Committee will review all NCRs to determine those over which the employees had control and which were the result of poor workmanship, carelessness or negligence. The Consultative Committee will develop objective criteria for the assessment of each case.

#### 15.4 Housekeeping & Safety

The objective is to significantly improve the general standard of housekeeping & safety across the whole Manufacturing Division.

The Housekeeping & Safety Review Checklist will be completed once per month by two members of the Consultative Committee (one employer and one employee representative).

Upon completion of each calendar month during which the target for housekeeping and safety is equalled or exceeded a bonus will be payable to all employees. The amount of the bonus will be calculated in accordance with Clause 14.2 above.

### 16.—OTHER PRODUCTIVITY IMPROVEMENT MEASURES

#### 16.1 Communications

Good communication is regarded by all as an essential element in the creation of a working environment that

encourages honesty, loyalty, trust and creativity. Regular communications will be maintained via—

- (a) Quarterly meetings of all employees;
- (b) Monthly Consultative Committee meetings;
- (c) Fortnightly Toolbox meetings.

#### 16.2 Employee Involvement

Employees are to become involved and to continue focussing on—

- (a) Customer service, both internal and external;
- (b) Reduction in down time, waste and replacement parts;
- (c) Productivity projects to improve quality and output without increasing overall costs.

#### 16.3 Training

The Consultative Committee will develop a classification structure which will define the competencies required for each classification. The classification structure will be based upon those existing in the Metal Trades (General) Award and the Metal and Engineering Industry National Competency Standards.

The Consultative Committee will also develop training programmes designed to meet the specific requirements of the Manufacturing Division and the employees.

#### 16.4 Other Improvement Measures

In order to achieve the aim of improved efficiency, productivity and flexibility, the following measures shall be implemented and the Consultative Committee will develop systems to monitor and report progress in relation to the objectives.

##### (a) *Occupational Health and Safety*

Improved safety procedures and monitoring of methods to reduce the duration of time lost through injury.

##### (b) *Staff Assistance to Wages Employees*

Staff may use tools provided this does not in any way replace the jobs of employees covered by this Agreement.

##### (c) *Consumables*

- (i) A concerted effort will be made by all employees to reduce wastage in consumable items such as gloves, glasses, disposable overalls, grinding discs, etc.
- (ii) The Consultative Committee will develop a system to monitor and report progress in relation to this objective.

##### (d) *Completion of Jobs*

For the purposes of meeting client delivery deadlines, employees will complete work in hand each day by working reasonable overtime.

##### (e) *Overtime Refusal*

As stated in the Award, employees shall not refuse to work reasonable overtime when requested to do so by the Supervisor. Reasonable overtime is regarded as 6 hours per week spread over not less than 5 days provided the employee is given not less than 1 day's notice. By agreement between the employee and employer a shorter notice period may be given.

##### (f) *Time Keeping*

To promote prompt and efficient time keeping, employees will monitor their own starting, smoko and finishing times.

### 17.—CONFIDENTIALITY AND SECRECY DEED

It is a condition of employment that each employee will sign a Confidentiality and Secrecy Deed, in the form shown in Attachment 1, and comply with the requirements of such Deed.

### 18.—PROBATIONARY PERIOD

As part of an on-going selection process, all new-employees will be employed for a one month probationary period during which time the employee or the employer may terminate the contract of employment by giving one hour's notice and an employee so terminated shall be deemed to have been employed on a casual basis.

### 19.—CONTRACTORS

It is agreed that from time to time customers require work to be performed at short notice. In an effort to maintain customer credibility work that is not able to be scheduled into normal production, may be undertaken by contract personnel.

### 20.—WAGES

Employees shall be paid as per the rates shown in Attachment 2.

### 21.—SIGNATORIES TO AGREEMENT

#### *Consultative Committee*

Jason Fuller	Geoff Kennaugh
Wayne Taaffe	Gunnar Day
John Whitehand	Victor Harp

Signed for and on behalf of Bains Harding Industries Pty Ltd

(Sgd.).....

Date: 10-5-99

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

(Sgd.).....

Date: 2-5-99

### ATTACHMENT 1

#### CONFIDENTIALITY AND SECRECY DEED

#### **CONFIDENTIALITY AND SECRECY DEED**

THIS DEED is made on     day of             1999 by the person whose name and address are specified in the Schedule ("the Recipient").

#### RECITALS—

- A. The Recipient is engaged, either as an employee or as an independent Contractor by Bains Harding Ltd Group of Companies (ACN 009 089 981) of 21 King Edward Road, Osborne Park, Western Australia ("Bains Harding") to provide services to Bains Harding ("the engagement").
- B. During the course of that engagement, the Recipient has had and will have access to or may become acquainted with information that Bains Harding has designated as confidential.
- C. During the course of that employment the Recipient may have, either on his/her own or as a member of a team made a discovery, invention or novel design which Bains Harding wishes to exploit.
- D. The Recipient acknowledges the desire and right of Bains Harding to preserve the secrecy of their confidential information and agrees not to disclose the confidential information.

#### 1. DEFINITIONS

"**Confidential Information**" means and includes any document or information marked as confidential and any information received or developed by the Recipient in the course of his engagement with Bains Harding, which is not publicly available and relates to trade secrets, intellectual property, copyright, patents, trademarks, designs, proprietary business practices and concepts, processes, equipment, designs for product, technical data, marketing information, customer lists, financial information and business plans and techniques used by Bains Harding in the course of the company's business and includes the documents and information listed in the Schedule.

"**Bains Harding**" includes Bains Harding Industries Pty Ltd, Bells Thermalag Industrial Services Pty Ltd and Formfix Pty Ltd and any other company forming part of the Bains Harding Group of Companies.

"**Document**" means—

- a) any paper or other material on which there is writing or printing or on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;

- b) a disc, tape or other article from which sounds images or messages are capable of being reproduced;
- c) a disc, tape or other article, or any material from which sounds, images, writing and messages are capable of being reproduced with or without the aid of any other article or device;

and without limiting the generality of the foregoing, includes any summons, order, legal process or other notice.

**“Recipient”** means the person listed in the schedule hereto and includes the recipients employees, consultants, agents, contractors and sub-contractors.

**“Goods”** means the items manufactured by Bains.

**“Services”** means any service provided by Bains and includes design, scaffolding, painting, maintenance, insulation and engineering services.

## 2. INTERPRETATION

2.1 Headings are not to be used in interpreting this Agreement.

2.2 A reference to—

- a) one gender includes all genders;
- b) a person includes bodies corporate and vice versa; and
- c) an agreement or legislative or other instrument, code or standard includes a reference to it as amended at any time;

2.3 The words “include” and “including” are to be construed without limitation.

## 3. CONFIDENTIAL INFORMATION

3.1 The Recipient acknowledges that during the course of his engagement with Bains Harding he may become acquainted with, or has access to, Confidential Information. He agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company.

3.2 The Recipient agrees not to use the Confidential Information for any purpose other than for the benefit of Bains Harding during or after his engagement with Bains Harding.

3.3 The Recipient shall not remove Confidential Information from the premises of Bains Harding without the written consent of Bains Harding.

3.4 The Recipient shall not, for whatever reason either for himself or any third party appropriate, copy, memorise or in any manner reproduce or reverse engineer any of the Confidential Information.

3.5 The Recipient agrees to return any or all Confidential Information on request of Bains Harding.

3.6 Nothing in this Deed shall impose an obligation on the Recipient with respect to maintaining confidence regarding any information which—

- a) becomes or has been generally available to the public other than as a result of a disclosure by the Recipient;
- b) was available to the Recipient on a non-confidential basis prior to its disclosure to the Recipient by Bains Harding or its representatives; or
- c) becomes available to the Recipient on a non-confidential basis from a source other than Bains Harding or its representatives, provided that such source is not bound by obligations of confidentiality to Bains Harding, nor is it intended to prevent the Recipient from using his own skill in any business in which he may be engaged after the termination of his engagement with Bains Harding.

## 4. INVENTIONS, COPYRIGHT, DESIGNS OR KNOW-HOW

4.1 The Recipient acknowledges that any of the following created during and in the course of the engagement with Bains Harding is the property of Bains Harding—

- a) all inventions, discoveries and novel designs whether or not registrable as designs or patents including any

invention of or developments or improvements to equipment, technology methods or techniques made by the Recipient solely or jointly with others at any time during and arising out of the engagement with Bains Harding (“inventions”);

- b) the entire copyright throughout the world in all literary works, art works and other copyright works as defined in the Copyright Act, 1968 as amended and eligible layout rights as defined in the Circuit Layouts Act 1989 (“Works”)

4.2 The Recipient shall disclose to Bains Harding all Inventions and Works created during and pursuant to his engagement with Bains Harding.

4.3 The Recipient shall both during and after the term of the engagement do all such acts and things, and sign all documents as Bains Harding or its attorneys may reasonably request to secure to Bains Harding ownership or registration rights in the Inventions and Works.

## 5. INJUNCTIVE RELIEF

The Recipient acknowledges that Bains Harding may obtain injunctive relief against the Recipient for any breach of this Deed, in addition to the remedies it may have at law.

## 6. GOVERNING LAW

The laws of the State of Western Australia shall govern this Deed and the parties expressly submit to the jurisdiction of the courts of that State.

## 7. SEVERABILITY

If any provision of this Deed should be held to be invalid or unenforceable it shall be severed and the remaining provisions shall not be affected or impaired. This Deed shall be construed so as to most nearly give effect to the intent of the parties as it was originally executed.

IN WITNESS WHEREOF the Recipient has hereunto set his hand and seal the day and year first above written.

## THE SCHEDULE.

Name of Recipient—

Address—

Telephone No.—

Occupation—

## CONFIDENTIAL INFORMATION

Confidential Information shall include but not be limited to

1. All information relating to product distributorships agreement.
2. All information relating to the company’s client list including contacts and pricing arrangements.
3. All information relating to the company’s product catalogues and pricing schedules.
4. All information relating to inventories, discovery and novel design whether registered or not.
5. All information relating to proprietary technologies.
6. All information relating to computerised processes, including programs, designs, routines and systems operations.

SIGNED by the Recipient as a Deed

in the presence of: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Name: \_\_\_\_\_

Witness Address: \_\_\_\_\_

Witness Occupation \_\_\_\_\_

## ATTACHMENT 2

Rate Set Code	Concept Class	New Classification	Current		June 1, 1999		June 1, 2000	
			Hourly	Weekly	Hourly	Weekly	Hourly	Weekly
035	SM5AG	Skilled Worker—Level 1	15.8358	601.76	16.1525	613.80	16.4756	626.07
023	SM4AG	Skilled Worker—Level 2	15.5400	590.52	15.8508	602.33	16.1678	614.38
		Skilled Worker—Level 3	15.1676	576.37	15.4711	587.90	15.7804	599.66
039	SM1AG	Skilled Worker—Level 4	14.6879	558.14	14.9817	569.30	15.2813	580.69
022	SM2AG	Semi Skilled Worker—Level 1	14.1600	538.08	14.4432	548.84	14.7321	559.82
036	TP1AG	Semi Skilled Worker—Level 2	13.4218	510.03	13.6902	520.23	13.9640	530.63
019	TP5DF	Semi Skilled Worker—Level 3	12.7921	486.10	13.0479	495.82	13.3089	505.74
		Semi Skilled Worker—Level 4	12.5971	478.69	12.8490	488.26	13.1060	498.03
027	TA4DF	Unskilled Worker—Level 1	11.8816	451.50	12.1192	460.53	12.3616	469.74
026	TA3DF	Unskilled Worker—Level 2	11.4079	433.50	11.6361	442.17	11.8688	451.01
025	TA2DF	Unskilled Worker—Level 3	10.8579	412.60	11.0751	420.85	11.2966	429.27
024	TA1DF	Junior Worker—20 Years	9.5471	362.79	9.7380	370.05	9.9328	377.45
030	URKAG	Junior Worker—19 Years	8.0587	306.23	8.2199	312.36	8.3843	318.60
038	URJAG	Junior Worker—18 Years	6.6726	253.56	6.8061	258.63	6.9422	263.80

**BHP BUILDING PRODUCTS OSBORNE PARK  
ENTERPRISE AGREEMENT 1999.  
AG 114 of 1999.**

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

BHP Steel (JLA) Pty Ltd trading as  
BHP Building Products at Osborne Park

AG 114 of 1999.

BHP Building Products Osborne Park  
Enterprise Agreement 1999.

COMMISSIONER S.J. KENNER.

23 August 1999.

*Order.*

HAVING heard Mr G Sturman on behalf of the applicant and Mr T Stockley 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 BHP Building Products Osborne Park Enterprise Agreement 1999 as filed in the Commission on 17 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

1.—TITLE

This Enterprise Agreement will be referred to as the BHP Building Products Osborne Park Enterprise Agreement 1999.

2.—ARRANGEMENT

CLAUSE SUBJECT MATTER

1. Title
2. Arrangement
3. Application of Enterprise Agreement
4. Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Award
7. Purpose of Enterprise Agreement
8. Wage Adjustment
9. Co-operative Relationships with Union Representatives
10. Long Service Leave
11. Accident Pay Income Protection

12. Performance Related Payment Scheme

13. Union Delegate Training

14. Contractors

15. No Extra Claims

16. Procedure for Resolving Claims, Issues and Disputes

17. Signatories to the Agreement

Attachment 1—Site Specific Business Improvement Measures

Attachment 2—Wages Schedule—Osborne Park

3.—APPLICATION OF ENTERPRISE AGREEMENT

This agreement will apply to the BHP Steel (JLA) Pty Ltd site trading as BHP Building Products at 14 Howe Street Osborne Park, Western Australia 6017.

This agreement supersedes the operation of the BHP Building Products Osborne Park Performance Related Payment Scheme Agreement 1998. This agreement covers approximately 43 employees.

4.—PARTIES BOUND

The parties to this agreement are—

- a) BHP Steel (JLA) Pty Ltd trading as BHP Building Products at Osborne Park;
- b) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Australia, WA Branch and its members;
- c) All employees of BHP Building Products Osborne Park, whether members of the organisations specified above or not, engaged in any of the classifications contained in the Sheetmetal Workers Award No 10 of 1973.

5.—DATE AND PERIOD OF OPERATION

This agreement will operate from the 1 January 1999 for period of 12 months. It will remain in force until 31 December 1999.

6.—RELATIONSHIP TO PARENT AWARD

This agreement is to be read and interpreted in conjunction with the Sheetmetal Workers' Award No. 10 of 1973 and shall prevail to the extent of any inconsistency with that Award.

7.—PURPOSE OF ENTERPRISE AGREEMENT

This agreement rewards employees for implementing projects and achieving targets to improve the Building Products business. The focus of this agreement is to protect employees' purchasing power and minimise additional costs to the business. It recognises the high level of co-operation between employees and management to improve business performance and the need to continue this co-operative relationship and do whatever is safe, efficient, logical and legal to achieve excellence in all areas of our business.

#### 8.—WAGE INCREASE

This agreement provides for a wage increase of 3%, which will apply to award, overaward, leading hand and shift allowances. There will be a minimum increase of \$20 per week for adult fulltime employees. This wage increase will be paid effective the first full pay period after 1 June 1999.

#### 9.—CO-OPERATIVE RELATIONSHIPS WITH UNION REPRESENTATIVES

The mutual co-operation between the Company, employees and their unions has been constructive and collective arrangements have delivered benefits to employees and the Company. The Company undertakes to maintain and extend the sound consultative arrangements which are currently in place. Constructive relationships will be continued and this includes recognising accredited delegates and allowing union organisers rights of entry in accordance with currently established site practices.

#### 10.—LONG SERVICE LEAVE

State Long Service Leave provisions apply and these will continue. After at least 5 years of continuous service pro rata payment for long service leave on termination of employment will be made in the following circumstances—

- termination of employment by the Company for any reason other than serious or wilful misconduct; or
- termination of employment by the employee for reasons of pressing or domestic necessity.

The amount of pro rata long service leave payable on termination will be calculated using accrual rates set out in local long service leave legislation.

#### 11.—ACCIDENT PAY INCOME PROTECTION

Employees who are eligible for Workers' Compensation will be entitled to up to a maximum of 52 weeks Accident Pay within 104 weeks of the first day of work due to incapacity.

Accident Pay is the amount of weekly payment necessary to bring the weekly gross payment of injured employees up to their normal rate of pay (ie. not including overtime, penalty rates and other allowances). Accident Pay is payable to injured employees either experiencing total incapacity or partial incapacity deemed total because the Company is unable to offer appropriate work.

Payment of Accident Pay is conditional upon the employee being willing to participate in appropriate rehabilitation.

If a Workers' Compensation claim is finalised in this 104 week period, Accident Pay will cease.

If compensation rates are changed subsequent to the commencement of Accident Pay payments, the level of Accident Pay payments will not increase in comparison to the original level. The normal rate of pay will be maintained.

This arrangement will apply to eligible injured employees absent from work as from the effective date of this agreement.

Accident Pay will not be paid—

- a) for periods of incapacity during the first two weeks of employment with the Company;
- b) for periods of incapacity during the first 3 months of employment caused by journey accidents which are compensable under the applicable Workers' Compensation legislation;
- c) for any periods of incapacity caused by an injury which occurred prior to the date of commencement of this agreement;
- d) for periods of incapacity caused by an injury which is substantially an exacerbation or deterioration of an injury which occurred prior to the employee's employment with the Company;
- e) for any period of annual or long service leave or public holidays;
- f) for any periods of incapacity, unless a claim is made on the appropriate forms within two days of the injury or as soon as practicable in the case of serious injuries (for example requiring hospitalisation);
- g) for any periods of incapacity unless the employee furnishes evidence reasonably required by the Company;
- h) for any periods of incapacity, unless the employee submits him/herself to reasonable and appropriate

medical examinations, provided and paid for by the Company;

- i) after the death of the employee involved and no payment of Accident Pay will be paid to any other person with respect to that particular employee.

#### 12.—PERFORMANCE RELATED PAYMENT SCHEME

A Performance Related Payment Scheme will be used to promote business improvement in key areas. *For the quarter ending 31 May 1999 three local site measures will be used to drive business improvement. From 1 June 1999 a national measure based totally on errors may be introduced.*

A maximum of 6.5% of gross earnings will be payable each period. For the purposes of determining the performance related payment, gross earnings will include award and overaward payments, overtime and shift allowance earnings plus payments for paid leave. Payments not included in gross earnings are payments for periods of absence on workers' compensation where the absence has been for more than 12 months and performance related payments relating to a previous period which may have been paid during this period.

A reasonably achievable target should be set to deliver 5.5% of gross earnings, however actual payments may range from 0% to 6.5%, dependent on the achievement of set targets.

#### 13.—UNION DELEGATE TRAINING

The Company will co-operate with Unions to facilitate release and pay ordinary wages to delegates attending agreed courses where—

- a) there is prior consultation with the Company about course content and the ability to release particular employees from the job;
- b) the course is aimed at improving industrial relations and deals with relevant matters in a positive and responsible manner. Relevant matters may include workers' compensation, occupational health and safety and legislative change affecting employment at the centre;
- c) there is, where appropriate, an opportunity for Company participation in or contribution to the course.

#### 14.—CONTRACTORS

BHP Building Products operates a seasonal business which is subject to significant variations in production demand. The Company reserves the right to utilise contractors where it is of benefit to the business to do so. This would include meeting fluctuating production demands and where projected demand is unclear or uncertain.

#### 15.—NO EXTRA CLAIMS

The parties agree that for the period to 31 December 1999 there will be no extra wage or conditions claims, award or other (including claims related to National or State Wage Case decisions). Renewal agreement discussions may commence after 1 November 1999. There will be agreed scope to resolve issues about classification restructuring or work value claims by following the Procedure for Resolving Claims and Disputes as defined in Clause 17 of this agreement.

#### 16.—PROCEDURE FOR RESOLVING CLAIMS, ISSUES AND DISPUTES

This procedure aims to promote the resolution of questions, disputes or difficulties by measures based on consultation, co-operation and discussion, and to avoid interruption to the performance of work and the consequential loss of production and wages.

1. The matter is to be discussed between the employee concerned and the immediate supervisor. The employee may invite a delegate to attend. If unresolved;
2. the delegate and the employee are to discuss the matter with the immediate supervisor. If unresolved;
3. they are to raise the matter with the Site Manager. If unresolved;
4. Manager to arrange for the matter to be discussed with the union organiser, involving HR assistance as required.
5. If still unresolved, and the parties wish to pursue the matter further, the matter will be referred to the Western Australian Industrial Relations Commission. In order to allow for the peaceful resolution of

grievances, the parties shall be committed to avoiding stoppages of work. It is acknowledged that genuine attempts must be made to resolve the matter(s) prior to referring the matter to the Western Australian Industrial Relations Commission.

#### 17.—SIGNATORIES TO THE AGREEMENT

Signed \_\_\_\_\_

Date: 13-7-99

For on behalf of

BHP Steel (JLA) Pty Ltd, T/A  
BHP Building Products—Osborne Park

Signed \_\_\_\_\_

Date: 16-7-99

For on behalf of the employees covered  
by this agreement and the AFMEPKIU of Workers  
Western Australian Branch

#### ATTACHMENT 1—SITE-SPECIFIC BUSINESS IMPROVEMENT MEASURES

The following improvements and changes to work practices have been agreed at BHP Building Products Osborne Park.

The current PRPS measure of time-keeping will be maintained on a co-operative basis and the parties agree to make all attempts to maintain this measure at its current level of 84%.

All employees agree to be at their workstations and ready for work at the start of shift and at the end of work breaks. Section 17 of this agreement is to be used to resolve any issues arising.

Employees and management agree to work together to ensure a weekly toolbox meeting is held to address any issues which occurred in the previous week and to discuss any safety-related issues.

#### Attachment 2

#### OSBORNE PARK

30-Apr-99

ADJUSTMENTS—effective first full pay period in:

Classification	Pay Class	3%		Award	Overaward	Tool Allow.	Total	Hourly
		Jun-99	Base					
LEVEL 1	1307	340.827	44.805	385.632	133.568		519.2	13.66315789
LEVEL 2	1308	357.101	46.968	404.069	148.831		552.9	14.55
LEVEL 3	1309	378.834	50.058	428.892	152.808		581.7	15.30789474
LEVEL 4	1310	398.919	53.045	451.964	142.136		594.1	14.63421053
STORES	1311						559.1	14.71315789
TRADES	1312	429.613	83.739	513.352	174.379		687.731	18.09818421
Apprentices		100% rates		513.352	82			
APPRENTICE 1 <sup>ST</sup> YR (42%)				0	0	0	0	0
APPRENTICE 2 <sup>ND</sup> YR (55%)				0	0	0	0	0
APPRENTICE 3 <sup>RD</sup> YR (75%)				0	0	0	0	0
APPRENTICE 4 <sup>TH</sup> YR (88%)				0	0	0	0	0
<b>Tool Allowance</b>	9.4							
<b>Leading Hand Allowance</b>								
3-10 employees	22.454							
11-20 employees	33.475							
20+ employees	42.333							

Note: Apprentices' rates have been calculated using the tradesperson award rate (now \$513.35) plus an overaward payment.

In 1998 this overaward payment was \$77. This has been increased to \$82 to allow for the \$20 minimum payment to all adult employees.

Apprentice rates are calculated therefore using an adult standard that includes a \$20 minimum increase.

#### BINDER (WA) ENTERPRISE BARGAINING AGREEMENT 1999.

#### AG 115 of 1999.

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

Binder Engineering Pty Ltd.

AG 115 of 1999.

Binder (WA) Enterprise Bargaining Agreement 1999.

COMMISSIONER S.J. KENNER.

30 August 1999.

Order.

HAVING heard Mr G Sturman on behalf of the applicant and  
Mr A Wright 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 Binder (WA) Enterprise Bargaining Agreement  
1999 as filed in the Commission on 17 June 1999 in  
the terms of the following schedule be and is hereby reg-  
istered as an industrial agreement.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

#### 1.—TITLE

This Agreement shall be known as the Binder (WA) Enter-  
prise Bargaining Agreement 1999.

#### 2.—ARRANGEMENT

Clause No.	Subject
1.	Title
2.	Arrangement
3.	Application
4.	Parties Bound

5. Date and Period of Operation
6. Relation to Parent Award
7. Objectives of the Agreement
8. Joint Consultative Committee (JCC)
9. Hours of Work
10. Shift Work
11. Timekeeping/Attendance Allowance
12. Rest Breaks
13. Rates of Payment
14. Overtime
15. Public Holidays
16. Leave
17. Sickness
18. Classification Structures
19. Employee Reviews
20. Training
21. Casual Employees
22. Dispute Resolution
23. Counselling and Disciplinary Practice
24. No Extra Claims
25. Not to be used as a Precedent
26. Continuous Improvement
27. Redundancy Policy
28. Journey Insurance Cover
29. Signatories

### 3.—APPLICATION

This Agreement shall apply to Binder Engineering Pty Ltd, 34 Clune Street, Bayswater, Western Australia, to approximately 30 employees engaged in the operation of manufacturing pipe support components, with respect to employees engaged in the classifications and terms of the Metal Trades (General) Award 1966, insofar as those provisions relate to the parties referred to in Clause 4—PARTIES BOUND—of this Agreement.

### 4.—PARTIES BOUND

The parties to this Agreement are—

- A. Binder Engineering Pty Ltd;
- B. The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australia Branch.

### 5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the 1st June 1999 and shall remain in force for a period of TWO years. If at the conclusion of this agreement, no other agreement has been reached, then this agreement shall remain in force until such time that an agreement is made.

### 6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966 provided that where there is any inconsistency between this Agreement and the Metal Trades (General) Award 1966, this Agreement shall take precedence to the extent of the inconsistency.

### 7.—OBJECTIVES OF THE AGREEMENT

It is confirmed that all parties to the Agreement are committed to real productivity gains. Further, as part of this Agreement initiatives must flow, on an ongoing basis, from employer, employees and union representatives to identify means by which productivity gains will be identified, implemented, achieved, measured, and maintained, in the following areas—

- (a) Identification and resolution of Inefficient Work Practices.
- (b) Rework Reduction Program.
- (c) Improvement in Quality of Service.
- (d) Reduction in Absenteeism.
- (e) Job Rotation.
- (f) Job Sharing.
- (g) Work Organisation.
- (h) Job Re-design.
- (i) Training Requirements.
- (j) Introduction to Technology.
- (k) Induction Programmes.
- (l) Occupational Health and Safety.
- (m) Consumable Consumption Reduction.

- (n) Maximum use of available daily hours.
- (o) Production time recording.
- (p) Adoption and adherence to QA principles and processes.
- (q) Implementation and adherence to maintenance schedules.

### 8.—JOINT CONSULTATIVE COMMITTEE (JCC)

A Joint Consultative Committee shall be established to create the mechanism to negotiate an EBA and implement and maintain that agreed. The committee shall consist of TWO management representatives and THREE employee representatives, who shall be nominated by their respective associates.

### 9.—HOURS OF WORK

(a) The standard working week shall be from Monday to Friday. In order to promote Productivity, each working day shall be of an eight hour duration, therefore the minimum working week shall be 40 hours. As the standard working week is still recognised as 38 hours, the additional two hours per week worked will be banked and accumulate to provide "Accrued Days Off".

(b) The standard working day shall consist of 7.6 hours standard time plus 0.4 hours accrued time. Public Holidays and Sickness entitlement leave will be paid the same hours as a standard working day. Annual leave shall be paid at 7.6 hours only.

(c) "Accrued days off" to be taken on an agreed time convenient to both parties however—

1. In the event of a downturn in workload, the company reserves the right to request employee's to take accrued days.
2. A minimum of four days notice is required for the taking of accrued days, unless otherwise agreed by the parties.
3. An accrued day should be taken within a four-week period, unless otherwise agreed by the parties.

(d) "Accrued days" shall consist of an accumulated eight hours, and be paid at single time.

(e) Accumulated hours shall be taken as leave only (No interim payouts), however if employees do have accrued hours banked prior to 31st December of each year, they shall be paid out at the rate of time and a half.

### 10.—SHIFTWORK

(a) All employees are eligible to undertake shift work, unless otherwise agreed at the time of employment.

(b) The requirement to work a shift roster will be determined by the company workload and client requirements and shall be utilised at the company's discretion. As the need to introduce or terminate shift working eventuates, the requirement shall be announced and organised via the Joint Consultative Committee, giving a minimum of two weeks notice in regard to change. Shift working may be restricted to individual machines or departments depending on the work requirements. Afternoon & night shift working shall incur an additional 15% loading on all hours worked.

(c) In introducing changes into the workplace, Binder is aware that there may be individuals who will have personal problems in meeting the afternoon shift requirements, in these cases those people should bring those problems to the manufacturing managers attention so they may be resolved.

(d) The standard working hours are as follows—

#### Standard Working hours

Hrs Per Shift	Day Shift			Afternoon Shift		
	Start	Lunch	Finish	Start	Lunch	Finish
8	0700Hrs	1200-1230Hrs	1530Hrs	1515Hrs	2000-2030Hrs	2345Hrs
9	0700Hrs	1200-1230Hrs	1630Hrs	1615Hrs	2000-2030Hrs	0145Hrs
10	0600Hrs	1200-1230Hrs	1630Hrs	1615Hrs	2000-2030Hrs	0245Hrs

(e) In regard to Stores and Material Handling, there will be the requirement to stagger the working hours in order to cover the Company trading hours.

## 11.—TIME KEEPING/ATTENDANCE ALLOWANCE

(a) There is great importance attached to time keeping and attendance in order to enable efficient work planning, to promote such, a \$15 per week "attendance allowance" shall be paid to those who meet timekeeping requirements. This allowance shall be paid out weekly.

(b) Payment shall not be made if —

- I. An employee is late on any day.
- II. An employee leaves early without approval from management.
- III. An employee takes sick leave without the certification required under clause 17 of this agreement.
- IV. An employee does not attend work without prior approval.

(c) If an employee is late for work the following times will be deducted from their standard hours.

- Between 4—15 minutes late = 15 minutes deducted.
- Between 15—30 minutes late = 30 minutes deducted.
- Between 30—45 minutes late = 45 minutes deducted.
- Continuing in 15 minute stages.

If an employee deems that a late arrival was due to extenuating circumstances they may bring their case to the Production Supervisor for consideration.

(d) Although attendance is based on clock time, in order to utilise the available hours it is expected that employees will be at their work place and working during the nominated work times.

Also, in providing accurate shop floor feed back of actual time taken to complete work, accurate labour posting must be maintained, ie Book to correct jobs, work centres, time taken, etc.

## 12.—REST BREAK

A 10 minute rest break shall be taken in alignment with the arrival of an external food supply van and the provision of tea, coffee, milo, milk and sugar will be maintained, providing sensible utilisation is continued.

## 13.—RATES OF PAY

(a) Classification rates of pay shall be inclusive of the following increases—

Period of 01/06/1999 to 31/05/2000 @ 4.75%.

Period of 01/06/2000 to 31/05/2001 @ 4.75%.

(b) It is agreed that the period of 01/01/99 to 31/05/99 shall be BACKPAID at the rate of 4.75%, which will be applicable to current employees only.

(c) Rates of pay shall be in line with the following classification listing and all employees will be advised of their relevant classifications as aligned with the classification structure.

(d) Payment of wages will be undertaken via electronic transfer directly into nominated employee bank accounts, with no exceptions, and wage payments will be made on a weekly basis.

(e) Section Coordinators shall be paid an additional 7% loading, over their relevant classification rate, or the rate of the highest person supervised, which ever the greater. This is effective from 01/06/99.

Period 01/06/1999 to 31/05/2000

Award Classification	Present Rates		New Rates (+4.75%)		\$ Variance /Week
	\$/Hr	38 Hrs/Week	\$/Hr	38 Hrs/Week	
C9	15.54	590.52	16.28	618.64	28.05
C10	15.00	570.00	15.71	596.98	26.98
C11	13.83	525.48	14.49	550.62	25.14
C12	12.78	485.64	13.39	508.82	23.18
C13	11.76	446.88	12.32	468.16	21.28
C14	10.71	406.98	11.22	426.36	19.38
Junior age 20	9.93	377.45	10.40	395.20	17.75
Junior age 19	8.38	318.40	8.78	333.64	15.24
Junior age 18	6.95	264.14	7.28	276.64	12.40
Junior age 17	5.88	223.44	6.16	234.05	10.61
Junior age 16	5.88	223.44	6.16	234.05	10.61

Period 01/06/2000 to 31/05/2001

Award Classification	Present Rates		New Rates (+4.75%)		\$ Variance /Week
	\$/Hr	38 Hrs/Week	\$/Hr	38 Hrs/Week	
C9	16.28	618.64	17.05	648.03	29.38
C10	15.71	596.98	16.46	625.34	28.36
C11	14.49	550.62	15.18	576.77	26.15
C12	13.39	508.82	14.02	532.99	24.17
C13	12.32	468.16	12.90	490.40	22.24
C14	11.22	426.36	11.75	446.61	20.25
Junior age 20	10.40	395.20	10.89	413.97	18.77
Junior age 19	8.78	333.64	9.20	349.49	15.85
Junior age 18	7.28	276.64	7.63	289.78	13.14
Junior age 17	6.16	234.05	6.45	245.20	11.15
Junior age 16	6.16	234.05	6.45	245.20	11.15

## 14.—OVERTIME

(a) Overtime working may be required to overcome workshop capacity overloads or to maintain client delivery commitments.

At this time, employees will be requested to work additional hours by their section coordinator, and it is expected that all reasonable requests will be met.

Overtime will be structured as to maximise the available hours within the working week prior to working weekends.

(b) For initial overtime requirements—The normal working days will be extended as required. This will apply to either selected individuals or complete sections.

For additional overtime requirements—This will require weekend working. This will also apply to either selected individuals or complete sections, however the Company will be selective of individuals who have been responsive to pre weekend work requests.

## 15.—PUBLIC HOLIDAYS

Public holidays shall be paid at the standard hourly rate (i.e. 7.6 hours standard time plus 0.4 hours accrued time).

## 16.—LEAVE

Annual leave shall be scheduled and formally applied for at a time, which is mutually convenient to the parties. Annual leave shall be paid at the standard time. In the event of a down turn in work the company reserves the right to request employees to take accumulated leave.

## 17.—SICKNESS

Sickness entitlements shall remain as per award. In qualifying for sickness payment the following must be undertaken—

- I. Employees to advise the company on the day of sickness as soon as practicable of their non attendance and reasons.
- II. Produce a Doctors certificate.

Sickness of up to two days duration may be taken without a doctor's certificate on two occasions, other than that a Doctors certificate will be required. In order to aid rehabilitation of employees who have incurred sickness, their normal working hours will be maintained for the remainder of that working week. Employees who are absent for five consecutive days without contacting a company representative will be considered to have abandoned their employment.

## CLASSIFICATION STRUCTURE

1. The parties agree that the following process will be undertaken, using the Metal and Engineering Industry National Competency Standards—

- I. The indicative tasks set out in 2. below will be reviewed against the National Competency Standards. The parties agree that this will occur within one week of commencement of this agreement.
- II. In-house assessors will be nominated by the shop floor and management (the number of which to be agreed by the parties) and trained as assessors.
- III. The in house assessors shall then assess employees against the National Competency Standards, according to the skills required by the company. It is agreed that this will occur within five weeks of commencement of this agreement.

- IV. The company undertakes to align an employee's competences to NMEC modules, so there is portable recognition of the skills exercised at Binder Engineering.
- V. The JCC will over see a Binder Training Plan, to be implemented on a section by section basis. The plan will outline the needs, priorities and implementation of training for all Binder employees, including casuals.
- VI. It is agreed that that any wage changes which may result from III. above, will apply from commencement of this agreement.

## 2. Classification Structure.

The following structures are indicative of the skills required at Binder Engineering—

### Junior Employees.

Those employees who are under the age of 21 years old and without recognised trade qualifications shall be deemed as juniors for the purpose of Classification placement, and shall be paid at the rate relating to their age.

### General Processing

- C14 Start rate  
Grinding and cleaning  
Clean workshop and yard  
Assist as required  
Undertake training for upgrading to C13 classification in the operation of saw, cropper and drill machinery
- C13 C14 experience  
Operate, train and maintain the saw, cropper and drill machinery  
Operate thread and press machinery  
Mark out plates with close supervision and direction
- C12 C13 experience  
Set, operate, train and maintain press and thread machinery  
Operate profile cutter, euromatic press, and plate rolls  
Understand manufacturing drawings  
Drive fork truck
- C11 C12 experience  
Set, operate, train and maintain the profile cutter, euromatic press, oven and plate rolls.  
Assessment of ability, responsibility and product knowledge and general attitude over progressive period
- C10 Trades person with relevant skills applicable to the company requirements.  
Binder production employee, level one.  
C11 experience and ability to undertake all tasks required within the section  
Complete understanding of Binder product  
Minimum of 4 years continuous section experience  
Undertake the workload and responsibilities as applicable to a classification and skill requirement.

C9

### General Fabrication

- C14 Start rate  
Grinding and cleaning  
Clean workshop and yard  
Assist as required  
Undertake training for upgrading to C13 classification in the operation of the saw, cropper and drill machinery
- C13 C14 experience  
Operate, train and maintain the saw and drill machinery  
Operate welding robot  
Sort parts and organise work in progress materials as per the MTO's  
Mark out plates with close supervision and direction

- C12 C13 experience  
Second Class Welder with ability to qualify to 6mm fillet welding procedure  
Read manufacturing drawings  
Fabricate and weld structures and components under close supervision  
Drive fork truck

- C11 C12 experience  
Fabricate and weld structures and components to required standard  
Program and set up jigs on the robot.  
Assessment of ability, responsibility and product knowledge and general attitude over progressive period
- C10 Trades person with relevant skills applicable to the company requirements. Binder production employee, level one.  
C11 experience and ability to undertake all tasks required within the section  
Complete understanding of Binder product  
Minimum of 4 years continuous section experience  
Undertake the workload and responsibilities as applicable to a trade requirement.

C9

### Building Services

- C14 Start rate  
Grinding and cleaning  
Clean workshop and yard  
Assist as required  
Undertake training for upgrading to C13 classification in the operation of the saw and drill machinery
- C13 C14 experience  
Operate, train and maintain the saw and drill machinery  
Operate cropper, 2x brake presses, eremitic press and 60 ton press  
Mark out plates with close supervision and direction  
Position tack components under close supervision
- C12 C13 experience  
Set, operate, train and maintain cropper, 2x brake presses, euromac press and 60 ton press  
Fabricate and weld components under close supervision.  
Hot forming  
Understand manufacturing drawings.  
Drive fork truck
- C11 C12 experience  
Assessment of ability, responsibility and product knowledge and general attitude over progressive period
- C10 Trades person with relevant skills applicable to the company requirements.  
Binder production employee, level one.  
C11 experience and ability to undertake all tasks required within the section  
Complete understanding of Binder product  
Minimum of 4 years continuous section experience  
Undertake the workload and responsibilities as applicable to a trade requirement.

C9

### Springs Fabrication and Assembly

- C14 Start rate  
Grinding and cleaning  
Clean workshop and yard  
Assist as required  
Undertaking training for upgrading to C13 classification in the operation of the saw and drill machinery

- C13 C14 experience  
Operate, train and maintain the saw and drill machinery  
Sort parts and organise work in progress materials as per the Shop packages  
Mark out plates with close supervision and direction  
Assist in assembling, setting and calibration of springs
- C12 C13 experience  
Second Class Welder with ability to qualify to 6mm fillet welding procedure  
Read manufacturing drawings.  
Fabricate and weld spring components under close supervision  
Assemble set and calibrate springs  
Operate Centre Lathe  
Drive fork truck
- C11 C12 experience  
Fabricate and weld spring components to required standard  
Assessment of ability, responsibility and product knowledge and general attitude over progressive period
- C10 Trades person with relevant skills applicable to the company requirements.  
Binder production employee, level one  
C11 experience and ability to undertake all tasks required within the section  
Complete understanding of Binder product  
Minimum of 4 years continuous section experience  
Undertake the workload and responsibilities as applicable to a trade requirement.
- C9
- Stores**
- C14 Start rate  
Picking and packing by instruction  
Pick up and delivery of goods via company ute or truck
- C13 C14 experiences  
Process orders through company system  
Understanding of company systems  
Confident with paperwork flow  
Demonstrate ability to work unsupervised  
Assembly of finished goods orders working from MTO's and drawings
- C12 C13 experience  
Receiving, despatching, distributing, sorting, checking and packing of goods  
Accurate recording and documentation of all product movements  
Extensive product and product location knowledge  
Direct involvement with inventory control  
Drive fork truck
- C11 Qualified and experienced store person required to direct and supervise others Assessment of ability, responsibility and product knowledge and conscientious attitude over progressive period
- C10
- C9

#### 19.—EMPLOYEE REVIEWS

In line with the Binder Engineering Training program and National Competency Standard reviews, all employees shall undertake formal performance reviews on a 12 monthly basis. These reviews shall form the mechanism for initiating training programmes, to include; skill requirements, skill achievements, individuals abilities, performance, development areas, career aspirations and job satisfaction.

#### 20.—TRAINING

A Binder Engineering training plan shall be implemented for all personnel. This plan shall be developed in conjunction with the JCC and in respect to the company requirements, in providing and maintaining a diversified work force with skills that cover a range of machinery and production processes.

Training programmes and schedules shall be implemented in association with the employee reviews, with an understanding between the individuals and the company of training requirements, anticipated time frames, commitment to task and anticipated remuneration.

In general this training shall be undertaken in house under instruction by qualified employees as designated by the Company. All employees are required to be flexible and co-operative in undertaking any work within their ability that is required to achieve the manufacturing output.

#### 21.—CASUAL EMPLOYEES

(1) From time to time casual employees will be used to alleviate shortfalls in the permanent workforce of the enterprise. The employee will be engaged and notification of casual status will be noted on their application for employment form.

(2) For the purposes of this Agreement, an employee shall be deemed to be casual if the expected term of employment is less than two months.

(3) In all other respects the terms of casual employment shall be in accordance with those prescribed by the Metals Trades (General) Award No 13 of 1965.

(4) After a two-week period an initial review of the anticipated term of employment shall be undertaken. If the term were expected to be more than six weeks, then the supply of work clothing would be available to the employee. If the employee resigns or is dismissed for gross misconduct, within three months of commencement of employment, then the employee will reimburse the company for the cost of the clothing.

(5) After two months casual employment the requirement for the employee will be assessed—

- (i) Less than one months work load—offer to re-employ for a further two months on a casual basis.
- (ii) More than three months—offer permanent employment.

#### 22.—DISPUTE RESOLUTION PROCEDURE

1. The parties agree that open communication is fundamental to sound employee relations. The dispute procedure has been agreed by the parties to enable potential disputes to be resolved amicably, without loss of wages or production. It is the desire of the parties to make strikes unnecessary and to limit stop work meetings.

In the interest of sound employee relations, the most effective way to resolve problems including questions, disputes or difficulties arising under this agreement is to communicate and seek solutions at the level at which problems occur.

2. It is agreed that no industrial action will occur by both parties until the following procedure has been followed in all stages.

The status quo will be maintained whilst the procedure is being followed.

##### 3. Stage 1

Employee/s will discuss the question, dispute or difficulties with the Production supervisor who will attempt to resolve the issue within a mutually agreed time frame.

##### Stage 2

If the matter is not resolved, the supervisor or employee/s will refer it to the Manufacturing Manager who will endeavour to resolve the issue in an agreed time frame.

##### Stage 3

If the Manufacturing Manager cannot resolve the issue, then the matter will be referred to the JCC, who will review the dispute and report their views for consideration, by both parties. (Note. If the employee in question is a member of the JCC then he/she will be excluded from the referral).

##### Stage 4

If the matter still remains unresolved then either party(s) will refer the matter to the Operations Manager who will endeavour to resolve the issue in an agreed time frame.

**Stage 5**

At any time the matter may be referred to the Western Australian Industrial Relations Commission for resolution or determination by either party provided in so doing that all reasonable attempts have been made by both parties to resolve the matter.

4. At any or all stages of the above procedure an employee/s may request the assistance of a fellow employee, JCC member, shop steward or a union official who is party to this agreement to represent them.

**23.—COUNSELLING AND DISCIPLINARY PRACTICE**

Where in the opinion of the management, an employee's conduct, behaviour or work performance is unacceptable, the following procedure will be followed—

At all stages of this procedure, the employee may request the presence and assistance of a fellow employee, JCC member or a union official who is party to this agreement to represent them.

**1. First Warning**

Informal verbal discussion will occur between the employee and the immediate supervisor. The Supervisor shall keep a record of the incident and submit a copy to the employee file.

**2. Second Warning**

If the employee's behaviour or performance still remains unacceptable, the employee will be counselled by his or her manager and a formal written warning will be issued to the employee, with a copy submitted to employee file.

The written warning will clearly state the unacceptable conduct and define what is required by the employee to remedy the problem.

The employee will have the right to respond in writing on the notice.

**3. Third Warning**

If the employee's behaviour or performance is still unacceptable, the employee will be counselled further and issued with a final written warning. The written warning will state clearly that is the employee's behaviour or performance does not improve then demotion or termination will occur, again a copy submitted to file.

The written warning will clearly state the unacceptable conduct and define what is required by the employee to remedy the problem.

The employee will have the right to respond in writing on the notice.

4. At this time the JCC shall be advised of the situation and the events preceding the final warning, for their comments and acceptance. (Note. If the employee in question is a member of the JCC then he/she will be excluded from comment).

5. Written warning will remain in force for a six month duration.

**6. Dismissal**

For continued unacceptable behaviour or performance the employee will be terminated or demoted.

**7. Resignation—Employee**

Nothing in this procedure precludes an employee from resigning in preference to termination of employment or demotion.

**8. Company Discretion**

This procedure does not affect the employer's right to terminate an employee's services without notice for misconduct that justifies instant dismissal.

9. Nothing in this procedure precludes the implementation of the Disputes Settlement Procedure (Clause 22).

**24.—NO EXTRA CLAIMS**

It is a term of the Agreement that all parties bound by this Agreement will not pursue any extra claims, Award or over Award for the life of this Agreement including increases arising from Award variations or decisions of the Commission other than increases that are consistent with the terms of the Agreement.

**25.—NOT TO BE USED AS A PRECEDENT**

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

**26.—CONTINUOUS IMPROVEMENT**

Management, its employees and the union covered by this Agreement are committed to searching for areas where improvements can be made and implementing such improvements as part of this Agreement.

**27.—REDUNDANCY POLICY**

It is agreed that a redundancy policy will be submitted and incorporated within six weeks from the commencement of this agreement.

**28.—JOURNEY INSURANCE COVER**

It is agreed that journey insurance cover will be provided for all employees. As per insurance policy No. 05P0003093.

**29.—SIGNATORIES**

\_\_\_\_\_  
Signed for and on behalf of

**Binder Engineering PTY LTD**

Dated the 11<sup>th</sup> day of June 1999.

\_\_\_\_\_  
Signed for and on behalf of

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

Dated the 17<sup>th</sup> day of June 1999.

\_\_\_\_\_  
**BLESSED VIRGIN MARY NON-TEACHING STAFF  
ENTERPRISE BARGAINING AGREEMENT 1999.  
No. AG 47 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Institute of the Blessed Virgin Mary

and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers.

No. AG 47 of 1999.

18 August 1999.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 47 OF 1999

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Institute of the Blessed Virgin Mary Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 23 March 1999 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.

Schedule

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "Institute of the Blessed Virgin Mary Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "Institute of the Blessed Virgin Mary Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause No.	Clause Title
<b>Part I Parameters</b>	
1.	Title
2.	Arrangement
3.	Term
4.	Parties To The Agreement
5.	Scope
6.	Definitions
7.	Objectives
8.	No Reduction
9.	No Extra Claims
<b>Part II General Conditions of Service</b>	
10.	Contract Of Service
11.	Other Leave
12.	Leave Without Pay
13.	Sick Leave
14.	Family Leave
15.	Parental Leave
16.	Long Service Leave
17.	Annual Leave Loading
18.	Public Holidays
19.	Casual Employees
20.	Part-Time Employees
21.	Higher Duties
22.	Rest Pauses And Meal Breaks
23.	Travelling And Motor Vehicle Allowances
24.	Location Allowances
25.	Superannuation
26.	Payment Of Wages
27.	Time And Wages Record
28.	Right Of Access, Notices And Interviews
29.	Dispute Settling Procedures
<b>Part III Teacher's Aides' / Teaching Assistants</b>	
30.	Hours
31.	Wages
32.	Classifications
33.	Vacation Leave
<b>Part IV School Employees</b>	
34.	Hours
35.	Rosters
36.	Overtime
37.	Weekend Work
38.	Wages
39.	Classifications
40.	Uniforms
41.	Protective Clothing
<b>Part V Administrative and Technical Officers</b>	
42.	Hours
43.	Annual Leave
44.	Salaries
45.	Classifications

Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

- Independent Schools Administrative and Technical Officers Award 1993;
- School Employees (Independent Day & Boarding Schools) Award 1980;
- Teachers' Aides' (Independent Schools) Award 1988;
- Independent School (Boarding House) Supervisory Staff Award;
- Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 6.

6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

- Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;
- School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;
- Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;
- (Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;
- Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different

categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

#### 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

#### 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

### PART II

#### GENERAL CONDITIONS OF SERVICE

##### 10.—CONTRACT OF SERVICE

- (1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.
- (b) This shall include statements of—
- (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.
- (2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.
- (3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.
- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.
- (4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.
- (5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.
- (6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.
- (7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.
- (8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.
- (9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill,

competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

- (1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.
- (2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.
- (3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.
- (4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.
- (5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.
- (2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.
- (4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family;
    - or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and
    - (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
  - (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

##### (2) Use of unpaid leave

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

#### 15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

##### (1) Maternity Leave

- (a) Nature of leave  
Maternity leave is unpaid leave.
- (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee under the age of one year.
- (iv) Spouse includes a former spouse.

- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
- (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

##### (c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

##### (d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.

##### (e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

##### (f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.
- (g) Variation of Period of Maternity Leave
- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
- (i) Where the pregnancy of a employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
- (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
- (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where a employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.
- Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) Effect of Maternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) Termination of Employment
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of a employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) Paternity Leave
- (a) Nature of Leave  
Paternity leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
- (aa) any period of leave taken in accordance with this clause;
- (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for paternity leave  
A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
- (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification  
At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
- (aa) he will take that period of paternity leave to become the primary care-giver of a child;
- (bb) particulars of any period of maternity leave sought or taken by his spouse; and
- (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
- (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
- (aa) the birth occurring earlier than the expected date; or
- (bb) the death of the mother of the child; or
- (cc) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave  
Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment  
Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.

- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave  
Adoption leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
  - (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
  - (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
  - (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
  - (v) Spouse includes a former spouse.
  - (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
    - (aa) any period of leave taken in accordance with this clause;
    - (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for adoption leave—  
An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to three weeks at the time of placement of the child;
  - (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
    - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
    - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
  - (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.
- (d) Certification
- (i) Before taking adoption leave the employee must produce to the employer—
    - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
    - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
  - (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
    - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
    - (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.
- (e) Notice requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
  - (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
  - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
  - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the

requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the

employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.

- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—  
For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.
- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—  
For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.
- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the

holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of

12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowances

Rate per kilometre Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

All Areas of State	Rate c/km
	17.8

### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons allowance		Single Persons allowance	
	\$ per week		\$ per week	
Balgo Hills	144.10	72.05		
Boulder	13.20	6.60		
Beagle Bay	130.20	65.10		
Billiluna	144.10	72.05		
Broome	94.00	47.00		
Carnarvon	41.34	20.67		
Derby	98.00	49.00		
Esperance	25.38	12.69		
Gibb River	144.10	72.05		
Kalgoorlie	13.20	6.60		
Karratha	99.20	49.60		
Kununurra	123.00	61.50		
La-djardar Bay	130.20	65.10		
Lake Gregory	144.10	72.05		
Lombadina	130.20	65.10		
Port Hedland	92.52	46.26		
Red Hill	123.00	61.50		
Ringer Soak	144.10	72.05		
Southern Cross	24.24	12.12		
Tardun	17.84	8.92		
Turkey Creek	130.20	65.10		
Wyndham	120.00	60.00		

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7) (a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

### 25.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

- (a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—
  - (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
  - (ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employee who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or

- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

#### Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer; or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

- (1) Wages shall be paid fortnightly or monthly.
- (2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—
  - (a) taxation;
  - (b) other;
 and the net wage.
- (3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

- (1) The employer shall keep or cause to be kept, a record or records containing the following particulars—
  - (a) Name of each employee.
  - (b) The nature of their work.
  - (c) The hours worked each day and each week.
  - (d) The wages and overtime (if any) paid each week.
  - (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

- (2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.
- (3) The employer may refuse the representative access to the records if—
  - (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
  - (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

- (1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.
- (2) Every employee shall be provided with access to a copy of this Agreement by the employer.
- (3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

- (1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.
- (2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.
- (3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union

representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

##### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3) (a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

- (b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

##### 32.—CLASSIFICATIONS

###### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1

Exit Step 5

###### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

###### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

###### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

#### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

## PART IV

### SCHOOL EMPLOYEES

#### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
- (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that

an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or

- (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.

(6) (a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.

(b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

### 35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
- (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.

(3) (a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.

(b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

### 36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

### 37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the

same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer’s contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including— Kitchen Attendant/ Canteen Assistant House Attendant Dining Attendant Laundry Attendant Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age	60
16 to 17 years of age	70
17 to 18 years of age	80

(3) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.

- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer’s contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person’s duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years’ experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

## 41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

## PART V

## ADMINISTRATIVE AND TECHNICAL OFFICERS

## 42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

## 43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

## 44.—SALARIES

(1) (a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from	Payable on and from
	1 September 1998 (3%)	1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
LEVEL 2	23188.46	23826.14
	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
LEVEL 3	26224.90	26946.08
	26776.98	27513.35
	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
LEVEL 4	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

(b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.

(c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

(d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.

(e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.

(i) Such reasons should indicate the areas where the employer considers improvement is required.

(ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.

(f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.

(g) The years of experience are indicated by the equivalent number of steps from the entry level.

(h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.

- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.- Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age	60%
17 years of age	70%
18 years of age	80%
19 years of age	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

- (b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.- Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

(3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

(4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

**PART VI  
(BOARDING HOUSE) SUPERVISORS**

46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;  
(b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;  
(c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

(a) Supervisor—

Salary Level	Payable on and from 1 September 1998	Payable on and from 1 January 1999
	(3%) Annual Rate \$	(2.75%) Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

(b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998	Payable on and from 1 January 1999
	(3%) Annual Rate \$	(2.75%) Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

## (c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

## 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

## 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

(1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.

(2) Access by employees to telephone facilities for emergency use.

## PART VII

## NURSES

## 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

## 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of

completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

## 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968—1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

## 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply:

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

### Appendix A

#### PARTIES BOUND

##### Employer Parties

Institute of the Blessed Virgin Mary 69 Webster Street  
Nedlands WA 6009

##### Union Parties

Australian Liquor, Hospitality  
and Miscellaneous Workers Division  
Miscellaneous Workers Division  
Western Australian Branch 61 Thomas Street  
Subiaco WA 6008

Australian Nursing Federation  
Western Australian Branch  
Industrial Union of Workers Level 2  
322 Hay Street  
Subiaco WA 6008

The Independent Schools Salaried  
Officers' Association of Western Australia,  
Industrial Union of Workers 143 Edward Street  
East Perth WA 6004

### Appendix B

#### AWARDS

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991

Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990

Nurses (Independent Schools) Award No. 21B of 1962

School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979

Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

#### ENDORSEMENTS

Signed for and on behalf of—

The Independent Schools Salaried Officers'  
Association of Western Australia,  
Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation  
Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and Miscellaneous  
Workers Union—Miscellaneous  
Division WA Branch (Signed S.M. Jackson)

Institute of the Blessed Virgin Mary (Signed L. Peterson)

Signed for and on behalf of—

The Independent Schools Salaried Officers'  
Association of Western Australia,  
Industrial Union of Workers (Signed I. Sands)

(Signed T. Howe)

*Common Seal*

### CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD SALARIED OFFICERS ENTERPRISE AGREEMENT 1999. No. AG 143 of 1999.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Cerebral Palsy Association of Western Australia Ltd  
and  
The Hospital Salaried Officers Association of Western  
Australia (Union of Workers).  
No. AG 143 of 1999.

7 September 1999.

*Order:*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 143 OF 1999.

HAVING heard Mr M O'Connor on behalf of the first named party and Ms C Thomas 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 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 Cerebral Palsy Association of Western Australia Ltd Salaried Officers Enterprise Agreement 1999 filed in the Commission on 25 August 1999, signed by me for identification, be and is hereby registered as an Industrial Agreement.

(Sgd.) C.B. PARKS,

[L.S.] Commissioner.

### CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA LTD SALARIED OFFICERS ENTERPRISE AGREEMENT 1999

#### 1.—TITLE

This Agreement shall be referred to as the Cerebral Palsy Association of Western Australia Ltd. Salaried Officers Enterprise Agreement 1999.

#### 2.—ARRANGEMENT

- Title
  - Arrangement
  - Application of Agreement
  - Relationship To Parent Award
  - Objective
  - Productivity and Efficiency measures
  - Avoidance and Resolution of Industrial Disputes, Questions and Difficulties
  - Remuneration
  - Salary/Remuneration Packaging
  - Redundancy
  - No Precedent
  - Period of Operation and Renewal
  - No Extra Claims
  - Number of Employees
- Signatories To Agreement  
Appendix—Salary Packaging Arrangements  
Schedule 1.—Salary Rates

#### 3.—APPLICATION OF AGREEMENT

This Agreement shall apply to the single bargaining unit comprising Cerebral Palsy Association of Western Australia Ltd. and all employees who are engaged in any of the non professional occupations or callings specified in the award referred to in Clause 4. hereof, and to the Hospital Salaried Officers Association of Western Australia Union of Workers.

This Agreement shall replace the Cerebral Palsy Association of Western Australia Ltd. Salaried Officers Enterprise Agreement 1997.

#### 4.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Hospital Salaried Officers (Cerebral Palsy Association of Western Australia) Award 1978, hereinafter referred to as the Award, but where the terms of this Agreement are inconsistent with the Award, the terms of this Agreement shall prevail.

#### 5.—OBJECTIVE

This Agreement is designed to provide an appropriate pay increase for employees in recognition of their continuing contribution and agreement to the productivity efficiency measures outlined in the Agreement.

#### 6.—PRODUCTIVITY AND EFFICIENCY MEASURES

##### (1) Sick Leave

The following provisions will apply in lieu of subclause (3) of Clause 16 of the award—

- (a) An application for leave of absence on the grounds of illness exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, where the nature of illness consists of a dental condition and the period of absence does not exceed five consecutive working days, by a certificate of a registered dentist.
- (b) The number of days' leave of absence which may be granted without the production of the certificate required by paragraph (a) of this subclause shall not exceed, in the aggregate, five working days in any one accruing year.
- (c) Subject to the provisions of this clause no leave of absence on the grounds of illness shall be granted with pay without the production of a medical certificate.
- (d) An employee who is unable to resume duty on the expiration of the period shown on the first certificate shall thereupon furnish a further certificate and shall continue to do so upon the expiration of the period respectively covered by such certificates.

##### (2) Public Holidays

The entitlement to the Easter and Christmas Public Service holidays to cease. To replace these days, 2 additional days of leave will be granted by the Chief Executive Officer on an annual basis. These days are to be taken on days nominated by the Chief Executive officer. This arrangement will continue in line with the State Public Service arrangement whereby the Premier allows State Public Servants 2 additional days leave per annum by Administrative Order. Should the State Public Service arrangement cease and public service employees no longer be allowed the extra 2 days leave, then the Employer reserves the right to cancel the arrangement.

##### (3) Family Leave

###### (a) Use of Sick Leave

- (i) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, up to 5 days per year sick leave entitlement which accrues after the date of this Agreement for absences to provide care and support for such persons when they are ill.
- (ii) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (iii) The entitlement to use sick leave in accordance with this subclause is subject to—
  - (1) the employee being responsible for the care of the person concerned; and
  - (2) the person concerned being either—
    - (A) a member of the employee's immediate family; or

(B) a member of the employee's household.

(3) the term "immediate family" includes—

(A) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and

(B) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent grandparent, grandchild or sibling of the employee or spouse of the employee.

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

(v) Sick leave provided for family leave purposes is not cumulative.

##### (b) Unpaid Leave for Family Purpose

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

##### (c) Annual Leave

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

(ii) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

##### (d) Make Up Time

An employee may elect, with the consent of the employer, to work "make up time", under which the employee takes time off during ordinary hours and works those hours at a later time, during the spread of ordinary hours prescribed in this Agreement.

#### (4) Parental Leave

##### Interpretation

##### (1) In this clause—

"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 employee for 6 months or longer;

"continuous service" means service under an unbroken contract of employment and includes—

- (i) any period of parental leave; and
- (ii) any period of leave or absence authorised by the employer or by this workplace agreement;

"expected date of birth" means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child;

“parental leave” means leave provided for by subclause (2).(a);

“spouse” includes a *de facto* spouse.

#### Entitlement to parental leave

- (2) (a) Subject to subclauses (4), (5).(a) and (6).(a), an employee, other than a casual employee, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—
- (i) the birth of a child to the employee 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—
- (i) has, before the expected date of birth or placement, completed at least 12 months’ continuous service with the employer; and
  - (ii) has given the employer at least 10 weeks written notice of his or her intention to take the leave.
- (c) An employee is not entitled to take parental leave at the same time as the employee’s spouse but this paragraph 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 employee and the employee’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 employee’s spouse in relation to the same child, except the period of one week’s leave referred to in paragraph (b).

#### Maternity leave to start 6 weeks before birth

- (3) A female employee who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 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 employee is fit to work.

#### Medical certificate

- (4) An employee 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 employee or the employee’s spouse, as the case may be, is pregnant and the expected date of birth.

#### Notice of spouse’s parental leave

- (5) (a) An employee 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 employee’s spouse in relation to the same child.
- (b) Any notice given under paragraph (a) is to be supported by a statutory declaration by the employee as to the truth of the particulars notified.

#### Notice of parental leave details

- (6) (a) An employee who has given notice of his or her intention to take parental leave is to notify the employer of the dates on which the employee wishes to start and finish the leave.
- (b) An employee who is taking parental leave is to notify the employer of any change to the date on which the employee wishes to finish the leave.

- (c) The starting and finishing dates of a period of parental leave are to be agreed between the employee and employer.

#### Return to work after parental leave

- (7) (a) On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave.
- (b) If the position referred to in paragraph (a) is not available, the employee is entitled to an available position—
- (i) for which the employee is qualified; and
  - (ii) that the employee is capable of performing, most comparable in status and pay to that of his or her former position without loss of income within any area of CPAWA.
- (c) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (a), that paragraph applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

#### Effect of parental leave on employment

- (8) Absence on parental leave—
- (a) does not break the continuity of service of an employee; and
  - (b) is not to be taken into account when calculating the period of service for the purpose of this Agreement.
- (9) Accrued Leave
- An employee going on parental leave, will be paid out in lieu of any accrued or pro rata annual leave or accrued long service leave owing to the employee at the time of taking parental leave
- (10) Any absence from duty during a pregnancy for medical reasons relating to that pregnancy and certified by a suitably qualified medical practitioner will not be debited against the 52 week maternity leave entitlement.

#### (5) Bereavement Leave

- (1) On the death of—
- (a) the spouse or *de facto* spouse of an employee;
  - (b) brother or sister
  - (c) the child, including a grand child or step-child of an employee;
  - (d) the parent, including a grand parent, step-parent or in-law relative of an employee; or
  - (e) any other person, immediately before that person’s death, lived with the employee as a member of the employee’s family,
- the employee is entitled to paid bereavement leave of 2 working days.
- (2) The two days need not be consecutive.
- (3) Bereavement leave is not available while the Employee is on any other period of leave.
- (4) An employee who claims to be entitled to paid leave under subclause (1) is to provide to the employer, if so requested by the employer, 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.

#### (6) Long Service Leave

Notwithstanding the long service leave provisions under the Award, the following provisions shall apply to employees covered by this Agreement—

- (a) A period of long service leave taken shall count as service for the purposes of calculating further long service leave entitlements.

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

#### (7) Hours

The following provisions will apply in lieu of subclauses (1), (2) and (3) in Clause 11.—Hours of the Award.

- (a) The ordinary working hours (exclusive of meal intervals) shall not exceed 38 in any week. Such hours shall be worked consecutively on Monday to Friday inclusive between the hours of 7.00am and 6.00pm, by arrangement with the relevant supervisor.
- (b) The lunch interval shall not be less than one half hour or more than one hour to be taken between 11.30am and 2.30pm at a time agreed between the employer and the employee, unless the employer and the employee agree that a lesser period may be taken.
- (c) The flexibility available to the parties within the provisions of this Clause shall be subject at all times to the needs of the clients and the relevant programme.

#### (8) Commitments

Employees under this Agreement give an ongoing commitment to maintaining and promoting the culture and ethos of the Cerebral Palsy Association, and to pursuing the maintenance and continuous improvement of a high quality service to its clients, customers and members.

#### (9) Jury Service

##### (1) Reimbursement for jury service

- (a) An employee required to attend for jury service during his/her ordinary working hours shall be reimbursed by the employer an amount equal to the difference between the amount paid in respect of his/her attendance for such jury service and the amount of wages he/she would have received in respect of the ordinary time he/she would have worked had he/she not been on jury service.

##### (2) Notification of jury service

- (a) An employee shall notify his/her employer as soon as possible of the date upon which he/she is required to attend for jury service.

##### (3) Proof of attendance at jury service

- (a) Further, the employee shall give his/her employer documentary proof of his/her attendance, the duration of such attendance and the amount received in respect of such jury service.

#### (10) Self Funded Career Break

- (1) By agreement with the Employer an employee may request that a percentage of his / her salary be placed in a trust fund to be established by the Cerebral Palsy Association Ltd.
- (2) The employee may request that a percentage of salary be held in trust for a maximum period of 4 years, after which the employee may request payment of the money held in trust in a lump sum or as "salary" on a normal fortnightly basis.
- (3) The employee may apply for an unpaid career break which shall be regarded for all purposes as leave without pay. Such leave may be for study, family reasons or to support other leave such as parenting leave.
- (4) Participation in the self funded career break scheme and approval to take leave in the 5<sup>th</sup> year is subject to approval of the Employer having regard to the needs of the organisation and its clients, but having approved an employee's participation in the scheme, approval to take the leave shall not unreasonably be withheld.
- (5) The conditions for participating in this scheme shall be agreed in writing between the respective parties. This shall include conditions whereby the parties can withdraw and an understanding as to the obligations in respect of the costs of administering the scheme.

#### 7.—AVOIDANCE AND RESOLUTION OF INDUSTRIAL DISPUTES, QUESTIONS AND DIFFICULTIES

##### (1) Preamble

Subject to the provisions of the Industrial Relations Act 1979 (as amended) any question, dispute or difficulty, including any matter arising under this Agreement, or any matter raised by the Union, the employer or an employee / employees, shall be settled in accordance with the procedures set out herein.

The parties agree that no bans, stoppages or limitations will be imposed prior to, or during the time this procedure is being followed.

This clause in no way limits the rights of employers, employees and the Union under the Occupational Health, Safety and Welfare Act 1984 or other related legislation.

##### (2) Procedure

Where the matter is raised by an employee, or a group of employees, the following steps shall be observed.

- (a) The employee(s) concerned shall discuss the matter with the immediate supervisor. If the matter cannot be resolved at this level the supervisor shall, within two working days, refer the matter to a more senior officer nominated by the employer and the employee(s) shall be advised accordingly.
- (b) The senior officer shall, if able, answer the matter raised within five working days of it being referred and if the senior officer is not so able, refer the matter to the employer for his/her attention, and the employee(s) shall be advised accordingly.
- (c) (i) If the matter has been referred in accordance with paragraph (b) above the employee(s) or the shop steward shall notify the Union Secretary or nominee, to enable the opportunity of discussing the matter with the employer.
- (ii) The employer shall, as soon as practicable after considering the matter before it, advise the employee(s) or, where necessary the Union of its decision. Provided that such advice shall be given within 21 calendar days of the matter being referred to the employer.
- (d) Should the matter remain in dispute after the above processes have been exhausted either party may refer the matter to the Western Australian Industrial Relations Commission.
- (e) Nothing in this procedure shall preclude the parties reaching agreement to shorten or extend the period specified in subclauses (2)(a), (b) or (c)(ii).

#### 8.—REMUNERATION

(1) Employees under this Agreement are entitled to a salary / remuneration benefit based on the employee's gross annual salary (salary packaged rate) as at the date of registration of this Agreement, subject to the following provisions—

- (a) the employee agrees to take up the salary / remuneration packaging arrangement offered;
- (b) a maximum of 30% of gross annual salary sacrifice is available;
- (c) the employee agrees to the salary / remuneration packaging in accordance with the Salary/Remuneration Packaging clause below and the salary packaging arrangements appended to this Agreement;
- (d) Award Safety Net Adjustments

Award safety net pay adjustments made to the Award during the life of this Agreement shall not be available to employees under this Agreement unless the Award rate exceeds the remuneration benefits under this Agreement. The employee, shall in such case only be entitled to the salary which provides the higher benefit, but for all other purposes shall remain bound by this Agreement.

##### (2) Gross Annual Salary

- (a) Gross Annual Salary will include the following components;
- ◆ The total of all basic salary/wages amounts
  - ◆ Shift and penalty allowances
  - ◆ Leave loading

- ◆ On call allowances
- ◆ Coordinators allowance
- ◆ Higher duties allowances
- ◆ Overtime Payments

(b) Gross annual salary will not include;

- ◆ Meal allowances
- ◆ Motor vehicle allowances

(3) Salary Rates

The salary rates for staff covered by this Agreement shall be as set out in Schedule 1 of this Agreement.

#### 9.—SALARY/REMUNERATION PACKAGING

(1) This clause shall be read in conjunction with the other provisions of the award but the provisions of this clause, to the extent that they deal with entitlements under the award will prevail over and apply in lieu of the relevant provisions of the award.

(2) Where agreed between the employer and an employee, the employer may introduce remuneration packaging in respect of salary and benefits (including any negotiated salary allowable) and the terms and conditions of such a package shall not, when viewed objectively, be less favourable than the entitlements otherwise available under the award and shall be subject to the following provisions

- (a) The employer shall ensure the structure of any agreed package complies with taxation and other relevant laws.
- (b) The employer shall confirm in writing to the employee the classification level and current salary payable as applicable to that employee under Schedule 1 of this Agreement.
- (c) The employer shall advise the employee in writing, of his/her right to choose payment of the non salary packaged salary rate referred to in Schedule 1 of this Agreement instead of a salary / remuneration package.
- (d) The employer shall advise the employee, in writing, that award conditions, other than the salary and benefits (including any negotiated salary allowable), or those varied by this Agreement, shall continue to apply.
- (e) The employee shall advise the employer, in writing, that the agreed cash component is adequate for his/her ongoing living expenses.
- (f) Where undue pressure or duress is placed on a party to enter into such a package it will be open to either party to seek relief in accordance with Clause 7 of this Agreement.

(3) The packaging agreement, the terms and conditions of which shall be in writing and signed by both the employer and employee, shall detail the components of the total remuneration package for the purpose of this agreement and for the purpose of complying with time and wages records under the Act and Regulations.

(4) A copy of the Agreement shall be made available to the employee.

(5) The employee shall be entitled to inspect details of payments and transactions made under the terms of this agreement and for this purpose where such details are maintained electronically, shall be provided with access to a computer terminal.

(6) (a) The configuration of the remuneration package shall remain in force for the period agreed between the employee and the employer. Provided that an employee may withdraw from a remuneration packaging arrangement by giving the employer reasonable notice of intention to withdraw from the end of the next quarter of the calendar year.

(b) An employee, on withdrawing from the packaging arrangement, shall revert to the appropriate non salary packaged rate in Schedule 1 hereof.

(c) An employee, who wishes to take up packaging, having previously taken up that benefit and withdrawn from it, may only be entitled to do so on giving satisfactory reasons to the employer, and if approved, the package shall be based on the rate of pay applicable to the employee when originally placed on the packaging arrangement, or as amended in accordance with this Agreement.

(d) An employee, who has previously declined to take up packaging, may, by giving the employer reasonable notice, take up the benefit at any time. The rate of pay used in calculating such benefit shall be the salary packaging rate referred to in Schedule 1 of this Agreement applicable at the date of this Agreement, unless amended in accordance with this Agreement, in which case the amended rate will apply.

(7) Where at the end of the financial year the full amount allocated to a specific benefit has not been utilised, by agreement between the employer and the employee, any unused amount may be carried forward to the next financial year to be utilised by 30 September, or be paid as salary as at the end of the financial year, which will be subject to usual taxation requirements.

(8) (a) In the event that changes in legislation, Income Tax Assessment Act determinations or Rulings, particularly in respect of the Employer's fringe benefits tax exempt status, remove the Employer's capacity to maintain the salary packaging arrangements offered to employees under this Agreement, the employer shall be entitled to withdraw from the salary packaging arrangements by giving notice to each affected employee three months prior to the withdrawal taking place or notice to have effect from a date not later than the date any change in the legislation is to have effect.

(b) In the event of the Employer withdrawing from the salary packaging arrangements, the employees will revert to a salary not less than that applicable to the employee's classification and non salary packaged rate under Schedule 1.

(9) The employer shall as soon as practicable after being advised of the legislative change referred to in paragraph (8) hereof, advise the Union and employees and shall convene a meeting of the parties with a view to reaching an alternative agreement on salaries and salary benefits.

#### 10.—REDUNDANCY

##### Discussions Before Terminations

(1) Where the employer for any reason, including the cessation or reduction of grant funding, has made a definite decision that the employer no longer wishes the job the employee has been doing to be undertaken and that decision may lead to termination of employment, the employer shall hold discussion with the employees directly affected and their Union representative, where applicable.

(2) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of subclause (1) hereof and shall cover, among other issues, all reasonable alternatives to redundancy, eg. reduced hours, appointment to a lower position, transfer to another type of position, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

(3) For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned all relevant information about the proposed terminations including the reasons for the proposed terminations, the number of categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that the employer shall not be required to disclose confidential information, the disclosure of which would not be in the employer's interests.

##### (4) Notice

In the event of redundancy an employee shall be given the following notice of termination of employment;

- (i) Up to the completion of 3 years  
continuous service 2 weeks
- (ii) 3 years and up to the completion of  
5 years continuous service 3 weeks
- (iii) 5 years and over continuous service 4 weeks
- (iv) In addition, employees over forty-five years of age at the time of the giving of the notice, with no less than two years continuous service, shall be entitled to an additional week's notice.
- (v) Provided that in no case shall the notice under this sub clause be less than notice of termination under the Award.

## (5) Severance Pay

In addition to the period of notice prescribed in subclause (4), an employee whose employment is terminated for reasons set out in subclause (1) shall be entitled to the following amounts—

- (a) Two weeks pay for each completed year of service;
- (b) Payment for all accrued and pro rata annual leave and leave loading, including pro rata leave loading;
- (c) Payment of accrued and all pro rata long service leave based on completed years of service

“Weeks’ pay” means the employee’s current ordinary time hourly rate of pay multiplied by the average number of weekly hours (excluding overtime) worked over the past 52 weeks.

## (6) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1) hereof may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of the remainder of the period of notice.

## (7) Time Off During Notice Period

- (a) During the period of notice of termination given by the employer an employee shall be allowed up to one day’s time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent.

For this purpose a statutory declaration will be sufficient.

## (8) Exemption

This clause shall not apply where employment is terminated as a consequence of conduct which justifies instant dismissal; to casual employees, or to employees engaged for a specific period of time or for a specified task or tasks.

## 11.—NO PRECEDENT

This Agreement is applicable only to the parties named herein and it shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other site or enterprise.

## 12.—PERIOD OF OPERATION AND RENEWAL

(1) This Agreement shall apply for a period of twenty four months from the first pay period commencing on or after the first of July 1999.

(2) The parties agree that negotiations for a further Agreement shall commence at least three months prior to its expiry.

(3) The Parties to this Agreement acknowledge that on the expiry of this Agreement, if a subsequent Agreement has not been reached or finalised at that date, the conditions herein shall remain in force for a further period of 6 months, at which time if an Agreement has not been achieved, either party has the right to retire from this Agreement.

## 13.—NO EXTRA CLAIMS

Subject to the provisions of Clause 8, herein, there shall be no extra salary claims for the life of this Agreement, except where consistent with decisions of the Western Australian Industrial Relations Commission that reflect State Wage Decisions requiring general application.

## 14.—NUMBER OF EMPLOYEES

There are an estimated 70 employees covered by the provisions of this Agreement as at the date of registration.

## SIGNATORIES TO AGREEMENT

For and on Behalf of—

Cerebral Palsy Association of Western Australia Ltd

*Common Seal*

(Signed John Knowles) 16 / 8 / 99  
Executive Director Date

(Signed Rosalie M. Taylor)  
Board Member

Hospital Salaried Officers Association  
(Union of Workers)

(Signed M. Hartland) 17 - 08 - 99  
President Date

*Common Seal*

(Signed D. Hill) 17 - 08 - 99  
Secretary Date

## APPENDIX

## THE CEREBRAL PALSY ASSOCIATION OF WESTERN AUSTRALIA

## SALARY PACKAGING ARRANGEMENT HSO NON PROFESSIONAL STAFF JUNE 1999

## (1) Packaging

- (a) Staff under this agreement shall be entitled to package up to a maximum of 30% of salary.
- (b) Staff may elect to take the maximum rate of packaging available to them or a lesser amount by increments of 5%.
- (c) Staff wishing to alter their band of packaging (subject to the determined maximum) may only do so at the end of each quarter.

## (2) Administration Charge

- (a) The Association will charge an administration fee of up to 3% of the amount packaged. This fee will automatically be deducted from the packaged amount. The 3% fee will be utilised only for the administration of the salary packaging scheme.

## (3) Pay Advice Slips and Group Certificates

- (a) Pay advice slips will indicate the gross salary and allowances and the amount that has been credited to the individual staff member’s salary packaging account. This amount will appear in the “Before Tax Additions/Deductions” space on the pay slip.
- (b) “Taxable Income” will be reduced by the amount packaged and the figure appearing under the “Tax” column will be the tax payable on the reduced “Taxable Income”.

- (c) Group Certificates will indicate the total taxable income and tax deducted for the year. The amount packaged will not be shown on Group Certificates unless required by law.

## (4) Operation of the System

- (a) Each fortnight the payroll system will calculate each staff member’s non cash benefit in accordance with the agreed sacrifice percentage. Such amount will be credited to that staff member’s salary packaging account.
- (b) At the end of each month each staff member will receive a statement of account indicating all transactions for the previous month and the end of month balance.
- (c) To pay a bill through their salary packaging account staff members will be required to complete a Salary Package Payment Authority and forward this to the Salary Packaging Clerk together with the original account. In normal circumstances payment will be made within two working days of receipt by the Salary Packaging Clerk.
- (d) At the end of the financial year it will be necessary for staff to utilise any unused amount in their salary packaging account as at the 30 June, within the next 3 months. (by 30 September).

- (e) When a staff member terminates employment with CPAWA they may elect to either use their remaining salary package balance prior to Termination or to have the balance paid out as a salary and wages. Where the balance is paid out as salaries and wages income tax instalment deductions will be deducted from the salary by CPAWA.

(5) Superannuation guarantee charge

- (a) Superannuation Guarantee payments will be based upon gross salary (see Schedule 1) as defined under the Superannuation Guarantee Charge Act 1992 as at the date of registration of the Agreement.

(6) Components of Salary Packaging

The following items will be those for which salary packaging amounts may be utilised;

- ◆ Telephone Accounts—bills from telephone service providers for the personal telephone expenses of the employee at their residence.
- ◆ Rent—personal rental expenses of the employee, such as the rent they pay for their present accommodation.
- ◆ Loan Repayments—the amount of a regular repayment required to be made to a financial or other institution or agency to repay borrowings, such as personal loans, home building mortgages.
- ◆ RAC Accounts—membership and other expenses of the employee as a result of their membership of the RAC.
- ◆ Any insurance premiums incurred by the employee, such as home and contents, motor vehicle, life and medical benefits.
- ◆ Water Corporation Accounts, personal employee expenses payable to the WA Water Corporation or any similar country agency.
- ◆ Rates—State or Local Government land rates and taxes incurred by the employee.
- ◆ Educational Expenses—any expenses incurred by the employees as part of an educational activity, undertaken by themselves or dependent child.
- ◆ Child Care Fees—expenses incurred by the employee for the care of their child/children.
- ◆ Maintenance Payments—any fixed payment incurred by an employee in respect of private or court/law enforced agreements for maintenance payments.
- ◆ Utilities (such as Western Power & Alinta Gas)—expenses incurred by the employee for these types of utility or energy purchases.
- ◆ Household Repairs and Maintenance—expenses incurred by the employee for household repairs and maintenance for which an invoice is produced.
- ◆ Domestic Support—expenses incurred by the employee in respect of a cleaner or ironing service where an invoice is produced.
- ◆ Travel and Accommodation Costs—payments to travel agents, airlines, hotels and the like would be included under this category.
- ◆ Membership Subscription—payment of expenses of membership of any organisation to which the employee belongs.
- ◆ Medical, Dental and Pharmaceutical Accounts—doctor, dentist and chemist bills (and bills from other medical service providers) incurred in respect of self, spouse or dependant.
- ◆ Veterinary Accounts.
- ◆ Credit Card Accounts—any expenses incurred by an employee and charged to them via a credit card (for example, Visa, Bankcard). The employee must have documentation to support the expenses charged to the credit card. It is important to note under no circumstances will there be payment for any cash advances. Payments made from any packaged amount will only be made in respect of expenses incurred as a the result of a purchase of goods and services and will be made to the credit card provider.

- ◆ Fleetcard is a system provided by Shell/Custom Credit whereby a credit card is issued which may be used to purchase fuel and other services for a nominated motor vehicle. Fleetcard issue a monthly bill detailing all expenses incurred. This will be payable through the employee's packaging account.

- ◆ Superannuation Contributions. Employee contributions payable to a superannuation fund.

When an account for an eligible item including electricity, gas, telephone, household insurance and water is not in the name of the employee but applies to their principal place of residence, payment may be made through their salary packaging account.

Please note that under no circumstances will a payment from a packaged amount be made directly to an employee. All payments will be made by cheque (or direct deposit) to a third party in payment of an expense incurred by that employee.

SCHEDULE 1.—SALARIES

(1) The minimum salaries to be paid to employees covered by this agreement shall be set out hereunder.

(2) Minimum Salaries – Salary Packaging

	Salary per annum Employee taking up Salary Packaging \$
Level 1	
1st year of service	21,110
2nd year of service	21,500
3rd year of service	21,899
Level 2	
1st year of service	22,221
2nd year of service	22,875
3rd year of service	23,525
4th year of service	24,173
Level 3	24,824
	25,475
	26,224
Level 4	26,742
	27,403
Level 5	28,307
	29,010
Level 6	29,749
	30,928
Level 7	31,545
	32,470
Level 8	33,421
	34,772
Level 9	35,476
	36,443
Level 10	37,438
	38,462
Level 11	40,434
	41,898
Level 12	43,978
Level 13	45,901
	46,501
Level 14	47,962
Level 15	50,097
	51,847
A 1	54,027
2	56,202
3	58,354
4	60,530
5	64,189
6	66,839
7	69,494
8	72,493
9	75,675

(3)	Minimum Salaries Non Salary Packaging \$
Level 1	
1st year of service	22,362
2nd year of service	22,752
3rd year of service	23,151
Level 2	
1st year of service	23,473
2nd year of service	24,127
3rd year of service	24,777
4th year of service	25,425
Level 3	26,076
	26,727
	27,372
Level 4	27,890
	28,655
Level 5	29,559
	30,158
Level 6	30,897
	32,076
Level 7	32,693
	33,618
Level 8	34,569
	35,920
Level 9	36,624
	37,591
Level 10	38,482
	39,506
Level 11	41,478
	42,942
Level 12	45,022
Level 13	46,135
	47,545
Level 14	49,006
Level 15	51,141
	52,891
A 1	55,071
2	57,246
3	59,398
4	61,574
5	65,233
6	67,883
7	70,538
8	73,537
9	76,719

(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) Annual increments shall be subject to the employee's satisfactory performance over the preceding twelve months.

(c) Any dispute in relation to the payment of an annual increment shall be referred to the WA Industrial Relations Commission for determination.

(d) Employees who are appointed to Level 1, Level 2 or Level 3, and are under 21 years of age, salaries shall be calculated using the following percentages of the first year of service rate for the Level the employee is appointed to—

	%
Under 17 years of age	54
17 years of age	64
18 years of age	74
19 years of age	86
20 years of age	97

Notwithstanding this provision, the employer can appoint an employee to the first year of service rate or higher.

**CHRIST CHURCH GRAMMAR SCHOOL INC  
(NON-TEACHING STAFF ENTERPRISE  
BARGAINING) AGREEMENT 1999.  
No. AG 122 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christ Church Grammar School (Inc)

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

and

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

and

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

and

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

and

The Australian Nursing Federation, Industrial Union of  
Workers Perth.

No. AG 122 of 1999.

Christ Church Grammar School Inc (Non-Teaching Staff  
Enterprise Bargaining) Agreement 1999.

COMMISSIONER P E SCOTT.

10 August 1999.

*Order.*

HAVING heard Mr J Madin on behalf of Christ Church Grammar School (Inc); Ms T Howe on behalf of The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers; Ms D MacTiernan on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch; Ms L Dowden on behalf of The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia, Western Australian Branch; Mr J Murie on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering Electrical Division, WA Branch and Mr C Gleeson on behalf of The Australian Nursing Federation, Industrial Union of Workers Perth, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the Christ Church Grammar School Inc (Non-Teaching Staff Enterprise Bargaining) Agreement 1999 in the terms of the following schedule be registered on the 30<sup>th</sup> day of July 1999.

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

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Christ Church Grammar School Inc (Non-teaching Staff Enterprise Bargaining) Agreement 1999 and shall replace the Christ Church Grammar School Inc (Non-teaching Staff Enterprise Bargaining) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration

6. Relationship to Parent Awards
7. Single Bargaining Unit
8. Objectives
9. Salary Rates
10. Efficiency Improvements
11. Parental Leave
12. Dispute Resolution Procedure
13. Consultation
14. No Further Claims
15. No Precedent
16. Signatories

### 3.—PARTIES TO THE AGREEMENT

This Agreement is made between Christ Church Grammar School Inc (the School) and The Independent Schools' Salaries Officers' Association of Western Australia, Industrial Union of Workers; The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch; The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia, Western Australian Branch; The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division WA Branch; The Australian Nursing Federation, WA Branch.

### 4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to staff members who are employed within the scope of the awards listed in Clause 6.

(2) The estimated number of staff employed within the scope of the awards is 80.

### 5.—DATE AND DURATION OF AGREEMENT

(1) This Agreement shall come into effect on 1 January 1999 and shall apply until 31 December 1999.

(2) The parties have agreed to meet no later than commencement of second term 1999 to commence negotiations for a new Agreement.

### 6.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read and interpreted in conjunction with the following awards—

- Building Trades (General) Award
- Independent Schools' Administrative and Technical Officers' Award 1993
- Independent Schools' (Boarding House) Supervisory Staff Award
- Metal Trades (General) Award
- Nurses' (Independent Schools) Award
- School Employees (Independent Day & Boarding Schools) Award
- Teachers' Aides (Independent Schools) Award

(2) Where there is any inconsistency between this Agreement and the relevant awards, this Agreement will prevail to the extent of the inconsistency.

### 7.—SINGLE BARGAINING UNIT

(1) The parties to this Agreement have formed a single bargaining unit.

(2) The single bargaining unit has conducted negotiations with the School and reached full agreement with the School represented by this Agreement.

### 8.—OBJECTIVES

The purposes of this Agreement are to—

- (1) Consolidate and develop further, initiatives arising out of the award restructuring process.
- (2) Accept a mutual responsibility to maintain a working environment which will ensure that the School and its staff become genuine participants and contributors to the School's aims, objectives and philosophy.
- (3) Safeguard and improve the quality and productivity of services at the School by establishing a review procedure through which work practices are considered and by upgrading of professional skills and knowledge. The School and the staff acknowledge

that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development.

### 9.—SALARY RATES

(1) The minimum annual rate of salary payable to members of staff engaged in the classifications prescribed in subclause (1) Clause 10.—EFFICIENCY IMPROVEMENTS, of this agreement shall be—

Level	Step	From 1 Jan 1999
Level 1	1	\$25,789
	2	\$26,386
	3	\$26,984
	4	\$27,581
	5	\$28,179
	6	\$28,777
Level 2	1	\$29,374
	2	\$29,972
	3	\$30,569
	4	\$31,167
	5	\$31,764
	6	\$32,362
Level 3	1	\$32,960
	2	\$33,557
	3	\$34,155
	4	\$34,752
	5	\$35,350
	6	\$35,947
Level 4	1	\$36,545
	2	\$37,142
	3	\$37,740
	4	\$38,338
	5	\$38,934
	6	\$39,532
Level 5	1	\$40,129
	2	\$40,727
	3	\$41,324
	4	\$41,922
	5	\$42,519
	6	\$43,117

(2) In the event of any safety net adjustment being applied in future to any or all of the relevant awards, such adjustment shall be absorbed into the salary rates prescribed by this Agreement.

(3) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level. Such annual increments shall be on the basis of full time employment.

(4) If during progression through the salary steps, and at least two months prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.

(5) Such reasons should indicate the areas where the employer considers improvement is required.

(6) If the improvement required is achieved, then the employee shall proceed to his/her appropriate salary level.

(7) An employee shall only progress from one level to another in accordance with the provisions prescribed in subclause (1) Classifications of Clause 10.—EFFICIENCY IMPROVEMENTS of this agreement.

(8) The new structure further recognises that individual employees may be asked to assume greater responsibility and as such, their classification will be examined to determine the correct level. It is agreed that the acquisition of additional skills and/or recognised qualifications may lead to a review of an employee's classification. In such cases, a greater degree of responsibility for the job or for other employees will normally be expected.

(9) For the purposes of determining weekly or fortnightly salary, the annual salaries shall be divided by 52.16 or 26.08 respectively.

## 10.—EFFICIENCY IMPROVEMENTS

(1) Classifications

(a) Each staff member shall be placed in one of the following levels dependent upon classification, qualification and experience.

## Level 1

The employee at this level requires no prior experience or formal qualification in the performance of the job and works under direct or general supervision.

## Level 2

The employee at this level performs duties under general supervision, is competent in the performance of tasks associated within Level 1 positions and, if the position requires, will have acquired some recognised trade or other relevant qualifications. Some employees at this level will supervise other staff under direction.

## Level 3

The employee at this level is competent and skilled and performs duties under direction but with a significant degree of autonomy. The employee will have acquired some recognised trade or other relevant qualifications. Some employees at this level will manage a team under direction.

## Level 4

The employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. Employees at this level will manage a team under direction or have responsibilities of similar standing. The employee will have TAFE/Tertiary or equivalent qualifications.

## Level 5

The employee at this level, through formal qualification or job responsibility, is not only fully competent in the performance of the position but also has a high degree of autonomy, initiative and discretion in the work programme and is responsible for the supervision of other employees.

## (b) No Reduction

Nothing herein contained shall entitle the School to reduce the salary of any staff member who at the date of this Agreement was being paid a higher rate than the minimum prescribed for the staff member's classification at that time.

(2) Long Service Leave

(a) Notwithstanding the provisions of the Long Service Leave subclauses of the relevant awards from 1 January, 1996, a staff member who has completed eight (8) years' continuous service with the School shall be entitled to take ten (10) weeks' Long Service Leave on full pay. Leave will accrue at the rate of 1.25 weeks for each year of service.

(b) Where a staff member has become entitled to a period of Long Service Leave in accordance with this sub-clause, the staff member shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the staff member.

(3) Flexibility Of Hours

(a) The parties recognise that there is a wide range of duties and responsibilities included in the support of programmes in a Day and Boarding School. By necessity these duties and responsibilities are undertaken at a range of times during each 24-hour span.

(b) The increases within this agreement are, in part, recognition of the requirement for employees to work overtime and as such ordinary rates will be paid until an employee works in excess of 90 hours per fortnight after which the relevant award penalty rates will apply.

(c) The employee may choose to take the overtime as payment for hours worked or as time in lieu. The time in lieu taken in accordance with this sub-clause shall be at such time as agreed between the employer and employee.

(d) The parties recognise that there is no intention on the part of the employer to seek to have employees work more than their prescribed normal hours on a regular basis.

(e) The parties agree to discuss strategies providing for greater flexibility in working hours to meet the needs of the School programme.

(4) Review of Work Practices

The parties agree to continue to monitor and improve the procedure for the review of work practices.

(5) Appraisal

The parties agree to continue to develop an appraisal procedure for all non-teaching staff.

(6) Part-time Employees

(a) Part time employees shall have the expectation of continuity of service.

(b) The School may vary the hours of employment of part time employees on an annual basis.

(c) The part time employee shall be given at least six weeks written notice of any variation, unless otherwise agreed by the School and the employee.

(d) In determining the hours of a part time employee, the School acknowledges that such employees may wish to seek additional employment and agrees to negotiate hours of duty which, as far as practicable, suit the circumstances of the employee and the School.

(7) Professional Development

Professional development activities shall be undertaken partly in School time and partly in a staff member's own time; where feasible, in equal proportions.

There will continue to be consultation with staff members in the planning of professional development.

(8) Special Family Leave

The School agrees to the employee using three days of his or her sick leave entitlement each sick leave year without the production of a medical certificate to use in the event of the illness of a child, partner or other dependant. This leave will not accrue annually.

(9) Superannuation

## (a) Contributions

Each employee is required to contribute 5% of his/her gross salary to a complying Superannuation Fund. Contributions are made by the School in accordance with the Christ Church Grammar Superannuation Fund Member Booklet.

Staff members are entitled to contribute more than the minimum amount. On application by the staff member and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the staff member into an Approved Superannuation Fund, and not being an employer contribution to superannuation paid in accordance with either Federal legislation or an employer's contributory superannuation fund.

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision title—Compliance, Nomination and Transition

## (b) Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee—

(i) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(aa) the fund or scheme is complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(bb) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(ii) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(iii) The employee shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(iv) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant

to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

- (v) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (vi) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee;

Provided that on and from 20 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (vii) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer; or
- (viii) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### (10) Education of sons of members of staff

Until the Council decides otherwise, which it may do if it sees fit, a rebate for sons of Christ Church Grammar School staff equal to the fees concession offered to members of the teaching staff will be given, but it is a condition of this concession that members of staff apply for entry for their sons promptly after they are born, or promptly after the member of staff's appointment.

#### (11) Insurance Cover

(a) For the period of this Agreement, the School will provide the following insurance cover for all employees covered by this Agreement—

- (i) Journey Insurance—Loss of income as a result of accident whilst travelling to or from work, limited to payment of normal salary for a period up to two years.
- (ii) Personal Accident Insurance—Similar to that covering all students at the School but limited in extent to \$150,000 for claims resulting in Paraplegia or Quadriplegia.
- (iii) Salary Continuance Insurance—Providing a benefit of 75% of normal salary for a period of up to two years following a deferment period of 90 days.

(b) The School acknowledges its intent to renew this insurance upon renewal of the Agreement subject to the cost being acceptable to the School.

#### (12) Redundancy conditions and payments

(a) It is acknowledged that redundancy is a termination of services because the position the staff member occupied is no longer available.

(b) In considering which employee is to be made redundant the school will—

- assess its needs;
- look at the job being performed and not the individual;
- look at any flexibility offered by the employees being considered;
- check with staff as to future plans (for example, long service leave, early retirement options or leave without pay) which may impact on the need for a redundancy;
- give notice of not less than ten weeks to those employees affected;
- terminate positions at the end of the school year whenever possible.

When there are a number of employees competing for a limited number of positions, decisions about which employees are to be retained will be made after a thorough review of the School's requirements in specific work areas and the qualifications of the employees.

(c) The school will hold discussions with the employees and the employees' industrial union regarding the possible redundancies. The discussions will cover any reasons for the proposed redundancies, measures being implemented to avoid or minimise the redundancies, and measures to mitigate any adverse affects of the redundancies on the employees concerned.

All employees of the school will be informed of the procedures which will be undertaken in order to reach a fair and equitable outcome for all concerned.

(d) To assist the redundant employee the School will—

- offer part-time or relief employment if this is possible;
- check with other schools to see whether there is a suitable vacancy;
- provide secretarial assistance with job applications;
- permit paid leave to attend job interviews;
- provide the employee with a reference and a statement to the effect that he/she has been released owing to his/her job no longer existing;
- give the employee all other entitlements;
- permit the employee to leave immediately any time after being notified that he/she is redundant if alternate employment is found either for or by the employee;
- provide the employee with a redundancy payment.

(e) The following severance pay scale will apply—

Less than 1 year	4 weeks pay
After 1 year	6 weeks pay
After 2 years	8 weeks pay
After 3 years	10 weeks pay
After 4 years	an additional week for each year of service above 3 years up to a maximum of 20 years.

#### (13) Remuneration Package

Permanent members of staff may participate in the School's approved Remuneration Packaging Scheme.

(a) For the purposes of this subclause—

- (i) "Benefits" means the benefits nominated by the staff member from the benefits provided by the School.
- (ii) "Benefit Value" means the amount specified by the School as the cost to the School of the benefit provided including Fringe Benefit Tax, if any.
- (iii) "Fringe Benefit Tax" means tax imposed by the Fringe Benefits Tax Act 1986 as amended.

(b) Conditions

- (i) Except as provided by this subclause, staff members must be employed at a salary based on a rate of pay, and on terms and conditions, not less than those prescribed by the Agreement.
- (ii) For all purposes of the Agreement, salary shall be deemed to include the value of any benefits provided under this subclause.
- (iii) The School and the employee must agree in writing to the Benefit Value before the packaging arrangement is entered into.
- (iv) During the currency of this Agreement :
  - (aa) Any staff member who takes paid leave on full pay shall receive the Benefits and salary referred to in this clause.
  - (bb) If a staff member takes leave without pay the staff member will not be entitled to any Benefits during the period of such leave.
  - (cc) If a staff member takes leave on less than full pay the staff member shall receive—
    - (AA) the Benefits; and
    - (BB) the amounts of salary calculated as agreed between the School and the staff member.

#### 11.—PARENTAL LEAVE

The School will grant parental leave in accordance with current minimum provisions as contained in the Western Australian Minimum Conditions of Employment Act (1993).

## 12.—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 immediate parties to the dispute shall make reasonable attempt to resolve the matter by mutual discussion and determination.

2) (a) If the immediate parties are unable to resolve the dispute, the matter, at the request in writing of either party, shall be referred to a meeting with the Bursar and/or an appointed delegate in an attempt to resolve the matter.

(b) This meeting must take place within two weeks of the written request unless otherwise agreed to by the parties, and both employee and employer will have the right to have representation.

3) If the parties are still 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.

(4) If the matter is not then resolved, it shall be referred to the Western Australian Industrial Relations Commission.

## 13.—CONSULTATION

(1) There shall be established a Consultative Committee with equitable representation of the School and employees covered by this Agreement. The Committee shall provide a forum in which to discuss matters that relate directly to the conditions of employment of non-teaching staff.

(2) The Committee shall meet at least once each School term.

## 14.—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.

## 15.—NO PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

## 16.—SIGNATORIES

(Signed) \_\_\_\_\_ *Common Seal*

(Signature)

P M Hollingsworth Vincent T Evans

(Name of signatory in block letters)

Christ Church Grammar School Inc

(Signed) \_\_\_\_\_ *Common Seal*

(Signature)

T I Howe

(Name of signatory in block letters)

Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

(Signed) \_\_\_\_\_ *Common Seal*

(Signature)

Sharryn Jackson

(Name of signatory in block letters)

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

(Signed) \_\_\_\_\_ *Common Seal*

(Signature)

Joe McDonald

(Name of signatory in block letters)

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

(Signed) \_\_\_\_\_ *Common Seal*

(Signature)

James Murie

(Name of signatory in block letters)

The Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch  
(Signed) \_\_\_\_\_ *Common Seal*

(Signature)

Mark Olson

(Name of signatory in block letters)

The Australian Nursing Federation, WA Branch

**MDR CONSTRUCTION HIRE INDUSTRIAL AGREEMENT.**

**No. AG 118 of 1999.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Daross Developments Pty Ltd trading as MDR Construction Hire.

AG 118 of 1999.

MDR Construction Hire Industrial Agreement.

COMMISSIONER S J KENNER.

31 August 1999.

*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 MDR Construction Hire Industrial Agreement as filed in the Commission on 18 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

[L.S.] \_\_\_\_\_ (Sgd.) S.J. KENNER, Commissioner.

Schedule.

## 1.—TITLE

This Agreement will be known as the MDR Construction Hire 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. Union Membership
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 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 Daross Developments Pty Ltd trading as MDR Construction Hire (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"). The parties agree that all work in the yard at the Company's premises is "construction work", as defined by the Award. There are approximately four (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 and Appendix – Resolution of Disputes Requirements of the Award.

### 7.—SINGLE ENTERPRISE

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

### 8.—RELATIONSHIP WITH AWARDS

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

### 9.—ENTERPRISE AGREEMENT

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

### 10.—WAGE INCREASE

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

### 11.—SITE ALLOWANCE

Employees are engaged in either yard work or on-site work. Where employees are working on-site they shall be paid an all-purpose allowance of \$5.25 and shall be included as part of the ordinary rate set out in Appendix A. The \$5.25 allowance shall be paid in lieu of all other allowances.

### 12.—INDUSTRY STANDARDS

#### 1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to \$50 per week per employee.

#### 2. Superannuation

- (i) The Company will immediately increase its level of payment to \$60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

- (ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, excluding fares and travel and other reimbursement allowances.

### 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 employer's approval shall not be unreasonably withheld.

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

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an 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.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the BLPPU and the CMETU.

#### 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	(Sgd.) _____
		Date: 8/6/99
		(Sgd.) _____
		WITNESS
	CMETU	(Sgd.) _____
		Date: 8/6/99
		(Sgd.) _____
		WITNESS
The Company:		(Sgd.) _____
	<i>Company</i>	SIGNATURE
	<i>Seal</i>	Date: 3/6/99
		(Sgd.) _____
		PRINT NAME
		(Sgd.) _____
		WITNESS

#### APPENDIX A—WAGE RATES

	Date of Signing	1 August 1999
	Hourly Rate \$	Hourly Rate \$
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12
Plaster, Fixer	17.58	17.82
Painter, Glazier	17.19	17.42
Signwriter	17.56	17.80
Carpenter	17.70	17.93
Bricklayer	17.52	17.75
Refractory Bricklayer	20.12	20.38
Stonemason	17.70	17.93
Rooftiler	17.38	17.62
Marker/Setter Out	18.21	18.46
Special Class T	18.45	18.69

#### APPRENTICE RATES

	Date of Signing	1 August 1999
	Hourly Rate \$	Hourly Rate \$
<b>Plasterer, Fixer</b>		
Year 1	7.38	7.48
Year 2 (1/3)	9.68	9.81
Year 3 (2/3)	13.19	13.37
Year 4 (3/3)	15.48	15.69
<b>Painter, Glazier</b>		
Year 1 (.5/3.5)	7.22	7.32
Year 2 (1/3), (1.5/3.5)	9.45	9.58
Year 3 (2/3), (2.5/3.5)	12.89	13.06
Year 4 (3/3), (3.5/3.5)	15.13	15.33

	Date of Signing	1 August 1999
	Hourly Rate \$	Hourly Rate \$
<b>Signwriter</b>		
Year 1 (.5/3/5)	7.38	7.48
Year 2 (1/3), (1.5/3.5)	9.65	9.78
Year 3 (2/3), (2.5/3.5)	13.17	13.35
Year 4 (3/3), (3.5/3.5)	15.46	15.66
<b>Carpenter</b>		
Year 1	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
<b>Bricklayer</b>		
Year 1	7.36	7.46
Year 2 (1/3)	9.63	9.76
Year 3 (2/3)	13.14	13.31
Year 4 (3/3)	15.41	15.62
<b>Stonemason</b>		
Year 1	7.44	7.54
Year 2 (1/3)	9.73	9.86
Year 3 (2/3)	13.27	13.45
Year 4 (3/3)	15.57	15.78
<b>Rooftiler</b>		
6 months	9.91	10.04
2 <sup>nd</sup> 6 months	10.90	11.04
Year 2	12.73	12.90
Year 3	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
- 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 \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.90
Above \$2.17m to \$4.55m	\$2.25
Over \$4.55m	\$2.85

###### Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

##### 4.2 Projects Located Within West Perth (as defined)

###### New Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.17m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

###### Renovations, Restorations and/or Refurbishment Work

Project Contractual Value	Site Allowance
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.60
Above \$2.17m to \$4.55m	\$1.80
Over \$4.55m	\$2.05

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 \$2.17m	\$1.30
Above \$2.17m to 6m	\$1.60
Above \$6m to \$11.98m	\$1.85
Above \$11.98m to \$24.43m	\$2.05
Above \$24.43m to \$60.5m	\$2.35
Over \$60.5m	\$2.55

‘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 Procedure
- 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. Productivity Allowance

In return to increase productivity and/or timely completion of projects it is agreed that a productivity allowance of \$1.00 per hour worked shall be paid to employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

#### 14. Structural Frame Allowance

It is agreed that a structural frame allowance of \$1.00 per hour all purpose shall be paid to all employees engaged upon projects (new construction only) which exceed two stories in height or building where the structure exceeds 10 metres in height (excluding spires, flagpoles and the like).

#### 15. Provision of Canteen

It is agreed that a canteen accommodation shall be provided where a project exceeds \$35 million in value and where the operation of the canteen is financially self supporting in respect of consumables. Canteen to come into operation when on site manning levels exceed 50 and to cease when manning levels reduce to below 50.

#### 16. Provision of Nurse

It is agreed that a qualified nurse shall be engaged where the forecast long term staffing levels for a project exceed 100 (one hundred) or when actual numbers exceed 100 notwithstanding that forecasts may have been below that level. The nurse shall commence duties when staffing levels reach (fifty) and shall terminate when levels reduce to 50 (fifty). The requirement for a provision of a nurse shall be waived if the project is adjacent to a hospital with a public emergency department.

17. This agreement shall only apply to building contracts entered into on or tendered for on or after 1 January 1999.

#### 18. Application to Apprentices

The rates prescribed in this agreement shall apply to all apprentices commencing employment after 31 December 1997 in the same proportion as the percentage of a tradesperson’s wage rate as prescribed by the appropriate award or Enterprise Bargaining Agreement, being

1 <sup>st</sup> year	42%
2 <sup>nd</sup> year	55%
3 <sup>rd</sup> year	75%
4 <sup>th</sup> year	88%

### MEADOW LEA FOODS LTD (PALMYRA AND CANNINGVALE SITES) ENTERPRISE AGREEMENT 1998. No. AG 134 of 1999.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Food Preservers’ Union of Western Australia Union of  
Workers and Other

and

Meadow Lea Foods Ltd.

No. AG 134 of 1999.

Meadow Lea Foods Ltd (Palmyra and Canningvale Sites)  
Enterprise Agreement 1998.

CHIEF COMMISSIONER W.S. COLEMAN.

3 September 1999.

*Order.*

HAVING heard Mr Trevor Pope on behalf of the applicant;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order —

THAT the agreement entitled Meadow Lea Foods Ltd (Palmyra and Canningvale Sites) Enterprise Agreement 1998 in the terms of the following Schedule be registered as an industrial agreement. This Agreement replaces AG 120 of 1997 entitled Meadow Lea Foods Ltd (Palmyra and Canningvale Western Australia) Enterprise Agreement 1996 which is hereby cancelled.

(Sgd.) W.S. COLEMAN,  
Chief Commissioner.

[L.S.]

## 1.—TITLE

This Agreement shall be referred to as the “MEADOW LEA FOODS LTD (Palmyra and Canningvale Sites) Enterprise Agreement 1998” and replaces entirely the “MEADOW LEA FOODS LTD (Palmyra and Canningvale Western Australia) Enterprise Agreement 1996.

## 2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties
5. Objectives
6. Term and Operation of Agreement
7. Definitions
8. Implementation
9. Consultation
10. Career Structure and Training
11. Hours of Work
12. Casuals
13. Sick Leave
14. Annual Leave
15. Long Service Leave
16. Special Leave
17. Wages
18. Lunch and Meal Breaks
19. Allowances
20. Termination of Employment
21. Security of Employment
22. Bereavement Leave
23. Trade Union Training Leave
24. Uniforms
25. Protective Equipment
26. Posting of Agreement
27. Union Notice Board
28. Disputes Settlement Procedure
29. Journey Cover Insurance
30. Public Holidays
31. Signatories

APPENDIX A Constitution of Consultative Committee  
APPENDIX B Palmyra/Canningvale Task Matrix

## 3.—SCOPE

(1) The area and scope of this Agreement shall be the same as that prescribed in the—

- (a) Food Industry (Food Manufacturing or Processing) Award (No. A20 of 1990);
- (b) The Shop and Warehouse (Wholesale & Retail Establishments) State Award 1977 (No R32 of 1976).

insofar as these Awards apply to the employees of Meadow Lea Foods Ltd.

(2) This Agreement shall apply to the persons employed by Meadow Lea Foods Ltd at the worksite located at 14-16 Absolon Street, Palmyra and at 20 Coulson Way, Canning Vale in the State of Western Australia.

(3) Unless otherwise expressly provided for in this Agreement, no employee shall be reduced in status or position or have his/her rate of remuneration reduced or any of his/her conditions of employment adversely affected merely as a consequence of making of this Agreement.

(4) This Agreement shall be read in conjunction with the relevant award referred to in subclause (1) of this Clause. Where the terms of this Agreement are inconsistent with the terms of the relevant award, the terms of this Agreement will prevail.

(5) Where this Agreement is silent the Awards referred to in sub-clause (1) shall apply.

(6) There are approximately 25 employees whose conditions of employment shall be regulated by this Agreement.

## 4.—PARTIES

The parties to this Agreement are—

Meadow Lea Foods Ltd (hereinafter “the employer”);  
The Food Preservers’ Union of Western Australia, Union of Workers (hereinafter the “FPU”);  
The Shop Distributive and Allied Employees’ Association of Western Australia (hereinafter the “SDA”);

Provided that “Unions” shall mean the two unions

## 5.—OBJECTIVES

(1) The parties acknowledge that the objective of this Agreement is to enhance job security and opportunity for employees through a joint commitment by management and employees to improved business competitiveness.

(2) All parties to this Agreement recognise the right of the Company to plan, organise, manage and decide upon the operations of the business (where operations of the business include all labour employed by it).

(3) The parties agree that the provisions of this Agreement are intended to support—

- (a) the development of meaningful, challenging and responsible work roles which allow employees a degree of autonomy and responsibility;
- (b) the enhancement and utilisation of employee skills and abilities;
- (c) the maximisation of labour flexibility;
- (d) The maintenance of productive and harmonious working relationships;
- (e) The efficient operation of the plant including—
  - (i) Changes to work practices to allow the efficient use of new and existing technology;
  - (ii) A healthy and safe working environment for all employees;
  - (iii) Highest quality of products;
  - (iv) Flexibility without demarcation or restrictions if this flexibility is safe, efficient, legal and logical.

(4) The employer, the Unions and all employees accept their joint responsibility to ensure this Agreement is effective and in the event of any ambiguity or dispute over interpretation of this Agreement the spirit and intent of this clause will be referred to.

## (5) Workplace Flexibility

Employees understand that the plant needs to operate continuously. As part of that understanding, employees acknowledge that the employer may need to re-roster employees or request overtime work by employees in the event of—

- Absenteeism
- Annual holidays
- Monitoring, service and supply of plant, services and other equipment as required
- Minor maintenance and housekeeping
- Training
- Production requirements
- Warehousing and tanker operations

(6) Any dispute arising from this clause shall be dealt with in accordance with Clause 28—Disputes Settlement Procedure of this Agreement.

## 6.—TERM AND OPERATION OF AGREEMENT

## (1) Term

- (a) This Agreement shall come into operation from the date of registration and shall remain in force until 1<sup>st</sup> December 2000. This agreement shall continue to operate until varied or replaced by the parties.
- (b) All parties to this Agreement make a commitment to re-negotiate this Agreement and apply for its replacement before 30th November 2000. Discussions shall not commence prior to 1st September 2000.

## (2) Operation

- (a) It is the intention of the parties to maintain this Agreement in its present form for its full term except when changes become necessary so as to ensure the Agreement’s effective and practical operation and such changes are consistent with prevailing wage fixing principles.
- (b) Notwithstanding paragraph (a) above, during the term of this Agreement, the parties will undertake to develop productivity measures to be incorporated within future Agreements. The implementation phase for the introduction of these measures will involve employees undertaking training in their effective use.

## 7.—DEFINITIONS

\* *Level 1 Operator* shall mean an employee during the first three months of employment and performing duties as outlined in the skills matrix.

\* *Level 1A Operator* shall mean an employee who has completed 3 months of employment and is expected to be working within the following guideline—

- Are responsible for their own work outcomes for carrying out tasks and responsibilities at Level 1A and below in the skills matrix.
- Work under direct supervision.
- Exercise minimal discretion.
- Work within established manufacturing, quality, safety and environmental processes and systems.
- Work as part of, and contribute to, a team.

Promotional Criteria—employees may be promoted to Level 2 when they can competently perform all tasks of a Level 1A employee and all tasks at Level 2 deemed as prerequisites to Level 2 according to the skills matrix (appendix B).

\* *Level 2 Operator* shall mean an employee who meets all promotional criteria to level 2 and is expected to be working within the following guidelines—

- Are responsible for their own work outcomes for carrying out tasks and responsibilities at Level 2 and below.
- Work under general guidance.
- Exercise limited operational discretion.
- Work within established manufacturing, quality, safety and environmental processes and systems.
- Work as part of, and contribute to, a team.
- Are responsible for operating a unit or subsystem within a wider process or system.

Promotional Criteria—employees may be promoted to Level 3 when they are deemed to be competent in all tasks described in Level 2 and below in the skills matrix and all tasks at level 3 deemed as prerequisites to Level 3 in the skills matrix.

\* *Level 3 Operator* are employees who have completed a Food Processing or Warehousing certificate III or equivalent training to enable the employee to perform work within the scope of this level. An employee at Level 3 operator is a fully trained operator.

Level 3 Operator shall mean an employee who meets all promotional criteria to Level 3 and is expected to be working within the following guidelines—

- Are responsible for the operation of a work process, system or section.
- Are responsible for their own work outcomes for carrying out tasks and responsibilities of Level 3 and below in the skills matrix.
- Work with limited guidance.
- Exercise some autonomy.
- Operate in varied contexts.
- Work within established manufacturing, quality, safety and environmental procedures and systems.
- Exercise a level of operational discretion.
- Work as part of, and contribute to, a team.

Promotional Criteria—employees may be promoted to Level 4 when—

- They can competently carry out all tasks of a Level 3 operator and all Level 4 prerequisites.
- A Team Leader position or Team Leader backup position becomes available.

\* *Level 4 Operator* are employees who have completed Frontline Manager training to AQF Level 4 competency or equivalent training to enable the employee to carry out the duties of Team Leader.

Level 4 Operator is expected to be working within the following guidelines—

- Oversee work processes, systems and sections.
- Work under general guidance.
- Work autonomously within established manufacturing, quality, safety and environmental processes and systems.

- Guide/mentor and facilitate the work of others.
- Apply a depth of knowledge.
- Exercise a range of skills.
- Work in varied contexts.
- Exercise some planning discretion.
- Exercise some operational discretion.
- Employees at this level will operate in a relatively diverse workplace environment in which they use the organisations goals, objectives, plans, processes and systems, quality and continuous improvement systems, business and performance plans, defined resource parameters and ethical standards.
- Are responsible for their own work outcomes for tasks and responsibilities at Level 4 and below. Are also responsible for the work outcomes of employees who are their direct reports.

\* *Level 5 operators* are employees who have completed approved Frontline Manager training to AQF Level 5 competency or equivalent training to enable the employee to carry out the duties of Team Leader and meet the AQF Level 5 competency standard. Employees at this level may hold a Trade Certificate appropriate within the scope of their position and demonstrate their ability to exercise that trade.

Level 5 operator is expected to be working within the following guidelines—

- Are responsible for overseeing work processes, systems or sections.
- Are responsible for their own work outcomes for tasks and responsibilities at Level 5 and below. They are also responsible for the work outcomes of employees who are their direct reports.
- Contribute to the design of workplace systems and procedures.
- Work under broad guidance.
- Work autonomously, within established processes and systems.
- Guide or mentor and facilitate the work of others.
- Plan and manage the work of others.
- Demonstrate self directed use of knowledge.
- Exercise a range of skills
- Work in varied contexts, both familiar and unfamiliar.
- Exercise some planning discretion.
- Exercise independent judgement.

\* *Level 6 Operators* are employees who have completed a Diploma appropriate within the scope of their position and demonstrate their ability to exercise the skills involved in the Diploma. A Level 6 operator is expected to be working within the following guidelines—

- Are responsible for overseeing work processes, systems or sections.
- Are responsible for their own work outcomes for tasks and responsibilities for all levels in the relevant stream of the skills matrix. They are also responsible for the work outcomes of employees who are their direct reports.
- Design workplace systems and procedures.
- Work independently with minimal guidance.
- Exercise independent judgement.
- Exercise planning discretion.
- Work autonomously, within established processes and systems.
- Guide or mentor and facilitate the work of others.
- Plan and manage the work of others.
- Demonstrate self directed use of knowledge.
- Exercise a range of skills
- Work in varied contexts, both familiar and unfamiliar.
- Exercise some planning discretion.
- Exercise independent judgement.

\* *Level 7 operators* are employees who have completed a degree appropriate within the scope of their position and demonstrate their ability to exercise the skills involved in the degree. A Level 7 operator is expected to be working within the following guidelines—

- Are responsible for overseeing work processes, systems or sections.
- Are responsible for their own work outcomes for tasks and responsibilities for all levels in the relevant stream of the skills matrix. They are also responsible for the work outcomes of employees who are their direct reports.
- Design workplace systems and procedures.
- Work independently with minimal guidance.
- Exercise independent judgement.
- Exercise planning discretion.
- Work autonomously, within established processes and systems.
- Guide or mentor and facilitate the work of others.
- Plan and manage the work of others.
- Demonstrate self directed use of knowledge.
- Exercise a range of skills
- Work in varied contexts, both familiar and unfamiliar.
- Exercise some planning discretion.
- Exercise independent judgement.

#### 8.—IMPLEMENTATION

##### (1) Arrangements

When this Agreement becomes operational, employees will be paid according to Clause 17—Wages.

##### (2) Deemed Competency

Employees have been deemed competent based on existing skills. Employees who are currently being paid at a level higher than their deemed competency will continue to be paid at that level for a period of two years after commencement of delivery of core training modules. If, after these two years, employees have not acquired the skills in line with their pay rate, their pay rate will be frozen until increases in the level they are deemed competent at, passes their saved rate.

##### (3) Implementation of Matrix

Whilst it is agreed that the intention is to allow progression in the skills matrix from the bottom up, operational requirements may necessitate the fast tracking of certain employees to meet the skill mix requirements and may be undertaken at the employer's discretion. New employees with appropriate prior qualifications or experience may be deemed competent to a skill level agreed by the Consultative Committee.

#### 9.—CONSULTATION

##### (1) Consultation

- (a) It is recognised by the parties that the key to productive and harmonious working relationships lies in establishing effective consultative mechanisms at the workplace. Effective consultation mechanisms will—
  - (i) Ensure that the views of both parties are known and taken into account by each other,
  - (ii) Provide both parties with an informed basis upon which to make decisions.
- (b) To this end, it is agreed that the Consultative Committee as established by charter as provided for in Appendix A—Constitution of Consultative Committee be the focal point for communication between Management, the Unions and the employees.
- (c) The Committee shall consist of a minimum of 6 and a maximum of 12 committee members.
- (d) The major objective of the Committee is to promote a spirit of co-operation. Each party will give constructive and sympathetic consideration to all views and representations submitted to the Committee with a view to furthering the common well-being of the establishment as a whole.
- (e) Employee representatives on the Committee shall be allowed reasonable time without loss of pay to

research or prepare for such committee meetings with full access to all relevant information as necessary.

- (f) Employee representatives on the Committee are required to keep their constituents advised on matters arising at the meeting.

#### 10.—CAREER STRUCTURES AND TRAINING

##### (1) General Conditions

- (a) The employer recognises and accepts its responsibility in the area of training and development and is committed to the design, provision and implementation of training programs to extend the knowledge and skills of its employees. The overriding objective is to enable each employee to gain the competence to perform, consistent with operational needs, all of the tasks and activities associated with a particular job to an established performance criteria.
- (b) Each employee is responsible for his/her own learning, and will be given the opportunity to acquire knowledge and skills to advance through the levels and gain additional remuneration, subject to demonstrated competence in the application of the skills acquired and in accordance with site requirements.

##### (2) Skills Matrix and Training

- (a) The Skills Matrix sets out the various skill levels in manufacturing, quality and warehouse streams.
- (b) Levels in each stream of the Skills Matrix are defined in Clause 7—Definitions. The definition of each level will be supported by an exhaustive training program detailing Competency Standards, Elements of Competency, Performance Criteria and Competency Assessment Criteria.
- (c) To enable progression through the Skills Matrix, Training Programs will further support each level.

##### (3) Progression and Selection for Training

- (a) Progression through the skills matrix will aim to give employees the opportunity to advance to the limits of their individual interests and capacities. It is recognised that progression may be constrained by production requirements, training resources, and the availability of equipment and safety factors.
- (b) Training programs will be designed and made available by the employer according to its current and future operational needs. Places in these programs will be made available having regard to the skills profile of the workforce.
- (c) The employer will select employees for a training program according to the following guideline—
  - Employee's stated preference;
  - Employee's work performance;
  - Experience of employees if operational needs so dictate;
  - Previous training undertaken;
  - The achievement of an acceptable level of proficiency from previous training;
  - Demonstrated aptitude for the skills which are to be acquired

##### (4) Competency Assessment

- (a) Specific and objective knowledge and skill assessment will be carried out to assess levels of competence. All skills acquired will be required to be demonstrated. Specific Employer Training Programs and Modules will not be regarded as complete until competency testing requirements, including both theoretical and practical tests, where appropriate, have been satisfied.
- (b) All competency assessment will be conducted by a panel of not more than two assessors, made up of—
  - (i) The relevant supervisor; or
  - (ii) The trainer in the skills being assessed; or
  - (iii) A member of the consultative committee

In the event of a disagreement, the results will be reviewed by the Production or Distribution Manager relevant to the personnel being assessed. If

agreement is still not reached, the matter will be referred to the Consultative Committee for recommendation.

(5) Record of Training and Experience

Employees will each be issued with an "Individual Training Program" which will be the employee's endorsed record of skills attained, courses attended and other relevant work experiences whilst employed by the employer. This statement will be updated on the completion of further training.

(6) Utilisation and Upkeep of Skills

- (a) All employees will be required to put acquired skills into practice. This is necessary for the retention of skill levels.
- (b) The allocation of work to employees will be subject to the operational needs of the business and will have regard to the following criteria—
  - The most effective utilisation of available skilled resources;
  - Effective utilisation of each employee on any of the activities in which the employee is competent;
  - Equitable allocation of work between employees of similar skill attainment;
  - Development of additional skills required by on-the-job application under guidance;
  - Planning to allow acquisition of additional skills by training;
  - The need to ensure exposure to work activity related to all of the skills held by an employee for the specific purpose of skill retention.
- (c) A program is to be developed to maintain skill levels on an ongoing basis that employees will be required to embrace.

(7) Payment for Training

- (a)
  - (i) it is agreed that additional training in accordance with this clause may be undertaken either on or off the job.
  - (ii) Where training is undertaken during ordinary working hours or when production overtime is occurring the employee concerned shall not suffer any loss of pay.
  - (iii) Any costs associated with standard fees for prescribed courses or prescribed text books (excluding those text books supplied by the employer) incurred in connection with the undertaking of such training shall be reimbursed by the employer upon production of evidence of such expenditure and report of satisfactory completion. Textbooks paid for by the employer shall be retained as employer property.
- (b)
  - (i) Employees undertaking formal training activities for the purpose of progression through the skills matrix may be required to undertake training outside of normal hours up to a maximum of 60 hours in a 6 month period. This time will be paid at the ordinary hourly rate as specified in Appendix A. Any further requirement to train beyond 60 hours will be paid at overtime rates.
  - (ii) Where training is required on a day other than an on an employee's rostered day, 7 days notice shall be given and a minimum of 2 hours training shall be provided. If such training is cancelled during the notice period, the 2 hour minimum engagement shall be paid.
  - (iii) Any training which occurs on a Sunday shall be paid at the rate prescribed by Clause 11 (2) (c)—Hours of Work.

11.—HOURS OF WORK

(1) Ordinary Hours

- (a) The ordinary rostered hours of work shall be 38 per week, or an average of 38 per week to be worked in one of the following methods—
  - (i) 38 hours in one week;

- (ii) 76 hours in two consecutive weeks;
  - (iii) 114 hours in three consecutive weeks;
  - (iv) 152 hours in four consecutive weeks.
- (b)
    - (i) the ordinary rostered hours of work shall be exclusive of meal breaks and shall be rostered so that a worker shall agree to commence work on either 5 days in each week or 10 days in each fortnight, or 19 days in each four week cycle.
    - (ii) A full-time worker may be engaged for a maximum of 9.5 hours within ordinary hours.
    - (iii) For full time or part time employees working a four day week, the normal days of work will be Monday to Thursday, except where mutually agreed to change to other days between Monday and Friday.
    - (iv) A part time worker shall be rostered to work a maximum of 34 ordinary hours per week, with a maximum of daily engagement of 8.5 ordinary hours and a minimum daily engagement of 4 ordinary hours. A part time worker shall be rostered to work a minimum of 16 ordinary hours per week.
  - (c) The ordinary hours of work shall be worked on Monday to Friday inclusive between the hours of 5am and 5pm, except in the case of one employee at the Palmyra site, who may work his/her ordinary hours between 9am and 7pm.

(2) Overtime

- (a) All time worked before the usual starting time or after the usual finishing time or on a non rostered work day shall be deemed to be overtime, except as provided in Clause 10—Career Structures and Training, of this Agreement.
- (b) Where a worker is requested to work overtime on any day on which he or she is not normally rostered to work, the employee shall be paid for a minimum of two hours.
- (c) Except as otherwise provided by this subclause, all overtime worked shall be paid at the rate of time and a half for the first two hours and double time thereafter. Provided that—
  - (i) All work after 12.00 noon on Saturday or all day Sunday shall be paid at the rate of double time;
  - (ii) Employees who work on a non rostered week day shall be paid at the rate of time and a half for the first 8 hours and double time thereafter;
  - (iii) all work on a public holiday shall be paid at the rate of double time and a half;
  - (iv) All work beyond 11.5 continuous hours on any day will be paid at double time.
- (d) An employee can only be required to work a reasonable amount of overtime.

(3) Shift Work Allowance

A shift allowance of 17% will be paid to permanent employees for shifts of work other than day shift, with the exclusion of one employee at the Palmyra site, who may work his/her ordinary hours between 9am and 7pm without a shift work allowance.

12.—CASUALS

(1) Casual employees shall be engaged for a minimum period of 2 hours on each occasion required.

(2) A casual employee shall be entitled to overtime at the applicable rates as set out in Clause 11.2 of this Agreement in addition to the loading provided in paragraph (a) of subclause 3 of this clause.

- (a) In excess of 9.5 hours on any day (exclusive of meal breaks);
- (b) In excess of 38 hours in any week;
- (c) In excess of 5 days in any week.

## (3) Additional Loading for Casual Employees—

- (a) In lieu of entitlements to sick leave, annual leave or other forms of leave (excluding Long Service Leave) a casual employee shall be paid a loading of 20% for all hours worked.
- (b) A call out allowance of one hour's pay shall be paid for any notice of work that is less than 8 hours before the required starting time.

## 13.—SICK LEAVE

(1) Subject to the other provisions of this clause, an employee other than a casual, unable to attend or remain at work because of personal illness or injury is entitled to be absent from work without loss of ordinary pay ("sick leave").

(2) An employee is entitled to sick leave of up to 76 ordinary hours in each year of service. Sick leave will accrue at the rate of 1.46 hours per week for full time employees, and proportionately to the hours worked for part time employees.

(3) Employees shall accrue any unused sick leave.

(4) The employer will endeavour to shut sections of the plant down in order to limit the requirement for covering absenteeism.

(5) The Company will require an employee to provide proof of illness for any period of sick leave in excess of 2 days.

(6) The Company may also require an employee to provide proof of illness for any period of illness in excess of the first 2 periods of leave in any calendar year. Such a requirement must be made in writing prior to the leave in question.

## 14.—ANNUAL LEAVE

## (1) Entitlement/Period of Leave

At the end of each 12 months employment with the employer, all permanent employees will be entitled to four (4) weeks annual leave, exclusive of Public Holidays which may be taken in any manner mutually agreed between the employer and the employee.

## (2) Payment

Payment for annual leave will be made immediately before the employee proceeds on annual leave.

The pay rate for employees shall be their ordinary pay rate in accordance with Clause 17—Wages for the employee taking leave, plus a loading of 17.5%.

## (3) Timing of Annual Leave

- (a) Wherever possible, the 4 day operation will be utilised to cover shutdowns. However, annual leave may be required to coincide with maintenance shutdowns. The employer agrees that no greater than 2 weeks in any 12 month period can be used for this purpose. The employer will endeavour to advise employees at least 2 months prior to a maintenance shutdown.

However, if this is not possible, employees may be requested to delay annual or long service leave to ensure adequate coverage remains to operate. It is agreed that adequate coverage in the warehouse will be maintained at all times. Any dispute will be referred to the Consultative Committee for a decision.

- (b) Except in exceptional circumstances, employees will not be allowed to accrue annual leave in excess of 6 weeks. Accrued annual leave exceeding 6 weeks will be reduced by the employee taking leave at a rate of 3 weeks each 6 month period until accrued annual leave does not exceed 6 weeks.

## 15.—LONG SERVICE LEAVE

The long service leave provisions published in Volume 59 of the Western Australian Industrial Gazette at pages 1 to 6, both inclusive are hereby incorporated in and shall be deemed part of this agreement.

Any employee entitled to pro-rata Long Service Leave after 10 years service will be given access to that leave if their annual leave entitlement is insufficient for a requested period of absence.

## 16.—SPECIAL LEAVE

- (1) Special leave does not apply to casuals.

(2) Special leave will be available where an employee cannot organise to attend to unforeseen family and/or personal matters during periods of other authorised leave or days off.

(3) A full time employee who is entitled to more than one day's sick leave may in each year of service use up to a maximum of 2 days of that sick leave as special leave, to enable the employee to attend to unforeseen family or personal matters. Part time employees are entitled to use sick leave as special leave on a pro rata basis.

(4) For events that can be planned ahead, employees shall where possible, request rosters changes or utilise available annual leave.

(5) Apart from emergencies, special leave will only be available upon at least 24 hours notice being given by the employee to their manager.

## 17.—WAGES

All employees employed after the registration of this Agreement shall be paid the following rate of pay from the first full pay period on or after the following dates—

LEVEL	14 <sup>th</sup> December 1998	30 <sup>th</sup> November 1999
Level 1 Operator	\$459.22 per week or \$12.08 per hour	\$477.59 per week or \$12.56 per hour
Level 1a Operator	\$477.40 per week or \$12.56 per hour	\$496.50 per week or \$13.06 per hour
Level 2 Operator	\$523.26 per week or \$13.77 per hour	\$544.19 per week or \$14.32 per hour
Level 3 Operator	\$568.30 per week or \$14.95 per hour	\$591.03 per week or \$15.55 per hour
Level 4 Operator	\$631.13 per week or \$16.60 per hour	\$656.38 per week or \$17.27 per hour
Level 5 Operator	\$658.01 per week or \$17.32 per hour	\$684.33 per week or \$18.00 per hour
Level 6 Operator	\$684.38 per week or \$18.01 per hour	\$711.74 per week or \$18.73 per hour
Level 7 Operator	\$712.12 per week or \$18.74 per hour	\$740.24 per week or \$19.48 per hour

NOTE : One week equals 38 hours

## 18.—LUNCH AND MEAL BREAKS

An employee will be allowed a half hour unpaid meal break per day at a time mutually agreed between the employee and management.

An employee shall be allowed two 10 minute paid tea breaks per day at a time mutually agreed between the employee and management.

## 19.—ALLOWANCES

## SERVICE ALLOWANCE

In addition to the rates of pay set out in Clause 17—Wages the following employees will receive \$10.26 per week until such time as they achieve Level 3 status or above.

Joe Lockwood, David Scorer, Russel Oldham, Sherald Smithers and John Denholm.

## HIGHER DUTIES ALLOWANCES

Any employee who is job grade 3 or below who is required to act as a team leader for a period of two days or more shall be paid at the job grade one higher than their current position for that period.

## MOTOR VEHICLE ALLOWANCE

Where an employee maintains a motor vehicle and is required by the employer to use the vehicle in the performance of their duties, they should be paid 48 cents per kilometre.

## 20.—TERMINATION OF EMPLOYMENT

Full time and Part time employees

(1) Should an employer wish to terminate a permanent employee, the following period of notice shall be provided—

Period of Continuous Service	Period of Notice
Within the first 6 months of employment	1 day
More than 6 months but less than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

(2) Employees over 45 years of age with 2 or more years continuous service at the time of termination, shall receive an additional week's notice.

(3) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.

(4) Payment in lieu of notice shall be calculated using the employee's weekly ordinary time earnings.

(5) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.

(6) Notice of termination by employee

Except in the first 6 months of service, 1 week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture or payment of 1 week's pay by the employee to the employer in lieu of notices.

In the first 6 months of service, an employee may give one day's notice to terminate his or her employment.

(7) Termination by employer prior to public holiday.

An employee whose employment is terminated by the employer on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holiday or holidays.

Provided that in the event of Christmas Eve falling on a Saturday or a Sunday any employee whose employment is terminated by the employer on the preceding Friday otherwise than for misconduct, shall be paid for Christmas Day and Boxing Day.

(8) Probation

An employee engaged under the terms of this Agreement might be engaged under probation for an agreed period not exceeding 6 months.

(9) Casual Employees

The giving or receiving of 1 hour's notice may terminate the employment of a casual employee.

## 21.—SECURITY OF EMPLOYMENT

The parties to this agreement are committed to providing employees with secure employment. However, should the need arise during the life of this agreement, the parties will adopt a Redundancy Agreement in line with the Goodman Fielder policy.

## 22.—BEREAVEMENT LEAVE

An employee shall, on the death of the spouse, de facto spouse, sibling, parent, step-parent, grand-parent, grand-child, child or step-child of the employee or any other person who, immediately before that person's death, lived with the employee as a member of the employee's family, be entitled to paid bereavement leave for ordinary hours of up to two days.

The right to such leave shall be dependent on compliance with the following conditions—

The employee shall furnish proof such as would satisfy a reasonable person as to the death that is the subject of the leave and/or the relationship of the employee to the deceased person should the employer so request.

The employee shall not be entitled to leave under this clause during a period of any other kind of leave.

## 23.—TRADE UNION TRAINING LEAVE

Subject to this clause a union delegate or duly elected or appointed union representative shall, upon application in writing by the Union, be granted up to five days leave with pay, each calendar year, non cumulative, to attend courses approved by the Union.

Leave shall be granted by the employer on the dates notified by the Union but shall be subject to the Union giving not less than one and where possible two, calendar months notice of the intention to attend such course or such lesser period as may be agreed between employer, the Union and the employee concerned.

Only employees who have completed twelve months continuous service with their current employer shall be eligible for leave pursuant to this clause

An employee on leave approved in accordance with this clause shall be paid all ordinary time earnings, which normally become due and payable during the period of the leave

The employer shall not incur any liability with respect to the cost of travel to and from the place where the courses are conducted, nor to any accommodation and associated costs during such leave, or any other cost associated with the conducting of the course.

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

Employees granted leave pursuant to this clause shall, upon request, inform the employer after the completion of the course of the nature of the course and their observations on it.

On completion of the course the employee shall, upon request, provide to the employer proof satisfactory to the employer of his or her attendance at the course. The employer shall not be required to make payment for any period of leave granted that is not utilised in the attendance at a course unless the employee can substantiate that the failure to attend the course was due to the taking of paid leave otherwise authorised by this Agreement.

The employer recognises the Union delegates who are elected by the employees as the on-site representatives of the Union. Delegates will be allowed, subject to prior notification to their supervisor, reasonable paid time to conduct on-site business including recruitment, with workers.

## 24.—UNIFORMS

If the employer requires an employee to wear a uniform for the purpose of his or her employment shall supply such uniforms free of charge or pay for its purchase and such uniform shall remain the property of the employer.

For the purpose of this clause a "uniform" shall mean any outer wearing apparel or part thereof which is distinctive to the employer's business either by bearing an embroidered or other permanent form of logo or business name or being outer wearing apparel of identical style, cut or design, and colour for all of the employees required to wear such a uniform.

Should any dispute arise between the parties as to the wearing of uniforms and overalls, if such are required to be worn, the dispute however originating and any matter arising therefrom including the matter of the laundering of uniforms and overalls, shall be determined by the Consultative Committee.

## 25.—PROTECTIVE EQUIPMENT

An employer shall have available a sufficient supply of protective equipment for use by employees when engaged on work for which some protective equipment is reasonably necessary.

An employee shall sign an acknowledgement when issued with any article of protective equipment

and shall return that article to the employer when finished using it or on leaving employment.

Employees will be diligent in utilising protective equipment necessary for the safe carrying out of all duties associated with their job.

## 26.—POSTING OF AGREEMENT

The employer shall allow a copy of this Agreement, if supplied by the Union, to be posted in a place easily accessible to the employees.

## 27.—UNION NOTICE BOARD

An employer bound by this Agreement shall permit a shop steward or a Union official to post formal Union notices, authorised by the General Secretary of the Union or his nominee upon an appropriate notice board.

The employer may remove any notice posted on a notice board not so signed by the General Secretary of the Union

## 28.—DISPUTES SETTLEMENT PROCEDURE

(1) Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure—

- (a) The matter shall first be discussed between the employee affected and the appropriate Team Leader/Co-ordinator. The employee may choose to be represented by the union delegate.
- (b) If not settled the matter shall be discussed between the employee, an accredited representative of the Union and the appropriate representative of the employer.
- (c) If not settled the matter shall be discussed between an official of the Union and an appropriate representative of the employer.

(2) While the matter in dispute is being discussed in accordance with the procedure, as prescribed in subclause (1) of this clause, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

(3) It is open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute, provided that persons involved in the question, dispute or difficulty will confer amongst themselves and make reasonable attempts to resolve the question, dispute or difficulty before taking those matters to the Commission.

## 29.—JOURNEY COVER INSURANCE

Journey Cover Insurance shall be provided to employees by the employer to an equivalent level as the TLC Joint Unions Cover Insurance scheme as amended from time to time.

## 30.—PUBLIC HOLIDAYS

(1) The following days shall be allowed as Public Holidays for full time and part time employees: New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, State Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2) The paid holidays set out in subclause (1) hereof shall be regarded as falling on the days upon which they are most commonly observed in the state of Western Australia.

(3) If a Public Holiday as defined by subclause (1) falls on a weekday on which a full time employee is not rostered to work they will be compensated by the payment of one additional day's pay for each Holiday.

## 31.—SIGNATORIES

For and on behalf of

MEADOW LEA FOODS LTD

(signed Mr P Thompson) (29/6/99)

Signature Date

(P Thompson)

Name of Signatory

(WA Manufacturing Manager)

Position of Signatory

For and on behalf of

THE FOOD PRESERVERS' UNION OF WESTERN AUSTRALIA, UNION OF WORKERS ("FPU")

(Signed Mr Joseph Bullock) (29/7/99)

Signature Date

(Joseph Bullock)

Name of Signatory

(Secretary)

Position of Signatory

For and on behalf of

THE SHOP DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA ("SDA")

(signed Joseph Bullock) (signed indecipherable)

General Secretary President

29/7/99 30/7/99

Date Date

## APPENDIX A

## CONSTITUTION

## MEADOW LEA FOODS

## PALMYRA SITE

## CONSULTATIVE COMMITTEE

The employees, Management of Meadow Lea Foods Palmyra Site and the Unions are committed to undertake improved and effective consultation in the workplace.

The parties agree this consultation will provide employees with an opportunity to participate fully in decisions which impact on their working lives and support the principle of continuous improvement in the operation. Management, employees and the Unions also agree that effective consultation is dependent upon,

- Honesty
- Information sharing
- Facilities and training for employees
- Commitment for all parties

It is therefore agreed that the establishment of an employee, Management Consultative Committee is the method whereby the above principles can be practised and upheld.

This Agreement involves the Food Preservers Union of WA and the Shop, Distributive and Allied Employees' Association of WA who will be represented on the Committee when required.

## VISION STATEMENT

The shared vision of the Consultative Committee is to develop an environment that encourages contribution towards continual improvement in all aspects of our Organisation through—

- Training
- Teamwork
- Efficiencies
- Communication

The result of this will be improved—

Quality	Product
	Lifestyle
Productivity Security	Jobs
	Financial
Competitiveness	

## OBJECTIVES OF THE CONSULTATIVE COMMITTEE

## PRIMARY OBJECTIVES

The objectives of the Meadow Lea Palmyra Consultative Committee are to improve productivity, communication, skills of all employees, job security and to make Palmyra a harmonious and safe workplace for the benefit of all employees.

Specifically, the Consultative Committee aims to achieve the following—

- The achievement of the highest possible efficiency and quality of work and products as a common goal for all.
- To increase the quality of working life for all company employees, particularly in the areas of job design, skill formation, training and the working environment both physical and mental.
- To improve job security, productivity and efficiency of the company.
- To ensure that employees are able to work in a co-operative atmosphere in which the worth, dignity and skills of each individual within the company are respected and appreciated.

- To provide each employee with career development opportunities with access to more varied, fulfilling jobs with the company and promotion on the basis of competence, assessed level of skill and job performance.
- To enable all employees to benefit from a fair and equitable wage system through a skills based career development program,

#### TERMS OF REFERENCE

The following matters will be discussed by the Committee and where appropriate decisions made and agreements reached to the extent that the matters raised impact on employees or the efficiency of the company

- Future site plans.
- Current market conditions and general conditions of the industry.
- The introduction of new technology/machines or new or revised work methods together with associated planning of layout, training, job numbers, skill requirements incorporating a skills audit etc.
- Training plans: selection for: application of. type of.
- Equal employment opportunities within the workplace.
- Any other matters raised by Employees or Management.

Matters, which by definition are the responsibility of the Occupational Health and Safety Committee, may be referred to that Committee.

Matters relating to the implementation of any Enterprise Agreement will require the endorsement of 75% of the members of a particular section or sections concerned. Where employees concerned request a secret ballot be carried out the procedure shall be agreed to by the parties involved.

The Committee will have the right to liaise with education and professional training bodies whether Government or otherwise and to present information or seek advice from the union or relevant bodies.

Matters requiring central union involvement. While the Consultative committee may discuss issues pertaining to the award or an enterprise agreement, any agreements shall be a matter for negotiation and resolution between the parties to this Agreement. Matters which may be discussed in this context include hours of work, leave loading, sick leave, holiday pay, penalty rates.

#### STRUCTURE

The Consultative committee will consist of 3 management representatives and 4 employee representatives to ensure that all employees are adequately represented.

Their nominated proxy may represent any Committee member who is unable to attend meetings. Any Committee member, who ceases to be an employee of the company, ceases to be on the Committee. In the event of this occurring, employees will elect/appoint a replacement as appropriate. Consultative committee members will be elected for a 12 month period and will be reviewed after this period via the specified election process. In addition, union officials or management designates may attend and have speaking rights at meetings.

#### MEETINGS

The committee will meet every 2 weeks during paid time in normal working hours for one hour, whenever possible. Meetings are to be scheduled on Thursdays, unless otherwise agreed. Either party at 1 week's notice may call additional meetings. All decisions will be arrived at by consensus. Meetings occurring outside normal hours will be restricted, however if required, will be paid at normal rates unless Committee members are disadvantaged through potential loss of earnings.

#### CHAIRPERSON

The chair and secretarial duties will alternate between all parties on a regular basis and as agreed by Committee members.

#### AGENDA

All members of the Committee can submit agenda items, which should be representative of the issues raised within their respective areas. An agenda is to be distributed by the chairperson no later than the Tuesday preceeding a meeting.

#### MINUTES

It will be the responsibility of the secretary to take and distribute minutes and management will provide facilities to type, photocopy and distribute minutes. A draft copy of the minutes will be made available to all parties within one week of the meeting.

All parties will informally accept that the agreements recorded are correct and there being no problems, the draft minutes will be posted and explained to all employees. Committee members should arrange to informally feedback issues discussed to their respective areas after each meeting. A copy of the draft minutes will be sent to the Union Branch Office. The minutes will be formally accepted at the next meeting of the Committee.

#### QUORUM

A quorum would consist of 1 management and 3 employee representatives

#### FACILITIES AND RIGHTS OF EMPLOYEE REPRESENTATIVES

It is agreed that the employee representatives should have the following facilities and rights—time off to canvass the views of the membership and to prepare items for the agenda; to prepare for the consultative meeting as a group and to report back to members on the Committee meeting. It is agreed that all time spent in meetings and back to members about the consultative Committee meeting shall be treated and paid for as time worked.

Facilities such as meeting room, telephone, photocopier and typing facilities should be made available as needed.

A Committee member will not be discriminated against or treated unfairly because of decisions of the Consultative Committee or having an interest in the Consultative Committee. Furthermore, the Committee has agreed to support its members in the process of implementing decisions agreed by the Consultative Committee.

#### RESPONSIBILITY OF COMMITTEE MEMBERS

All committee members have the following responsibilities—

1. to attend all meetings and give serious consideration to all matters raised.
2. To represent the views of their constituents.
3. To communicate key issues to constituents as agreed by the Consultative Committee.

#### CONFIDENTIALITY

It is agreed that there may be some information that is regarded as confidential. However, management will make every effort to make available as much information as possible for the effective resolution of problems. A confidentiality agreement may be required for material presented to the Committee which may be deemed to be confidential.

#### TRAINING

All members of the Committee and their proxies shall be entitled to extra training to ensure they are able to adequately represent their constituents and fully participate in the Consultative Committee.

#### APPENDIX B—PALMYRA/CANNINGVALE TASK MATRIX

As Food Processing Certificate modules become available, employees at respective levels will be required to complete them.

Items marked with an asterisk are prerequisites for moving up to that grade.

An employee may be graded at Level 1 for a maximum of three months.

Level	Manufacture and Package Product & Warehouse Streams	Quality Control	Versatile Operator	Theory & Core Modules
5	<ul style="list-style-type: none"> <li>* Design workplace systems (Including ISO internal auditor).</li> <li>* Manage operations to achieve planned outcomes.</li> <li>* Participate in, lead and facilitate teams.</li> <li>* Manage personal work priorities and professional development.</li> <li>* Contribute to the development of a workplace environment.</li> </ul> <p>Manage workplace information. Manage quality customer service. Establish and manage effective workplace relationships. Provide leadership in the workplace</p>	<ul style="list-style-type: none"> <li>* Design workplace systems (including ISO internal auditor).</li> <li>* Maintain operation to achieve planned outcome.</li> <li>* Manage workplace information.</li> </ul> <p>Manage quality customer service. Manage personal work priorities and professional development. Contribute to the development of a workplace learning environment. Establish and manage effective workplace relationships.</p>	All items of Level 4 in 2 streams	Frontline Manager AQF Level 5 Core Modules
4	<p>Prerequisites to reach level 4— all competencies marked with asterisk plus any one of the remaining four.</p> <ul style="list-style-type: none"> <li>* Manage Operation to achieve planned outcomes (includes monitor nonconforming product, co-ordinate crewing and production/warehouse supervision. Also includes site security, operate PC, customer enquiries and monthly pallet reconciliation for warehouse only).</li> <li>* Manage quality customer service.</li> <li>* Contribute to the development of a workplace learning environment</li> </ul> <p>Develop and maintain workplace systems (includes ISO Document Controller). Acquire and analyse workplace information. Establish and manage effective workplace relations. Manage Personal work priorities and professional development.</p>	<p>Prerequisites to reach level 4— All competencies marked with asterisk plus any one of the remaining four.</p> <ul style="list-style-type: none"> <li>* Develop and maintain workplace systems (includes ISO Document Controller).</li> <li>* Manage operations to achieve planned outcomes.</li> <li>* Manage quality customer service.</li> <li>* Acquire and analyse workplace information.</li> </ul> <p>Manage personal work priorities and professional development. Contribute to the development of a workplace learning environment Establish and manage effective workplace relations.</p>	All items of Level 3 in 2 streams	Frontline Manager AQF Level 4 Core Modules

Level	Manufacture and Package Product & Warehouse Streams	Warehouse	Quality Control	Versatile Operator	Theory & Core Modules
3	<p>Prerequisites to reach Level 3— all competencies marked with an asterisk</p> <p>AND Produce margarine OR Boiler certificate, testing and chemical dosage, incoming oil testing.</p> <ul style="list-style-type: none"> <li>* Online Testing—margarine</li> <li>* Pro pump cleaning/maintenance.</li> <li>* Machine troubleshooting and minor maintenance.</li> <li>* Produce shortening, FBS</li> </ul> <p>Produce margarines Produce solid Cooking Oil Boiler certificate, testing and chemical dosage. Margarine plant washout. Process troubleshooting Incoming Oil testing</p>	<ul style="list-style-type: none"> <li>* Raise/allocate distribution orders—AS/400</li> <li>* Reversing distribution orders—AS/400</li> <li>* Stock to stock issue—AS/400</li> <li>* Raise picklist/cancel picklist—AS/400</li> <li>* Receiver add data—AS/400</li> <li>* Raise invoices—AS/400</li> <li>* Raise/log cycle counts—AS/400</li> <li>* Print stock to stock del. document—AS/400</li> <li>* Purchase order receipt to stock—AS/400/Reject</li> <li>* Stocktake (reconciliation)</li> </ul> <p>Pallet control (Chepmate)—PC. Customer credits—written—AS/400.</p>	<ul style="list-style-type: none"> <li>* Monitor and maintain Nonconforming product</li> <li>* Micro sample preparation, setup and plating (Product, plant, environmental, lecithin and swab samples)</li> </ul> <p>Calibration. Complaint investigation. Monthly reporting.</p>	All items of Level 2 in 2 streams.	Warehousing Certificate III or Food Processing Certificate III Core modules.

Level	Manufacture and Package Product & Warehouse Streams	Warehouse	Quality Control	Versatile Operator	Theory & Core Modules
		Raise nonconformance forms—Lotus Notes. Raise corrective action report—Lotus Notes. Raise opportunity for improvement forms. Stock adjustments—AS/400 Stock reconciliation—internal/external.			
2	<ul style="list-style-type: none"> <li>* Casepacker changeover</li> <li>* Benhil changeover.</li> <li>* Transfer loads (forklift license)</li> <li>* First Aid certificate.</li> <li>* Palletiser changeover.</li> </ul> <p>Dairy—milk preparation. Dairy—cleaning. Prepare Ingredients (CVF, antifoam etc.) Tanker unloading. DAF plant operation. Cooling towers testing and chemical dosage. Filler cleaning and assembly (Benhil &amp; Kustner). Monitor and test water softeners. Organise and control production consumables.</p>	<ul style="list-style-type: none"> <li>* Physically locate and isolate nonconforming products.</li> <li>* Short code report.</li> <li>* Product storage knowledge.</li> <li>* Items alpha search—AS/400</li> <li>* Invoice history inquiry—AS/400</li> <li>* Location inquiry—AS/400</li> <li>* MPS Inquiry (Local ATP's)—AS/400</li> <li>* MRP Inquiry (E/states ATP's)—AS/400</li> <li>* Inventory transaction inquiry—AS/400</li> </ul> <p>Monitor/record coolroom/ temp/ambient temperatures daily. Organise consumables. Faxing and confirmation of time slots. Depalletise freight and internally distribute stock to areas within the w/house. Hygiene Audits. First Aid Certificate. Stocktake participation. Raise consignment notes/ Chep dockets.</p>	<ul style="list-style-type: none"> <li>* Routine analysis—AOM, AV, soap, fry test, smoke pt. 3 month testing, statistical methods.</li> <li>* Operate Lotus Notes Databases.</li> <li>* Daily release—inc Premium products and micro results checks</li> <li>* Test monitor DAF plant.</li> </ul> <p>Organise and participate in quality audits. Hygiene inspections. Conduct stocktakes. Order and control lab consumables. Prepare chemical solutions. Imported Oils testing</p>	All items of Level 1A in 2 streams	Food Processing Certificate II or Certificate II Core modules.
1A	<p>Wash / inspect, setup and fill—FBS, 20lt, 200lt, 1000lt. Operate other load transferring equipment. Set dates on coders. Set weights on scales. Load and operate casepacker. Load and operate Benhil. Production equipment external cleaning. Maintain packaging supplies. Stocktakes—finished products &amp; consumables. Bulk line operation. Kustner handpacking. Cleaning DAF plant. Return remelt to processing. Palletiser operation. Can line operation.</p>	<p>General housekeeping. Pick and assemble outward goods from picking slip/work orders. Load and unload trucks. Drive company truck (current 'A' Class License) Packaging (reboxing damaged goods) Operation of sweeper Basic quality control. Manual palletising. General fork-lift maintenance. ISO awareness/understanding Reach forklift license. Physically count cycle-counts.</p>	<p>Cooling Towers testing and chemical dosage. Prepare ingredients (CVF, BHA, AF etc) Incoming oil testing. Micro preparation (agar &amp; peptone water). Online Testing—Shortening Online testing—margarine testing. Daily verification. Boiler water testing Water Quality Routine Lab Sampling. Approval of Milk Powder</p>		Warehousing Certificate I. Food Processing Certificate I. Core modules.
1	<p>Induction Numeracy and literacy Manual tasks. Drive company truck ('A' Class license) Manual palletising. Maintain yard/grounds.</p>	<p>Induction Numeracy and literacy. Forklift operation. Monitor coolroom temperatures. General cleaning. Pallet storage and handling.</p>	<p>Induction Numeracy and literacy. Chemical awareness. Safety aspects—eg MSDS, PPE.</p>		

Level	Manufacture and Package Product & Warehouse Streams	Warehouse	Quality Control	Versatile Operator	Theory & Core Modules
	Office cleaning. Reject damaged product. Reboxing product. Empty reject tubs. General housekeeping. Wrap staff sales. Maintain security offsite (after hours).	Operate other load transferring equipment.	Computer literacy— spreadsheets. Cleaning lab equipment.		

Level 1 are duties which all employees are expected to be willing to do.

Level 1 has no training modules and none will be developed.

**MEADOW LEA FOODS LTD (WESTERN AUSTRALIA) ENTERPRISE AGREEMENT 1998.**  
**No. AG 133 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Food Preservers' Union of Western Australia Union of  
Workers and Other

and

Meadow Lea Foods Ltd.

No. AG 133 of 1999.

Meadow Lea Foods Ltd (Western Australia) Enterprise  
Agreement 1998.

CHIEF COMMISSIONER W.S. COLEMAN.

3 September 1999.

*Order.*

HAVING heard Mr Trevor Pope on behalf of the applicant;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred under the Industrial Relations Act, 1979 do hereby order—

THAT the agreement entitled Meadow Lea Foods Ltd (Western Australia) Enterprise Agreement 1998 in the terms of the following Schedule be registered as an industrial agreement. This Agreement replaces AG 331 of 1996 entitled Meadow Lea Foods Ltd (Western Australia) Enterprise Agreement 1996 and AG 82 of 1994 entitled Meadow Lea Foods Ltd (Western Australia) Enterprise Agreement 1994 which are hereby cancelled.

(Sgd.) W.S. COLEMAN,

[L.S.] Chief Commissioner.

1.—TITLE

This Agreement shall be referred to as "Meadow Lea Foods Ltd (Western Australia) Enterprise Agreement 1998" and replaces entirely the "Meadow Lea Foods Ltd (Western Australian) Enterprise Agreement 1996 and the "Meadow Lea Foods Ltd (Western Australia) Enterprise Agreement 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties
5. Objectives
6. Term and Operation of Agreement
7. Implementation
8. Consultation
9. Career Structure and Training
10. Hours of Work
11. Hours of Work for Packing Room
12. Sick leave

13. Annual Leave
14. Disputes Settlement Procedure
15. Journey Cover Insurance
16. Engineering Call-Out Roster
17. Long Service Leave
18. Allowances

APPENDIX A—Pay Rates-Refinery, Technical, Packing Room

APPENDIX B—Pay Rates-Engineering

APPENDIX C—Skills Matrix—Refinery, Packing Room, Technical

APPENDIX D—Skills Matrix—Engineering

APPENDIX E—Constitution of Consultative Committee

3.—SCOPE

(1) The area and scope of this Agreement shall be the same as that prescribed in the—

- (a) Metal Trades (General) Award 1966 (No. 13 of 1965);
- (b) Food Industry (Food Manufacturing or Processing) Award (No. A20 of 1990);

insofar as these Awards apply to the employees of Meadow Lea Foods Ltd.

(2) This Agreement shall apply to the persons employed by Meadow Lea Foods Ltd at the worksite located at Lot 10 Estuary Drive, Bunbury in the State of Western Australia.

(3) Unless otherwise expressly provided for in this Agreement or specified in any subsequent agreement, no employee shall be reduced in status or position or have his/her rate of remuneration reduced or any of his/her conditions of employment adversely affected merely as a consequence of making of this Agreement.

(4) This Agreement shall be read in conjunction with the relevant award referred to in subclause (1) of this Clause. Where the terms of this Agreement are inconsistent with the terms of the relevant Award, the terms of this Agreement will prevail.

(5) Where this agreement is silent the awards referred to in sub-clause (1) shall apply.

(6) There are approximately 30 employees whose conditions of employment shall be regulated by this Agreement.

4.—PARTIES

The parties to this Agreement are—

Meadow Lea Foods Ltd (hereinafter "the Company").

The Food Preservers' Union of Western Australia, Union of Workers (hereinafter the "FPU");

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, (hereinafter "the AMWU");

provided that "Unions" shall mean the two unions jointly and "Union" shall mean either of the two unions individually.

5.—OBJECTIVES

(1) The parties acknowledge that the objective of this Agreement is to enhance job security and opportunity for employees through a joint commitment by management and employees to improved business competitiveness.

(2) Any dispute arising from this shall be dealt with in accordance with Clause 14.—Disputes Settlement Procedure of this Agreement.

(3) The parties agree that the provisions of this Agreement are intended to support—

- (a) the development of meaningful, challenging and responsible works roles which allow employees a degree of autonomy and responsibility;
- (b) the enhancement and utilisation of employee skills and abilities;
- (c) the maximisation of labour flexibility;
- (d) the maintenance of productive and harmonious working relationships;
- (e) the efficient operation of the plant including—
  - (i) changes to work practices to allow the efficient use of new and existing technology;
  - (ii) a healthy and safe working environment for all employees;
  - (iii) highest quality of products;
  - (iv) flexibility without demarcation or restrictions if this flexibility is safe, efficient, legal and logical.

#### (4) Workplace Flexibility

Employees understand that the plant needs to operate continuously. As part of that understanding, employees acknowledge that the Company may need to re-roster employees or request overtime work by employees in the event of—

- absenteeism
- annual holidays
- monitoring, service and supply of plant, services and other equipment as required
- warehousing and tanker operations
- minor maintenance and housekeeping
- training
- production requirements

This flexibility also extends to the provision of assistance of the Goodman Fielder Bakery depot.

(5) The Company, the Unions and all employees accept their joint responsibility to ensure this Agreement is effective and in the event of any ambiguity or dispute over interpretation of this Agreement the spirit and intention of this clause will be referred to.

### 6.—TERM AND OPERATION OF AGREEMENT

#### (1) Term

- (a) This Agreement shall come into operation on and from 1st June 1998 and shall remain in force until 31st May 2000 unless renewed by all the parties in accordance with paragraph (b) hereof.
- (b) All parties to this Agreement make a commitment to re-negotiate this Agreement and apply for its replacement before 31st May 2000.

#### (2) Operation

- (a) It is the intention of the parties to maintain this Agreement in its present form for its full term except when changes become necessary so as to ensure the Agreement's effective and practical operation and such changes are consistent with prevailing wage fixing principles.
- (b) Notwithstanding paragraph (a) above, during the term of this Agreement, the parties undertake to implement choice of superannuation fund as required by State Legislation and to investigate provision of salary continuance insurance. Trade-offs may be necessary to fund the cost of this insurance.

### 7.—IMPLEMENTATION

#### (1) Arrangements

When this Agreement becomes operational, employees will be paid according to Appendices A and B.

#### (2) Deemed Competency

Packing Room employees were deemed competent in accordance with the Skills Matrix as set out in Appendix C of

this Agreement during the life of the Enterprise Agreement 1996.]

Refinery, Technical and Engineering employees were deemed to be competent in accordance with the Skills Matrix as set out in Appendices C and D of this Agreement during the life term of the Enterprise Agreement 1994.

#### (3) Productivity Payment

Productivity improvement payments, as per the following, will be effected if the principles of this document are being met (ie Training Program, Teams Development etc). This will be determined by the Consultative Committee.

1st June 1998	Increase	4%
1st June 1999	Increase	4%

#### (4) Implementation of Matrix

Whilst it is agreed that the intention is to allow progression in the skills matrix from the bottom up, operational requirements may necessitate the fast tracking of certain employees to meet the skill mix requirements and may be undertaken at the Company's discretion. New employees with appropriate prior qualifications or experience may be deemed competent to a skill level agreed by the Consultative Committee.

### 8.—CONSULTATION

#### Consultation

- (a) It is recognised by the parties that the key to productive and harmonious working relationships lies in establishing effective consultative mechanisms at the workplace. Effective consultation mechanisms will—
  - (i) ensure that the views of both parties are known and taken into account by each other;
  - (ii) Provide both parties with an informed basis upon which to make decisions.
- (b) To this end, it is agreed that a Consultative Committee is established by charter as provided for in Appendix E—Constitution of Consultative Committee.
- (c) The Committee shall consist of a minimum of six and a maximum of ten committee members.
- (d) The major objective of the Committee is to promote a spirit of co-operation. Each party will give constructive and sympathetic consideration to all views and representations submitted to the Committee with a view to furthering the common well-being of the establishment as a whole.
- (e) Employee representatives on the Committee shall be allowed reasonable time without loss of pay to research or prepare for such committee meetings with full access to all relevant information as necessary.
- (f) Employee representatives on the Committee are required to keep their constituents advised on matters arising at the meeting.
- (g) Meetings of work teams to enable effective communication and consultation between team members and team leaders will be held during normal work hours for all employees except those in the Refinery. Refinery employees will have one team meeting per month for all shifts together. Those employees attending outside normal hours will be paid at time and one half for the duration of the meeting.

### 9.—CAREER STRUCTURES AND TRAINING

#### (1) General Conditions

- (a) The Company recognises and accepts its responsibility in the area of training and development and is committed to the design, provision and implementation of training programs to extend the knowledge and skills of its employees. The overriding objective is to enable each employee to gain the competence to perform, consistent with operational needs, all of the tasks and activities associated with a particular job to an established performance criteria.
- (b) Each employee is responsible for his/her own learning, and will be given the opportunity to acquire knowledge and skills to advance through the levels and gain additional remuneration, subject to demonstrated competence in the application of the skills acquired and in accordance with site requirements.

## (2) Skills Matrix and Training

- (a) The Skills Matrices (see Appendices C & D) set out the various skill levels in Refinery, Packing, Technical and Engineering streams.
- (b) Levels in each stream of the Skills Matrix are defined in Appendices C & D. The definition of each level will be supported by an exhaustive training program detailing Competency Standards, Elements of Competency, Performance Criteria and Competency Assessment Criteria.
- (c) To enable progression through the Skills Matrix, each level will be further supported by Training Programs.

## (3) Progression and Selection for Training

- (a) Progression through the skills matrix will aim to give employees the opportunity to advance to the limits of their individual interests and capacities. It is recognised that progression may be constrained by production requirements, training resources, the availability of equipment and safety factors.
- (b) Training programs will be designed and made available by the Company according to its current and future operational needs. Places in these programs will be made available having regard to the skills profile of the workforce.
- (c) Employees will be selected by the Company for a training program according to the following guideline criteria—
  - Employee's stated preference;
  - Employee's work performance;
  - Experience of employees if operational needs so dictate;
  - Previous training undertaken;
  - The achievement of an acceptable level of proficiency from previous training;
  - Demonstrated aptitude for the skills which are to be acquired

## (4) Competency Assessment

- (a) Specific and objective knowledge and skill assessment will be carried out to assess levels of competence. All skills acquired will be required to be demonstrated. Specific Company Training Programs and Modules will not be regarded as complete until competency testing requirements, including both theoretical and practical tests where appropriate have been satisfied.
- (b) All competency assessment will be conducted by a panel of not more than two assessors, made up of—
  - (i) the relevant supervisor; or
  - (ii) the trainer in the skills being assessed; or
  - (iii) a member of the consultative committee

In the event of a disagreement the results will be reviewed by the Site Manager. If agreement is still not reached, the matter will be referred to the Consultative Committee for recommendation.

All skills reclassifications will be presented to the consultative committee for ratification at the next meeting.

## (5) Record of Training and Experience

Employees will each be issued with an "Individual Training Program" which will be the employee's endorsed record of skills attained, courses attended and other relevant work experiences whilst employed by the Company. This statement will be updated on the completion of further training.

## (6) Utilisation and Upkeep of Skills

- (a) All employees will be required and afforded the opportunity to put skills into practice. This is necessary for the retention of skill levels.
- (b) The allocation of work to employees will be subject to the operational needs of the business and will have regard to the following criteria—
  - The most effective utilisation of available skilled resources;
  - Effective utilisation of each employee on any of the activities in which the employee is competent;

- Equitable allocation of work between employees of similar skill attainment;
- Development of additional skills required by on-the-job application under guidance;
- Planning to allow acquisition of additional skills by training;
- The need to ensure exposure to work activity related to all of the skills held by an employee for the specific purpose of skill retention.

- (c) A program is to be developed to maintain skill levels on an ongoing basis which employees will be required to embrace.

## (7) Payment for Training

- (a) It is agreed that additional training in accordance with this clause may be undertaken either on or off the job.
- (b) Where training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of pay.
- (c) Any costs associated with standard fees for prescribed courses or prescribed text books (excluding those text books supplied by the Company) incurred in connection with the undertaking of such training shall be reimbursed by the company upon production of evidence of such expenditure and report of satisfactory completion. Text books paid for by the Company shall be retained as Company property.
- (d) Payment for Training  
Employees undertaking formal training activities for the purpose of progression through the skills matrix may be required to undertake training outside of normal hours up to a maximum of 60 hours in a 6 month period. This time will be paid at the ordinary hourly rate as specified in Appendices A or B. Any further requirement to train beyond 60 hours will be paid at overtime rates.

## 10.—HOURS OF WORK

## (1) Ordinary Hours

- (a) Subject to this clause and except where provided elsewhere in this Agreement, the ordinary hours of work shall be 38 per week, or an average of 38 per week in one of the following methods—
  - (i) 38 hours in one week
  - (ii) 76 hours in two consecutive weeks
  - (iii) 114 hours in three consecutive weeks
  - (iv) 152 hours in four consecutive weeks
- (b) The ordinary hours of work for a day worker shall be worked on any or all days of the week Monday to Friday inclusive between the hours of 6.00am and 6.00pm exclusive of meal breaks.
- (c) The ordinary hours of work for shift work shall be between 11.00pm Sunday and 11.00pm Friday inclusive of meal breaks.
- (d) The rates of pay for shift workers shall be that as specified in Appendix A of this Agreement.

## (2) Implementation of 38 Hour Week

Except as provided in Clause 11.—Hours of Work for Packing Room of this Agreement the method of implementation of the 38 hour week may be one of the following—

- (a) By Refinery employees working 8 ordinary hours per day inclusive of meal breaks on not more than 19 days in each 4 week cycle.
- (b) By maintenance and packing room employees working 10 ordinary hours per day exclusive of meal breaks on not more than 16 days in each 4 week cycle.

## (3) Shift Work Allowances

The shift allowance for Refinery and Technical Operators is built into the hourly rate as specified in the Meadow Lea Foods Enterprise Agreement 1994.

## (4) Public Holidays

It is the company's intention to avoid operating on a public holiday whenever possible.

In a week in which a public holiday occurs, either 3 or 4 shifts per week, may be worked in the Packing Room at normal rates with an additional payment of 10 hours per shift pay for the public holiday. This does not apply to individuals undertaking continuous rotating shifts or maintenance teams.

Work on a public holiday will incur normal penalty rates as per the award.

#### 11.—HOURS OF WORK FOR PACKING ROOM

(1) Employees engaged in the packing room and maintenance shall work 4 shifts per week, of 10 hours per shift exclusive of meal breaks. This work shall be performed on any day Monday to Friday.

(2) The parties to this Agreement acknowledge that as a term of the Meadow Lea Foods Ltd (Western Australia) Enterprise Agreement 1994 employees engaged in the Packing Room and Maintenance moved from an average of 38 ordinary hours of work per week to an average of 39 and 2 minutes ordinary hours of work per week, and the additional hour and 2 minutes of ordinary work was paid into the base rate.

(3) All employees engaged in the Packing Room and Maintenance continue to accrue 46 hours of paid time off per year. This time shall be utilised—

- (a) By mutual agreement for Maintenance employees; and
- (b) during plant shut downs for Packing Room employees.

#### 12.—SICK LEAVE

(1) Subject to the other provisions of this clause an employee, other than a casual, unable to attend or remain at work because of personal illness or injury is entitled to be absent from work without loss of ordinary pay ("sick leave").

(2) An employee is entitled to sick leave of up to 76 ordinary hours in each year of service. Sick leave will accrue at the rate of 1.46 hours per week for full time employees, and proportionately to the hours worked for regular part time and fixed term employees.

(3) Employees engaged on 8 hour shift rosters have agreed to a flexible Sick Leave coverage system.

This "Sick Leave coverage" (Buddy) system operates in the following manner—

- (a) The annual rate of pay of all employees engaged on 8 hours shift rosters has been increased by an amount equal to 36 hours pay.
- (b) Employees may be called in to work by the Company to replace other employees on sick leave. No more than 48 hours per employee per year may be worked.
- (c) During each hour of sick leave replacement work prescribed by this subclause employees shall be paid in accordance with the rates contained in Appendix A.
- (d) The Company will endeavour to limit the number of occasions this procedure is used.
- (e) The Company will ensure an equitable distribution of the requirement to work in accordance with this procedure.
- (f) The first 48 hours per year of Sick Leave will be designated as Buddy Leave. A Buddy Leave balance of 48 hours will be credited on 1 June each year.

Sick Leave will accrue at the rate of 0.54 hours per week (28 hours/year).

Sick Leave taken will resume the above balances as follows—

- First 48 hours per year from Buddy Leave
- Any further Sick Leave from Sick Leave balance.

Buddy Leave does not accumulate from year to year. All Buddy Leave balances will be zeroed at Midnight 31st May each year.

#### 13.—ANNUAL LEAVE

(1) Entitlement/Period of Leave

At the end of each 12 months employment with the Company, all employees will be entitled to four (4) weeks annual leave, exclusive of Public Holidays which may be taken in any manner agreed between the Company and the employee.

(2) Payment

The payment to be made to each employee immediately before proceeding on annual leave shall be as shown in the Annual Leave column in Appendices A and B of this Agreement.

(3) Timing of Annual Leave

- (a) Annual leave may be required to coincide with maintenance shutdowns, however the company agrees that no greater than 2 weeks in any 12 month period can be used for this purpose. The company will endeavour to advise employees at least 2 months prior to a maintenance shutdowns. Wherever possible, pooled RDO's will be utilised to cover shutdowns.
- (b) Employees operating on 8 hour shifts may be requested to delay annual or long service leave to ensure adequate coverage remains to operate the refinery. It is agreed that adequate coverage in the refinery will be maintained at all times. Any dispute will be referred to the Consultative Committee for a decision.
- (c) Employees will not be allowed to accrue holiday leave in excess of 30 days. Accrued holiday leave exceeding 30 days will be reduced by the employee taking leave at a rate of 15 days each 6 month period until accrued holidays do not exceed 30 days.

#### 14.—DISPUTE SETTLEMENT PROCEDURE

(1) Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure—

- (a) The matter shall first be discussed between the employee affected and the appropriate Team Leader/Co-Ordinator. The employee may choose to be represented by the union delegate.
- (b) If not settled the matter shall be discussed between the employee, an accredited representative of the union and the appropriate representative of the Company.
- (c) If not settled the matter shall be discussed between an official of the union and an appropriate representative of the Company.

(2) While the matter in dispute is being discussed in accordance with the procedure, as prescribed in subclause (1) hereof, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

(3) It is open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute, provided that persons involved in the question, dispute or difficulty will confer amongst themselves and make reasonable attempts to resolve the question, dispute or difficulty before taking those matters to the Commission.

#### 15.—JOURNEY COVER INSURANCE

Journey Cover Insurance shall be provided to employees by the Company to an equivalent level as the TLC Joint Unions Cover Insurance scheme as amended from time to time.

#### 16.—ENGINEERING CALL-OUT ROSTER

(1) Engineering employees will participate in a call out roster for attending plant breakdowns outside of normal Engineering work hours, as follows—

- (a) A tradesman will be rostered each week as the first to be called in the event of a plantbreakdown requiring engineering assistance.
- (b) The roster will be organised by the Engineering team.
- (c) The rostered tradesman undertakes to remain contactable by way of a company provided device, and to be on site, fit to work within one hour, if necessary.

(2) The rostered tradesman shall receive a payment of 4 hours at the CIO rate of pay for each week, when rostered. This payment shall be in addition to payment for any work performed if called back to work.

(3) Implementation of the call-out roster system relies on all tradesman gaining proficiency in all site plants and processes. Continuation of payment to any individual tradesman is conditional upon gaining accreditation for one "in-house" module (as defined in Appendix D) within 6 months of preparation of the first of such modules, and another within the second six months.

17.—LONG SERVICE LEAVE

Any employee entitled to pro-rata Long Service Leave after 10 years service will be given access to that leave if their annual leave entitlement is insufficient for a requested period of absence.

18.—ALLOWANCES

Whilst it is the intention of this agreement to encourage skills development via the Skills Matrix and separate allowances for any purpose are deemed to not be desirable or in the spirit of the agreement, the following points are specifically noted.

- (a) Boiler Ticket holders in the refinery before June 1994 receive a \$16.20 per week allowance which is built into the hourly rate for overtime and penalty rate calculations.
- (b) Any employee permanently working in the position of Team Leader will be paid an allowance of \$17.30 per week which is built into the hourly rate for overtime and penalty rate calculations.
- (c) Any employee working as a relief Team Leader for a period of more than 4 days will be paid at the skills level one higher than normal for the full period of absence of the Team Leader.
- (d) Payment for holding a First Aid Certificate is included in the rates in Appendices C and D. All employees are encouraged and will be assisted to obtain First Aid Skills to assist with Occupational Health and Safety of their fellow employees and family.
- (e) Engineering pay rates in Appendix B include tool allowance.

For and on behalf of  
Meadow Lea Foods Limited—  
(signed Paul Thompson) 5/10/98

\_\_\_\_\_  
Signature Date  
(Paul Thompson)

\_\_\_\_\_  
Name of Signatory  
Manufacturing Manager—WA

\_\_\_\_\_  
Position of Signatory  
For and on behalf of  
The Food Preservers Union of Western Australia,  
Union of Workers  
(Signed Joseph Bullock) 29/7/99

\_\_\_\_\_  
Signature Date  
(Joseph Bullock)

\_\_\_\_\_  
Name of Signatory  
(Secretary)

\_\_\_\_\_  
Position of Signatory  
For and on behalf of  
The AMWU  
(Signed John Sharp-Collett) 22/10/98

\_\_\_\_\_  
Signature Date  
(John Sharp-Collett)

\_\_\_\_\_  
Name of Signatory  
(State Secretary)

\_\_\_\_\_  
Position of Signatory

APPENDIX A

PAY RATES—REFINERY, PACKING ROOM & TECHNICAL

HOURLY RATES

SKILL LEVEL	REFINERY		PACKING ROOM		TECHNICAL	
	6/1998	6/1999	6/1998	6/1999	6/1998	6/1999
ANN						
1 Induction (3 months)	13.13	13.66	11.56	12.03	12.55	13.06
1A Operator 1	14.62	15.21	12.89	13.40	13.98	14.54
2 Operator 2	15.42	16.04	13.58	14.13	14.74	15.33
3 Operator 3	17.07	17.75	15.04	15.64	16.31	16.96
4 Operator 4	17.75	18.46	15.64	16.27	16.97	17.65
5 Operator 5	18.43	19.17	16.23	16.88	17.62	18.32
6 Operator 6	19.79	20.58	17.42	18.12		

WEEKLY RATES

SKILL LEVEL	REFINERY		PACKING ROOM		TECHNICAL	
	6/1998	6/1999	6/1998	6/1999	6/1998	6/1999
ANN						
1 Induction (3 months)	499.14	519.10	462.59	481.10	477.01	496.09
1A Operator 1	555.65	577.88	515.42	536.04	531.15	552.39
2 Operator 2	586.08	609.52	543.30	565.03	560.00	582.40
3 Operator 3	648.52	674.46	601.54	625.60	619.67	644.46
4 Operator 4	674.60	701.59	625.66	650.69	644.97	670.77
5 Operator 5	700.29	728.31	649.38	675.35	669.47	696.25
6 Operator 6	752.07	782.15	696.80	724.67		

Boiler Ticket holders in the refinery prior to June 1994 receive an additional \$16.20 per week allowance that is built into their hourly rates

Refinery and Technical streams include a shift allowance which is built into these hourly rates.

Team Leaders receive an extra \$17.30 per week built into their hourly rates at the appropriate skill level

APPENDIX B  
PAY RATES—ENGINEERING  
HOURLY RATES

SKILL LEVEL	6/1998	6/1999
C12	14.50	15.08
C11	15.24	15.85
C10	16.29	16.94
C9	16.99	17.67
C8	17.75	18.46
C7	18.52	19.26
C6	19.34	20.12

WEEKLY RATES

SKILL LEVEL	6/1998	6/1999
C12	579.90	603.10
C11	609.44	633.82
C10	651.46	677.51
C9	679.74	706.93
C8	710.11	738.52
C7	740.90	770.53
C6	773.76	804.71

**CALL OUT ROSTER**

4 hours at C10 rate is paid to the person on call.

Team Leader Allowance

The maintenance Team Leader receives an extra \$17.30 per week built into the hourly rate at the appropriate skill level

Tool Allowance

Pay rates include a tool allowance

APPENDIX C  
BUNBURY EBA SKILL MATRIX

Level	Refinery Skills Band	Versatile Operator Band	Packing Room Training	Technical Skills	Tafe Module/Theory
1A. Induction	-Induction -Tanker Loading & Unloading		-Induction -Tanker loading and Unloading	-Induction -Tanker loading and Unloading	-Occupational Health & Safety -Numeracy & Literacy
1B. Operator 1	-Hydrogenation -Interesterification -Batch Bleaching -Site services		-Setup minor machines -Operate All Positions -Correct manual handling -P.R. paperwork	-Understand process & testing requirements	-Communications -First Aid
2. Operator 2	-Cont. Bleaching -Soap Splitting		-Warehouse -Weighbridge -Bulkline -Oil Preparation -Stock Control (MRPII)	-Understand theory and practical knowledge of Refinery function	-Quality Assurance -Calculations -Forklift
3. Operator 3	-Refinery		-4L/750ml/2L lines -QC testing	-Understand both theory and practical operation of Refinery and Packing Room	-Fats & Oils theory -Packaging theory -MRPII
4. Operator 4	-Deodoriser and Vacuum System -Boiler Ticket	-All operations of Refinery or Packing Room and Level 1A/1B of another band	-All operations -Fault finding -Minor maintenance	-Level 3 plus participate in training (facilitators) -Input MRPII data -Minor materials -Exception report quality	-Working in Teams -Train the Trainer -Boiler Ticket
5. Team Leader	-Operator 4 plus Team Leader	-All operations to Level 4 of Refinery or Packing Room and level 2 of another Band. -Training Co-Ordinator	-Operator 4 plus Team Leader -Boiler Ticket -Training Co-Ordinator	-Level 4 plus appropriate certificate -Statistical process control	-Assessor Training -Team Leadership
6. Senior Team Leader	-Certificate in Food Processing				

APPENDIX D  
MAINTENANCE SKILLS MATRIX

LEVEL	IN-HOUSE	EXTERNAL
C10	Packing Room	NM13 Fluid Power NF05 Welding (Arc) NREL1 Electrical Principles and Safety NM43 Pump Maintenance
C9	Refinery	NF09 Welding (Tig) NR3L2 Disconnect/Reconnect to 650V NM33 PLC Pipe Fabrication
C8	Services	NREL5 Cords and Plugs to 250V *Each level requires approximately 120 hours of post trade training in site relevant skills (which includes an inhouse component) before progression to the next level of competency.
C7	FULLY SKILLED TRADESPERSON	

An Independent skills analysis and equipment analysis to be conducted. From this analysis a training plan is to be developed and implemented to ensure adequate coverage of skills.

As a result of this analysis, these modules may change during the life of this agreement.

Maintenance employees will be encouraged to progress through modules to C7 or their individual capability.

APPENDIX E  
CONSTITUTION  
MEADOW LEA FOODS  
BUNBURY SITE  
CONSULTATIVE COMMITTEE

**PREAMBLE:**

The employees, management and unions of Meadow Lea Foods Bunbury Site are committed to undertake improved and effective consultation in the workplace.

The parties agree this consultation will provide employees with an opportunity to participate fully in decisions which impact on their working lives and support the principle of consultation. Management, employees and unions also agreed that effective consultation is dependent upon—

- honesty
- information sharing
- facilities and training for employees
- commitment for all parties

It is therefore agreed that the establishment of an Employee/Management Consultative Committee is the method whereby the above principles can be practised and upheld. This agreement involves the following two unions represented on site—

FPU — Food Preservers' Union

AMWU—The Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union of workers – Western Australian Branch

The Food Preservers' Union and the Metal and Engineering Workers' Union have agreed to form a single bargaining unit for participating within the Consultative Committee.

**VISION STATEMENT:**

The shared vision of the Consultative Committee is to develop an environment which encourages contribution towards continual improvement in all aspects of our organisation through—

- Training
- Teamwork
- Efficiencies
- Communication

The results of this will be improved—

- Quality—
  - Product
  - Lifestyle
  - Productivity
- Security—
  - Jobs
  - Financial
- Competitiveness

**OBJECTIVES OF THE CONSULTATIVE COMMITTEE**

The establishment of the Consultative Committee is intended to assist in the achievement of the following—

- The achievement of the highest possible efficiency and quality of our work and products as a common goal for all.
- To increase the quality of working life for all company employees particularly in the areas of job design, skill formation, training and the working environment both physical and mental.
- To improve job security, productivity and efficiency of the company.
- Ensure that employees are able to work in a co-operative atmosphere in which the worth, dignity and skills of each individual within the company are respected and appreciated.
- Provide each employee with career development opportunities with access to more varied, fulfilling jobs with the company and promote them on the basis of competence, assessed level of skill and job performance.
- Enable all employees to benefit from a fair and equitable wage system through a skills based career development programme.

**TERMS OF REFERENCE**

The following matters will be discussed by the committee and where appropriate decisions made and agreements reached to the extent that the matters raised impact on the unions membership or the efficiency of the company—

1. Future site plans.
2. Current market conditions and general conditions of the industry.
3. The introduction of new technology/machines or new or revised work methods together with associated planning of layout, training, job numbers, skill requirements incorporating a skill audit etc.
4. Training plans: selection for: application of: type of.
5. Equal Employment opportunities within the workplace.
6. Any other matter raised by Employees or Management.

Matters which by definition are the responsibility of the Occupational Health and Safety Committee may be referred to that Committee.

Matters relating to the implementation of any enterprise agreement will require the endorsement of 75% of the members of the relevant unions in the section or sections concerned. Where members concerned request a secret ballot be carried out, the procedure shall be agreed to by the parties involved.

The Committee will have the right to liaise with education and professional training bodies whether Government or otherwise and to present information or seek advice from the unions or relevant bodies.

Matters requiring central union involvement—while the consultative committee may discuss issues pertaining to the award of an enterprise agreement, any agreement, any agreements made should follow normal industrial relations proceedings involving the unions in these areas. These may include hours of work, leave loading, sick leave, holiday pay, penalty rates.

**STRUCTURE:**

The Consultative Committee will consist of employee representatives elected from the union membership including shop stewards and others and Management representatives, according to the following prescription—

- 2 FPU
- 1 AMWU
- 3 Management

Any committee member who is unable to attend a meeting may be represented by their nominated proxy. Any committee member who ceases to be an employee of the company, ceases to be on the Committee and Union/Management will elect/appoint a replacement as appropriate. Re-election of the Union representatives will be determined by members of the appropriate unions. In addition, union officials and appropriate officers may attend and have speaking rights at all meetings. Management may invite their representatives to attend meetings.

**MEETINGS:**

The committee will meet as frequently as required but no less than every 4 weeks during paid time in normal working hours for up to four hours. Additional meetings may be called by either party at 1 weeks notice. All decisions will be arrived at by consensus.

**CHAIR PERSON:**

The chair will alternate/rotate each meeting between all members of the committee and will be nominated from the previous meeting. Secretarial duties will be undertaken by the previous meeting chairman.

**AGENDA:**

All members of the Committee can submit agenda items. An employee representative and a Management representative will meet at least one week prior to the meeting to write up and distribute the agenda to members of the Committee. All relevant written information and documents must be circulated with the agenda a week before the meeting.

**MINUTES:**

The Committee will nominate a minute taker and management will provide facilities to type, photocopy and distribute. A draft copy of the minutes will be made available to all parties within one week of the meeting.

All parties will informally accept that the agreements recorded are correct and there being no problems the draft minutes will be posted and explained to the membership by report back meetings if necessary. A copy of the draft minutes will be sent to the Union Branch Office. The minutes will be formally accepted at the next meeting of the Committee.

**QUORUM:**

A quorum would consist of 2 management and 2 employee representatives.

**FACILITIES AND RIGHTS OF EMPLOYEE REPRESENTATIVES:**

It is agreed that the employee representatives should have the following facilities and rights. Time off to canvass the views of the membership and to prepare items for the agenda: to prepare for the Consultative meeting as a group of employee representatives: and to report back to members on the Committee meeting. It is agreed that all time spent in meetings and reporting back to members about the Consultative Committee meeting shall be treated and paid for as time worked.

Facilities such as a meeting room, telephone, photocopier and typing facilities should be made available as needed. All union representatives and potential employee representatives should attend Trade Union Training Courses specifically designed to enable them to be effective on Consultative Committee.

An employee member will not be discriminated against by the employer or treated unfairly because of the Consultative Committee or having an interest in the Consultative Committee.

**RESPONSIBILITY OF COMMITTEE MEMBERS:**

All committee members have the following responsibilities—

1. To attend all meetings and give serious consideration to all matters raised.
2. To represent the views of their constituents.
3. To communicate key issues to constituents as agreed by Consultative Committee.

**CONFIDENTIALITY:**

It is agreed that there may be some information which is regarded as confidential. However, management will make every effort to make available as much information as possible for the effective resolution of problems. A confidentiality agreement may be required for material presented to the committee which may be deemed to be confidential.

**TRAINING:**

All members of the Committee and their proxies shall be entitled to extra training to ensure they are able to adequately represent their constituents and fully participate in the Consultative Committee.

It is agreed that—

1. Such training for employee members is separate from and in addition to any Trade Union Training Leave.
2. The nature and extent of such training will be agreed between the Union and Management before it is entered into.
3. Employee members will be entitled to take such time off work with pay as is necessary for the purpose of performing their functions or duties or taking part in any course of training relating to ECC at no financial cost to employee members.

**NORBERTINE CANONS INCORPORATED NON-TEACHING STAFF ENTERPRISE BARGAINING AGREEMENT 1999.**  
**No. AG 60 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Norbertine Canons Incorporated

and

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

and

The Australian Nursing Federation Western Australian Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers.

No. AG 60 of 1999.

18 August 1999.

*Order:*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 60 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Norbertine Canons Incorporated Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 23 March 1999 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,

[L.S.]

Commissioner.

Schedule.

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "Norbertine Canons Incorporated Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "Norbertine Canons Incorporated Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause Clause Title  
No.

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

Part II General Conditions of Service

10. Contract Of Service

11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic

Schools in Western Australia will be in accordance with the following awards—

- Independent Schools Administrative and Technical Officers Award 1993;
- School Employees (Independent Day & Boarding Schools) Award 1980;
- Teachers' Aides' (Independent Schools) Award 1988;
- Independent School (Boarding House) Supervisory Staff Award;
- Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 16.

6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

- Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;
- School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;
- Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;
- (Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;
- Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

**PART II**

**GENERAL CONDITIONS OF SERVICE**

10.—CONTRACT OF SERVICE

- (1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.
- (b) This shall include statements of—
  - (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

- (3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.
- (4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family;
    - or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and

- (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
- (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Use of unpaid leave

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

15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(1) Maternity Leave

(a) Nature of leave

Maternity leave is unpaid leave.

(b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

(d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

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

- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.

(e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.

(g) Variation of Period of Maternity Leave

- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

## (i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
  - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
  - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.

- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.

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

## (j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

## (k) Effect of Maternity Leave on Employment

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

## (l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

## (n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## (2) Paternity Leave

## (a) Nature of Leave

Paternity leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for paternity leave

A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

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

- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
  - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
  - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
    - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
  - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
    - (aa) the birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
  - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave
- Adoption leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for adoption leave—

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
  - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
- (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.

## (d) Certification

- (i) Before taking adoption leave the employee must produce to the employer—
  - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
  - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

## (e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

## (f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

## (h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure.

Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
  - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer

shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—  
For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.
- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—  
For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.
- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

#### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid

the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons	Single Persons
	allowance \$ per week	allowance \$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.— SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

### (1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

- (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
- (ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

### (2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

### (3) Exemption

Exemptions from the requirements of this clause shall apply to an employee who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

### Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;  
or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

## 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 32.—CLASSIFICATIONS

**Level One**

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1  
Exit Step 5

**Level Two**

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6  
Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

**Level Three**

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8  
Exit Step 10

**Level Four**

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

**Level Five**

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13  
Exit Step 15

## 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

**PART IV  
SCHOOL EMPLOYEES**

**34.—HOURS**

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

**35.—ROSTERS**

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
- (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.

(3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at

such times and place as the record book is so open for inspection.

- (b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

**36.—OVERTIME**

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

**37.—WEEKEND WORK**

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**38.—WAGES**

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer’s contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years’ experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

PART V

ADMINISTRATIVE AND TECHNICAL OFFICERS

42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee’s ordinary rate of pay or be given

paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
LEVEL 2	23188.46	23826.14
	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
LEVEL 3	26224.90	26946.08
	26776.98	27513.35
	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
LEVEL 4	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

(b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.

(c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

(d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.

(e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.

(i) Such reasons should indicate the areas where the employer considers improvement is required.

(ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.

(f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.

(g) The years of experience are indicated by the equivalent number of steps from the entry level.

(h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.

(i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

(a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

(b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

(a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

(b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

## (3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

## (4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

**PART VI****(BOARDING HOUSE) SUPERVISORS****46.—HOURS**

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

**47.—ROSTERS**

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;  
 (b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;  
 (c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

**48.—VACATION LEAVE**

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an

employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

**49.—SALARIES**

(1) The minimum annual salary payable to employees shall be as follows—

## (a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

## (b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

## (c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**50.—CLASSIFICATIONS**

(1) **“Houseparent”**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **“Part-Time Supervisor”**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **“Relief Supervisor”**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **“Senior Supervisor”**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **“Shift”**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) “**Supervisor**”—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

#### 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

#### 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

#### 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

#### 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month’s continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer’s contributory superannuation fund.

#### 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer’s expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be “required” unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

### Appendix A

#### PARTIES BOUND

##### Employer Parties

Norbertine Canons Incorporated 135 Treasure Road  
Queens Park WA 6107

##### Union Parties

Australian Liquor, Hospitality and Miscellaneous Workers Union Subiaco WA 6008

Miscellaneous Workers Division Western Australian Branch

Australian Nursing Federation Level 2  
Western Australian Branch 322 Hay Street  
Industrial Union of Workers Subiaco WA 6008

The Independent Schools Salaried Officers’ Association of Western Australia, Industrial Union of Workers East Perth WA 6004

**Appendix B****AWARDS**

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991  
 Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990  
 Nurses (Independent Schools) Award No. 21B of 1962  
 School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979  
 Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

**ENDORSEMENTS**

Signed for and on behalf of—  
 The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)  
 Australian Nursing Federation Industrial Union of Workers Perth (Signed M. Olsen)  
 Australian Liquor Hospitality and Miscellaneous Workers Union—Miscellaneous Division WA Branch (Signed S.M. Jackson)  
 Norbertine Canons Incorporated (Signed P.J. Stiglich)

Signed for and on behalf of—  
 The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)  
 (Signed T. Howe)

*Common Seal*

**PCB HOLDINGS ASBESTOS ERADICATION INDUSTRIAL AGREEMENT.  
 No. AG 107 of 1999.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.  
 Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers  
 and  
 PCB Holdings Pty Ltd.  
 AG 107 of 1999.

PCB Holdings Asbestos Eradication Industrial Agreement.  
 COMMISSIONER S J KENNER.

31 August 1999.

*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 PCB Holdings Asbestos Eradication Industrial Agreement as filed in the Commission on 15 June 1999 in the terms of the following schedule be and is hereby registered as an industrial agreement.

(Sgd.) S.J. KENNER,  
 [L.S.] Commissioner.

Schedule.

**1.—TITLE**

This Agreement will be known as the PCB Holdings Asbestos Eradication 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. Hours of Work
9. Dispute Settlement Procedure
10. Wage Increase
11. Safety Dispute Resolution
12. Training Allowance, Training Leave, Recognition of Prior Learning
13. First On Last Off
14. Overtime
15. Company Based Incentive Scheme
16. Industry Standards
17. All-In Payments
18. Pyramid Sub-Contracting
19. Fares and Travelling
20. Drug and Alcohol, Safety and Rehabilitation Program
21. Income Protection
22. No Extra Claims
23. Signatories to the Agreement

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 & Plasterers Union of Workers (hereinafter referred to as the "Union") and PCB Holdings Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

**4.—APPLICATION**

1. This Agreement shall be binding upon the Company, the Union, its officers and employees eligible to be members of the Union employed by the Company on asbestos eradication work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the relevant Award).

2. "Asbestos eradication work" shall include all work on or about buildings, involving the removal or any other method of neutralisation of any materials which consist of, or contain asbestos.

3. The provisions of this Agreement are in addition to entitlements specified in the relevant Award and where there is an inconsistency the Agreement shall prevail.

4. There is approximately one (1) employee covered by the agreement.

**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 or any future Agreement three calendar months prior to the expiration of this Agreement.

### 7.—ALLOWANCES

1. Unless otherwise agreed in writing between the Company and the Union, employees will be paid the Labourer Group 1 rate of pay as contained in the relevant award. In addition, the following allowance will be paid—

- a) A rate of \$5.00 per hour will be paid to all employees.
- b) This allowance is “all purpose” and shall be included as part of the ordinary rate.
- c) Whilst a worker is engaged in the removal of Asbestos sheeting a \$4.50 per hour allowance shall apply. This allowance will be paid on an hours worked basis.

2. The above rates are in lieu of Clause 9 of the Award or allowances contained in particular site agreements.

### 8.—HOURS OF WORK

1. For employees required to wear full respiratory equipment, six hours only will be worked in an eight hour period, and no more than three hours may pass without a paid rest period of one hour.

2. Unless otherwise agreed in writing between the Company and the Union, and in addition to the provisions of clause 13 of the Award, a further productivity incentive of one paid day off every four week period will be given to each employee.

### 9.—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 the Award.

### 10.—WAGE INCREASE

This agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A – Wage Rates

### 11.—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. Adequate Union approved protective equipment will be supplied by the Company.

6. \$5 Million Public Liability asbestos related insurance shall be held by the Company.

7. 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.

### 12.—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 employer’s approval shall not be unreasonably withheld.

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

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer’s operations. The onus shall rest with the employer to demonstrate an 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.

### 13.—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.

### 14.—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.

### 15.—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.

## 16.—INDUSTRY STANDARDS

## 1. Redundancy

It is a term of this Agreement that the Company will immediately increase its payments to \$50 per week per employee into the Western Australian Construction Industry Redundancy Fund.

## 2. Superannuation

- (i) The Company will immediately increase its level of payment to \$60 per week per employee or 7% Ordinary Time Earnings, whichever is the greater.

The Company will advise all employees subject to the Agreement of their right to have payments made to a complying superannuation fund of their choice. The Company is bound by the employee's election. The aforementioned payment will then be made to that fund.

Until each employee nominates the fund of their choice the Company will make payments into the Construction + Building Unions Superannuation Scheme (the "C+BUSS").

In the event that any employee chooses a fund other than the C+BUSS the Company will, within seven days of the employee advising the Company of the fund of their choice, advise the Union in writing of the employee's decision.

In the event that the employee and the Company reach an agreement pursuant to section 49C(2)(d) of the Act to change the complying superannuation fund or scheme the Company will, within seven days of the employee and the Company reaching such an agreement, advise the Union in writing of the agreement. The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by the employee.

- (ii) "Ordinary Time Earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including tool allowance, industry allowance, trade allowances, shift loading, special rates, qualification allowances (eg. first aid, laser safety officer), multi-storey allowance, site allowance, asbestos eradication allowance, leading hand allowances, in charge of plant allowance and supervisory allowances where applicable. The term includes any regular over-award pay as well as casual rates received and any additional rates and allowances paid for work undertaken during ordinary hours of work, including fares and travel.

## 17.—ALL-IN PAYMENTS

1. All-In methods of payments shall be prohibited.

2. "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or Agreement.

3. If an employer has been paying an employee an all in-rate he/she shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the employer shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

4. If any party is of the view that this principle has been breached or is aware of a contracting arrangements on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

5. Any industrial action that may arise, shall be confined to the employer in breach of this clause.

## 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 A—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.

## 23.—SIGNATORIES TO THE AGREEMENT

On behalf of the Union: Signed \_\_\_\_\_  
On behalf of the Company: Signed \_\_\_\_\_  
Peter Brady  
Print name

Dated this 21<sup>st</sup> day of May, 1999.

*Company*  
*Seal*

## APPENDIX A—WAGE RATES

	Date of Signing	1 August 1999
	Hourly Rate	Hourly Rate
	\$	\$
Labourer Group 1	16.92	17.15
Labourer Group 2	16.34	16.56
Labourer Group 3	15.90	16.12

## 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 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.
- 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/dismitted 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.

\_\_\_\_\_

**THE ROMAN CATHOLIC ARCHBISHOP OF  
PERTH INC. NON-TEACHING STAFF ENTERPRISE  
BARGAINING AGREEMENT 1999.**

No. AG 46 of 1999.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Roman Catholic Archbishop of Perth  
and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers.

No. AG 46 of 1999.

18 August 1999.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 46 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named

party and Mr C. Gleeson on behalf of the third 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 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 Roman Catholic Archbishop of Perth Inc. Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 23 March 1999 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,

Commissioner.

[L.S.]

Schedule.

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "The Roman Catholic Archbishop of Perth Inc. Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "The Roman Catholic Archbishop of Perth Inc. Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause No.	Clause Title
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Part I Parameters

- |    |                          |
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Part II General Conditions of Service

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| 13. | Sick Leave                              |
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| 18. | Public Holidays                         |
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- |     |                 |
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| 31. | Wages           |
| 32. | Classifications |
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Part IV School Employees

- |     |              |
|-----|--------------|
| 34. | Hours        |
| 35. | Rosters      |
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| 37. | Weekend Work |

- 38. Wages
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## Part V Administrative and Technical Officers

- 42. Hours
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- 44. Salaries
- 45. Classifications

## Part VI (Boarding House) Supervisors

- 46. Hours
- 47. Rosters
- 48. Vacation Leave
- 49. Salaries
- 50. Classifications
- 51. Lodging Conditions
- 52. General Conditions

## Part VII Nurses

- 53. Time Off Duty
- 54. Vacation Leave
- 55. Wages
- 56. Laundry And Uniforms
- 57. Board And Lodging

## Appendix A Parties Bound

## Appendix B Awards

## Endorsements

## 3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

## 4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

## 5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 1026.

## 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides'/ Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

## 7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

## 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

## 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

## PART II

## GENERAL CONDITIONS OF SERVICE

## 10.—CONTRACT OF SERVICE

(1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.

(b) This shall include statements of—

- (i) the classification ;
- (ii) the salary step relevant to the appointment;
- (iii) the number of hours per week;
- (iv) the weeks per year the employee is engaged for;
- (v) whether the position is temporary; and/or
- (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

(3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

(a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

(b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

(1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.

(b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.

(c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.

(d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.

(e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

(3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.

(b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

(a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.

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

(c) The entitlement to use sick leave is subject to—

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

(ii) the person concerned being either—

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

or

(bb) a member of the employee's household.

(iii) the term "immediate family" includes—

(aa) a spouse (including a former spouse), of the employee; and

(bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.

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

##### (2) Use of unpaid leave

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

#### 15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

##### (1) Maternity Leave

(a) Nature of leave

Maternity leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

## (d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.

## (e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

## (f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.

## (g) Variation of Period of Maternity Leave

- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

## (i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of a employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
  - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
  - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where a employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.

- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.
- Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) Effect of Maternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) Termination of Employment
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of a employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) Paternity Leave
- (a) Nature of Leave
- Paternity leave is unpaid leave.
- (b) Definitions
- For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
- (aa) any period of leave taken in accordance with this clause;
- (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for paternity leave
- A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
- (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
- (aa) he will take that period of paternity leave to become the primary care-giver of a child;

- (bb) particulars of any period of maternity leave sought or taken by his spouse; and
- (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
- (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
- (aa) the birth occurring earlier than the expected date; or
- (bb) the death of the mother of the child; or
- (cc) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave
- Adoption leave is unpaid leave.
- (b) Definitions
- For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
- (aa) any period of leave taken in accordance with this clause;
- (bb) any period of leave or absence authorised by the employer or by the award.

- (c) Eligibility for adoption leave—  
An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to three weeks at the time of placement of the child;
  - (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
    - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
    - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
  - (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.
- (d) Certification
- (i) Before taking adoption leave the employee must produce to the employer—
    - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
    - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
  - (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
    - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
    - (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.
- (e) Notice requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
  - (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
  - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
  - (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave  
The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment  
Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.

- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
  - (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
  - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
  - (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated

on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays

without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or  
(b) 4 hours for school employees; or  
(c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked:

provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

#### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons allowance	Single Persons allowance
	\$ per week	\$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

- (b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.— SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

- (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
- (ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make

contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

##### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

- (b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

### 32.—CLASSIFICATIONS

#### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1  
Exit Step 5

#### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6  
Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

#### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8  
Exit Step 10

#### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery

Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

#### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

## PART IV

### SCHOOL EMPLOYEES

#### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- Three agreed days during the first school term vacation in each year.
- Two agreed days during each of the other school term vacations.
- Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
- with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or

- (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

**35.—ROSTERS**

- (1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.
- (2) Such roster shall show—
  - (a) the name of each employee; and
  - (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.
- (3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.
- (b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.
- (4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

**36.—OVERTIME**

- (1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.
- (2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.
- (3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.
- (4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

**37.—WEEKEND WORK**

- (1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.
- (2) General Conditions
  - (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the

same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**38.—WAGES**

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant House Attendant Dining Attendant Laundry Attendant Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees

shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

#### 40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

#### 41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

### PART V

#### ADMINISTRATIVE AND TECHNICAL OFFICERS

##### 42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

##### 43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

## 44.—SALARIES

- (1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

- (b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.
- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
- Such reasons should indicate the areas where the employer considers improvement is required.
  - If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

## (2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

## 45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

## (1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

- (b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

## (2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

## (3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

## (4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

## PART VI

## (BOARDING HOUSE) SUPERVISORS

## 46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

## 47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;
- (b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- (c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

## 48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

## 49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

(a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

(b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

(c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

## 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

## 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

(1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.

(2) Access by employees to telephone facilities for emergency use.

PART VII  
NURSES

## 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

## 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

#### Appendix A PARTIES BOUND

##### Employer Parties

The Roman Catholic Archbishop of Perth Inc.	St Mary's Cathedral Victoria Square Perth WA 6000
---------------------------------------------	---------------------------------------------------------

##### Union Parties

Australian Liquor, Hospitality and Miscellaneous Workers Union Miscellaneous Workers Division Western Australian Branch	61 Thomas Street Subiaco WA 6008
Australian Nursing Federation Western Australian Branch Industrial Union of Workers	Level 2 322 Hay Street Subiaco WA 6008
The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	143 Edward Street East Perth WA 6004

#### Appendix B AWARDS

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991	
Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990	
Nurses (Independent Schools) Award No. 21B of 1962	
School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979	
Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987	

#### ENDORSEMENTS

Signed for and on behalf of— The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	(Signed I. Sands)
Australian Nursing Federation Industrial Union of Workers Perth	(Signed M. Olsen)
Australian Liquor Hospitality and Miscellaneous Workers Union— Miscellaneous Division WA Branch	(Signed S.M. Jackson)
The Roman Catholic Archbishop of Perth Inc	(Signed B.J. Hickey)
Signed for and on behalf of— The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	(Signed I. Sands) (Signed T. Howe)

Common Seal

**THE ROMAN CATHOLIC BISHOP OF BROOME  
NON-TEACHING STAFF ENTERPRISE  
BARGAINING AGREEMENT 1999.  
No. AG 55 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Roman Catholic Bishop of Broome

and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers.

No. AG 55 of 1999.

18 August 1999.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 55 of 1999.**

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Roman Catholic Bishop of Broome Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 23 March 1999 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,

[L.S.] Commissioner.

Schedule.

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "The Roman Catholic Bishop of Broome Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "The Roman Catholic Bishop of Broome Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause No. Clause Title

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

Part II General Conditions of Service

10. Contract Of Service

11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

3.—TERM

- (1) This Agreement shall—
- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
  - (b) to expire on the 31st December 1999.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

- Independent Schools Administrative and Technical Officers Award 1993;
- School Employees (Independent Day & Boarding Schools) Award 1980;
- Teachers' Aides' (Independent Schools) Award 1988;
- Independent School (Boarding House) Supervisory Staff Award;
- Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 122.

#### 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

- Teacher's Aides'/ Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;
- School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;
- Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;
- (Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;
- Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

#### 7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

#### 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

#### 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

### PART II

#### GENERAL CONDITIONS OF SERVICE

##### 10.—CONTRACT OF SERVICE

- (1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.
- (b) This shall include statements of—
  - (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

- (3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
  - (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
  - (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
  - (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
  - (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.
- (2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.
- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
  - (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.
- (4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family; or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and

- (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
- (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

##### (2) Use of unpaid leave

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

#### 15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

##### (1) Maternity Leave

- (a) Nature of leave  
Maternity leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
  - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
  - (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
  - (iii) Child means a child of the employee under the age of one year.
  - (iv) Spouse includes a former spouse.
  - (v) Continuous service means service under an unbroken contract(s) of employment and includes—
    - (aa) any period of leave taken in accordance with this clause;
    - (bb) any period of leave or absence authorised by the employer or by the award.

##### (c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
  - (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
  - (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.
- (d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

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

- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.
- (e) Notice requirements
  - (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
  - (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
  - (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
  - (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (f) Transfer to a safe job
  - (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
  - (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.
- (g) Variation of Period of Maternity Leave
  - (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
  - (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
  - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
  - (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
    - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where a employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
  - (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer. Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
  - (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) Effect of Maternity Leave on Employment
 

Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) Termination of Employment
  - (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
  - (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of a employee proceeding on maternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) Paternity Leave
- (a) Nature of Leave  
Paternity leave is unpaid leave.
  - (b) Definitions  
For the purposes of this clause—
    - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
    - (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
    - (iii) Child means a child of the employee or the employee's spouse under the age of one year.
    - (iv) Spouse includes a former spouse.
    - (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
    - (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
      - (aa) any period of leave taken in accordance with this clause;
      - (bb) any period of leave or absence authorised by the employer or by the award.
  - (c) Eligibility for paternity leave  
A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—
    - (i) an unbroken period of up to one week at the time of confinement of his spouse;
    - (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
    - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification  
At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
  - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
    - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
  - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
    - (aa) the birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
  - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave  
Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

- (h) **Paternity Leave and Other Leave Entitlements**
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) **Effect of Paternity Leave on Employment**  
Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) **Termination of Employment**
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) **Return to Work After Paternity Leave**
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) **Replacement Employees**
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) **Adoption Leave**
- (a) **Nature of Leave**  
Adoption leave is unpaid leave.
- (b) **Definitions**  
For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
  - (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
  - (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
  - (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
  - (v) Spouse includes a former spouse.
  - (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
    - (aa) any period of leave taken in accordance with this clause;
    - (bb) any period of leave or absence authorised by the employer or by the award.
- (c) **Eligibility for adoption leave—**  
An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to three weeks at the time of placement of the child;
  - (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
    - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
    - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
  - (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.
- (d) **Certification**
- (i) Before taking adoption leave the employee must produce to the employer—
    - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
    - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
  - (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
    - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

- (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.
- (e) Notice requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
  - (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
  - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
  - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
  - (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure.

Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
  - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

- (1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer

shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct, the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

#### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons	Single Persons
	allowance \$ per week	allowance \$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- is provided with board and lodging by his/her employer, free of charge; or
- is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

- The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

## (1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

- (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
- (ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) “Ordinary Time Earnings” means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

## (2) Fund Membership

(a) “Eligible Employee” shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month’s satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee’s commencement.

## (3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

## Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

## 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee’s name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

## 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer’s office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and

- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

##### (4) Procedure of Settlement of Disputes

- The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

##### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

- (b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

##### 32.—CLASSIFICATIONS

###### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step	1
Exit Step	5

**Level Two**

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

**Level Three**

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

**Level Four**

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

**Level Five**

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

**33.—VACATION LEAVE**

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

**PART IV  
SCHOOL EMPLOYEES****34.—HOURS**

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

**35.—ROSTERS**

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

- (2) Such roster shall show—
  - (a) the name of each employee; and
  - (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.
- (3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.

(b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone				
Groundsperson / Handyperson Grade 1				
Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2				
First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson				
Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

#### 40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

#### 41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

#### PART V

##### ADMINISTRATIVE AND TECHNICAL OFFICERS

#### 42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given

paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

#### 43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

#### 44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998	Payable on and from 1 January 1999
	(3%) Annual Rate \$	(2.75%) Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

(b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.

- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
- (i) Such reasons should indicate the areas where the employer considers improvement is required.
  - (ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

#### (2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

#### 45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

##### (1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.
- (b) Examples of positions which may appropriately be classified as Level 1—  
General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

##### (2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.
- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—  
Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

##### (3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.
- (b) Examples of positions which may appropriately be classified as Level 3:  
Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

##### (4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.  
An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.
- (b) Examples of positions which may appropriately be classified as Level 4—  
Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

#### PART VI

#### (BOARDING HOUSE) SUPERVISORS

##### 46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

##### 47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;
- (b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- (c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

##### 48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an

employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

(a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

(b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

(c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

50.—CLASSIFICATIONS

(1) "Houseparent"—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) "Part-Time Supervisor"—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) "Relief Supervisor"—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) "Senior Supervisor"—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) "Shift"—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) "Supervisor"—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

52.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

PART VII  
NURSES

53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

#### Appendix A PARTIES BOUND

##### Employer Parties

The Roman Catholic Bishop of Broome PO Box 76  
Broome WA 6725

##### Union Parties

Australian Liquor, Hospitality and Miscellaneous Workers Union Subiaco WA 6008  
Miscellaneous Workers Division Western Australian Branch

Australian Nursing Federation Level 2  
Western Australian Branch 322 Hay Street  
Industrial Union of Workers Subiaco WA 6008

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers 143 Edward Street  
East Perth WA 6004

#### Appendix B AWARDS

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991

Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990

Nurses (Independent Schools) Award No. 21B of 1962

School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979

Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

#### ENDORSEMENTS

Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and Miscellaneous Workers Union—Miscellaneous Division WA Branch (Signed S.M. Jackson)

The Roman Catholic Bishop of Broome (Signed C. Saunders)

Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)

(Signed T. Howe)

Common Seal

#### THE ROMAN CATHOLIC BISHOP OF BUNBURY NON-TEACHING STAFF ENTERPRISE BARGAINING AGREEMENT 1999. No. AG 54 of 1999.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Roman Catholic Bishop of Bunbury  
and

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

and

The Australian Nursing Federation Western Australian Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers.

No. AG 54 of 1999.

18 August 1999.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 54 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Roman Catholic Bishop of Bunbury Non-Teaching Staff Enterprise Bargaining

Agreement 1999 filed in the Commission on 26 March 1999 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.

Schedule.

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "The Roman Catholic Bishop of Bunbury Non-Teaching Staff Enterprise Bargaining Agreement 1999" and shall replace the "The Roman Catholic Bishop of Bunbury Non-Teaching Staff Enterprise Bargaining Agreement 1997."

2.—ARRANGEMENT

Clause No.	Clause Title
Part I Parameters	
1.	Title
2.	Arrangement
3.	Term
4.	Parties To The Agreement
5.	Scope
6.	Definitions
7.	Objectives
8.	No Reduction
9.	No Extra Claims
Part II General Conditions of Service	
10.	Contract Of Service
11.	Other Leave
12.	Leave Without Pay
13.	Sick Leave
14.	Family Leave
15.	Parental Leave
16.	Long Service Leave
17.	Annual Leave Loading
18.	Public Holidays
19.	Casual Employees
20.	Part-Time Employees
21.	Higher Duties
22.	Rest Pauses And Meal Breaks
23.	Travelling And Motor Vehicle Allowances
24.	Location Allowances
25.	Superannuation
26.	Payment Of Wages
27.	Time And Wages Record
28.	Right Of Access, Notices And Interviews
29.	Dispute Settling Procedures
Part III Teacher's Aides' / Teaching Assistants	
30.	Hours
31.	Wages
32.	Classifications
33.	Vacation Leave
Part IV School Employees	
34.	Hours
35.	Rosters
36.	Overtime
37.	Weekend Work
38.	Wages
39.	Classifications
40.	Uniforms
41.	Protective Clothing
Part V Administrative and Technical Officers	
42.	Hours
43.	Annual Leave
44.	Salaries
45.	Classifications
Part VI (Boarding House) Supervisors	
46.	Hours
47.	Rosters
48.	Vacation Leave













49. Salaries  
50. Classifications  
51. Lodging Conditions  
52. General Conditions

Part VII Nurses

53. Time Off Duty  
54. Vacation Leave  
55. Wages  
56. Laundry And Uniforms  
57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.  
(b) to expire on the 31st December 1999.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 242.

6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.  
(b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.  
(c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

## 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

## 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

**PART II****GENERAL CONDITIONS OF SERVICE**

## 10.—CONTRACT OF SERVICE

(1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.

(b) This shall include statements of—

- (i) the classification ;
- (ii) the salary step relevant to the appointment;
- (iii) the number of hours per week;
- (iv) the weeks per year the employee is engaged for;
- (v) whether the position is temporary; and/or
- (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

(3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

## 11.—OTHER LEAVE

(1) Bereavement Leave

(a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

(b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

(2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

## 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

## 13.—SICK LEAVE

(1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.

(b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.

(c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.

(d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.

(e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

(3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified

and registered medical practitioner stating the period during which the employee is unfit for duty.

- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family; or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and
    - (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
  - (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

##### (2) Use of unpaid leave

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

#### 15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

##### (1) Maternity Leave

- (a) Nature of leave  
Maternity leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
  - (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
  - (iii) Child means a child of the employee under the age of one year.
  - (iv) Spouse includes a former spouse.
  - (v) Continuous service means service under an unbroken contract(s) of employment and includes—
    - (aa) any period of leave taken in accordance with this clause;

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

##### (c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

##### (d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.

##### (e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

##### (f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of

- subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.
- (g) Variation of Period of Maternity Leave
- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
  - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
    - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where a employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
  - (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.
 

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) Effect of Maternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) Termination of Employment
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
  - (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of a employee proceeding on maternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) Paternity Leave
- (a) Nature of Leave
 

Paternity leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for paternity leave

A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
- (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.

## (d) Certification

At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—

- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
  - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
  - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
  - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.

## (e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
- (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
  - (aa) the birth occurring earlier than the expected date; or

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

(cc) other compelling circumstances.

- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.

## (f) Variation of Period of Paternity Leave

- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (g) Cancellation of Paternity Leave

Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

## (h) Paternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.

## (i) Effect of Paternity Leave on Employment

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

## (j) Termination of Employment

- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (k) Return to Work After Paternity Leave

- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position

as nearly comparable in status and salary or wage to that of his former position.

(l) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

(3) Adoption Leave

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for adoption leave—

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
  - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.

- (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.

(d) Certification

- (i) Before taking adoption leave the employee must produce to the employer—
  - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
  - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
  - (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

(e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(f) Variation of Period of Adoption Leave

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

- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

(a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.

(b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

(c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

(d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

(a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;

(b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct, the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she

shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

### Rates of Hire for use of Employee's own Vehicle on Employer's Business

#### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

#### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons	Single Persons
	allowance \$ per week	allowance \$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- is provided with board and lodging by his/her employer, free of charge; or
- is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

### 25.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

#### (1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

- CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
- an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

#### (2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

#### (3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- was not contributing to a superannuation fund for employees covered by this Agreement; and

- (i) written notice of the proposed alternative superannuation fund is given to the Union; and
- (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
- (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

#### Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer; or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.

(c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.

(d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

##### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98	Payable on and from 1/1/99
	3%	2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 32.—CLASSIFICATIONS

##### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1

Exit Step 5

##### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

##### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

##### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

##### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the

Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

## PART IV SCHOOL EMPLOYEES

### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

### 35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
  - (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.
- (3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.
- (b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

### 36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

### 37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions

of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer’s contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone				
Groundsperson / Handyperson Grade 1				
Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2				
First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson				
Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer’s contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years’ experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

- (1) Where employees are required to work in water they shall be supplied with rubber boots.
- (2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.
- (3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.
- (4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

**PART V  
ADMINISTRATIVE AND TECHNICAL OFFICERS**

42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the

hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

- (b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.
- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
  - (i) Such reasons should indicate the areas where the employer considers improvement is required.
  - (ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

- (b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.- Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

- (2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

- (3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

- (4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

**PART VI  
(BOARDING HOUSE) SUPERVISORS**

**46.—HOURS**

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

**47.—ROSTERS**

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;
- (b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- (c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

**48.—VACATION LEAVE**

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

**49.—SALARIES**

(1) The minimum annual salary payable to employees shall be as follows—

- (a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

- (b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

- (c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not

being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

#### 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

#### 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

(1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.

(2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

#### 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

#### 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered,

and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

**Appendix A  
PARTIES BOUND**

**Employer Parties**

The Roman Catholic Bishop of Bunbury	Chancery Office PO Box 1084 Bunbury WA 6230
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**Union Parties**

Australian Liquor, Hospitality and Miscellaneous Workers Union Miscellaneous Workers Division Western Australian Branch	61 Thomas Street Subiaco WA 6008
Australian Nursing Federation Western Australian Branch Industrial Union of Workers	Level 2 322 Hay Street Subiaco WA 6008
The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	143 Edward Street East Perth WA 6004

**Appendix B  
AWARDS**

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991  
Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990  
Nurses (Independent Schools) Award No. 21B of 1962  
School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979  
Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

**ENDORSEMENTS**

Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	(Signed I. Sands)
Australian Nursing Federation Industrial Union of Workers Perth	(Signed M. Olsen)
Australian Liquor Hospitality and Miscellaneous Workers Union— Miscellaneous Division WA Branch	(Signed S.M. Jackson)
The Roman Catholic Bishop of Bunbury	(Signed P. Quinn)

Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	(Signed I. Sands) (Signed T. Howe)
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*Common Seal*

**THE ROMAN CATHOLIC BISHOP OF GERALDTON  
NON-TEACHING STAFF ENTERPRISE  
BARGAINING AGREEMENT 1999.**

**No. AG 53 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Roman Catholic Bishop of Geraldton  
and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

No. AG 53 of 1999.

18 August 1999.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 53 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Roman Catholic Bishop of Geraldton Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 26 March 1999 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,  
Commissioner.

[L.S.]

Schedule.

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "The Roman Catholic Bishop of Geraldton Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "The Roman Catholic Bishop of Geraldton Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause No.    Clause Title

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

Part II General Conditions of Service

10. Contract Of Service

11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic

Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 162.

6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

**PART II**

**GENERAL CONDITIONS OF SERVICE**

10.—CONTRACT OF SERVICE

(1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.

(b) This shall include statements of—

- (i) the classification ;
- (ii) the salary step relevant to the appointment;
- (iii) the number of hours per week;
- (iv) the weeks per year the employee is engaged for;
- (v) whether the position is temporary; and/or
- (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

(3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family;
    - or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and

- (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
- (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Use of unpaid leave

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

15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(1) Maternity Leave

(a) Nature of leave

Maternity leave is unpaid leave.

(b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

(d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any

act inconsistent with her contract of employment.

(e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.

(g) Variation of Period of Maternity Leave

- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

## (i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
  - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
  - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.

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

## (j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

## (k) Effect of Maternity Leave on Employment

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

## (l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

## (n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## (2) Paternity Leave

## (a) Nature of Leave

Paternity leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for paternity leave

A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

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

- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
  - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
  - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
    - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
  - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
    - (aa) the birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
  - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave
- Adoption leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for adoption leave—

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
  - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
- (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.

## (d) Certification

- (i) Before taking adoption leave the employee must produce to the employer—
  - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
  - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

- (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

## (e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

## (f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

## (h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure.

Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
  - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer

shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—
- For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.
- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause

18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

All Areas of State	Rate c/km
	17.8

## 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons	Single Persons
	allowance \$ per week	allowance \$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

- (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
- (ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

- (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

- (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation

would infringe the privacy of persons who are not members of the organisation; and

- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

## 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 32.—CLASSIFICATIONS

**Level One**

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1  
Exit Step 5

**Level Two**

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6  
Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

**Level Three**

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8  
Exit Step 10

**Level Four**

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

**Level Five**

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13  
Exit Step 15

## 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

**PART IV  
SCHOOL EMPLOYEES**

**34.—HOURS**

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

**35.—ROSTERS**

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

- (2) Such roster shall show—
- (a) the name of each employee; and
  - (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.

(3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.

(b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

**36.—OVERTIME**

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

**37.—WEEKEND WORK**

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**38.—WAGES**

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson Tradeperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson / Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of

maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradeperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

- (1) Where employees are required to work in water they shall be supplied with rubber boots.
- (2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.
- (3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.
- (4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

PART V

ADMINISTRATIVE AND TECHNICAL OFFICERS

42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from	Payable on and from
	1 September 1998 (3%) Annual Rate \$	1 January 1999 (2.75%) Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
LEVEL 2	23188.46	23826.14
	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
LEVEL 3	26224.90	26946.08
	26776.98	27513.35
	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
LEVEL 4	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

(b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.

(c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee

into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

(d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.

(e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.

(i) Such reasons should indicate the areas where the employer considers improvement is required.

(ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.

(f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.

(g) The years of experience are indicated by the equivalent number of steps from the entry level.

(h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.

(i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.- Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

(a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

(b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.- Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

(a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

(b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

(3) Level 3.

(a) An employee at this level works as a competent skilled autonomous employee and has knowledge,

skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

- (4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

#### PART VI

#### (BOARDING HOUSE) SUPERVISORS

##### 46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

##### 47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- the name of the employee/s;
- the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

##### 48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

#### 49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

- (a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

- (b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

- (c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

## 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

## 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

## 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

## 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

## 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school

or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

## 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

## Appendix A

## PARTIES BOUND

## Employer Parties

The Roman Catholic Bishop of Geraldton PO Box 178  
Geraldton WA 6530

## Union Parties

Australian Liquor, Hospitality and Miscellaneous Workers Union  
Miscellaneous Workers Division  
Western Australian Branch 61 Thomas Street  
Subiaco WA 6008

Australian Nursing Federation  
Western Australian Branch Level 2  
322 Hay Street  
Industrial Union of Workers Subiaco WA 6008

The Independent Schools Salaried Officers' Association of Western Australia, East Perth WA 6004  
Industrial Union of Workers

## Appendix B

## AWARDS

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991

Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990

Nurses (Independent Schools) Award No. 21B of 1962  
 School Employees (Independent Day and Boarding Schools)  
 Award 1980 No. 7 of 1979  
 Teachers' Aides' (Independent Schools) Award 1988, No. A27  
 of 1987

#### ENDORSEMENTS

Signed for and on behalf of—

The Independent Schools Salaried Officers'  
 Association of Western Australia,  
 Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation  
 Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and  
 Miscellaneous Workers Union—  
 Miscellaneous Division WA Branch (Signed S.M. Jackson)

The Roman Catholic Bishop  
 of Geraldton (Signed J. J. Bianchini)

Signed for and on behalf of—

The Independent Schools Salaried  
 Officers' Association of Western  
 Australia, Industrial Union of Workers (Signed I. Sands)  
 (Signed T. Howe)

*Common Seal*

### ST JOHN OF GOD HEALTH CARE MURDOCH (HSOA) CAREGIVER AGREEMENT 1999.

No. AG 130 of 1999.

WESTERN AUSTRALIAN  
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

St John of God Health Care Murdoch  
 (a division of St John of God Health Care)

and

Hospital Salaried Officer's Association  
 of Western Australia (Union of Workers).

No. AG 130 of 1999.

St John of God Health Care Murdoch (HSOA) Caregiver  
 Agreement 1999.

18 August 1999.

*Order.*

HAVING heard Mr I L Oakley as agent on behalf of the Applicant and Ms C L L Thomas as agent 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 agreement made between the parties lodged in the Commission on the 26th day of July 1999 entitled St John of God Health Care Murdoch (HSOA) Caregiver Agreement 1999 and as subsequently amended by direction of the Commission be registered in the terms of the following Schedule as an industrial agreement in replacement of the St John of God Hospital Murdoch (HSOA) Caregiver Agreement 1997 (AG 377 of 1997) which is hereby cancelled.

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

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42. Interviews
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45. Dispute Resolution
- Signatories to Agreement
- Schedule A—Salaries
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- Schedule C—Salary Packaging
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#### 1.—PARTIES

The parties to this Agreement shall be St John of God Health Care Murdoch (a division of St John of God Health Care) and the Hospital Salaried Officers' Association of Western Australia (Union of Workers).

#### 2.—AREA AND SCOPE

(1) This Agreement shall apply to all Caregivers eligible for membership of the Hospital Salaried Officers Association of Western Australia (Union of Workers) employed by the hospital throughout the State of Western Australia.

(2) Pursuant to s. 41(A)(1a) of the Industrial Relations Act 1979 (WA), it is estimated that 102 Caregivers will be bound by this Agreement upon its registration.

#### 3.—TERM

The term of this Agreement shall be 2 years as from the beginning of the first pay period commencing after the 1st day of July, 1999.

#### 4.—REPLACEMENT

(1) This Agreement cancels and replaces the St John of God Hospital Murdoch (HSOA) Caregiver Agreement 1997 AG 377 of 1997.

(2) This Agreement shall continue to operate until it is replaced by a new agreement.

(3) Provided that the parties may at any time agree to vary or cancel the Agreement in accordance with the provisions of the Industrial Relations Act 1979(WA).

#### 5.—INTERPRETATION

(1) "Accrued Time Off" means paid time off accruing to a Caregiver resulting from an entitlement to the 38 hour week;

(2) "Banked Hours" means hours banked by a Caregiver as a result of the operation of annualised hours;

(3) "Caregiver" means an employee of the hospital;

(4) "Casual" means a Caregiver engaged on an hourly basis with no guarantee of continual or additional employment. A casual shall not be continuously rostered for a period exceeding 4 weeks;

(5) "Clerical Classification Assessment System" means the system developed by the Hospital, its Caregivers and the Union for the purpose of equitably and objectively classifying and remunerating clerical positions;

(6) "Clerical Classification Review Panel" means a panel comprised of the Manager of Human Resources, the Hospital Chief Executive Officer or his/her delegate and either a Caregiver's Representative or Union Industrial Officer.

(7) "Fixed Term Contract" refers to a contract of employment in which a Caregiver is engaged for a specific project either for the duration of that project or for a specific period of time. Nothing in this subclause shall restrict the right of the hospital or the Caregiver to terminate the engagement within the specified term in accordance with the provisions of this Agreement.

(8) "Ordinary Rate" means the rate of pay prescribed in Schedule A or B of this Agreement.

(9) "Ordinary Time Earnings" means the ordinary rate and shift and weekend penalties.

(10) "Part-time" refers to a permanent Caregiver with a guaranteed minimum number of hours (inclusive of holidays and leave) who is regularly employed to work less hours than those prescribed for full time Caregivers;

(11) "Public Holiday" means New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Queen's Birthday, Christmas Day and Boxing Day.

(12) "Salary Packaging" means the substitution of goods and/or services valued at their cost, for ordinary salary payable under this Agreement.

(13) "Temporary" means a Caregiver engaged for a specific period not exceeding 12 months.

(14) "Union" means the Hospital Salaried Officers Association of Western Australia (Union of Workers).

(15) (a) Where the provisions of this Agreement provide they may be varied by agreement between the hospital and the Caregiver, that agreement shall not be deemed to have been reached unless freely entered into by both parties. Nor shall a Caregiver be disadvantaged in any way by withholding agreement.

(b) Where the hospital seeks such agreement each Caregiver shall be made aware of their rights, and given reasonable opportunity to contact and seek representation from a Union representative.

(c) Any problem arising from the operation of this Agreement may be referred to the Single Bargaining Unit which shall endeavour to resolve the problem in accordance with clause 44 hereof.

#### 6.—WORKPLACE AGREEMENTS

The hospital 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 with Caregivers who would otherwise fall within the scope of this Agreement.

#### 7.—CLASSIFICATION AND DUTIES

(1) (a) The classification and reclassification of clerical positions for salary purposes shall be determined by the Clerical Classification Review Panel in accordance with the Clerical Classification System.

(b) Determinations of the Clerical Classification Review Panel may be appealed to the Hospital Management Committee.

(2) The classification of Caregivers not covered by the Clerical Classification System shall be determined by agreement between the Hospital and the Caregiver.

(3) The Caregiver will be required to work in accordance with his/her job description and the hospital's policies and procedures. The hospital may direct the Caregiver to carry out such duties as are within the limits of the Caregiver's skill, competence or training provided that such duties are not designed to promote deskilling.

#### 8.—SEPARATION

##### (1) Hospital Giving Notice

(a) The Contract of Service may be terminated by the hospital on any day by giving to the Caregiver the required period of notice in writing and the contract shall expire at the end of that period of notice.

(b) The required period of notice shall be—

Caregiver's period of continuous service with the hospital	Period of notice
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

The required period of notice is increased by one week if the Caregiver is over 45 years old and has completed at least 2 years continuous service with the hospital.

(c) Provided that the contract of service of a Caregiver engaged as a casual may be terminated by the hospital giving the Caregiver one hour's notice. Such notice need not be in writing.

(d) Payment in lieu of the required period of notice may be made by the hospital if the required notice is not given.

The Hospital may terminate the Contract of Service by providing part of the required notice and payment in lieu of the balance.

##### (2) Caregiver Giving Notice

(a) The Contract of Service may be terminated on any day by the Caregiver giving to the hospital two weeks notice in writing and the contract shall expire at the end of that period of notice.

Where there is written agreement between the Hospital and the Caregiver a longer period of notice up to and including four weeks may be required.

(b) Provided that the Contract of Service of a Caregiver engaged as a casual may be terminated by the Caregiver giving the Hospital one hour's notice. Such notice need not be in writing.

(c) If a Caregiver fails to give the required notice or leaves during the notice period, the Hospital may, at its discretion, deduct from any monies due to the Caregiver, an amount equal to ordinary time earnings for the period of notice not given.

(d) A Caregiver shall not be disadvantaged as a result of providing a longer period of notice than required by this clause.

(3) The Caregiver and the Hospital may agree in writing upon a longer period of notice than prescribed in this clause.

(4) The required notice may be dispensed with by agreement in writing between the Hospital and Caregiver.

(5) Nothing in this clause affects the Hospital's right to dismiss a Caregiver without notice for serious misconduct which justifies instant dismissal.

##### Certificate of Service

(6) Where a Caregiver whose service terminates requests a certificate of service, a certificate signed by the Hospital stating the name of the Caregiver, the period of service, whether the service was full time or part time and the classifications in this Agreement in which work has been carried out, shall be provided.

#### 9.—PROBATION

The first three months of employment will be on a probationary basis during which time and notwithstanding the provision of Clause 8 hereof either party may terminate the contract by giving one weeks notice in writing (one hour in the case of casuals) or payment or forfeiture in lieu thereof.

The Hospital shall provide the Caregiver with an appraisal of his or her performance during the probationary period.

#### 10.—TIME NOT WORKED

The Caregiver shall not be entitled to payment for any period of unauthorised absence.

### 11.—RIGHT OF TRANSFER

The Caregiver shall be required to comply with any reasonable request to transfer to another suitable position or place of work.

### 12.—CONFIDENTIALITY

Information relating to the Hospital, its customers or activities may not be released or divulged by the Caregiver to a third party other than in the proper performance of the Caregiver's obligations under this Agreement. This shall not prevent the Caregiver from seeking representation by an accredited official of his or her union.

### 13.—PART-TIME

(1) A part-time employee shall be guaranteed a minimum number of hours per week averaged over a 12 month period.

(2) (a) A Caregiver appointed part-time shall be remunerated at a weekly rate pro rata to the rate prescribed for the class of work on which he/she is engaged only in the proportion which his/her ordinary weekly hours averaged over the qualifying period, bears to 40.

(b) A Caregiver appointed part-time shall be allowed annual leave, sick leave, bereavement leave and study leave in the same manner as full time employees. Payment for such leave shall be in the same ratio as his/her ordinary weekly hours, averaged over the qualifying period, bears to 40.

(c) Provided that where a Caregiver appointed part-time is not in receipt of accrued time off the divisor shall be 38.

(3) A Caregiver appointed part-time may by agreement work additional hours at ordinary rates subject to the normal rostering parameters of a full time Caregiver and the provisions of this clause.

#### Annualised Hours

(4) A Caregiver appointed part-time who works additional hours shall, subject to the provisions of subclause (6), bank those additional hours.

(5) Once a Caregiver appointed part-time banks 8 hours in accordance with subclause (4), he/she shall elect whether to—

- (a) be paid out in each fortnightly pay period for any additional hours in excess of the 8 banked hours; or
- (b) continue to bank additional hours.

The Caregiver must advise the hospital whether he/she wishes to be paid out, or to bank, the additional hours prior to completing the shift.

(6) Where a Caregiver appointed part-time is in debit as a result of the operation of annualised hours, he/she shall not accrue banked hours until the debit is cleared.

### 14.—CASUAL

(1) A casual shall be paid 1/40th of the total rate prescribed in Clause 23 of this Agreement, for each hour worked, plus 25% additional loading.

(2) A casual shall not receive any of the leave entitlements prescribed in this Agreement.

### 15.—TEMPORARY AND FIXED TERM APPOINTMENTS

(1) A Caregiver appointed as a temporary or under a fixed term contract shall accrue and be paid the same benefits as a permanent Caregiver.

(2) Where a temporary contract exceeds 6 months the hospital shall give consideration to granting permanency.

### 16.—HOURS

(1) A Caregiver shall have no fixed hours of duty provided that—

- (a) The ordinary hours of work for a full-time Caregiver shall not exceed 2086 hours per annum (inclusive of holidays and leave).
- (b) The ordinary hours of work for a part-time Caregiver shall average not less than the minimum weekly number of hours which that Caregiver has been guaranteed.

Such hours shall be averaged over a 12 month period and shall not exceed 2086 hours per annum (inclusive of holidays and leave).

(c) The ordinary hours of work for a Caregiver who does not accrue time off in accordance with the provisions of clause 22(6) of this Agreement shall not exceed 1982 per annum (inclusive of holidays and leave).

(2) Ordinary hours may be worked over any day of the week, Monday to Sunday inclusive, and shall be arranged by the hospital to meet its needs.

(3) Ordinary hours shall not exceed 96 in any fortnight.

(4) Ordinary hours may not be rostered over more than 6 consecutive days except by agreement between the Caregiver and the hospital.

(5) (a) Ordinary hours shall not be worked over more than 20 days in a four week cycle unless there is agreement between the Caregiver and the hospital. Provided that a Caregiver may be required to work up to 21 days in a four week cycle in order to make up a debit (where the debit has not resulted from mismanagement of the roster).

(b) Where ordinary hours are worked over more than 20 days in a four week cycle the Caregiver shall be involved in the setting of the roster.

(c) The operation of this subclause shall be reviewed after 12 months.

(6) A minimum of two days off duty shall be taken consecutively unless otherwise agreed between the employee and the employer.

(7) Ordinary hours shall not exceed 10 in any shift.

Provided that a shift of 12 ordinary hours may be rostered by agreement between the Caregiver and the hospital.

(8) Broken shifts shall not be rostered but may be worked where a Caregiver is called in to work at short notice either by agreement or as a result of being placed on call.

(9) (a) The roster shall in each case provide for a 10 hour break between shifts.

(b) A Caregiver may agree to forego a 10 hour break between rostered shifts provided that the shortfall (ie. the difference between the rostered break and 10 hours) shall be recorded and the Caregiver shall be entitled to take twice that amount of time as paid time off. Such time off shall be taken at the end of the following shift unless otherwise agreed between the Hospital and the Caregiver.

(c) Provided that this subclause shall not apply where a Caregiver agrees to work additional hours at short notice.

(10) A Caregiver shall not be rostered to work a shift of less than 3 hours duration.

### 17.—OVERTIME

(1) Time worked in excess of 10 hours a day, 96 hours a fortnight or 2086 per annum shall be deemed overtime and shall be paid for at time and a half for the first two hours and double time thereafter.

(2) A Caregiver may be required to work reasonable overtime.

(3) In the case of a Caregiver who does not accrue time off in accordance with the provisions of clause 22 (6) of this Agreement, time worked in excess of 10 hours a day, 96 hours a fortnight or 1982 hours per annum shall be deemed overtime and shall be paid for at time and a half for the first two hours and double time thereafter.

(4) Provided that by agreement between the Caregiver and the Hospital a shift of 12 ordinary hours may be rostered without incurring overtime.

(5) (a) Where a Caregiver and the hospital so agree, time off in lieu of payment for overtime may be allowed proportionate to the payment to which the Caregiver is entitled.

(b) Such time off shall be taken at a time (or times) agreed between the hospital and Caregiver.

### 18.—BANKED HOURS

(1) A Caregiver who at the end of an accruing year has banked hours to his/her credit may elect—

- (a) to be paid for those hours at ordinary rates; or
- (b) by agreement with the hospital, to roll those credits over into the subsequent accruing year.

(2) Where a Caregiver is in debit at the end of an accruing year—

- (a) the debit shall be cancelled; and in addition
- (b) if the Caregiver is otherwise in receipt of accrued time off in accordance with clause 22 of this Agreement, he/she shall be credited with accrued time off at the rate of .05 of an hour for each hour of the debit.

#### 19.—ON CALL

(1) For the purposes of this Agreement a Caregiver is on call when he or she is required by the Hospital to remain at his or her private residence or any other mutually agreed place as will enable the Hospital to readily contact him or her during the hours for which he or she has been placed on call.

A Caregiver is also on call when required to carry a mobile telephone or beeper and to remain within a specified range of the hospital.

(2) A Caregiver who is rostered to be on call at such a place as prescribed in subcl. (1)—

- (a) from Monday to Friday shall receive an allowance of \$13.00;
- (b) on a Saturday shall receive an allowance of \$19.00;
- (c) on a Sunday, public holiday or any other day on which the Caregiver is not rostered on duty shall receive an allowance of \$22.00;

Provided that only one allowance shall be payable in any period of 24 hours.

(3) The Hospital shall provide a Caregiver placed on-call with a mobile telephone or beeper. Where the hospital fails to provide a mobile telephone or beeper the allowance prescribed in paragraph (a) of subclause (2) hereof shall be \$19.00.

(4) A Caregiver rostered to be on call spanning two days over which different on call allowances apply, shall receive a payment which is equal to the allowance payable for the day attracting the higher allowance.

(5) The Caregiver shall not be required to remain on call whilst on leave or the day before commencing leave unless by mutual agreement between the Caregiver and the Hospital.

#### Call In

(6) A Caregiver who is on-call and who is called in to work shall be paid a minimum of three hours pay at double time. Such work shall be deemed overtime.

(7) Where a Caregiver who is on call is called in to work and works for more than 4 hours he/she shall be entitled to an 8 hour break before commencing his/her next rostered shift without deduction of pay.

(8) A Caregiver who is on call but who remains at work following the completion of a rostered shift shall be paid at double time for any additional work performed. Such additional work shall be deemed overtime.

#### Caregiver Not On-Call

(9) A Caregiver who is not on-call, but who is called in to work by agreement with the hospital in place of a Caregiver who is on-call, shall be paid a minimum of three hours pay at the appropriate shift or weekend penalty rate, and in addition \$13.00.

(10) The rates prescribed in this clause shall be increased by 2% from 1 July 2000.

#### 20.—ROSTERS

(1) A roster of working hours shall be posted in a convenient place where it can be readily seen by each Caregiver concerned.

(2) The roster shall be open for inspection by an accredited representative of the Union at all reasonable times.

(3) The roster shall be posted at least 7 days before it comes into operation.

(4) (a) The roster may be altered at the hospital's discretion if the hospital's requirements render such alteration necessary provided that—

- (i) a Caregiver is entitled to 48 hours notice of a requirement to come in to work;
- (ii) a Caregiver is entitled to 12 hours notice where a shift is cancelled or varied;

The notice referred to in this paragraph may be dispensed with by agreement between the Caregiver and the Hospital.

(b) A Caregiver who has commenced a shift is entitled to complete that shift unless otherwise agreed between the Caregiver and the Hospital.

(5) Each Caregiver shall have access to shift sheets on an ongoing basis.

#### 21.—MEAL AND MEAL HOURS

(1) (a) Meal breaks shall be a minimum of 30 minutes and a maximum of one hour (except by agreement) and subject to subclause (2) of this clause shall not be counted as time worked.

(b) The Caregiver shall not be required to work for more than 6 hours consecutively without a meal break.

(2) Where the Caregiver is required to be on duty or available at the hospital during his/her meal break, the Caregiver shall be paid at ordinary rates. Provided that the time when the Caregiver is on duty or available but not working shall not be counted as time worked for the purposes of Clause 17 of this Agreement.

(3) One fifteen or two seven minute tea breaks shall be allowed during each shift and shall be taken when convenient to the hospital without deduction of pay for such time.

(4) A Caregiver who has not been notified the previous day or earlier that he or she is required to attend work at a time when a meal is usually taken shall be provided with such a meal.

#### 22.—ACCRUED TIME OFF

##### (1) Entitlement

(a) A Caregiver (other than a casual) shall accrue an entitlement to time off at the rate of .05 of an hour for each ordinary hour worked to a maximum of 12 days (96 hours) off in each 12 month period.

(b) A Caregiver shall not accrue an entitlement to time off during the first 4 weeks of annual leave, long service leave, any period of unpaid leave or any absence on workers compensation leave in excess of one calendar month.

Accrual shall continue during any other period of leave (including any additional annual leave) prescribed by this Agreement.

##### (2) Taking Accrued Time Off

Where the Caregiver has accrued a sufficient entitlement, the accrued time off may be taken—

(a) in a minimum period of one week made up of 5 consecutive accrued days off in conjunction with a period of annual leave or at a time mutually acceptable to the Caregiver and the hospital; or

(b) as single day absences at a time suitable to the hospital and subject to 48 hours notice given to the Caregiver; or

(c) at the request of the Caregiver, and by agreement with the hospital, in periods of less than one day; or

(d) at any other time agreed between the Caregiver and the hospital provided that—

- (i) the Hospital shall, subject to its operational requirements, make every reasonable endeavour to accommodate the wishes of the Caregiver; and
- (ii) the Hospital shall allow the time off to be taken in the 12 months following the year of accrual.

##### (3) Rate of Pay

Accrued Time Off shall be paid at the ordinary rate.

##### (4) Termination

A Caregiver who at the time of termination has accrued time off to his/her credit shall be paid for those hours at ordinary rates.

##### (5) Pay Out of Entitlements

(a) When a Caregiver proceeds on parental leave, the hospital may pay the Caregiver for any accrued time off then standing to his/her credit.

(b) A Caregiver may at any time, by agreement in writing with the Hospital, be paid for some or all of the

accrued time off standing to his/her credit in lieu of taking the time off.

A Caregiver shall not otherwise be paid for accrued time off without actually taking the time off.

(6) A Caregiver may be paid a rate of pay using a divisor of 38 hours per week in lieu of the provisions of this clause—

- (a) where the Caregiver is guaranteed no more than 16 hours or two shifts per week; or
- (b) at the request of the Caregiver and by agreement with the Hospital. Provided that the Caregiver may withdraw his/her agreement by providing two weeks notice in writing.

### 23.—CLERICAL CLASSIFICATIONS

(1) The salary rates payable to clerical Caregivers classified in accordance with the Clerical Classification System, and the conditions pertaining to appointment and progression, are prescribed in Schedule A.

(2) A clerical Caregiver, employed prior to the date of this Agreement, whose salary would otherwise fall as a result of the application of the Clerical Classification System, shall not be reclassified and shall continue to be paid in accordance with his/her existing classification at the salary rate prescribed in Schedule B.

The Caregiver shall continue to be paid in accordance with Schedule B, and progress through any applicable increments, until such time as he/she is otherwise reclassified in accordance with the Clerical Classification System to a level with a salary rate that exceeds his/her existing classification.

(3) Caregivers appointed to positions outside the scope of the Clerical Classification System shall be paid in accordance with Schedule B.

#### (4) Salary Packaging

At the request of a Caregiver and by agreement between the hospital and the Caregiver, a Caregiver may be provided with a salary package in lieu of the ordinary salary prescribed in Schedules A or B of this Agreement.

The terms and conditions of salary packaging are prescribed in Schedule C.

### 24.—PAYMENT OF WAGES

(1) A full time Caregiver shall be paid in each fortnightly pay period—

- (a) (i) as for 80 ordinary hours (irrespective of the number of ordinary hours actually worked); or
- (ii) where the Caregiver does not accrue time off in accordance with clause 22—Accrued Time Off of this Agreement—as for 76 ordinary hours (irrespective of the number of ordinary hours actually worked);
- (b) for any overtime worked; and
- (c) any penalty payments arising from work performed in that pay period.

(2) A Caregiver appointed part-time shall be paid in each fortnightly pay period—

- (a) as for his/her guaranteed ordinary hours (irrespective of the number of ordinary hours actually worked);
- (b) for any additional hours worked in the pay period for which the Caregiver has elected to be paid out in accordance with clause 13(5) of this Agreement;
- (c) for any overtime worked; and
- (d) any penalty payments arising from work performed in that pay period.

(3) A Caregiver appointed on a casual basis shall be paid in each fortnightly pay period on the basis of the number of hours actually worked.

(4) Wages shall be paid fortnightly by electronic funds transfer into one or two accounts nominated by the Caregiver held at any major bank, building society or credit union.

Any costs associated with the establishment by the Caregiver of such an account and of the operation of it shall be borne by the Caregiver.

(5) Where payment is not made within the nominated time the Hospital shall make every reasonable endeavour to rectify the matter without further delay. Where the problem is within the control of the hospital it shall be rectified within 24 hours.

(6) Each Caregiver shall be provided with a pay advice slip on each day that wages are paid. The pay advice slip shall detail—

- (a) the rate of wage;
- (b) the hours worked including overtime;
- (c) the number of ordinary hours for which payment has been made;
- (d) the total number of hours, if any, which as a result of the annualising of hours, the Caregiver is in credit or debit;
- (e) the gross wage;
- (f) the net wage;
- (g) the Hospital funded superannuation component;
- (h) any allowances paid;
- (i) any deductions made including details of any salary sacrifice;
- (j) the composition of any annual leave payment;
- (k) the composition of any termination payment;
- (l) accrued annual leave;
- (m) accrued days off.

(7) Upon termination of employment, the Hospital shall pay to the Caregiver all monies earned by or payable to the Caregiver before the Caregiver leaves the hospital or the same shall be forwarded to the Caregiver by post on the next working day following termination. Provided that—

- (a) Where the employment is terminated without notice in accordance with this Agreement the Hospital shall, as soon as reasonably possible, forward by post all monies earned by or payable to the Caregiver;
- (b) By agreement the monies earned by or payable to the Caregiver may be paid by electronic funds transfer into the Caregiver's account(s).

### 25.—BANKED HOURS ON TERMINATION

(1) A Caregiver who at the time of termination has banked hours to his/her credit shall be paid for those hours at ordinary rates.

(2) A Caregiver who at the time of termination is in debit shall have the monies otherwise payable on termination reduced by an amount equivalent to payment at ordinary rates for the number of hours in respect of which the Caregiver is in debit. Provided that—

- (a) the number of hours for which a deduction is made shall not exceed 20 or 1.2 times the Caregiver's guaranteed weekly hours (to a maximum of 48), whichever is the greater;
- (b) Caregiver Giving Notice
  - (i) A Caregiver who gives written notice of termination shall be given the opportunity of working additional hours during the notice period to enable the Caregiver to reduce the debit prior to termination.
  - (ii) In such a case the hospital shall offer the Caregiver a minimum of 8 additional hours in each week of the notice period.
  - (iii) Subject to its requirements, the hospital may offer the Caregiver further additional hours within the parameters for working ordinary hours prescribed in this Agreement.
  - (iv) Any additional hours worked during the notice period shall reduce the maximum number of hours for which a deduction may be made in accordance with paragraph (a) hereof.
  - (v) For the purposes of this paragraph the Caregiver may provide a longer period of notice than required by clause 8—Separation of this Agreement;
- (c) Hospital Giving Notice
  - (i) A Caregiver who is given notice of termination by the Hospital may be required to work

additional ordinary hours during the notice period to enable the Caregiver to reduce the debit prior to termination.

- (ii) This requirement shall be subject to the parameters for working ordinary hours prescribed by this Agreement.
  - (iii) Any additional hours worked during the notice period shall reduce the maximum number of hours for which a deduction may be made in accordance with paragraph (a) hereof.
  - (iv) Where the hospital fails to provide the Caregiver with such additional hours as will completely offset the maximum number of hours for which a deduction may be made in accordance with paragraph (a), no deduction shall be made.
  - (v) For the purposes of this paragraph the Hospital may provide a longer period of notice than required by clause 8 of this Agreement;
- (d) No deduction shall be made where—
- (i) a Caregiver's employment is terminated by the Hospital with payment in lieu of notice; or
  - (ii) where a Caregiver's employment has been terminated by the Hospital on the grounds of redundancy in accordance with clause 39 of this Agreement; or
  - (iii) where the required notice period has been dispensed with by agreement in writing between the Hospital and the Caregiver.

#### 26.—SHIFT WORK

(1) (a) The loading on the ordinary rates of pay for a Caregiver who works an afternoon shift commencing not earlier than 12.00 noon and finishing after 6.00 pm on weekdays shall be 15%.

(b) The provisions of paragraph (a) of this subclause do not apply to a Caregiver who on any weekday commences his/her ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 pm on that day.

(c) The loading on ordinary rates of pay for a Caregiver who works a shift between the hours of 6.00 pm and 7.30 am on a weekday shall be 15%.

(2) (a) A Caregiver rostered to work ordinary hours between midnight Friday and midnight on the following Saturday shall be paid a loading of 50% on actual hours worked during this period.

(b) A Caregiver rostered to work ordinary hours between midnight Saturday and midnight on the following Sunday shall be paid a loading of 75% on actual hours worked during this period.

(3) Where a Caregiver works a broken shift each portion of that shift shall be considered a separate shift for the purpose of this clause.

(4) Where the ordinary hours of work span 12.00 midnight on a Friday night or Sunday night the additional payments for shift work and work during the weekend shall be made by calculation for each part of the shift according to the rate applicable for additional payment for shift work and work during the weekend as the case may be.

#### 27.—CALCULATION OF PENALTIES

Where the Caregiver works hours which would entitle him or her to payment of more than one of the penalties payable in accordance with the overtime, on call, shift and weekend penalties, or public holiday provisions of this Agreement, only the highest of any such penalty shall be payable. In the case of casuals any such penalty shall be in addition to the casual loading.

#### 28.—HIGHER DUTIES

(1) A Caregiver who is capable of performing and does perform all duties of a position which attracts a higher rate of pay than that which he or she usually performs shall be entitled to the higher rate whilst so engaged.

(2) When a Caregiver performs some, but not all, of the duties of the position a rate of pay less than the rate the position normally attracts can be paid on agreement between the

Hospital and Caregiver. In such circumstances the Caregiver will be provided with written advice of the additional duties and confirmation of the agreed rate of remuneration prior to assuming such duties.

When a Caregiver assumes higher duties or responsibilities due to a special project or similar short term process and such higher duties or responsibilities are not imported from an existing post an appropriate rate of remuneration shall be determined by agreement between the hospital and the Caregiver. Where practicable the rate of remuneration shall be set prior to the commencement of the special project or process.

(4) Provided that payment for higher duties shall not apply to a Caregiver required to act in another position while the incumbent is taking accrued time off for a single day or less in accordance with Clause 22 of this Agreement.

(5) Any dispute as to the appropriate rate of remuneration payable pursuant to this clause may be referred to the Clerical Classification Review Panel.

#### 29.—LAUNDRY AND UNIFORMS

(1)(a) Where the hospital requires a uniform to be worn, an adequate supply of such uniforms shall be provided free of cost to the Caregiver on engagement.

(b) Thereafter uniforms will be replaced on an 'as required' basis provided that—

(i) no uniform shall be replaced within 18 months of the date of issue;

(ii) the Caregiver when a new uniform is issued shall be required to return the replaced uniform.

(c) Uniforms shall at all times remain the property of the Hospital and must be returned to the Hospital on termination.

A failure to return hospital uniforms may lead to a delay in the processing of any termination payment and to the Hospital deducting the cost of the uniforms from any monies owing to the Caregiver.

(d) Uniforms shall not be worn other than in the course of, and in travelling to and from, employment.

(2) The cost of laundering uniforms shall be met by the Caregiver. The additional payment prescribed in Schedules A and B includes an amount to compensate for this requirement.

(3) Caregivers shall be responsible for the provision of appropriate clean and tidy footwear.

(4) The provisions of this clause shall not detract from the Hospital's obligation pursuant to section 19 of the Occupational Health Safety and Welfare Act 1984-1987 to provide Caregivers with adequate personal protective clothing and equipment where it is not practicable to avoid the presence of hazards at the workplace.

#### 30.—FARES AND MOTOR VEHICLE ALLOWANCE

(1) A Caregiver required to work outside the hospital during his or her normal working hours shall be paid any reasonable travelling expenses incurred except where an allowance is paid in accordance with subclause (2) hereof.

(2) A Caregiver required and authorised to use his or her own motor vehicle in the course of their duties shall be paid an allowance of not less than 49.1 cents per kilometre.

(3) (a) The rate prescribed in subclause (2) shall be automatically adjusted in accordance with the rate applicable to travel in the metropolitan area (over 1600cc—2600cc) prescribed in the Public Service General Conditions of Service and Allowances Award No. PSA A4 of 1989.

(b) Any adjustment to the rate prescribed in subclause (2) shall operate from the date of the order varying the above award.

(4) Nothing in this clause shall prevent the hospital and the Caregiver making other arrangements as to car allowance not less favourable to the Caregiver.

#### 31.—SUPERANNUATION

(1) The Hospital shall contribute on behalf of the Caregiver in accordance with the requirements of the Superannuation Guarantee (Administration) Act 1992.

(2) Contributions shall at the option of the Caregiver be paid into either—

- (a) the Health Employees' Superannuation Trust Australia fund; or
- (b) the National Catholic fund; or
- (c) such other complying superannuation fund or scheme nominated in accordance with the provisions of section 49C of the Industrial Relations Act 1979.

(3) The Hospital shall notify the Caregiver that she/he may nominate a complying fund or scheme. If the Caregiver does not nominate a fund or scheme, or until such time as she/he nominates a fund or scheme, superannuation contributions shall be paid into a fund or scheme nominated by the Hospital. The Hospital and Caregiver are bound by the employee's nominated fund choice unless they agree to a change of fund. The Hospital will not unreasonably refuse a change of fund request made by the Caregiver.

(4) Contributions into the nominated fund shall be paid monthly.

(5) Contributions shall continue to be paid on behalf of a Caregiver in receipt of payments under the Workers Compensation and Assistance Act.

#### (6) Salary Packaging

- (a) A Caregiver may elect in writing to receive a superannuation benefit in lieu of part of the salary to which he or she is otherwise entitled under this Agreement.
- (b) The salary package shall remain in force until terminated by mutual agreement or by either the hospital or the Caregiver providing one calendar month's notice.

### 32.—ANNUAL LEAVE AND PUBLIC HOLIDAYS

#### Entitlement

(1) (a) Each Caregiver shall after the completion of each 12 months continuous service be entitled to four weeks annual leave.

(b) The entitlement accrues pro rata based on completed weeks of service.

(c) In paragraph (a), "service" shall not include any period of unpaid leave other than the first 3 months of unpaid sick leave and the first month of workers' compensation leave.

#### Rate of Pay

(2) (a) The Caregiver shall be paid for any period of annual leave prescribed in this clause at the ordinary rate of wage the Caregiver would have received as his or her payment at the time of taking the leave and, in addition, any shift and weekend penalties which the Caregiver would have received had the Caregiver not proceeded on annual leave.

(b) Where it is not possible to calculate the shift and weekend penalties the Caregiver would have received, the Caregiver shall be paid at the rate of the average of such payments made each week over the four weeks prior to taking the leave.

(c) Provided that the Caregiver when proceeding on annual leave shall not be paid less than the sum of—

- (i) the Caregiver's ordinary rate of wage for the period (ie excluding shift and weekend penalties); and
- (ii) a loading of 17.5% in respect of all periods of annual leave other than the periods relating to public holidays (ie to which the Caregiver is entitled under subclauses 9 and 13 hereof).

#### Timing of Payment

(4) The Caregiver is to be paid for a period of annual leave at the time payment is made in the normal course of employment, unless the Caregiver requests in writing that he or she be paid before the period of leave commences in which case the Caregiver is to be so paid.

Provided that, where annual leave is paid in advance, payment for time worked may be adjusted in the fortnightly pay period following the period of annual leave.

#### Termination

(5) If a Caregiver's employment terminates, the Caregiver shall be paid a pro rata entitlement (at the rate prescribed by subclause (2) hereof) in respect of each completed week of service for which annual leave has not already been taken.

Provided that—

- (a) Leave loading shall not apply to pro rata leave on termination but shall apply (in accordance with subclause (2) hereof) to leave resulting from a completed year of service.
- (b) Caregivers to whom subclause (11) hereof applies shall be paid for such additional days leave as have accrued under those subclauses at the date of termination.

#### Taking Annual Leave

(6) (a) The Caregiver may, with the approval of the hospital, be allowed to take the annual leave prescribed by this clause before the completion of twelve month's continuous service.

(b) The annual leave prescribed in this clause may be split into portions by mutual agreement between the hospital and the Caregiver.

(c) When the Caregiver requests that the annual leave be split into portions the hospital shall make every reasonable endeavour to accommodate the wishes of the Caregiver.

(d) Where the Hospital and Caregiver have not agreed when the Caregiver is to take annual leave—

- (i) the Hospital shall allow the leave to be taken in the 12 months following the year of accrual; and
- (ii) the Hospital shall give the Caregiver at least 2 week's notice of the period of time when it will be convenient to the hospital for the Caregiver to take the leave.

#### Compaction

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

Such election is to be made in writing by the Caregiver and approved by the Hospital.

#### Cashing In

(8) A Caregiver to whom subclause (11) of this clause applies or who has otherwise accrued in excess of 4 weeks annual leave may elect to be paid when proceeding on annual leave an amount equivalent to the value of his or her additional leave entitlement in lieu of taking the additional leave. Such election is to be made in writing by the Caregiver and approved by the Hospital.

#### Public Holiday Occurring During Annual Leave

(9) A Caregiver shall be entitled to a day's leave in lieu of a public holiday, without deduction of pay, in respect of a public holiday which occurs during the Caregivers' annual leave.

#### Day Observed in Lieu of Public Holiday

(10) Where any public holiday prescribed by this Agreement falls on a Saturday or a Sunday, such holiday shall be observed on the next succeeding Monday and where Boxing Day falls on a Sunday or Monday, such holiday shall be observed on the next succeeding Tuesday. Provided that—

- (a) a day observed in lieu of the holiday may be appointed by proclamation published in the Gazette under the Public and Bank Holidays Act 1972;
- (b) another day may be observed in lieu of the holiday by agreement between the Caregiver and the Hospital.

#### Shift Work

(11) A Caregiver rostered to work ordinary hours on Sundays and/or public holidays shall be entitled to additional annual leave as follows—

- (a) if 35 ordinary shifts on such days have been worked—one week
- (b) if less than 35 ordinary shifts on such days have been worked the Caregiver shall be entitled to have one additional day's leave (to a maximum of five days) for each seven ordinary shifts so worked.

#### Public holidays

(12) A Caregiver not required to work on a day solely because that day is a public holiday or day observed in lieu thereof, shall be entitled to leave for the number of hours which

he or she would otherwise be rostered to work on that day without deduction of pay.

(13) Where the Caregiver is rostered to work ordinary hours on a public holiday or day observed in lieu thereof, he or she shall be entitled to ordinary rates of pay and a loading of 50% for the actual time worked together with an equivalent period of time off to be added to the period of annual leave.

### 33.—SICK LEAVE

(1) A Caregiver shall accrue 10 rostered shifts paid sick leave per annum.

(2) The entitlement shall accrue pro rata on a weekly basis.

(3) A Caregiver who is unable to attend work on the grounds of personal ill health or injury or on account of the illness or injury of a family member residing with the Caregiver, is entitled to be paid at ordinary rates for the period of the absence up to and including the number of hours which the Caregiver was rostered to work on that day.

Provided that—

(a) subject to subclause (4) hereof, the payment shall not exceed payment for 10 rostered shifts per annum; and

(b) where such payment exceeds the Caregiver's accrued entitlement, the excess may be offset against any future accrual or against monies otherwise payable to the Caregiver at the point of separation;

(4) Unused portions of sick leave entitlement shall accumulate from year to year and may be taken in any subsequent year.

(5) A Caregiver shall advise the hospital as soon as reasonably practicable and if possible prior to the commencement of the shift of, the inability to attend work, the nature of illness or injury and the estimated duration of absence.

(6) A Caregiver is allowed a maximum of four days absence without a medical certificate in any one accruing year provided that a medical certificate must be provided for any absence of more than two consecutive days.

(7) A Caregiver who suffers personal ill health or injury whilst on annual leave may be paid sick leave in lieu of annual leave subject to—

(a) providing a medical certificate stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more.

(b) the portion of annual leave coinciding with the paid sick leave is to be taken at a time agreed by hospital and Caregiver or shall be added to the next period of annual leave.

(c) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 32—Annual Leave and Public Holidays shall be deemed to have been paid with respect to the replaced annual leave.

(8) Paid leave may be withheld if the illness or injury is the result of the Caregiver's own misconduct.

(9) Where a Caregiver receives payment under this clause and subsequently receives payments in respect of the same period under the Workers Compensation and Assistance Act 1981, the Caregiver shall reimburse to the hospital the payments made under this clause and the Hospital shall reinstate the Caregiver's sick leave or other entitlements accordingly.

Use of Banked Hours Where Sick Leave Entitlement Exceeded

(10) A Caregiver who has exceeded his or her entitlement to paid sick leave under this clause and who has banked hours to his/her credit may elect to be paid for those hours during any period of unpaid sick leave.

### 34.—LONG SERVICE LEAVE

(1) The long service leave provisions published in Volume 73 of the Western Australian Industrial Gazette at pages 1 to 4 inclusive as updated from time to time, are hereby incorporated in and shall be deemed to be part of this Agreement, providing that long service leave shall not accrue on workers' compensation leave in excess of one month.

(2) Provided that the leave to which a Caregiver shall be entitled or deemed to be entitled shall be as provided in this clause—

Where a Caregiver has completed at least 10 years' service the amount of leave shall be—

(a) in respect of 10 years service so completed—eight and two thirds weeks leave;

(b) in respect of each 10 years service completed after such 10 years—eight and two thirds weeks leave;

(c) on the termination of the Caregiver's employment—  
(i) on his/her death;

(ii) in circumstances otherwise than by the hospital for serious misconduct;

in respect of the number of years' service with the hospital completed since he/she last became entitled to an amount of long service leave, a proportionate amount on the basis of eight and two thirds weeks for 10 years service.

(3) Leave may be taken in weekly multiples. When the remaining portion of accrued untaken leave entitlement is less than a week, such portion may be taken.

(4) On agreement between the hospital and Caregiver, a part time Caregiver or a Caregiver whose ordinary hours have changed from part time to full time may take his or her long service leave entitlement as a reduced period of full time equivalent time off. Such agreement shall not be unreasonably withheld by the hospital.

(5) At the request of the Caregiver and with the agreement of the hospital, a Caregiver faced with pressing personal needs may be paid in lieu of taking a portion of long service leave.

### 35.—PARENTAL LEAVE

Employees shall be entitled to unpaid parental (and adoption) leave in accordance with Division 5 of Part VIA of the Industrial Relations Act 1988 (Cth) detailed as follows—

#### (1) Interpretation

In this Clause—

“adoption”, in relation to a child, is a reference to a child who—

(a) is not the natural child or the step-child of the Caregiver or the Caregiver's spouse;

(b) is less than 5 years of age; and

(c) Has not lived continuously with the Caregiver for 6 months or longer.

“continuous service” means service under an unbroken contract of employment and includes—

(a) any period of parental leave; and

(b) any period of authorised leave or absence.

“expected date of birth” means the day certified by a medical practitioner to be the day on which the medical practitioner expects the Caregiver or the Caregiver's spouse, as the case may be, to give birth to a child;

“parental leave” means leave provided for by subclause (2) of this clause;

“spouse” includes a de facto spouse.

#### (2) Entitlement to parental leave

(a) Subject to this subclause and to subclauses (3) and (4) hereof, a Caregiver, other than a casual Caregiver, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—

1. The birth of a child to the Caregiver or the Caregiver's spouse; or

2. The placement of a child with the Caregiver with a view to the adoption of the child by the Caregiver.

(b) A Caregiver is not entitled to take parental leave unless he or she—

1. has before the expected date of birth or placement, completed at least 12 months' continuous service with the hospital; and

2. has given the hospital at least 10 weeks written notice of his or her intention to take the leave;
3. has notified the hospital of the dates on which he or she wishes to start and finish the leave.

A Caregiver shall not be in breach of this Clause as a consequence of failure to give the required notice if such failure is occasioned by the confinement occurring earlier than the expected date.

- (c) A Caregiver is not entitled to take parental leave at the same time as the Caregiver's spouse but this subsection does not apply to—
    1. one week's parental leave taken by the male parent immediately after the birth of the child; or
    2. three week's parental leave taken by the Caregiver and the Caregiver'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 Caregiver's spouse in relation to the same child, except the period of one week's leave referred to in paragraph c (1).
- (3) Certification
- (a) A Caregiver who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the hospital a certificate from a medical practitioner stating that the Caregiver or the Caregiver's spouse, as the case may be, is pregnant and the expected date of birth.
  - (b) A Caregiver who has given notice of his or her intention to take parental leave for adoption, is to provide to the Hospital—
    1. A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the Caregiver for adoption purposes; or
    2. A statement from the appropriate government authority confirming that the Caregiver is to have custody of the child pending an application for an adoption order.
- (4) Notice of spouse's parental leave
- (a) A Caregiver who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the Hospital of particulars of any period of parental leave taken or to be taken by the Caregiver's spouse in relation to the same child.
  - (b) Any notice given under paragraph (a) is to be supported by a statutory declaration by the Caregiver as to the truth of the particulars notified.
- (5) Transfer to a safe job
- Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the Caregiver make it inadvisable for the Caregiver to continue at her present work, the Caregiver shall, if the hospital deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave. If the transfer of a safe job is not practicable, the Caregiver may, or the hospital may require the Caregiver to take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) hereof.

- (6) Maternity leave to start 6 weeks before birth

A female Caregiver who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 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 Caregiver is fit to work.

- (7) Variation of Period of Parental leave
  - (a) Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9) does not exceed the period to which the Caregiver is entitled under subclause (2) hereof—
    1. The period of parental leave may be lengthened once only by the Caregiver giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    2. The period may be further lengthened by agreement between the Caregiver and the hospital.
  - (b) The period of parental leave may, with the consent of the hospital, be shortened by the Caregiver giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (8) Cancellation of Parental Leave
  - (a) Parental leave, other than adoption leave, applied for but not commenced, shall be cancelled when the pregnancy of the Caregiver or the Caregiver's spouse terminates other than by the birth of a living child.
  - (b) Where the pregnancy of a Caregiver on maternity leave terminates other than by the birth of a living child, it shall be the right of the Caregiver to resume work at a time nominated by the Hospital which shall not exceed four weeks from the date of notice in writing by the Caregiver to the Hospital that she desires to resume work.
- (9) Special Maternity Leave and Sick Leave
  - (a) Where the pregnancy of a Caregiver not then on parental leave terminates after 28 weeks other than by the birth of a living child then—
    1. she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
    2. for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
  - (b) Where a Caregiver not then on parental leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and parental leave shall not exceed the period to which the Caregiver is entitled under subclause (2) hereof.
  - (c) For the purposes of subclauses (10), (12) and (13) hereof, parental leave shall include special maternity leave.
  - (d) A Caregiver returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a Caregiver

who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

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

(10) Parental Leave and Other Leave Entitlements

Provided the aggregate of any leave (including leave taken pursuant to subclauses (5) and (9)) does not exceed the period to which the Caregiver is entitled under subclause (2) hereof—

- (a) A Caregiver may, in lieu of or in conjunction with parental leave, take any annual leave, long service leave or any part thereof or accrued time off to which he or she is then entitled.
- (b) Paid sick leave or other paid authorised absences (excluding annual leave, long service leave or accrued time off), shall not be available to a Caregiver during his or her absence on parental leave.

(11) Return to work after parental leave

- (a) a Caregiver shall confirm his or her intention of returning to work by notice in writing to the hospital given not less than four weeks prior to the expiration of the period of parental leave.
- (b) On finishing parental leave, a Caregiver is entitled to the position he or she held immediately before starting parental leave.
- (c) If the position referred to in paragraph (b) is not available, the Caregiver is entitled to an available position.
  - For which the Caregiver is qualified; and
  - That the Caregiver is capable of performing, most comparable in status and pay to that of his or her former position.
- (d) Where, immediately before starting parental leave, a Caregiver was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (b), that subsection applies only in respect of the position held by the Caregiver immediately before taking the acting or temporary position.

(12) Effect of parental leave on employment

Absence on parental leave—

- (a) Does not break the continuity of service of a Caregiver; and
- (b) Is not to be taken into account when calculating the period of service for a purpose of this Agreement or a relevant award or contract of employment.

(13) Termination of employment

- (a) A Caregiver on parental leave may terminate his or her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (b) The hospital shall not terminate the employment of a Caregiver on the grounds of pregnancy or absence on parental leave, but otherwise the rights of the hospital in relation to termination of employment are not hereby affected.

(14) Replacements—

- (a) A replacement is a person specifically engaged as a result of a Caregiver proceeding on parental leave.
- (b) The hospital shall, before engaging a replacement under this subclause, inform that person

of the temporary nature of the employment and of the rights of the Caregiver who is being replaced.

- (c) The hospital shall, before engaging a person to replace a Caregiver temporarily promoted or transferred in order to replace a Caregiver exercising his or her rights under this clause, inform that person of the temporary nature of the promotion or transfer and of the rights of the Caregiver who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring the hospital to engage a replacement.

36.—BEREAVEMENT LEAVE

(1) On the death of a spouse or de facto spouse, child or step-child, parent or parent in law, brother, sister, grandparent, grandchild or any other person who immediately before that person's death lived with the Caregiver as a member of the Caregiver's family, the Caregiver is entitled to bereavement leave, without loss of ordinary time earnings, of up to two (2) days.

(2) Bereavement leave shall at the discretion of the Caregiver be taken at any time up to and including the two days following the day of the funeral.

(3) Reasonable additional leave may be granted where a Caregiver has assumed significant responsibility for the arrangements to do with the ceremonies resulting from the death; or where cultural obligations necessitate a longer period of bereavement leave.

(4) Payment for such leave may be subject to the Caregiver providing proof of the death, satisfactory to the Hospital.

(5) Bereavement leave is not to be taken where the Caregiver is absent on another form of leave or would not otherwise have been on duty unless the absence has been taken to enable the Caregiver to be with a dying relative.

37.—STUDY LEAVE

(1) Where a Caregiver is engaged in a course of study which is relevant to his/her profession of work, time off without deduction of pay may be approved as follows—

- (a) to attend to classes, lectures, or tutorials – up to 3 hours per week;
- (b) to attend final examinations – the day of the examination.

Provided that the classes, lectures, or tutorials fall within the parameters of the Caregiver's normal working hours.

(2) Such time off will be granted subject to the operational requirements of the Hospital.

38.—JURY SERVICE

(1) Caregivers summoned for jury service and giving prior advice to their manager will be granted paid leave subject to the procedures set out herein.

(2) Caregivers requesting time off for jury service must notify their manager on receipt of notice to attend.

(3) Application for leave of absence for jury service must be made on the standard Application for Leave form with a copy of the notice to attend attached.

(4) On presentation of proof of appearance payment of salary will be made at the ordinary time through the pay roll system.

(5) The hospital will claim reimbursement from the Court.

39.—TIME OFF WITHOUT PAY

Time off without pay for whatever purpose may be granted by agreement between the Hospital and the Caregiver.

In any such case the number of hours guaranteed to the Caregiver as a result of the operation of annualised hours shall be reduced accordingly. This clause shall apply to unpaid sick leave.

40.—INTRODUCTION OF CHANGE AND REDUNDANCY

(1) Interpretation

In this clause—

“Caregiver” does not include a Caregiver engaged on a casual or temporary basis or on a fixed term contract;

“redundant” means being no longer required by the hospital to continue doing a job because the hospital has decided that the job will not be done by any Caregiver.

For the purposes of this clause, an action of the employer has a “significant effect” on an employee if—

- (a) there is to be a major change in the composition, operation or size of, or skills required in, the Hospital’s workforce that will affect the Caregiver; or
- (b) there is to be elimination or reduction of a job opportunity, promotion opportunity or job tenure for the Caregiver; or
- (c) the guaranteed hours of the Caregiver’s work are to significantly increase or decrease; or
- (d) the Caregiver is required to be retrained; or
- (e) the Caregiver is to be required to transfer to another job or work location; or
- (f) the Caregiver’s job is to be restructured; or
- (g) the Caregiver’s income is decreased.

(2) (a) Caregiver to be Informed

Where the hospital has decided to—

- (i) take action that is likely to have a significant effect on a Caregiver; or
- (ii) make a Caregiver redundant,

the Caregiver is entitled to be informed by the hospital, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be.

(b) Discussions to occur

The hospital shall thereafter hold discussions with the Caregiver affected as to—

- (i) the likely effects of the action or the redundancy in respect of the Caregiver; and
- (ii) measures that may be taken by the Caregiver or hospital to avoid or minimise a significant effect.

Provided that the hospital shall not be required to disclose confidential information the disclosure of which may seriously harm the Hospital’s interests.

(3) Union to be informed

Where the hospital has made a definite decision to introduce major changes that are likely to have significant effects on one or more Caregivers, the hospital shall notify and hold discussions with the union.

(4) Severance Pay

- (a) In addition to the period of notice prescribed in Clause 8 of this Agreement, for ordinary termination, a Caregiver whose employment is terminated on the grounds of redundancy shall be entitled to the following amount of severance pay in respect of a continuous period of service.

<u>Period of Continuous Service</u>	<u>Severance Pay</u>
Less than 1 year	Nil
1 year but less than 2 years	1 weeks
2 years but less than 3 years	3 weeks
3 years but less than 4 years	5 weeks
4 years but less than 5 years	7 weeks
5 years but less than 6 years	9 weeks
Thereafter	1 week’s additional pay for each additional year of service

“Weeks Pay” means the ordinary weekly rate of wage for the Caregiver concerned.

- (b) For the purpose of this clause continuity of service shall not be broken on account of—
  - (i) any absence from work on account of personal sickness or accident for which a Caregiver is entitled to claim sick pay as prescribed by this award or on account of leave lawfully granted by the Hospital; or
  - (ii) any absence with reasonable cause, proof whereof shall be upon the Caregiver; or

- (iii) any absence on approved leave without pay.

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

- (c) Service by the Caregiver with a business which has been transmitted from one hospital to another and the Caregiver’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 WA Industrial Gazette at pp.1-4 shall also constitute continuous service for the purpose of this clause.

(5) Out Placement Support

The hospital shall provide at their expense professional out placement advice.

(6) Caregiver Leaving During Notice—

A Caregiver whose employment is to be terminated on the grounds of redundancy may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the Caregiver remained with the Hospital until the expiry of such notice. Provided that in such circumstances the Caregiver shall not be entitled to payment in lieu of notice.

(7) Alternative Employment—

The hospital, 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 hospital obtains acceptable alternative employment for a Caregiver.

(8) Leave for Job Interviews

- (a) A Caregiver who has been given notice that he or she has been, or will be, made redundant shall during the period of notice of termination be entitled to be absent from work up to a maximum of 8 ordinary hours during each week of notice without deduction of pay for the purpose of being interviewed for further employment.
- (b) A Caregiver who claims to be entitled to paid leave under paragraph (a) shall, at the request of the Hospital, be required to produce reasonable proof of attendance at an interview or the Caregiver shall not receive payment for the time absent.

(9) Notice to Commonwealth Employment Service—

Where a decision has been made to terminate Caregivers in circumstances of redundancy, the Hospital shall, subject to the agreement of the Caregivers concerned, notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the Caregivers likely to be affected and the period over which the terminations are intended to be carried out.

#### 41.—TIME AND WAGES RECORD

(1) A time and wages record shall be kept by the Hospital and shall, upon reasonable notice of not less than 24 hours being given, be available for inspection by an accredited representative of the union.

(2) The record shall contain the following information—

- (a) the name and address of each Caregiver subject to this Agreement;
- (b) the date on which each Caregiver commenced employment with the hospital;
- (c) the classification and increment of the Caregiver;
- (d) whether the Caregiver is employed on a full time, part-time or casual basis;
- (e) the commencing and finishing time of work each day;
- (f) the total number of ordinary hours and the total number of overtime hours worked each day;
- (g) the number of ordinary hours for which payment was made;

- (h) the total number of hours, if any, which as a result of the annualising of hours, the Caregiver is in credit or debit;
- (i) the wages and allowances paid to each Caregiver in each pay period and any deductions therefrom.

(3) The representative of the union shall be permitted reasonable time to inspect the record and, if required, take an extract or copy of any of the information contained therein.

(4) Provided that—

- (a) the employer may refuse the representative of the union access to time and wages records if—
  - (i) the employer is of the opinion that access to the records by the representative of the union would infringe the privacy of persons who are not members of the union; and
  - (ii) the employer undertakes to produce the records to an industrial inspector within 48 hours of being notified of the requirement to inspect by the representative;
- (b) the power of inspection may only be exercised by a representative of the union authorised for the purpose in accordance with the rules of the organisation.

#### 42.—INTERVIEWS

(1) Subject to section 49AB of the Industrial Relations Act 1979 (WA) an accredited representative of the Union shall be entitled to enter the hospital and interview a Caregiver. Provided that—

- (a) on arrival at the workplace the union representative shall seek permission to enter the premises from the Chief Executive Officer or his appointed representative.
- (b) agreement between the union representative and the CEO or his appointed representative shall be sought as to where and subject to what conditions the Caregiver may be interviewed or work inspected.

(2) Failing agreement on the foregoing, the following shall apply—

- (a) On giving prior notice in writing or by telephone to the CEO or his appointed representative, or failing that person being available, the most senior person in charge of the establishment, an accredited representative of the union shall be entitled to enter the hospital to interview a Caregiver at a time and place agreed between the union and the CEO or his appointed representative.
- (b) Where there is no agreement as to time and place, the union representative shall have the right, upon prior notice to the CEO or his representative, or most senior person in charge of the establishment, to interview Caregivers during the recognised meal period at the place where the meal is usually taken.

(3) If access has not been gained in accordance with the provisions of this clause then the union representative shall leave immediately upon a request from the CEO or, his appointed representative or senior person in charge.

#### 43.—NOTICES

The hospital shall provide a notice board in a place where it may be conveniently and readily seen for the posting of union notices.

#### 44.—SINGLE BARGAINING UNIT TO MONITOR AGREEMENT

(1) The single bargaining unit which negotiated this Agreement shall meet as required during its term for the purpose of monitoring, and resolving problems arising from its application.

(2) Meetings may be called by any party providing a minimum of 7 days notice. This notice may be dispensed with by agreement.

(3) Particular attention shall be paid to the application of Clauses 16 to 22 inclusive of the Agreement.

(4) In resolving problems arising from the application or interpretation of the Agreement the single bargaining unit shall make reasonable attempts to reach a consensus.

(5) Where consensus is not able to be reached the parties may jointly or individually refer the problem to the Western Australian Industrial Commission or to an agreed third party for the purposes of conciliation and, if required, arbitration.

(6) Provided that disputes regarding the classification and reclassification of individual clerical positions shall be dealt with in accordance with Clause 7 of this Agreement.

#### 45.—DISPUTE SETTLEMENT

(1) The following procedures shall apply in connection with questions, disputes or difficulties arising under this Agreement not appropriately dealt with under clause 44.

(2) The persons directly involved, or representatives of the person(s) directly involved, shall discuss the question, dispute or difficulty as soon as is practicable.

(3) (a) If these discussions do not result in a settlement, the question, dispute or difficulty shall be referred to senior management for further discussion.

(b) Discussions at this level will take place as soon as practicable.

(4) The persons involved at each step of the process shall make reasonable attempts to resolve the question, dispute or difficulty.

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

(6) Any settlement reached which is contrary to the terms of this Agreement shall not have effect unless and until that conflict is resolved to allow for it.

(7) Nothing in this clause shall be read so as to exclude the Union from representing its members.

(8) Any question, dispute or difficulty not settled may be referred to the Western Australian Industrial Relations Commission.

Signatories to Agreement

Signed for and on behalf of

ST JOHN OF GOD HEALTH CARE MURDOCH—

Glyn Palmer (signed)

In the presence of—

J Healey (signed)

Signed for and on behalf of

HOSPITAL SALARIED OFFICERS' ASSOCIATION OF WESTERN AUSTRALIA (UNION OF WORKERS)—

M. Hartland (signed)

President

In the presence of—

Chris D Panizza (signed) (common seal)

A/Secretary

#### SCHEDULE A—SALARIES

(1) This Schedule applies to Caregivers whose positions have been classified or reclassified in accordance with the Clerical Classification System.

(2) The rates prescribed include the following enterprise bargaining increases—

(a) 3% operative from the first pay period beginning on or after 1 July 1999;

(b) 2% operative from the first pay period beginning on or after 1 July 2000.

(3) (a) Unless otherwise specified progression for all bands for which there is more than one wage point, shall be by automatic annual increments, subject to a satisfactory performance appraisal.

(b) Any disagreement in relation to the payment of an annual increment may be referred to the WA Industrial Relations Commission for determination.

(4) The base hourly rate of wage for each Caregiver shall be calculated by dividing the weekly rate by 40.

Provided that in the case of a Caregiver not in receipt of accrued time off the base hourly rate shall be calculated by dividing the weekly rate by 38.

(5) The following annual salaries shall apply to Caregivers covered by this Schedule—

	Base Rate	3% First Pay Period 1.7.1999	2% First Pay Period 1.7.2000
	\$	\$	\$
(a) Band 1			
1.1	24,194	24,920	25,418
1.2	24,569	25,306	25,812
1.3	25,068	25,820	26,336
1.4	25,472	26,236	26,761
(b) Band 2			
2.1	25,472	26,236	26,761
2.2	26,290	27,079	27,620
2.3	27,103	27,916	28,474
2.4	27,915	28,752	29,327
2.5	28,731	29,593	30,185
(c) Band 3			
3.1	28,731	29,593	30,185
3.2	29,545	30,431	31,040
3.3	30,483	31,397	32,025
3.4	31,131	32,065	32,706
(d) Band 4			
4.1	31,131	32,065	32,706
4.2	32,090	33,053	33,714
4.3	33,222	34,219	34,903
(e) Band 5			
5.1	34,102	35,125	35,828
5.2	35,027	36,078	36,799
5.3	36,503	37,598	38,350

#### SCHEDULE B—SALARIES

(1) This Schedule applies to Caregivers, employed prior to the date of this Agreement, whose salary would otherwise fall as a result of the application of the Clerical Classification System, and who accordingly have not been reclassified.

(2) This Schedule also applies to Caregivers appointed to positions outside the scope of the Clerical Classification System.

(3) The rates prescribed include the following enterprise bargaining increases—

- (a) 3% operative from the first pay period beginning on or after 1 July 1999;
- (b) 2% operative from the first pay period beginning on or after 1 July 2000.

(4) (a) Unless otherwise specified progression for all classifications for which there is more than one wage point, shall be by automatic annual increments, subject to a satisfactory performance appraisal.

(b) Any disagreement in relation to the payment of an annual increment may be referred to the WA Industrial Relations Commission for determination.

(c) Progression between levels shall be by appointment, subject to the hospital's requirements.

(5) The base hourly rate of wage for each Caregiver shall be calculated by dividing the weekly rate by 40.

Provided that in the case of a Caregiver not in receipt of accrued time off the base hourly rate shall be calculated by dividing the weekly rate by 38.

(6) Caregivers in receipt of a base salary at or above Level 10 may by agreement in writing with the hospital receive an all in rate in full satisfaction of the monetary entitlements prescribed by this Agreement. Provided that the rate shall not when viewed objectively, and having regard to the whole of the Caregiver's terms and conditions of employment, be less favourable to the Caregiver than the entitlements otherwise available under this Agreement.

(7) The following annual salaries shall apply to Caregivers covered by this Schedule—

	Base Rate	3% First Pay Period 1.7.1999	2% First Pay Period 1.7.2000
	\$	\$	\$
(a) Level 1			
1.1	24,194	24,920	25,418
1.2	24,569	25,306	25,812
1.3	25,068	25,820	26,336
1.4	25,472	26,236	26,761
(b) Level 2			
2.1	25,472	26,236	26,761
2.2	26,290	27,079	27,620
2.3	27,103	27,916	28,474
(c) Level 2A			
2A.1	27,103	27,916	28,474
2A.2	27,915	28,752	29,327
2A.3	28,731	29,593	30,185
(d) Level 3			
3.1	28,731	29,593	30,185
3.2	29,545	30,431	31,040
(e) Level 3A			
3A.1	30,483	31,397	32,025
3A.2	31,131	32,065	32,706
(f) Level 4			
4.1	31,131	32,065	32,706
4.2	32,090	33,053	33,714
(g) Level 5			
5.1	33,222	34,219	34,903
5.2	34,102	35,125	35,828
(h) Level 6			
6.1	35,027	36,078	36,799
6.2	36,503	37,598	38,350
(i) Level 7			
7.1	37,277	38,395	39,163
7.2	38,433	39,586	40,378
(j) Level 8			
8.1	39,624	40,813	41,629
8.2	41,316	42,555	43,407
(k) Level 9			
9.1	42,198	43,464	44,333
9.2	43,409	44,711	45,605
(l) Level 10			
10.1	44,654	45,994	46,913
10.2	45,937	47,315	48,261
(m) Level 11			
11.1	48,406	49,858	50,855
11.2	50,239	51,746	52,781
(n) Level 12			
12.1	52,842	54,427	55,516
(o) Level 13			
13.1	54,237	55,864	56,981
13.2	56,002	57,682	58,835
(p) Level 14			
14.1	57,831	59,566	60,757
(q) Level 15			
15.1	60,505	62,320	63,567
15.2	62,696	64,577	65,869

#### SCHEDULE C—SALARY PACKAGING

The terms and conditions of salary packaging shall be subject to the following conditions—

- (a) the agreement, the terms and conditions of which shall be in writing and signed by both the employer

and employee, shall detail the components of the total salary package.

- (b) a copy of the agreement shall be made available to the Caregiver and a copy shall be open for inspection by an accredited representative of the union in accordance with Clause 41 of this Agreement.
- (c) the hospital must inform the Caregiver in writing of how the benefits are costed in money terms;
- (d) the cost of any benefit will take into account the cost of any Fringe Benefit Tax (FBT) payable and an imputed cost to take account of the non-deductibility of FBT and other non-deductible benefits;
- (e) the salary package shall not increase the total cost of employment;
- (f) the Caregiver shall be entitled to inspect details of payments and transactions made under the terms of this Agreement;
- (g) subject to subclauses (i) and (j) hereof the configuration of the salary package shall remain in force for the period agreed between the Caregiver and the hospital; and
- (h) where at the end of the agreed period the full amount allocated to a specific benefit has not been utilised, by agreement between the hospital and the Caregiver, any unused amount may be carried forward to the next period or paid as salary which will be subject to usual taxation requirements;
- (i) during the agreed period the hospital or the Caregiver may request a review of the package in the event that its cost or benefits are materially affected by changes in tax rulings or legislation. If agreement is unable to be reached the matter may be referred to the Western Australian Industrial Relations Commission for conciliation and/or arbitration; and
- (j) notwithstanding the provisions of this Schedule the salary package may be terminated by mutual agreement or by either party providing one calendar month's notice or three calendar month's notice where the package includes the provision of a motor vehicle. Where the full amount allocated to a specific benefit has not been utilised it shall be paid as salary subject to the usual taxation requirements.
- (k) The menu of items that may be packaged shall be those agreed by the parties from time to time.

#### APPENDIX

#### ST JOHN OF GOD HOSPITAL MURDOCH



St John of God Health Care Murdoch is committed to the dignity and worth of each person. We believe that work is a major forum in which we express and develop our dignity and grow towards fullness in human living.

We believe that conditions of work must be such that each person has the freedom and resources needed for growth and development towards wholeness.

St John of God Health Care Murdoch is committed to the development and maintenance of an organisational culture that is person focused, committed to the Christian ministry of healing, and to the processes of Quality Caring.

St John of God Health Care Murdoch has an organisational culture that promotes, encourages and facilitates individual and organisational growth and development towards quality service provision. It allows for flexibility and mutuality in the arrangements of working conditions.

It is a culture that leads to greater job satisfaction and ever improving quality of patient care and services.

St John of God Health Care Murdoch will arrange conditions of employment, "Employment Relationships" in accordance with the following "Principles of Employment Relationships."

#### PRINCIPLES FOR EMPLOYMENT RELATIONSHIPS BASED ON FIDELITY TO OUR HERITAGE

August 1993

1. Positive employment relationships are essential for the successful provision of health care. Recognition of the rights and duties of the hospital and each Caregiver are required for fairness and mutual accountability. [Justice]\*
2. The work of all Caregivers is valued equally in the Mission and operation of the organisation. (This includes the work of those who provide direct patient care and those whose work enables these hands-on Caregivers to function effectively.) [Respect]\*
3. Behaviours in the workplace must demonstrate respect for the basic orientation of the Mission, Philosophy and Cultural Values of the hospital. [Respect]\*
4. In decisions related to clinical provision of health care, the expert knowledge and experienced judgements of health care professionals are acknowledged in their individual areas of competency as we work in collaboration with each other. [Respect, Justice, Excellence]\*
5. The Hospital recognises the different cultures and faith traditions of our Caregivers. It respects and values these differences and strives to learn from the richness of this diversity. [Hospitality, Respect]\*
6. Opportunities for employment, career development and other pathways to growth are open to all people competent for the positions available throughout the hospital. [Hospitality, Compassion, Respect, Justice and Excellence]\*
7. The Hospital recognises the right of Caregivers to form associations to engage in collective actions, to negotiate various benefits for their members and to work for a better society. This does not exclude the Caregiver's right to choose individual negotiations when appropriate. [Respect, Justice]\*
8. Decision making, planning and policy formation related to the work of Caregivers will be participative processes involving relevant stake-holders. Due processes are established to attend to grievances, injuries and other concerns. [Hospitality, Compassion, Respect, Justice and Excellence]\*
9. Each Caregiver is expected to be committed to person centred care, to continual improvement of the quality of services and to the requirements of the Hospital's Mission, Vision and Goals as described in their employment contracts. [Hospitality, Compassion, Respect, Justice and Excellence]\*
10. Each Caregiver will be involved in ongoing learning. [Justice, Excellence]\*
11. Caregivers are entitled to fair compensation for their work and they will share in the benefits of their work. [Hospitality, Justice, Excellence]\*
12. Each Caregiver will contribute to quality patient care and to the common good of all by just and honest performance of the duties of their individual position. [Hospitality, Justice, Excellence]\*

(\*The Core Cultural Value(s) most relevant to each principle is noted in square brackets [])

#### CAREGIVER EMPLOYMENT AGREEMENT

Involvement in this Agreement results in mutual commitment to the following—

St John of God Health Care Murdoch—

1. The provision of fair employment conditions.
2. Maintenance of safe working environments.
3. Opportunities for growth and development for each Caregiver.
4. Resources to facilitate optimum work processes and quality of services.
5. Participation in continual improvement of all work processes.
6. Provision of information and training to enable each Caregiver to understand and fulfil his or her obligations under this Agreement and to apply safe work practices.
7. Non requirement of Caregivers to perform duties outside their competence.

8. Provision of a regular cycle of appraisal and review of performance and developmental needs.
9. Involvement of Caregivers as participants in the general functioning of the workplace.

Each Caregiver—

1. Provision of an honest day's work in accordance with the relevant Position Description.
2. Positive participation in the desired organisational culture of the Hospital.
3. Involvement in learning that will facilitate personal and professional growth and development.
4. Observance of appropriate safety and security regulations.
5. Observance of the Hospital's policies and procedures.
6. Participation in a regular cycle of appraisal and review of performance and developmental needs.

**SERVITE COLLEGE COUNCIL INC. NON-TEACHING STAFF ENTERPRISE BARGAINING AGREEMENT 1999.**  
**No. AG 61 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Servite College Council Inc

and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

No. AG 61 of 1999.

18 August 1999.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT**  
**No. AG 61 of 1999.**

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Servite College Council Inc. Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 26 March 1999 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,  
Commissioner.

[L.S.]

Schedule.

**PART I**  
**PARAMETERS**

1.—TITLE

This Agreement shall be known as the "Servite College Council Inc. Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "Servite College Council Inc Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause Clause Title  
No.

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

Part II General Conditions of Service

10. Contract Of Service
11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages

56. Laundry And Uniforms

57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

### 3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

### 4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

### 5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 19.

### 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides'/ Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

### 7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

### 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

### 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the

State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

## PART II

### GENERAL CONDITIONS OF SERVICE

#### 10.—CONTRACT OF SERVICE

(1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.

(b) This shall include statements of—

- (i) the classification ;
- (ii) the salary step relevant to the appointment;
- (iii) the number of hours per week;
- (iv) the weeks per year the employee is engaged for;
- (v) whether the position is temporary; and/or
- (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

(3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

(1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

(2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

(3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.

(b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

14.—FAMILY LEAVE

(1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family;
    - or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and
    - (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
  - (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Use of unpaid leave

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

15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(1) Maternity Leave

- (a) Nature of leave  
Maternity leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
  - (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
  - (iii) Child means a child of the employee under the age of one year.
  - (iv) Spouse includes a former spouse.
  - (v) Continuous service means service under an unbroken contract(s) of employment and includes—
    - (aa) any period of leave taken in accordance with this clause;
    - (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for maternity leave
- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this

- clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.
- (d) Certification  
At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—
- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (f) Transfer to a safe job
- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.
- (g) Variation of Period of Maternity Leave
- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
- (i) Where the pregnancy of a employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
- (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
- (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where a employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.
- Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause,

- an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) Effect of Maternity Leave on Employment  
Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) Termination of Employment
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of a employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) Paternity Leave
- (a) Nature of Leave  
Paternity leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
- (aa) any period of leave taken in accordance with this clause;
- (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for paternity leave  
A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
- (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification  
At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
- (aa) he will take that period of paternity leave to become the primary care-giver of a child;
- (bb) particulars of any period of maternity leave sought or taken by his spouse; and
- (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
- (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
- (aa) the birth occurring earlier than the expected date; or
- (bb) the death of the mother of the child; or
- (cc) other compelling circumstances.

- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
  - (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
 

Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
  - (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
 

Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
  - (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
  - (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
  - (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
  - (a) Nature of Leave
 

Adoption leave is unpaid leave.
  - (b) Definitions
 

For the purposes of this clause—

    - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
    - (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
    - (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
    - (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
    - (v) Spouse includes a former spouse.
    - (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
      - (aa) any period of leave taken in accordance with this clause;
      - (bb) any period of leave or absence authorised by the employer or by the award.
  - (c) Eligibility for adoption leave—
 

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

    - (i) an unbroken period of up to three weeks at the time of placement of the child;
    - (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
      - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
      - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
    - (iii) the employee must have had at least 12 months' continuous service within Catholic Education

- immediately preceding the date which he or she proceeds on such leave in either case.
- (d) Certification
- (i) Before taking adoption leave the employee must produce to the employer—
- (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
- (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
- (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
- (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
- (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.
- (e) Notice requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

## (m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

## 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

## 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

#### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons allowance	Single Persons allowance
	\$ per week	\$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

#### 25.— SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

##### (1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

(i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and

(ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect of the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

##### (2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

##### (3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

(a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or

(b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or

(c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;

(d) was not contributing to a superannuation fund for employees covered by this Agreement; and

(i) written notice of the proposed alternative superannuation fund is given to the Union; and

(ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and

(iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

#### Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

(b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;

(c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;

(d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

(e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;

(f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

(g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

(h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

(a) taxation;

(b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

## 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

## 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

## 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

## PART III

## TEACHER'S AIDES' / TEACHING ASSISTANTS

## 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

## 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

### 32.—CLASSIFICATIONS

#### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1

Exit Step 5

#### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

#### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

#### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

#### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

### PART IV SCHOOL EMPLOYEES

#### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee

shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
- (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.

(3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.

(b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone				
Groundsperson / Handyperson Grade 1				
Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2				
First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson				
Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

PART V

ADMINISTRATIVE AND TECHNICAL OFFICERS

42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998	Payable on and from 1 January 1999
	(3%)	(2.75%)
LEVEL 1	Annual Rate \$	Annual Rate \$
	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
LEVEL 2	23188.46	23826.14
	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
LEVEL 4	31193.62	32051.44
	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

- (b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.
- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
- Such reasons should indicate the areas where the employer considers improvement is required.
  - If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

#### (2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

#### 45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

##### (1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

- (b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

##### (2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

##### (3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

##### (4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

#### PART VI

#### (BOARDING HOUSE) SUPERVISORS

##### 46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

##### 47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- the name of the employee/s;
- the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

(a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

(b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

(c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in

accordance with either federal legislation or an employer's contributory superannuation fund.

50.—CLASSIFICATIONS

(1) "Houseparent"—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) "Part-Time Supervisor"—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) "Relief Supervisor"—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) "Senior Supervisor"—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) "Shift"—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) "Supervisor"—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

52.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

**PART VII  
NURSES**

53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered,

and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

### Appendix A PARTIES BOUND

#### Employer Parties

Servite College Council Inc 2 Morgan Street  
Tuart Hill WA 6060

#### Union Parties

Australian Liquor, Hospitality and Miscellaneous Workers Union  
Miscellaneous Workers Division  
Western Australian Branch 61 Thomas Street  
Subiaco WA 6008

Australian Nursing Federation  
Western Australian Branch  
Industrial Union of Workers Level 2  
322 Hay Street  
Subiaco WA 6008

The Independent Schools Salaried  
Officers' Association of Western  
Australia, Industrial Union of Workers 143 Edward Street  
East Perth WA 6004

### Appendix B AWARDS

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991

Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990

Nurses (Independent Schools) Award No. 21B of 1962

School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979

Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

### ENDORSEMENTS

Signed for and on behalf of—

The Independent Schools Salaried Officers'  
Association of Western Australia,  
Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation  
Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and  
Miscellaneous Workers Union—  
Miscellaneous Division WA Branch (Signed S.M. Jackson)

Servite College Council Inc (Signed Fr. Christopher  
Ross, O.S.M.)

Signed for and on behalf of—

The Independent Schools Salaried  
Officers' Association of Western  
Australia, Industrial Union of Workers (Signed I. Sands)

(Signed T. Howe)

Common Seal

**SISTERS' OF THE GOOD SHEPHERD INC. NON-TEACHING STAFF ENTERPRISE BARGAINING AGREEMENT 1999.**  
**No. AG 58 of 1999.**

WESTERN AUSTRALIAN  
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sisters' of the Good Shepherd Inc

and

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

and

The Australian Nursing Federation Western Australian  
 Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
 Western Australia, Industrial Union of Workers

No. AG 58 of 1999.

18 August 1999.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT**  
 No. AG 58 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Sisters' of the Good Shepherd Inc. Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 26 March 1999 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,  
 Commissioner.

[L.S.]

Schedule.

**PART I**  
**PARAMETERS**

1.—TITLE

This Agreement shall be known as the "Sisters' of the Good Shepherd Inc. Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "Sisters' of the Good Shepherd Inc Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause No. Clause Title

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

Part II General Conditions of Service

10. Contract Of Service

11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

3.—TERM

- (1) This Agreement shall—
  - (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
  - (b) to expire on the 31st December 1999.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic

Schools in Western Australia will be in accordance with the following awards—

- Independent Schools Administrative and Technical Officers Award 1993;
- School Employees (Independent Day & Boarding Schools) Award 1980;
- Teachers' Aides' (Independent Schools) Award 1988;
- Independent School (Boarding House) Supervisory Staff Award;
- Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 1.

#### 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

- Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;
- School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;
- Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;
- (Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;
- Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

#### 7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

#### 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

#### 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

### PART II

#### GENERAL CONDITIONS OF SERVICE

##### 10.—CONTRACT OF SERVICE

- (1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.
- (b) This shall include statements of—
  - (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

- (3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

(1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

(2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

(1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.

(b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.

(c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.

(d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.

(e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

(3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.

(b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

(1) Use of sick leave

(a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.

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

(c) The entitlement to use sick leave is subject to—

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

(ii) the person concerned being either—  
(aa) a member of the employee's immediate family;  
or  
(bb) a member of the employee's household.

(iii) the term "immediate family" includes—  
(aa) a spouse (including a former spouse), of the employee; and

(bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.

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

(2) Use of unpaid leave

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

#### 15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(1) Maternity Leave

(a) Nature of leave

Maternity leave is unpaid leave.

(b) Definitions

For the purposes of this clause—

(i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

(ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.

(iii) Child means a child of the employee under the age of one year.

(iv) Spouse includes a former spouse.

(v) Continuous service means service under an unbroken contract(s) of employment and includes—

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

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

(c) Eligibility for maternity leave

(i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

(ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.

(iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

(d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

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

- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.
- (e) Notice requirements
  - (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
  - (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
  - (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
  - (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (f) Transfer to a safe job
  - (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
  - (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.
- (g) Variation of Period of Maternity Leave
  - (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
  - (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
  - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
  - (i) Where the pregnancy of a employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
    - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where a employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
  - (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.
 

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
  - (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) Effect of Maternity Leave on Employment
 

Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) Termination of Employment
  - (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
  - (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of a employee proceeding on maternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) Paternity Leave
- (a) Nature of Leave  
Paternity leave is unpaid leave.
  - (b) Definitions  
For the purposes of this clause—
    - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
    - (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
    - (iii) Child means a child of the employee or the employee's spouse under the age of one year.
    - (iv) Spouse includes a former spouse.
    - (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
    - (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
      - (aa) any period of leave taken in accordance with this clause;
      - (bb) any period of leave or absence authorised by the employer or by the award.
  - (c) Eligibility for paternity leave  
A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—
    - (i) an unbroken period of up to one week at the time of confinement of his spouse;
    - (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
    - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
  - (d) Certification  
At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
    - (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
    - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
      - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
      - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
      - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
  - (e) Notice requirements
    - (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
    - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
      - (aa) the birth occurring earlier than the expected date; or
      - (bb) the death of the mother of the child; or
      - (cc) other compelling circumstances.
    - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
  - (f) Variation of Period of Paternity Leave
    - (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
    - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
    - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
  - (g) Cancellation of Paternity Leave  
Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

- (h) **Paternity Leave and Other Leave Entitlements**
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) **Effect of Paternity Leave on Employment**  
Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) **Termination of Employment**
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) **Return to Work After Paternity Leave**
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) **Replacement Employees**
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) **Adoption Leave**
- (a) **Nature of Leave**  
Adoption leave is unpaid leave.
  - (b) **Definitions**  
For the purposes of this clause—
    - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
    - (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
    - (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
    - (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
    - (v) Spouse includes a former spouse.
    - (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
      - (aa) any period of leave taken in accordance with this clause;
      - (bb) any period of leave or absence authorised by the employer or by the award.
- (c) **Eligibility for adoption leave—**  
An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to three weeks at the time of placement of the child;
  - (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
    - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
    - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
  - (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.
- (d) **Certification**
- (i) Before taking adoption leave the employee must produce to the employer—
    - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
    - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
  - (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
    - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
    - (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

## (e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

## (f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

## (h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

## (i) Adoption Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

## (j) Effect of Adoption Leave on Employment

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

## (k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

## (m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated

before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

## 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

## 21.— HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

## 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

## 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

**Rates of Hire for use of Employee's own Vehicle on Employer's Business**

## Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

## Schedule 2—Motor Cycle Allowances

All Areas of State	Rate c/km
	17.8

## 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be

shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons allowance	Single Persons allowance
	\$ per week	\$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- is provided with board and lodging by his/her employer, free of charge; or
- is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.— SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

- An employer shall contribute to superannuation for each employee in accordance with Federal

Legislation to one of the following approved superannuation funds—

- (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
  - (ii) an exempted fund allowed by subclause (3) of this clause.
- (b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.
- (c) “Ordinary Time Earnings” means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

- (a) “Eligible Employee” shall mean a full-time or part-time employee who earns more than \$450.00 per month.
- (b) An employee shall not be eligible to join the fund until he/she has completed one month’s satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee’s commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;

- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee’s name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer’s office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and

- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

##### (4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

##### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

- (b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

##### 32.—CLASSIFICATIONS

###### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1

Exit Step 5

###### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

#### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

#### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

#### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

## PART IV SCHOOL EMPLOYEES

### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per

week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

### 35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
  - (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.
- (3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.
- (b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant House Attendant Dining Attendant Laundry Attendant Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$

**Level 5**

First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
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**Level 6**

Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
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**Level 7**

Senior Groundsperson / Handyperson Tradesperson Cook	12.82	25410.21	13.17	26108.99
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**Level 8**

Head Groundsperson	15.24	30213.21	15.66	31044.07
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(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

Under 16 years of age	60
16 to 17 years of age	70
17 to 18 years of age	80

(3) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

#### 40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

#### 41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

### PART V

#### ADMINISTRATIVE AND TECHNICAL OFFICERS

#### 42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work

and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

#### 43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

#### 44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

(b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.

(c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an

employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
  - (i) Such reasons should indicate the areas where the employer considers improvement is required.
  - (ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.
- (b) Examples of positions which may appropriately be classified as Level 1—  
General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.
- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—  
Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

(3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake

complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

(4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

**PART VI  
(BOARDING HOUSE) SUPERVISORS**

46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;
- (b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- (c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

#### 49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

##### (a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

##### (b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

##### (c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

#### 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

#### 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

(1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.

(2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

#### 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

#### 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining

the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

#### Appendix A PARTIES BOUND

##### Employer Parties

Sisters' of the Good Shephard Inc 19 Bronte Street  
East Perth WA 6004

##### Union Parties

Australian Liquor, Hospitality  
and Miscellaneous Workers Union  
Miscellaneous Workers Division  
Western Australian Branch 61 Thomas Street  
Subiaco WA 6008

Australian Nursing Federation  
Western Australian Branch  
Industrial Union of Workers Level 2  
322 Hay Street  
Subiaco WA 6008

The Independent Schools Salaried  
Officers' Association of Western  
Australia, Industrial Union of Workers 143 Edward Street  
East Perth WA 6004

#### Appendix B AWARDS

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991

Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990

Nurses (Independent Schools) Award No. 21B of 1962  
School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979  
Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

#### ENDORSEMENTS

Signed for and on behalf of—

The Independent Schools Salaried Officers'  
Association of Western Australia,  
Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation  
Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and  
Miscellaneous Workers Union—  
Miscellaneous Division WA Branch (Signed S.M. Jackson)

Sisters' of the Good Shephard Inc. (Signed Sr. McClements)

Signed for and on behalf of—

The Independent Schools Salaried  
Officers' Association of Western  
Australia, Industrial Union of Workers (Signed I. Sands)

(Signed T. Howe)

Common Seal

#### THE SISTERS OF MERCY PERTH (AMALGAMATED) INC. NON-TEACHING STAFF ENTERPRISE BARGAINING AGREEMENT 1999. No. AG 50 of 1999.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Sisters of Mercy Perth (Amalgamated) Inc  
and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

No. AG 50 of 1999.

18 August 1999.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 50 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Sisters of Mercy Perth (Amalgamated) Inc. Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 23 March 1999 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,  
Commissioner.

[L.S.]

## Schedule.

**PART I  
PARAMETERS**

## 1.—TITLE

This Agreement shall be known as the “The Sisters of Mercy Perth (Amalgamated) Inc. Non-Teaching Staff Enterprise Bargaining Agreement, 1999” and shall replace the “The Sisters of Mercy Perth (Amalgamated) Inc Non-Teaching Staff Enterprise Bargaining Agreement, 1997.”

## 2.—ARRANGEMENT

Clause Clause Title  
No.

## Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

## Part II General Conditions of Service

10. Contract Of Service
11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

## Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

## Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

## Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

## Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

## Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages

56. Laundry And Uniforms

57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

## 3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

## 4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

## 5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 60.

## 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

## 7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

## 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

## 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the

State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

## PART II GENERAL CONDITIONS OF SERVICE

### 10.—CONTRACT OF SERVICE

(1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.

- (b) This shall include statements of—
- (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

(3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

### 11.—OTHER LEAVE

#### (1) Bereavement Leave

(a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.

(b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

#### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

### 13.—SICK LEAVE

(1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.

(b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.

(c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.

(d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.

(e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

(3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.

(b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

## 14.—FAMILY LEAVE

## (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family; or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and
    - (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
  - (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

## (2) Use of unpaid leave

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

## 15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

## (1) Maternity Leave

- (a) Nature of leave  
Maternity leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
  - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
  - (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
  - (iii) Child means a child of the employee under the age of one year.
  - (iv) Spouse includes a former spouse.
  - (v) Continuous service means service under an unbroken contract(s) of employment and includes—
    - (aa) any period of leave taken in accordance with this clause;
    - (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for maternity leave
  - (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this

clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.

- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.
- (d) Certification  
At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—
  - (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
  - (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.
- (e) Notice requirements
  - (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
  - (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
  - (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
  - (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (f) Transfer to a safe job
  - (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
  - (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.
- (g) Variation of Period of Maternity Leave
  - (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing

- stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
  - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
    - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
  - (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.
 

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) Maternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause,
    - an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
    - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) Effect of Maternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) Termination of Employment
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (m) Return to Work After Maternity Leave
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
  - (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) Paternity Leave
- (a) Nature of Leave
 

Paternity leave is unpaid leave.
  - (b) Definitions
 

For the purposes of this clause—

    - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.

- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
  - (iii) Child means a child of the employee or the employee's spouse under the age of one year.
  - (iv) Spouse includes a former spouse.
  - (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
  - (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
    - (aa) any period of leave taken in accordance with this clause;
    - (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for paternity leave
- A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to one week at the time of confinement of his spouse;
  - (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
  - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
  - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
    - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
  - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
    - (aa) the birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.

## (l) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## (3) Adoption Leave

## (a) Nature of Leave

Adoption leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for adoption leave—

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
  - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
- (iii) the employee must have had at least 12 months' continuous service within Catholic Education

immediately preceding the date which he or she proceeds on such leave in either case.

## (d) Certification

- (i) Before taking adoption leave the employee must produce to the employer—
  - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
  - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
  - (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

## (e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

## (f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions

- outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

(a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.

(b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

(c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

(d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

(a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;

(b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

(a) by their death;

(b) in any circumstances, other than serious misconduct, the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

#### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons allowance		Single Persons allowance	
	\$ per week		\$ per week	
Balgo Hills	144.10	72.05		
Boulder	13.20	6.60		
Beagle Bay	130.20	65.10		
Billiluna	144.10	72.05		
Broome	94.00	47.00		
Carnarvon	41.34	20.67		
Derby	98.00	49.00		
Esperance	25.38	12.69		
Gibb River	144.10	72.05		
Kalgoorlie	13.20	6.60		
Karratha	99.20	49.60		
Kununurra	123.00	61.50		
La-djardar Bay	130.20	65.10		
Lake Gregory	144.10	72.05		
Lombadina	130.20	65.10		
Port Hedland	92.52	46.26		
Red Hill	123.00	61.50		
Ringer Soak	144.10	72.05		
Southern Cross	24.24	12.12		
Tardun	17.84	8.92		
Turkey Creek	130.20	65.10		
Wyndham	120.00	60.00		

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- is provided with board and lodging by his/her employer, free of charge; or
- is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

#### 25.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

(i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and

(ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

(a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or

(b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or

(c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;

(d) was not contributing to a superannuation fund for employees covered by this Agreement; and

(i) written notice of the proposed alternative superannuation fund is given to the Union; and

(ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and

- (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

#### Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
- (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by an employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III TEACHER'S AIDES' / TEACHING ASSISTANTS

#### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

#### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved

superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 32.—CLASSIFICATIONS

##### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1

Exit Step 5

##### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

##### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

##### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

##### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

## PART IV SCHOOL EMPLOYEES

### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
- (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
- (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.

(6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.

(b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than

any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

### 35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
- (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.

(3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.

(b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

### 36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

### 37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone				
Groundsperson / Handyperson Grade 1				
Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2				
First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson				
Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

PART V

ADMINISTRATIVE AND TECHNICAL OFFICERS

42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

- (b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.
- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
  - (i) Such reasons should indicate the areas where the employer considers improvement is required.
  - (ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.- Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

- (b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.— Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

(3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

(4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

## PART VI

### (BOARDING HOUSE) SUPERVISORS

#### 46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

#### 47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- the name of the employee/s;
- the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

#### 48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

#### 49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

(a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

(b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

(c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in

accordance with either federal legislation or an employer's contributory superannuation fund.

#### 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

#### 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

#### 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

#### 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

#### 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further

payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

**Appendix A  
PARTIES BOUND**

**Employer Parties**

The Sisters of Mercy Perth  
(Amalgamated) Inc 20 Barret Street  
Wembley WA 6014

**Union Parties**

Australian Liquor, Hospitality  
and Miscellaneous Workers Union 61 Thomas Street  
Subiaco WA 6008  
Miscellaneous Workers Division  
Western Australian Branch  
Australian Nursing Federation Level 2  
Western Australian Branch 322 Hay Street  
Industrial Union of Workers Subiaco WA 6008  
The Independent Schools Salaried  
Officers' Association of Western 143 Edward Street  
Australia, Industrial Union of Workers East Perth WA 6004

**Appendix B  
AWARDS**

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991  
Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990  
Nurses (Independent Schools) Award No. 21B of 1962  
School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979  
Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

**ENDORSEMENTS**

Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and Miscellaneous Workers Union—Miscellaneous Division WA Branch (Signed S.M. Jackson)

The Sisters of Mercy Perth (Amalgamated) Inc (Signed L. O'Brien)

Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)  
(Signed T. Howe)

*Common Seal*

**THE SISTERS OF MERCY WEST PERTH  
CONGREGATION NON-TEACHING STAFF  
ENTERPRISE BARGAINING AGREEMENT 1999.  
No. AG 51 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Sisters of Mercy West Perth Congregation

and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

No. AG 51 of 1999.

18 August 1999.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 51 of 1999.**

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Sisters of Mercy West Perth Congregation Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 23 March 1999 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,  
Commissioner.

[L.S.]

Schedule.

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "The Sisters of Mercy West Perth Congregation Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "The Sisters of Mercy West Perth Congregation Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause Clause Title  
No.

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

Part II General Conditions of Service

10. Contract Of Service

11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

Appendix A Parties Bound

Appendix B Awards

Endorsements

3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic

Schools in Western Australia will be in accordance with the following awards—

- Independent Schools Administrative and Technical Officers Award 1993;
- School Employees (Independent Day & Boarding Schools) Award 1980;
- Teachers' Aides' (Independent Schools) Award 1988;
- Independent School (Boarding House) Supervisory Staff Award;
- Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 40.

6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

- Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;
- School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;
- Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;
- (Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;
- Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

**PART II**

**GENERAL CONDITIONS OF SERVICE**

10.—CONTRACT OF SERVICE

- (1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.
- (b) This shall include statements of—
  - (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.
- (2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.
- (3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family;
    - or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and

- (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
- (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Use of unpaid leave

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

15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(1) Maternity Leave

(a) Nature of leave

Maternity leave is unpaid leave.

(b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

(d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any

act inconsistent with her contract of employment.

(e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.

(g) Variation of Period of Maternity Leave

- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

## (i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
  - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
  - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.

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

## (j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

## (k) Effect of Maternity Leave on Employment

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

## (l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

## (n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## (2) Paternity Leave

## (a) Nature of Leave

Paternity leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for paternity leave

A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

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

- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
  - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
  - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
    - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
  - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
    - (aa) the birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
  - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave
- Adoption leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for adoption leave—

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
  - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
- (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.

## (d) Certification

- (i) Before taking adoption leave the employee must produce to the employer—
  - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
  - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

## (e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

## (f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

## (h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure.

Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

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

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

## 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons	Single Persons
	allowance \$ per week	allowance \$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

- (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
- (ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

- (i) the fund or scheme is a complying fund or scheme within the meaning of the

Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

- (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

#### (3)(a) Child Care Workers

	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

### 32.—CLASSIFICATIONS

#### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1  
Exit Step 5

#### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6  
Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

#### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8  
Exit Step 10

#### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

#### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13  
Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

**PART IV  
SCHOOL EMPLOYEES**

**34.—HOURS**

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

**35.—ROSTERS**

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
  - (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.
- (3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at

such times and place as the record book is so open for inspection.

- (b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

**36.—OVERTIME**

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

**37.—WEEKEND WORK**

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**38.—WAGES**

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer’s contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person’s duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years’ experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

- (1) Where employees are required to work in water they shall be supplied with rubber boots.
- (2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.
- (3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.
- (4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

**PART V  
ADMINISTRATIVE AND TECHNICAL OFFICERS**

42.—HOURS

- (1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.
- (2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—  
The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.
- (3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.
- (4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee’s ordinary rate of pay or be given

paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

(b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.

(c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

(d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.

(e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.

(i) Such reasons should indicate the areas where the employer considers improvement is required.

(ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.

(f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.

(g) The years of experience are indicated by the equivalent number of steps from the entry level.

(h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.

(i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

(a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

(b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

(a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

(b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

## (3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

## (4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

**PART VI****(BOARDING HOUSE) SUPERVISORS****46.—HOURS**

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

**47.—ROSTERS**

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;
- (b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- (c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

**48.—VACATION LEAVE**

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an

employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

**49.—SALARIES**

(1) The minimum annual salary payable to employees shall be as follows—

## (a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

## (b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

## (c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**50.—CLASSIFICATIONS**

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **“Supervisor”**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

#### 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

#### 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

#### 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

#### 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

### Appendix A PARTIES BOUND

#### Employer Parties

The Sisters of Mercy West Perth Congregation 60 John Street Northbridge WA 6003

#### Union Parties

Australian Liquor, Hospitality and Miscellaneous Workers Union Subiaco WA 6008

Miscellaneous Workers Division Western Australian Branch

Australian Nursing Federation Western Australian Branch Level 2 322 Hay Street Subiaco WA 6008

Industrial Union of Workers The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers 143 Edward Street East Perth WA 6004

**Appendix B  
AWARDS**

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991  
 Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990  
 Nurses (Independent Schools) Award No. 21B of 1962  
 School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979  
 Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

**ENDORSEMENTS**

Signed for and on behalf of—  
 The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)  
 Australian Nursing Federation Industrial Union of Workers Perth (Signed M. Olsen)  
 Australian Liquor Hospitality and Miscellaneous Workers Union—Miscellaneous Division WA Branch (Signed S.M. Jackson)  
 The Sisters of Mercy West Perth Congregation (Signed K. F. Bolwell)

Signed for and on behalf of—  
 The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (Signed I. Sands)  
 (Signed T. Howe)

*Common Seal*

**THE SISTERS OF THE HOLY FAMILY OF  
NAZERETH NON-TEACHING STAFF ENTERPRISE  
BARGAINING AGREEMENT 1999.  
No. AG 57 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Sisters of the Holy Family of Nazereth  
and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers.

No. AG 57 of 1999.

18 August 1999.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 57 of 1999.**

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Sisters of the Holy Family of Nazereth Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 26 March 1999 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,  
Commissioner.

[L.S.]

Schedule.

**PART I  
PARAMETERS**

1.—TITLE

This Agreement shall be known as the "The Sisters of the Holy Family of Nazereth Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "The Sisters of the Holy Family of Nazereth Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause Clause Title  
No.

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

Part II General Conditions of Service

10. Contract Of Service
11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

## Part VI (Boarding House) Supervisors

- 46. Hours
- 47. Rosters
- 48. Vacation Leave
- 49. Salaries
- 50. Classifications
- 51. Lodging Conditions
- 52. General Conditions

## Part VII Nurses

- 53. Time Off Duty
- 54. Vacation Leave
- 55. Wages
- 56. Laundry And Uniforms
- 57. Board And Lodging

## Appendix A Parties Bound

## Appendix B Awards

## Endorsements

## 3.—TERM

(1) This Agreement shall—

- (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
- (b) to expire on the 31st December 1999.

## 4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

## 5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 15.

## 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

## 7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different

categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

## 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

## 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

## PART II

## GENERAL CONDITIONS OF SERVICE

## 10.—CONTRACT OF SERVICE

(1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.

(b) This shall include statements of—

- (i) the classification ;
- (ii) the salary step relevant to the appointment;
- (iii) the number of hours per week;
- (iv) the weeks per year the employee is engaged for;
- (v) whether the position is temporary; and/or
- (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

(3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

(b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.

(c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.

(d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill,

competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.
- (4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family; or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and
    - (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
  - (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

##### (2) Use of unpaid leave

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

#### 15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

##### (1) Maternity Leave

- (a) Nature of leave  
Maternity leave is unpaid leave.
- (b) Definitions  
For the purposes of this clause—
  - (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
  - (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
  - (iii) Child means a child of the employee under the age of one year.

- (iv) Spouse includes a former spouse.
- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for maternity leave
  - (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
  - (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
  - (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.
- (d) Certification
 

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

  - (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
  - (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.
- (e) Notice requirements
  - (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
  - (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
  - (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
  - (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (f) Transfer to a safe job
  - (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
    - (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.
- (g) Variation of Period of Maternity Leave
  - (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
  - (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
  - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
  - (i) Where the pregnancy of a employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
    - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
    - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where a employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
  - (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.

- Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (j) **Maternity Leave and Other Leave Entitlements**
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) **Effect of Maternity Leave on Employment**
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) **Termination of Employment**
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (m) **Return to Work After Maternity Leave**
- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.
- (n) **Replacement Employees**
- (i) A replacement employee is an employee specifically engaged as a result of a employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (2) **Paternity Leave**
- (a) **Nature of Leave**
- Paternity leave is unpaid leave.
- (b) **Definitions**
- For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
- (aa) any period of leave taken in accordance with this clause;
- (bb) any period of leave or absence authorised by the employer or by the award.
- (c) **Eligibility for paternity leave**
- A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to one week at the time of confinement of his spouse;
- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
- (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) **Certification**
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
- (aa) he will take that period of paternity leave to become the primary care-giver of a child;
- (bb) particulars of any period of maternity leave sought or taken by his spouse; and
- (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) **Notice requirements**
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates

- on which he proposed to start and finish the period or periods of leave.
- (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
- (aa) the birth occurring earlier than the expected date; or
- (bb) the death of the mother of the child; or
- (cc) other compelling circumstances.
- (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave
- Adoption leave is unpaid leave.
- (b) Definitions
- For the purposes of this clause—
- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or stepchild of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
- (aa) any period of leave taken in accordance with this clause;
- (bb) any period of leave or absence authorised by the employer or by the award.
- (c) Eligibility for adoption leave—
- An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—
- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the

- placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
- (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
- (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.
- (d) Certification
- (i) Before taking adoption leave the employee must produce to the employer—
    - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
    - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
  - (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
    - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
    - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
    - (cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.
- (e) Notice requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
  - (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
  - (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
  - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
  - (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (f) Variation of Period of Adoption Leave
- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
  - (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
  - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (h) Special Leave
- The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.
- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior

to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.

- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.

- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

- (2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

- (b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or  
 (b) 4 hours for school employees; or  
 (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

#### 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons allowance	Single Persons allowance
	\$ per week	\$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

- (b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

#### 25.— SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

- (a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—
  - (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and
  - (ii) an exempted fund allowed by subclause (3) of this clause.
- (b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.
- (c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

- (a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.
- (b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or
- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or
- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;
- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and
  - (i) written notice of the proposed alternative superannuation fund is given to the Union; and
  - (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and
  - (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

#### Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make

contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;  
(b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.  
(b) The nature of their work.  
(c) The hours worked each day and each week.  
(d) The wages and overtime (if any) paid each week.  
(e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and  
(b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.  
(b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.  
(c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.  
(d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

### PART III

#### TEACHER'S AIDES' / TEACHING ASSISTANTS

##### 30.—HOURS

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

##### 31.—WAGES

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

### 32.—CLASSIFICATIONS

#### Level One

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1  
Exit Step 5

#### Level Two

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6  
Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

#### Level Three

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8  
Exit Step 10

#### Level Four

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

##### Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

##### Step 12

#### Level Five

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

### 33.—VACATION LEAVE

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

### PART IV SCHOOL EMPLOYEES

#### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- Three agreed days during the first school term vacation in each year.
- Two agreed days during each of the other school term vacations.
- Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and

by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

### 35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

- (2) Such roster shall show—
- (a) the name of each employee; and
  - (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.
- (3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.
- (b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

### 36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

### 37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

#### (2) General Conditions

- (a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.
- (b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

### 38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant				
House Attendant				
Dining Attendant				
Laundry Attendant				
Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone				
Groundsperson / Handyperson Grade 1				
Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2				
First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson				
Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

## (3) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment and outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

## 40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

## 41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

## PART V

## ADMINISTRATIVE AND TECHNICAL OFFICERS

## 42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

## 43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of that calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
LEVEL 2	23188.46	23826.14
	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
LEVEL 3	26224.90	26946.08
	26776.98	27513.35
	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
LEVEL 4	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

- (b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.
- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
  - (i) Such reasons should indicate the areas where the employer considers improvement is required.
  - (ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.

- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

- (1) Level 1.
  - (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.
  - (b) Examples of positions which may appropriately be classified as Level 1—  
General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.
- (2) Level 2.
  - (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.
  - (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—  
Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.
- (3) Level 3.
  - (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.
  - (b) Examples of positions which may appropriately be classified as Level 3:  
Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.
- (4) Level 4.
  - (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.  
An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.
  - (b) Examples of positions which may appropriately be classified as Level 4—  
Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

**PART VI  
(BOARDING HOUSE) SUPERVISORS**

**46.—HOURS**

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

**47.—ROSTERS**

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- (a) the name of the employee/s;
- (b) the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- (c) the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

**48.—VACATION LEAVE**

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

**49.—SALARIES**

(1) The minimum annual salary payable to employees shall be as follows—

(a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

(b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

(c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**50.—CLASSIFICATIONS**

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

**51.—LODGING CONDITIONS**

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

**52.—GENERAL CONDITIONS**

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

**PART VII  
NURSES**

**53.—TIME OFF DUTY**

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

## 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

## 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

## 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

## 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

### Appendix A PARTIES BOUND

#### Employer Parties

The Sisters of the Holy Family  
of Nazereth 15 Carinya Place  
Castle Hill NSW 2154

#### Union Parties

Australian Liquor, Hospitality  
and Miscellaneous Workers Union 61 Thomas Street  
Subiaco WA 6008  
Miscellaneous Workers Division  
Western Australian Branch

Australian Nursing Federation Level 2  
Western Australian Branch 322 Hay Street  
Industrial Union of Workers Subiaco WA 6008

The Independent Schools Salaried 143 Edward Street  
Officers' Association of Western East Perth WA 6004  
Australia, Industrial Union of Workers

### Appendix B AWARDS

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991

Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990

Nurses (Independent Schools) Award No. 21B of 1962

School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979

Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

### ENDORSEMENTS

Signed for and on behalf of—

The Independent Schools Salaried Officers'  
Association of Western Australia,  
Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation  
Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and  
Miscellaneous Workers Union—  
Miscellaneous Division WA Branch (Signed S.M. Jackson)

The Sisters of the Holy Family  
of Nazereth (Signed Sr. Helen Tereba)

Signed for and on behalf of—

The Independent Schools Salaried  
Officers' Association of Western  
Australia, Industrial Union of Workers (Signed I. Sands)

(Signed T. Howe)

Common Seal

**TOTALISATOR AGENCY BOARD OF WESTERN AUSTRALIA ENTERPRISE AGREEMENT 1999.**

**No. PSA AG 27 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Civil Service Association of Western Australia Incorporated  
and

Totalisator Agency Board of Western Australia

No. PSA AG 27 of 1999.

20 August 1999.

*Order.*

**REGISTRATION OF AN INDUSTRIAL AGREEMENT**  
No. PSA AG 27 of 1999.

HAVING heard Mr K Ross on behalf of the first named party and Ms C Holmes on behalf of the second named party; and

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

WHEREAS the Arbitrator is satisfied that the aforementioned agreement complies with the Industrial Relations Act, 1979;

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

THAT the agreement titled the Totalisator Agency Board of Western Australia Enterprise Agreement 1999, filed in the Commission on 29 July 1999 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,

[L.S.] Public Service Arbitrator.

**AGREEMENT**

**1.—TITLE**

This Agreement shall be known as the Totalisator Agency Board of Western Australia Enterprise Bargaining Agreement 1999.

**2.—ARRANGEMENT**

1. Title
  2. Arrangement
  3. Scope
  4. Parties to the Agreement
  5. Number of Employees Covered
  6. Definitions
  7. Date And Operation of Agreement
  8. No Further Claims
  9. Relationship to Parent Awards
  10. Re-Open Negotiations
  11. Availability of Agreement
  12. Dispute Resolution Procedure
  13. Productivity Measurement
  14. Productivity Initiatives
  15. Salary Increases
- Signatures of Parties to Agreement  
Schedule A: Salaries  
Schedule B: Total Factor Productivity Model

**3.—SCOPE**

This Enterprise Bargaining Agreement shall apply to all Totalisator Agency Board of Western Australia employees, including Senior Executive Service employees, who are members of or eligible to be members of the Union party to this agreement.

**4.—PARTIES TO THE AGREEMENT**

This Agreement is made between the Totalisator Agency Board of Western Australia and the Civil Service Association of Western Australia (Inc).

**5.—NUMBER OF EMPLOYEES COVERED**

As at the date of registration the approximate number of employees covered by this Agreement is four.

**6.—DEFINITIONS**

In this Agreement, the following terms shall have the following meanings.

“Agreement”—The Totalisator Agency Board Enterprise Bargaining Agreement 1999.

“Board”—The Western Australian Totalisator Agency Board

“Employee”—for the purposes of this Agreement, a person referred to at Clause 3 .- Scope.

“Employer”—The Totalisator Agency Board of Western Australia

“GOSAC”—Government Officers Salaries, Allowances and Conditions Award 1989.

“Parties”—The Totalisator Agency Board of Western Australia and the Civil Service Association of Western Australia (Inc).

“Union”—Civil Service Association of Western Australia Inc.

“WAIRC”—The Western Australian Industrial Relations Commission

**7.—DATE AND OPERATION OF AGREEMENT**

7.1. This Agreement shall operate from the date of registration in the WAIRC and shall remain in force for a period of 12 months.

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

7.3. 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 salary rate is higher in which case the award salary rate shall apply.

7.4. This Agreement will continue in force until replaced by a subsequent Agreement or until such time as either party withdraws from the agreement by notification in writing to the other party and to the WAIRC.

**8.—NO FURTHER CLAIMS**

The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases claimed or granted except as provided for under the terms of this Agreement or in accordance with any decision of the WAIRC arising from a State Wage Case.

**9.—RELATIONSHIP TO PARENT AWARDS**

This Agreement shall be read in conjunction with the award applicable to the parties to this Agreement. In the case of any inconsistencies, this Agreement shall have precedence to the extent of any inconsistencies. Where this agreement is silent the award shall apply. The relevant award is—

Government Officers Salaries Allowances and Conditions Award 1989

**10.—RE-OPEN NEGOTIATIONS**

The parties agree to commence negotiations for a replacement Agreement no later than three months prior to the expiration of this Agreement.

**11.—AVAILABILITY OF AGREEMENT**

Each employee is entitled to a copy of this Agreement. In addition, a copy or copies of this Agreement will be kept in an easily accessible place or places within the agency, and the location of the copies will be communicated to all employees.

**12.—DISPUTE RESOLUTION PROCEDURE**

12.1. This dispute settlement procedure will apply to any questions, disputes or difficulties that may arise under this Agreement.

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

12.3. If the matter is not resolved within 5 working days following the discussion in accordance with 12.2 above, the matter shall be referred by the Union representative or employee to the employer for resolution.

12.4. If the matter is not resolved within 5 working days of the Union representative's or employee's notification of the dispute to the employer, it may be referred by the Union or the employer to the WAIRC.

### 13.—PRODUCTIVITY MEASUREMENT

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

13.2. The parties agree, for the term of this Agreement, to assess organisational productivity using the Totalisator Agency Board of Western Australia Total Factor Productivity Model (Schedule B to this agreement).

### 14.—PRODUCTIVITY INITIATIVES

The parties agree, throughout the duration of this Agreement, to confer, discuss and progress productivity initiatives designed to enhance organisational performance and workplace efficiency consistent with the organisational and corporate goals of the Totalisator Agency Board of Western Australia.

### 15.—SALARY INCREASES

15.1. Employees will receive a salary increase of 10% from the date of registration of this Agreement. The increase will be calculated from the GOSAC award rate including the first, second, third and fourth safety net adjustments.

15.2. On the date 6 months after registration of this Agreement, subject to the productivity outcome calculated and approved in accordance with the Totalisator Agency Board of Western Australia Total Factor Productivity Model for the period 1998/99 (Schedule B to this Agreement), employees may receive a further salary increase of up to a maximum of 4%.

15.3. Salaries applying under this Agreement are set out at Schedule A of this Agreement.

### SIGNATURES OF PARTIES TO THE AGREEMENT

#### Signatories

Signed for and on behalf of the  
TOTALISATOR AGENCY BOARD OF WESTERN  
AUSTRALIA

(Signed RB Bennett)

R B BENNETT  
Chief Executive Officer Date 20/7/99

Signed for and on behalf of the  
THE CIVIL SERVICE ASSOCIATION OF  
WESTERN AUSTRALIA INCORPORATED

(Signed D Robinson) Date 29/7/99

Dave Robinson  
General Secretary

*Common Seal*

### SCHEDULE A—SALARIES

The parties agree that this Schedule will be varied in accordance with organisational productivity outcomes for 1998/99 as measured in accordance with the Totalisator Agency Board Total Factor Productivity Model pursuant to Clause 9 of this Agreement, six (6) months after registration of this Agreement.

Level	Salary on Registration	Level	Salary on Registration
<b>Level 1</b>		<b>Level 5</b>	
Under 17 years	12,491.00	5.1	44,476.00
17 years	14,598.00	5.2	45,943.00
18 years	17,027.00	5.3	47,466.00
19 years	19,709.00	5.4	49,047.00
20 years	22,132.00	<b>Level 6</b>	
1.1	24,314.00	6.1	51,589.00
1.2	25,032.00	6.2	53,317.00
1.3	25,748.00	6.3	55,106.00
1.4	26,459.00	6.4	57,015.00
1.5	27,176.00		
1.6	27,892.00	<b>Level 7</b>	
1.7	28,716.00	7.1	59,943.00
1.8	29,285.00	7.2	61,970.00
1.9	30,128.00	7.3	64,174.00

Level	Salary on Registration	Level	Salary on Registration
<b>Level 2</b>		<b>Level 8</b>	
2.1	31,137.00	8.1	67,757.00
2.2	31,910.00	8.2	70,323.00
2.3	32,723.00	8.3	73,505.00
2.4	33,582.00		
2.5	34,481.00	<b>Level 9</b>	
		9.1	77,480.00
<b>Level 3</b>		9.2	80,165.00
3.1	35,716.00	9.3	83,227.00
3.2	36,678.00		
3.3	37,671.00	Class 1	87,858.00
3.4	38,691.00	Class 2	92,489.00
		Class 3	97,118.00
<b>Level 4</b>		Class 4	101,749.00
4.1	40,086.00		
4.2	41,181.00		
4.3	42,307.00		

### SCHEDULE B—TOTAL FACTOR PRODUCTIVITY MODEL

#### TAB Total Factor Productivity Model

TAB's efficiency is measured by comparing its two main outputs (sales and bets) with all inputs using a Total Factor Productivity (TFP). This model uses indices of outputs and inputs to analyse the relative contribution of different inputs and productivity in achieving revenue growth. Through the monitoring of TFP and focusing employee performance on the achievement of business objectives, this Agreement ensures that all employees are focused on actual corporate achievements.

Employee share is calculated on the basis of the demonstrated contribution of productivity to increasing outputs rather than assuming that productivity alone is totally responsible for increases in output. Salary increases calculated in this way are based on a rolling average of efficiency over the past four years.

#### PERFORMANCE MEASUREMENT

The TAB is responsible for the provision of an efficient, effective, accessible and service oriented betting service for Western Australia. This agreement ensures employees have a clear understanding of the TAB's key business objectives and a commitment to strategies to achieve them. It is vital that the TAB be able to demonstrate the extent to which its business objectives are achieved. This enables the Board will be able to appropriately recognise employees' contribution to increased performance.

Historically, comparisons between the TAB's past and current levels of performance have been undertaken through the use of various performance indicators, accepted and audited by the Auditor General as relevant to the stated objectives of the TAB. Each of these indicators reports on a "partial" aspect of the Board's performance including the—

- (1) profit before transfers;
- (2) the distribution to the racing industry;
- (3) the cost of services;
- (4) return on assets
- (5) the return to investors, in dollar terms and as a percentage of sales;
- (6) the number of sales outlets providing TAB products to the public;
- (7) the number of meetings for which the TAB provides wagering services in each year;
- (8) the income, in dollar terms, from sales made to the public;
- (9) the number of bets processed; and
- (10) computer system availability to support all sales outlet betting and TAB wagering information services.

These indicators can be categorised as either financial indicators or non-financial indicators.

Each indicator also provides a separate insight into particular aspects of the TAB's efficiency or effectiveness. It is difficult however to accurately discern the overall effect or value of improvements in each of the indicators as each indicator

measures only one output relative to particular inputs. To gain an overall view of achievements there is a need to combine the data of as many of these indicators as possible to establish a single performance measure or index for all activities.

“Total Factor Productivity” (TFP) index measures total output relative to all inputs and indicates whether key services are being provided with relatively fewer inputs or whether more services are provided for the same amount of inputs.

To establish a TFP index the following process has been used—

- identification of the TAB’s outputs (dollar values and quantities);
- identification of the resources used to provide services (dollar values and quantities); and
- the rate of growth experienced in outputs and inputs.

#### EFFICIENCY MEASUREMENT

##### TFP Calculation

A Tornqvist index method is used to calculate TFP. It accumulates over time, a weighted sum of the rates of change of the output and input quantities.

##### Outputs

The TAB has one predominant output, being the acceptance and processing of bets.

Outputs can therefore be increased via two criteria—

- increasing the number of different bet types; and
- increasing the value of different bet types as they contribute to overall revenue.

The TAB can significantly impact these outputs through decisions on—

- advertising campaigns;
- establishment of agencies;
- products to cover wagering on a range of meetings and sports;
- number and location of agents appointed; and
- types of products introduced.

Productivity is therefore driven by the relationship between the two principal outputs and their relationship to the amounts of inputs used.

##### Treatment of Outputs

One of the major aims of the TAB is to increase total sales. The quantification of outputs in terms of the value of bets (sales) is therefore a primary measure of success for the TAB as an organisation and appropriate to use in the TFP model. The influence of inflation on sales is acknowledged and has been adjusted for in the calculation of output in the model.

The number of bets processed is preferred as a measure of output. The implications of using this measure alone includes—

- The TAB does influence the value of bets through marketing, advertising and the range of products offered;
- Estimating the value of bets placed by inflating the value of bets in subsequent years against a base year discounts the effects of the TAB in the market place;
- The TAB could influence the number of bets by lowering the price per bet without affecting sales. In doing so the cost per bet to the TAB would increase, being printing and supply of betting tickets, which in turn would be represented as a drop in efficiency; and
- The TAB’s strategy is to reduce the number of bets while increasing the value of outputs (sales) thereby improving efficiency. This strategy was previously implemented by introducing a unit bet value of \$1.00 on several TAB products.

##### Inputs

The major expenditure inputs of the organisation are—

- other costs—variation between years after allowing for inflation;
- commission costs to agents—driven by ratio to sales value;
- cost of capital; and
- labour costs—driven by FTE’s.

“Other Costs” include—

- communications—data and telephone;
- broadcasting and raceday information;
- marketing and advertising costs;
- printing of raceday issues, form guides and tickets;
- occupancy and maintenance;
- freight and postage;
- computing and terminal maintenance;
- computing rental; and
- general administration.

No allowance within the calculation is made for distribution determined by legislation, including—

- dividends—as increases and decreases in this cost do not reflect productivity achievements by the organisation; and
- tax—as this is effectively a return to the owner (State Government), and not a controllable cost of the TAB.

The TFP model includes a recognition of capital costs as inputs. Capital inputs differ from other inputs in that only a percentage of the input is used each year to produce outputs. The major capital stock is represented by—

- land & buildings;
- computer equipment; and
- other equipment.

The cost of capital, utilised within the TFP calculation, is made up of two components—

- depreciation on the current value of capital stock; and
- opportunity cost of current value of capital stock.

#### PERFORMANCE GROWTH VALUE

The TFP index is used to identify and measure the TAB’s efficiency growth. Efficiency growth can be measured in terms of a dollar value, which can be used to evaluate employee contribution to this growth and determine a proportional benefit for employees. To provide employees with salary increases, as a consequence of improved organisational performance, a number of steps need to be undertaken.

##### Value of TFP

A dollar value can be placed on the TAB’s efficiency improvements based on the TFP growth rate. The value of the growth can be identified on the basis of—

- (1) Productivity Contribution Increment = annual TFP % growth x % contribution of TFP to output growth
- (2) Value of TFP Growth = Productivity Contribution x total input (ie expenditure) costs;
- (3) Employees share = Value of TFP Growth x 50% (50% goes to employees); and
- (4) % Salary Increase = Employees’ share ÷ Salary costs (including oncost).

At equations (1) and (2) the value of TFP growth is determined on the basis of the contribution of productivity to output growth. Applying this calculation effectively partials out the value to TFP growth from sources other than productivity and input use.

At equation (3) the employees share of the value of productivity growth has been assessed as 50%. This percentage was calculated using the Treasury preferred method of dividing all labour related costs by the total operating costs.

In determining this percentage of the value of TFP growth to be allocated to employees, it has also been taken into consideration that growth of outputs has already been shared among the other major stakeholders—

- TAB Customers, via dividends paid;
- Racing Industry, through distribution of profits; and
- Government, via tax on sales.

The quantity of inputs, and at a cost centre level the use of inputs, is determined by TAB policy and Board decisions, particularly in the budget approval process. The efficient use of these inputs to achieve organisational goals, including output growth, is a function of employee work effort. Each aspect is essential to the overall operation of the TAB and the proposed share arrangements of 50% of productivity growth each for

the TAB and its employees is seen as the most equitable division. This proportion also reinforces the shared responsibility for productivity between the employer and employees which this agreement aims at achieving.

A rolling four year average is used for calculating salary increases under this agreement in order to limit, as far as possible, the effects of unforeseen events which may cause aberrations in the rates of output growth, productivity and therefore the rate of return to employees.

**TFP Calculation**

A Tornqvist index method is used to calculate TFP. It accumulates over time, a weighted sum of the rates of change of the output and input quantities.

- Where: t and t-1 = adjacent observations (consecutive years);  
 R = output revenue share;  
 Y = outputs;  
 S = input cost shares;  
 X = inputs; and  
 Ln = natural logarithm operator.

$$Ln\left(\frac{TFP_t}{TFP_{t-1}}\right) = \sum \frac{1}{2}(R_t + R_{t-1})Ln\left(\frac{Y_t}{Y_{t-1}}\right) - \sum \frac{1}{2}(S_t + S_{t-1})Ln\left(\frac{X_t}{X_{t-1}}\right)$$

**OUTPUT INDEX CALCULATION**

As an example as to the TFP Model's operation, the 1992/93 output index was calculated in the following way—

$$Ln\left(\frac{Y_{1992}}{Y_{1991}}\right) = \frac{1}{2} \left\{ \begin{array}{l} \left( \frac{283,388}{471,279} + \frac{260,683}{426,803} \right) Ln\left(\frac{29,948}{38,375}\right) + \left( \frac{8,360}{471,279} + \frac{7,884}{426,803} \right) Ln\left(\frac{1,533}{1,506}\right) + \\ \left( \frac{31,198}{471,279} + \frac{29,526}{426,803} \right) Ln\left(\frac{9,662}{9,596}\right) + \left( \frac{122,968}{471,279} + \frac{105,833}{426,803} \right) Ln\left(\frac{28,746}{23,196}\right) + \\ \left( \frac{702}{471,279} + \frac{559}{426,803} \right) Ln\left(\frac{250}{202}\right) + \left( \frac{24,664}{471,279} + \frac{22,520}{426,803} \right) Ln\left(\frac{7,257}{6,938}\right) \end{array} \right\} = 0.$$

Taking the antilog of 0.0711, calculated above, the value for the ratio of the output index in 1991/92 to that in 1992/93 is 1.0737. Similarly, the ratio of output in 1993/94 to that of 1992/93 is 1.0728 and so on.

**INPUT INDEX CALCULATION**

In the same way the 1992/93 input index was calculated using the following method—

$$Ln\left(\frac{X_{1992}}{X_{1991}}\right) = \frac{1}{2} \left\{ \begin{array}{l} \left( \frac{4,399}{31,919} + \frac{4,441}{30,787} \right) Ln\left(\frac{120}{107}\right) + \left( \frac{11,373}{31,919} + \frac{10,400}{30,787} \right) Ln\left(\frac{2,1879}{2,2625}\right) + \\ \left( \frac{2,885}{31,919} + \frac{3,306}{30,787} \right) Ln\left(\frac{19,847}{20,246}\right) + \left( \frac{13,262}{31,919} + \frac{12,640}{30,787} \right) Ln\left(\frac{12,023}{11,737}\right) \end{array} \right\} = 0.$$

Taking the antilog of 0.0125, calculated above, the value for the ratio of the input index in 1991/92 to that in 1992/93 is 1.0126. Similarly, the ratio of input in 1993/94 to that of 1992/93 is 1.0115 and so on.

**TRUSTEES OF THE CHRISTIAN BROTHERS IN WA INC. NON-TEACHING STAFF ENTERPRISE BARGAINING AGREEMENT 1999. No. AG 45 of 1999.**

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Trustees of the Christian Brothers in WA Inc

and

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

and

The Australian Nursing Federation Western Australian Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

No. AG 45 of 1999.

18 August 1999.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT No. AG 45 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Trustees of the Christian Brothers in WA Inc. Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 23 March 1999 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,

Commissioner.

[L.S.]

Schedule.

**PART I PARAMETERS**

1.—TITLE

This Agreement shall be known as the "Trustees of the Christian Brothers in WA Inc. Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "Trustees of the Christian Brothers in WA Inc Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause Clause Title  
 No.

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

## Part II General Conditions of Service

10. Contract Of Service
11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

## Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

## Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

## Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

## Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

## Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

## Appendix A Parties Bound

## Appendix B Awards

## Endorsements

## 3.—TERM

- (1) This Agreement shall—
  - (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
  - (b) to expire on the 31st December 1999.

## 4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

## 5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 115.

## 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

## 7.—OBJECTIVES

(1) The objectives of this Agreement are—

- (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
- (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
- (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

## 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

## 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

## PART II

## GENERAL CONDITIONS OF SERVICE

## 10.—CONTRACT OF SERVICE

- (1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.
- (b) This shall include statements of—
  - (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

- (3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.

- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
  - (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family;
    - or
    - (bb) a member of the employee's household.
  - (iii) the term "immediate family" includes—
    - (aa) a spouse (including a former spouse), of the employee; and

- (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
- (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Use of unpaid leave

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

15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(1) Maternity Leave

(a) Nature of leave

Maternity leave is unpaid leave.

(b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

(d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

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

- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.

(e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days' notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.

(g) Variation of Period of Maternity Leave

- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

## (i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
  - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
  - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.  
Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

## (j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

## (k) Effect of Maternity Leave on Employment

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

## (l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

## (n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## (2) Paternity Leave

## (a) Nature of Leave

Paternity leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for paternity leave

A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

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

- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
  - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
  - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
    - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
  - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
    - (aa) the birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
  - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave
- Adoption leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for adoption leave—

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
  - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
- (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.

## (d) Certification

- (i) Before taking adoption leave the employee must produce to the employer—
  - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
  - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

## (e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

## (f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

## (h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure.

Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
  - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer

shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—
- For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.
- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

All Areas of State	Rate c/km
	17.8

## 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons	Single Persons
	allowance \$ per week	allowance \$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

- (b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.— SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

- (a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

- (i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and

- (ii) an exempted fund allowed by subclause (3) of this clause.

- (b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

- (c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

- (a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

- (b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

- (a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or

- (b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or

- (c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;

- (d) was not contributing to a superannuation fund for employees covered by this Agreement; and

- (i) written notice of the proposed alternative superannuation fund is given to the Union; and

- (ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and

- (iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

- (i) the fund or scheme is a complying fund or scheme within the meaning of the

Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

- (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

**PART III****TEACHER'S AIDES' / TEACHING ASSISTANTS****30.—HOURS**

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

**31.—WAGES**

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**32.—CLASSIFICATIONS****Level One**

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1

Exit Step 5

**Level Two**

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

**Level Three**

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

**Level Four**

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

**Level Five**

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

**33.—VACATION LEAVE**

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

#### PART IV SCHOOL EMPLOYEES

##### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
- (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
- (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.

(6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.

(b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

##### 35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
- (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.

(3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.

(b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

##### 36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

##### 37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant House Attendant Dining Attendant Laundry Attendant Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fittings, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

PART V

ADMINISTRATIVE AND TECHNICAL OFFICERS

42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.28

- (b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.
- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
  - (i) Such reasons should indicate the areas where the employer considers improvement is required.
  - (ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

- (b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

(3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

(4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

## PART VI

### (BOARDING HOUSE) SUPERVISORS

#### 46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

#### 47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- the name of the employee/s;
- the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

#### 48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

#### 49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

(a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

(b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

(c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not

being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

#### 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

#### 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

- (1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.
- (2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

#### 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

#### 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered,

and the employer shall be entitled to withhold any further payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee by the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

**Appendix A**  
**PARTIES BOUND**

**Employer Parties**

Trustees of the Christian Brothers in WA Inc.	"Westcourt" PO Box 1129 Bentley Delivery Centre WA 6983
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**Union Parties**

Australian Liquor, Hospitality and Miscellaneous Workers Union Miscellaneous Workers Division Western Australian Branch	61 Thomas Street Subiaco WA 6008
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Australian Nursing Federation Western Australian Branch Industrial Union of Workers	Level 2 322 Hay Street Subiaco WA 6008
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The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	143 Edward Street East Perth WA 6004
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**Appendix B**  
**AWARDS**

Independent Schools' Administrative and Technical Officers' Award 1993 No. A15 of 1991

Independent Schools (Boarding House) Supervisory Staff Award, No A9 of 1990

Nurses (Independent Schools) Award No. 21B of 1962

School Employees (Independent Day and Boarding Schools) Award 1980 No. 7 of 1979

Teachers' Aides' (Independent Schools) Award 1988, No. A27 of 1987

**ENDORSEMENTS**

Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	(Signed I. Sands)
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Australian Nursing Federation Industrial Union of Workers Perth	(Signed M. Olsen)
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Australian Liquor Hospitality and Miscellaneous Workers Union— Miscellaneous Division WA Branch	(Signed S.M. Jackson)
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Trustees of the Christian Brothers in WA Inc	(Signed J. P. Marks)
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Signed for and on behalf of—

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers	(Signed I. Sands) (Signed T. Howe)
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*Common Seal*

**TRUSTEES OF THE MARIST BROTHERS  
SOUTHERN PROVINCE NON-TEACHING STAFF  
ENTERPRISE BARGAINING AGREEMENT 1999.  
No. AG 56 of 1999.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Trustees of the Marist Brothers Southern Province

and

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

and

The Australian Nursing Federation Western Australian  
Branch Industrial Union of Workers

and

The Independent Schools Salaried Officers' Association of  
Western Australia, Industrial Union of Workers

No. AG 56 of 1999.

18 August 1999.

*Order.*

REGISTRATION OF AN INDUSTRIAL AGREEMENT  
No. AG 56 of 1999.

HAVING heard Ms A.M. Britto on behalf of the first named party and Ms T. Howe on behalf of the second and fourth named party and Mr C. Gleeson on behalf of the third 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 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 Trustees of the Marist Brothers Southern Province Non-Teaching Staff Enterprise Bargaining Agreement 1999 filed in the Commission on 26 March 1999 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,

[L.S.]

Commissioner.

Schedule.

**PART I**  
**PARAMETERS**

1.—TITLE

This Agreement shall be known as the "Trustees of the Marist Brothers Southern Province Non-Teaching Staff Enterprise Bargaining Agreement, 1999" and shall replace the "Trustees of the Marist Brothers Southern Province Non-Teaching Staff Enterprise Bargaining Agreement, 1997."

2.—ARRANGEMENT

Clause Clause Title  
No.

Part I Parameters

1. Title
2. Arrangement
3. Term
4. Parties To The Agreement
5. Scope
6. Definitions
7. Objectives
8. No Reduction
9. No Extra Claims

## Part II General Conditions of Service

10. Contract Of Service
11. Other Leave
12. Leave Without Pay
13. Sick Leave
14. Family Leave
15. Parental Leave
16. Long Service Leave
17. Annual Leave Loading
18. Public Holidays
19. Casual Employees
20. Part-Time Employees
21. Higher Duties
22. Rest Pauses And Meal Breaks
23. Travelling And Motor Vehicle Allowances
24. Location Allowances
25. Superannuation
26. Payment Of Wages
27. Time And Wages Record
28. Right Of Access, Notices And Interviews
29. Dispute Settling Procedures

## Part III Teacher's Aides' / Teaching Assistants

30. Hours
31. Wages
32. Classifications
33. Vacation Leave

## Part IV School Employees

34. Hours
35. Rosters
36. Overtime
37. Weekend Work
38. Wages
39. Classifications
40. Uniforms
41. Protective Clothing

## Part V Administrative and Technical Officers

42. Hours
43. Annual Leave
44. Salaries
45. Classifications

## Part VI (Boarding House) Supervisors

46. Hours
47. Rosters
48. Vacation Leave
49. Salaries
50. Classifications
51. Lodging Conditions
52. General Conditions

## Part VII Nurses

53. Time Off Duty
54. Vacation Leave
55. Wages
56. Laundry And Uniforms
57. Board And Lodging

## Appendix A Parties Bound

Appendix B Awards  
Endorsements]

## 3.—TERM

- (1) This Agreement shall—
  - (a) come into effect on and from the date of registration in the Western Australian Industrial Relations Commission.
  - (b) to expire on the 31st December 1999.

## 4.—PARTIES TO THE AGREEMENT

This Agreement is made between the employer set out in Appendix A—Parties Bound and the registered organisations of employees listed in Appendix A—Parties Bound.

## 5.—SCOPE

(1) This Agreement shall apply to those employees as defined in Clause 6.—Definitions of this Agreement employed by the employer as prescribed in Appendix A—Parties Bound.

(2) Where there is any inconsistency between this Agreement and the relevant award, this Agreement will apply to the extent of the inconsistency.

(3) Except as provided by this Agreement, the conditions of employment of non-teaching staff employed in Catholic Schools in Western Australia will be in accordance with the following awards—

Independent Schools Administrative and Technical Officers Award 1993;

School Employees (Independent Day & Boarding Schools) Award 1980;

Teachers' Aides' (Independent Schools) Award 1988;

Independent School (Boarding House) Supervisory Staff Award;

Nurses' (Independent Schools) Award.

(4) The number of employees covered by this Agreement is 57.

## 6.—DEFINITIONS

This Enterprise Bargaining Agreement covers the following classifications—

Teacher's Aides' / Teaching Assistants as defined in Part III, Clause 32.—Classifications of this Agreement;

School Employees as defined in Part IV, Clause 39.—Classifications of this Agreement;

Administrative and Technical Officers as defined in Part V, Clause 45.—Classifications of this Agreement;

(Boarding House) Supervisors as defined in Part VI, Clause 50.—Classifications of this Agreement;

Nurses as defined in Part VII, Clause 55.—Wages of this Agreement.

## 7.—OBJECTIVES

- (1) The objectives of this Agreement are—
  - (a) To consolidate and develop further, initiatives arising out of the enterprise bargaining process.
  - (b) To maintain a just working environment in which education can be provided in harmony with the aims, objectives and philosophy of Catholic Education.
  - (c) To provide some consistency regarding general conditions of employment that exist for the different categories of non-teaching staff employed within Catholic schools.

(2) In pursuit of these objectives the parties are committed to further negotiations to simplify classification structures and examining the possibility of a generic classification structure.

## 8.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the salary or conditions of any employee, except where provided for by this Agreement.

## 9.—NO EXTRA CLAIMS

For the period of this Agreement there will be no further salary or conditions increase except where consistent with the State Wage Fixing Principles, or pursuant to Clause 3.—Term of this Agreement.

**PART II****GENERAL CONDITIONS OF SERVICE**

## 10.—CONTRACT OF SERVICE

- (1)(a) Each employee shall, upon engagement, be given a letter of appointment wherein the general conditions of employment are stated.
- (b) This shall include statements of—
  - (i) the classification ;
  - (ii) the salary step relevant to the appointment;
  - (iii) the number of hours per week;
  - (iv) the weeks per year the employee is engaged for;
  - (v) whether the position is temporary; and/or
  - (vi) any other matter specific to the contract.

(2) The letter of appointment shall not contain any provision which is inconsistent with or contrary to any provision of this agreement and / or the Award.

- (3)(a) Except in the case of a casual/relief employee, the termination of service of any employee shall require a minimum of 2 weeks' notice by either party.
- (b) Provided that the requirements of this subclause may be waived in part or in whole by mutual agreement between the employee and employer. Any request to waiver such notice shall not be unreasonably withheld by the employer, where it is deemed that the employee has not been able to give the required notice through no fault of their own.
- (c) Subject to the provisions of this subclause, failure to give the required notice shall make either party liable for the payment to the other party of an amount equivalent to the period of notice not given.
- (d) The employer reserves the right to withhold or recover an amount equivalent to the period of notice not given. However, approval must be obtained from the Director of Catholic Education before such action is proceeded with.

(4) A temporary employee shall be employed in a part-time or full-time capacity for a period greater than four weeks' continuous service, and not more than a period of 12 months continuous service.

(5) Where the period of employment of a casual employee exceeds five days the notice of termination of service shall be one day. Where the employment is for five days or less the engagement shall be considered to be a specific period and notice shall not be required.

(6) A part-time employee shall have an entitlement to sick leave, long service leave and annual leave on a pro rata basis in the proportion of which his/her hours and/or weeks worked bear to the hours and/or weeks worked of a full-time employee.

(7) Upon termination a statement of service and a separate reference when requested by the employee shall be provided to the employee by the employer.

(8) Nothing within this clause detracts from the employer's right to dismiss summarily any employee for serious misconduct, in which case salary and entitlements shall be paid up to the time of dismissal only.

(9) The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Agreement, provided that such duties are not designed to promote de-skilling.

#### 11.—OTHER LEAVE

##### (1) Bereavement Leave

- (a) An employee shall, on the death of a member of the immediate family, be entitled to paid leave up to and including the day of the funeral of such relation, for a period of up to two days not exceeding the number of hours which would have been worked by the employee in that time. Proof of such death shall be furnished by the employee to the satisfaction of the employer.
- (b) Provided that payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with the roster, or on long service leave, vacation leave, or on sick leave, or on workers' compensation, or on authorised leave without pay or on a public holiday.

##### (2) Examination Leave

An employee shall be granted sufficient time off with pay to travel to and sit for the examinations of any approved course of study.

#### 12.—LEAVE WITHOUT PAY

(1) While an employee has the right to apply for leave without pay the granting of such leave is at the discretion of the employer.

(2) An employee applying for leave under this clause must state the period of such leave and the reason for which the leave is being sought.

(3) Leave without pay does not constitute a break in service but shall not count in calculating the period of service for any

purpose of this Agreement unless where otherwise provided for in this Agreement.

(4) If an employee is granted leave without pay the question of the employee's specific duties on return to work should be considered before the granting of such leave and any arrangements made documented. If no prior arrangement is made, an employee, upon return to service shall be entitled to a position commensurate with the position held immediately prior to the commencement of such leave.

(5) The maximum period for which leave is granted under this clause shall be one year.

#### 13.—SICK LEAVE

- (1)(a) An employee shall be entitled to payment for non attendance on the ground of personal ill health or injury at the rate of ten (10) days per year, from the beginning of each year. For those employees who commence work at anytime throughout the year a pro-rata entitlement will apply.
- (b) The unused portion of the entitlement prescribed in paragraph (a) of this subclause in any accruing year shall accumulate and may be availed of in the next or any succeeding year.
- (c) Where an employee's employment is terminated prior to the end of the school year, the calculation for pro-rata entitlement of sick leave will be based on one sixth of a week for each completed month of service with the employer. Where an employee has utilised sick leave in excess of this entitlement the employer may deduct the excess portion from the final payment of wages to the employee.
- (d) Where an employee's employment is terminated by the employer through no fault of the employee the provisions of paragraph (c) of this subclause shall not apply.
- (e) An employee shall upon request to their employer be advised of their unused portion of sick leave. Where an employee has utilised sick leave in excess of their entitlement, they shall be advised of the provisions of paragraph (c) of this subclause.

(2) This clause shall not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

- (3)(a) Sick leave shall be granted provided the application is supported by a certificate from a legally qualified and registered medical practitioner stating the period during which the employee is unfit for duty.
- (b) The employer shall not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.

(4) No payment shall be made for any absence due to the employee's wilful misconduct.

#### 14.—FAMILY LEAVE

##### (1) Use of sick leave

- (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement for absences to provide care and support for such persons when they are ill. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use sick leave is subject to—
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being either—
    - (aa) a member of the employee's immediate family;
    - or
    - (bb) a member of the employee's household.

- (iii) the term “immediate family” includes—
  - (aa) a spouse (including a former spouse), of the employee; and
  - (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employees or spouse of the employee.
- (iv) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Use of unpaid leave

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

15.—PARENTAL LEAVE

Subject to the terms of this clause employees are entitled to maternity, paternity and adoption leave and to work part-time in connection with the birth or adoption of a child.

(1) Maternity Leave

(a) Nature of leave

Maternity leave is unpaid leave.

(b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

(c) Eligibility for maternity leave

- (i) An employee who becomes pregnant, upon production to her employer of the certificate required by subclause (1)(d) and (1)(i) of this clause, shall be entitled to a period of up to fifty two (52) weeks maternity leave provided that such leave shall not extend beyond the child’s first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee’s spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (ii) Subject to subclauses (1)(d) and (1)(i) of this clause the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks compulsory leave.
- (iii) The employee must have had at least twelve (12) months continuous service within Catholic Education immediately preceding the date upon such leave.

(d) Certification

At the time specified in subclause (1)(c) of this clause the employee must produce to her employer—

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

- (ii) an agreement shall exist where for the period of maternity leave she will not engage in any act inconsistent with her contract of employment.

(e) Notice requirements

- (i) An employee shall, not less than ten (10) weeks prior to the presumed date of confinement, produce to her employer the certificate referred to in subclause (1)(d)(i) of this clause.
- (ii) An employee shall give not less than four (4) weeks’ notice in writing to her employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken.
- (iii) An employer by not less than fourteen (14) days’ notice in writing to the employee may require her to commence maternity leave at any time within the six (6) weeks immediately prior to her presumed date of confinement. The employee may work within this period provided they produce a certificate from a registered medical practitioner stating that they are fit to do so.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (1)(e)(ii) of this clause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(f) Transfer to a safe job

- (i) Where in the opinion of a duly registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (ii) If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (1)(j), (1)(k), (1)(l), and (1)(m) of this clause.

(g) Variation of Period of Maternity Leave

- (i) The period of maternity leave may be lengthened once only by the employee giving not less than fourteen (14) days’ notice in writing stating the period by which the leave is to be lengthened.
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
- (iii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days’ notice in writing stating the period by which the leave is to be shortened.

(h) Cancellation of Maternity Leave

- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.

## (i) Special Maternity Leave and Sick Leave

- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
  - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
  - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (1)(c) of this clause.
- (iii) For the purposes of subclause (1) of this clause, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave, or in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause, to the position she held immediately before such transfer.

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

## (j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (1)(c) of this clause, an employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

## (k) Effect of Maternity Leave on Employment

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

## (l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this Agreement.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

## (m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee, upon returning to work after maternity leave or the expiration of the notice required by subclause (1)(m)(i) of this clause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (1)(f) of this clause to the position which she held immediately before such transfer.
- (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

## (n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

## (2) Paternity Leave

## (a) Nature of Leave

Paternity leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Paternity leave means leave of the type provided for in subclause (1) of Clause 15.—Parental Leave of this Agreement (and includes special paternity leave) whether prescribed in an award or otherwise.
- (iii) Child means a child of the employee or the employee's spouse under the age of one year.
- (iv) Spouse includes a former spouse.
- (v) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for paternity leave

A male employee, upon production to his employer of the certificate required by subclause (2)(d) of this clause shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances—

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

- (ii) a further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave;
  - (iii) the employee must have had at least 12 months continuous service within Catholic Education immediately preceding the date which he proceeds upon either period of leave.
- (d) Certification
- At the time specified in subclause (2)(c) of this clause the employee must produce to his employer—
- (i) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
  - (ii) in relation to any period to be taken under subclause (2)(c)(ii) of this clause an agreement shall exist stating—
    - (aa) he will take that period of paternity leave to become the primary care-giver of a child;
    - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
    - (cc) that for the period of paternity leave he will not engage in any act inconsistent with his contract of employment.
- (e) Notice requirements
- (i) An employee shall, not less than ten (10) weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposed to start and finish the period or periods of leave.
  - (ii) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with subclause (2)(e)(i) of this clause if such failure is due to—
    - (aa) the birth occurring earlier than the expected date; or
    - (bb) the death of the mother of the child; or
    - (cc) other compelling circumstances.
  - (iii) The employee shall immediately notify his employer of any change in the information provided pursuant to subclause (2)(d) of this clause.
- (f) Variation of Period of Paternity Leave
- (i) The period of paternity leave may be lengthened once only by the employee giving not less than fourteen (14) days notice in writing stating the period by which the leave is to be lengthened;
  - (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement.
  - (iii) The period of paternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- Paternity leave, applied for under subclause (2)(c)(ii)(aa) of this clause but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (2)(c) of this clause an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part to which he is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to his work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of paternity leave provided by subclause (2)(c)(ii) of this clause.
  - (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by subclause (2)(c)(i) of this clause, shall be entitled to the position which he held immediately before proceeding on paternity leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and salary or wage to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (3) Adoption Leave
- (a) Nature of Leave
- Adoption leave is unpaid leave.

## (b) Definitions

For the purposes of this clause—

- (i) Employee includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (ii) Child means a person under the age of five years who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the spouse of the employee of a child who has previously lived continuously with the employee for a period of six months.
- (iii) Relative Adoption occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iv) Primary care-giver means a person who assumes the principal role of providing care and attention to a child.
- (v) Spouse includes a former spouse.
- (vi) Continuous service means service under an unbroken contract(s) of employment and includes—
  - (aa) any period of leave taken in accordance with this clause;
  - (bb) any period of leave or absence authorised by the employer or by the award.

## (c) Eligibility for adoption leave—

An employee, upon production to the employer of the documentation required by subclause (3)(d) of this clause, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (i) an unbroken period of up to three weeks at the time of placement of the child;
- (ii) a further unbroken period of up to 52 weeks from the time of the placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. The entitlement of up to 52 weeks shall be reduced by—
  - (aa) any period of leave taken pursuant to subclause (3)(c)(i) of this clause; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse.
- (iii) the employee must have had at least 12 months' continuous service within Catholic Education immediately preceding the date which he or she proceeds on such leave in either case.

## (d) Certification

- (i) Before taking adoption leave the employee must produce to the employer—
  - (aa) A statement from the adoption agency or other appropriate body of the presumed date of placement of the child with the employee for the adoption purposes; or
  - (bb) A statement from the appropriate government authority confirming that the employee is to have custody of the child pending an application for an adoption order.
- (ii) In relation to any period to be taken under subclause (3)(c)(ii) of this clause, an agreement shall exist stating—
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(cc) that for the period of adoption leave the employee will not engage in any act inconsistent with his/her contract of employment.

## (e) Notice requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within 2 months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of relative adoption the employee shall notify as aforesaid upon deciding to take the child into custody pending an application for adoption.
- (ii) An employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the employer immediately preceding the date upon which he/she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement give notice in writing to the employer of such date, and of the date of the commencement of any period to be taken under subclause (3)(c)(i) of this clause.
- (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under subclause (3)(c)(ii) of this clause give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with subclauses (3)(e)(iii) and (3)(e)(iv) of this clause if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

## (f) Variation of Period of Adoption Leave

- (i) The period of adoption leave may be lengthened once only by the employee giving not less than fourteen (14) days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) The period may be further lengthened by agreement between the employer and the employee, in accordance with the provisions outlined in Clause 12.—Leave Without Pay of this Agreement;
- (iii) The period of adoption leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

## (g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

## (h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure.

Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

- (i) Adoption Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this clause, does not exceed the period to which the employee is entitled under subclause (3)(c) of this clause, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part to which he or she is entitled.
  - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment
- Subject to this clause, notwithstanding any award, or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
  - (ii) An employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by subclause (3)(c) of this clause.
  - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave.
  - (iii) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and salary or wage to that of the employee's former position.
- (m) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
  - (ii) Before an employer engages a replacement employee, the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
  - (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his/her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
  - (iv) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.

#### 16.—LONG SERVICE LEAVE

(1) Subject to subclause (3) of this clause, an employee who has completed ten years' continuous service with the employer

shall be entitled to ten weeks' long service leave. For each subsequent period of ten years' service an employee shall be entitled to an additional ten weeks' long service leave.

(2) In calculating an employee's entitlement under this clause, continuous service with the employer prior to the 1st day of January 1997 shall be taken into account in the following manner—

- (a) In the case of an employee who has already accrued an entitlement to long service leave with the employer prior to the 1st day of January, 1997, the employee shall continue to accrue subsequent entitlements to long service leave in accordance with the provisions of subclause (1) of this clause.
- (b) In the case of an employee who, at the 1st day of January 1997, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—

For any period of continuous employment prior to the 1st day of January 1997, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service, in accordance with the relevant award.

- (c) In the case of an employee covered by the *Independent Schools' Administrative and Technical Officers' Award 1993* who, at the 1st day of January 1993, had not accrued an entitlement to long service leave, the employee's entitlement shall be calculated on the following basis—
- For any period of continuous employment prior to the 1st day of January 1993, an amount calculated on the basis of 13 weeks' long service leave on full pay for each 15 years of continuous service.
- (d) In the case of employees who have worked less than full-time during the accrual period, long service leave shall be paid at the rate of the average of hours worked over the accrual period.

(3) The expression "continuous service" includes any period during which the employee is absent on full pay from their duties, but does not include—

- (a) Any period exceeding two weeks during which the employee is absent on leave without pay. In the case of leave without pay which exceeds eight weeks in a continuous period, the entire period of that leave is excised in full;
- (b) Any service of an employee who resigns or is dismissed, other than service prior to such resignation or prior to the date of any offence in respect of which they are dismissed by the employer, when that prior service has actually entitled the employee to long service leave under this clause.

(4) Any entitlement to annual leave that falls due during the period of long service leave shall be recognised as extra leave and not included in the long service leave.

(5) Any public holiday which occurs during the period an employee is on long service leave shall be treated as part of the long service leave and extra days in lieu thereof shall not be granted.

(6) Where an employee has become entitled to a period of long service leave in accordance with this clause, the employee shall commence such leave as soon as possible after the accrual date, or in a manner mutually agreed between the employer and employee.

(7) Payment for long service leave shall be made;

- (a) in full before the employee goes on leave, or
- (b) by the normal fortnightly payment intervals;
- (c) or by agreement between the employee and the employer.

(8) Where an employee has completed at least 7 years' service but less than 10 years' service and employment is terminated—

- (a) by their death;
- (b) in any circumstances, other than serious misconduct,

the amount of leave shall be such proportion of 10 weeks' leave as the number of completed years of such service bears to 10 years.

(9) In the case to which subclause (8) of this clause applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of employment otherwise than by death, pay to the employee and upon termination by death, pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which they are entitled or deemed to have been entitled and which would have been taken but for termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.

#### 17.—ANNUAL LEAVE LOADING

(1) An annual leave loading shall be included in the final payment of ordinary wages made in December of each year to employees who have become entitled to annual leave in accordance with this Agreement.

(2) Subject to the annual leave or vacation leave provisions in Parts I through to VI of this Agreement, the annual leave loading shall be 17.5 per cent of four weeks' wages at the rate of pay applicable at the time of payment.

(3) If an employee commences after the beginning of first term in a calendar year then the leave loading shall be paid, proportionate to the length of service in that year, in December of that year, provided that the employee's contract of employment is continuing into the next calendar year.

#### 18.—PUBLIC HOLIDAYS

(1) The following days, or the days observed in lieu shall, subject to subclause (3) of this clause, be allowed as holidays without deduction of pay namely: New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2)(a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday the holidays shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(b) When any of the days observed as a holiday under this clause falls on a day when a school employee (see Part IV—Clause 39.—Classifications of this Agreement) is rostered off duty and is a day that the employee would normally have worked and he/she has not been required to work on that day, he/she shall be paid as if the day was an ordinary working day, or if he/she agrees, be allowed a day's leave with pay in lieu of the holiday at a time mutually acceptable to the employer and the employee.

(3) An employee who, on a day observed as a holiday under this clause is required to work during his/her ordinary hours of work shall be paid for the time worked at the rate of 2.5 times their ordinary rate or, if he/she agrees, be paid for the time worked at the rate of time and one-half and in addition be allowed to take a day's leave with pay on a day mutually acceptable to the employer and the employee.

(4) The provisions of this clause shall not apply to casual employees.

#### 19.—CASUAL EMPLOYEES

(1) A casual employee shall be engaged on an hourly contract of service, with a minimum payment of

- (a) 2 hours; or
- (b) 4 hours for school employees; or
- (c) 1 day for an employee as defined in Clause 45.—Classifications of this Agreement.

(2) A casual employee shall be paid 20 per cent in addition to the rates prescribed for the work performed.

(3) A casual employee shall be paid for all work performed on any of the days prescribed in subclause (1) of Clause 18.—Public Holidays of this Agreement at the rate of double time and one-half.

(4) A casual employee is defined as an employee who is not employed on a regular basis and who is engaged by the employer for a period not exceeding four weeks in duration.

#### 20.—PART-TIME EMPLOYEES

(1) Notwithstanding anything contained in this Agreement, employees may be regularly employed to work less hours per week or weeks per year than are prescribed in the applicable clauses of this Agreement, and such employees shall be remunerated at a weekly rate pro rata to the rate prescribed for the classification of work on which they are engaged in the proportion which their hours of work bear to the Hours clause of this Agreement, for their classification and level of work.

(2) When an employee is employed under the provisions of this clause, he/she shall receive payment for annual/vacation leave, and sick leave on a pro-rata basis in the same proportion as the number of hours regularly worked each week bears to a full-time employee of the same classification.

#### 21.—HIGHER DUTIES

An employee engaged on duties carrying a higher rate of salary than his/her ordinary classification, shall be paid the higher salary for the time so engaged provided that engagement is for no less than 5 consecutive working days/shifts.

Where an employee has worked two periods of 5 consecutive days / shifts or more in one year on duties carrying a higher rate of salary, then any subsequent higher duties in that year shall be paid for at the higher salary rate.

#### 22.—REST PAUSES AND MEAL BREAKS

(1) All employees shall be allowed a tea break of 10 minutes daily between the second and third hour from starting time each day. Such tea break shall be counted as time worked: provided that such employees responsible for supervising children continue such supervision during the said tea break.

(2) All employees shall be allowed a meal break of not less than 30 minutes nor more than one hour between the hours of 12.00 noon and 2.00 pm. Such time shall not count as time worked.

(3) For employees classified in Part VI of this Agreement who are rostered on duty during meal times shall be entitled to a meal and shall be allowed sufficient time to have such meal.

#### 23.—TRAVELLING AND MOTOR VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his/her own motor vehicle in the course of his/her duties he/she shall be paid an allowance not less than that provided for in the schedule set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other arrangement as to motor vehicle allowance not less favourable to the employee.

(2) Where an employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June the next following year.

#### Rates of Hire for use of Employee's own Vehicle on Employer's Business

##### Schedule 1—Motor Vehicle Allowance

Rate per kilometre Area and Details	Engine Displacement (in cubic centimetres)		
	Over 2600cc	1600cc - 2600cc	1600cc & under
Metropolitan Area	57.3	50.4	43.9
South West Land Division	58.8	51.7	45.1
North of 23.5° South Latitude	65.1	58.0	50.4
Rest of the State	60.5	53.3	46.3

Motor vehicles with rotary engines are to be included in the 1600-2600cc category.

##### Schedule 2—Motor Cycle Allowances

	Rate c/km
All Areas of State	17.8

## 24.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the wages prescribed in this Agreement an employee shall be paid the following weekly allowances when employed in the towns described hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances. These rates are subject to change from time to time in accordance with the Western Australian Catholic Schools (Enterprise Bargaining) Agreement No. 1 of 1996.

Town	Married Persons	Single Persons
	allowance \$ per week	allowance \$ per week
Balgo Hills	144.10	72.05
Boulder	13.20	6.60
Beagle Bay	130.20	65.10
Billiluna	144.10	72.05
Broome	94.00	47.00
Carnarvon	41.34	20.67
Derby	98.00	49.00
Esperance	25.38	12.69
Gibb River	144.10	72.05
Kalgoorlie	13.20	6.60
Karratha	99.20	49.60
Kununurra	123.00	61.50
La-djardar Bay	130.20	65.10
Lake Gregory	144.10	72.05
Lombadina	130.20	65.10
Port Hedland	92.52	46.26
Red Hill	123.00	61.50
Ringer Soak	144.10	72.05
Southern Cross	24.24	12.12
Tardun	17.84	8.92
Turkey Creek	130.20	65.10
Wyndham	120.00	60.00

(2) Except as provided in subclause (3) of this clause, an employee who has a dependant shall be paid double the allowance prescribed in subclause (1) of this clause.

(3) Where an employee

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging such employee shall be paid 66 and two-third per cent of the allowances prescribed in subclause (1) of this clause.

(4) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(7)(a) For the purpose of this clause "dependent" shall take on the definition as described by the Australian Taxation Office for such purposes.

(b) The income used as a dependency test shall be adjusted on 30 June each year in accordance with variations to the taxable limit for earnings for the dependent spouse rebate.

(8) Subject to the making of a General Order pursuant to section 50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day of July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 25.—SUPERANNUATION

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled—Compliance, Nomination and Transition.

(1) Employer Contributions

(a) An employer shall contribute to superannuation for each employee in accordance with Federal Legislation to one of the following approved superannuation funds—

(i) CONCEPT ONE—superannuation plan which was established and is governed by a trust deed and rules dated 23 September 1986, as amended; and

(ii) an exempted fund allowed by subclause (3) of this clause.

(b) Employer contributions shall be paid at least monthly for each week of service that the eligible employee completes with the employer.

(c) "Ordinary Time Earnings" means the salary or other remuneration periodically received by the employee in respect to the time worked in ordinary hours and/or any other rate paid for all purposes of this agreement to which the employee is entitled for ordinary hours of work.

(2) Fund Membership

(a) "Eligible Employee" shall mean a full-time or part-time employee who earns more than \$450.00 per month.

(b) An employee shall not be eligible to join the fund until he/she has completed one month's satisfactory service. On completion of this period the employee shall be entitled to the appropriate employer contribution, from the date of the employee's commencement.

(3) Exemption

Exemptions from the requirements of this clause shall apply to an employer who at the date of this Agreement—

(a) was contributing to a superannuation fund, in accordance with an order of an industrial tribunal; or

(b) was contributing to a superannuation fund in accordance with an order, award or an agreement of an industrial tribunal, for a majority of employees and makes payment for employees covered by this Agreement in accordance with that order, award or agreement; or

(c) subject to notification to the Union, was contributing to a superannuation fund for employees covered by this Agreement where such payments are not made pursuant to an order of an industrial tribunal;

(d) was not contributing to a superannuation fund for employees covered by this Agreement; and

(i) written notice of the proposed alternative superannuation fund is given to the Union; and

(ii) contributions and benefits of the proposed alternative superannuation fund are no less than those provided by this clause; and

(iii) within one month of the notice prescribed in subparagraph (d)(i) of this subclause being given, the Union has not challenged the suitability of the proposed fund by notifying the Western Australian Industrial Relations Commission of a dispute.

(4) The employer shall provide such facilities as is appropriate to ensure that all employees are adequately informed of the provisions of the superannuation funds available.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998—

(a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless—

(i) the fund or scheme is a complying fund or scheme within the meaning of the

Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

- (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) The employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;
- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme—

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;
- or
- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

#### 26.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly or monthly.

(2) Accompanying each payment of wages shall be a pay advice slip to be retained by the employee. On this slip the employer shall clearly detail the employee's name, hourly rate, overtime, penalties, allowances, gross wage, deductions broken down to—

- (a) taxation;
- (b) other;

and the net wage.

(3) On termination of employment the employer shall pay to the employee all moneys payable to that employee before the employee leaves the premises or the same shall be forwarded to the employee by post on the following day.

#### 27.—TIME AND WAGES RECORD

(1) The employer shall keep or cause to be kept, a record or records containing the following particulars—

- (a) Name of each employee.
- (b) The nature of their work.
- (c) The hours worked each day and each week.
- (d) The wages and overtime (if any) paid each week.
- (e) The age of each junior employee.

Any system of automatic recording by machines shall be deemed to comply with this provision to the extent of the information recorded.

(2) The salary records shall be open for inspection by a duly accredited official of the union during the usual office hours at the employer's office and the official may be allowed to take extracts therefrom.

(3) The employer may refuse the representative access to the records if—

- (a) the employer is of the opinion that access to the records by the representative of the organisation would infringe the privacy of persons who are not members of the organisation; and
- (b) the employer undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirement to inspect by the representative.

(4) The power of inspection may only be exercised by a representative of an organisation of employees authorised for the purpose in accordance with the rules of the organisation.

(5) Before exercising a power of inspection, the representative shall give reasonable notice of not less than 24 hours to an employer.

#### 28.—RIGHT OF ACCESS, NOTICES AND INTERVIEWS

(1) Material approved by the Union will be displayed on a notice board or a mutually agreed location, which is easily accessible by employees.

(2) Every employee shall be provided with access to a copy of this Agreement by the employer.

(3) The Secretary of the Union or authorised representative will, on prior notification to the employer, have the right to enter the employer's premises during working hours, including meal breaks for the purpose of distributing information and or discussing with employees covered by this Agreement, the legitimate business of the Union and or for the purposes of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

#### 29.—DISPUTE SETTLING PROCEDURES

(1) The principles of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any questions, disputes or difficulties that may arise.

(2) The parties to the dispute shall take an early and active part in discussion and negotiation aimed at preventing or settling questions, disputes or difficulties in accordance with the agreed procedures set out here under.

(3) The provisions of this clause shall not preclude an employee from discussing any grievance with a Union representative or a representative of their choice as he/she deems fit. Neither shall the provisions of this clause pre-empt, limit or delay the right of the Union to enter into direct negotiations with the employer to resolve matters in dispute or to address matters of mutual concern.

(4) Procedure of Settlement of Disputes

- (a) The employee and the employee's supervisor shall confer, identify the facts and where possible, resolve the issue.
- (b) If not resolved, the employee and the employer shall confer and, where possible, resolve the issues.
- (c) If not resolved, the parties to the dispute may confer with the parties to this Agreement on this matter, and where possible, resolve the issue.
- (d) If the matter is still not settled, it may be referred to the Western Australian Industrial Relations Commission for conciliation/arbitration.

(5) Until the matter is resolved in accordance with the above procedure, the status quo shall remain. While the above procedure is being followed, no party shall be prejudiced as to the final settlement by the continuation of work in accordance with this procedure.

(6) It is acknowledged that if the dispute relates to an alleged ambiguity or uncertainty in this Agreement any party may at any time apply for variation of the Agreement to eliminate the alleged uncertainty or ambiguity.

**PART III****TEACHER'S AIDES' / TEACHING ASSISTANTS****30.—HOURS**

The ordinary hours of work shall be 32.5 per week to be worked between Monday and Friday inclusive.

Provided that where the nature of the work requires the ordinary hours of work to be longer than 32.5, the employer and the Union may agree to the ordinary hours of work being up to but not exceeding 38 per week.

**31.—WAGES**

(1) The rate of wage payable to employees engaged in the classifications prescribed in Clause 32.—Classifications of this Agreement shall be—

Step	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
Step 1	11.09	18792.80	11.39	19309.60
Step 2	11.30	19148.23	11.61	19674.81
Step 3	11.52	19522.65	11.83	20059.52
Step 4	11.78	19972.05	12.11	20521.28
Step 5	12.10	20515.29	12.43	21079.46
Step 6	12.51	21207.60	12.85	21790.81
Step 7	12.85	21787.28	13.21	22386.43
Step 8	12.93	21918.68	13.29	22521.44
Step 9	13.27	22499.46	13.64	23118.20
Step 10	13.60	23060.38	13.98	23694.54
Step 11	13.81	23415.92	14.19	24059.86
Step 12	13.97	23678.71	14.35	24329.87
Step 13	14.64	24809.37	15.04	25491.63
Step 14	15.30	25940.04	15.72	26653.39
Step 15	15.97	27072.90	16.41	27817.40

Progression through the wages scale shall be by annual increment.

(2) A Teachers' Aide left in charge of pupils for a full session shall be paid at his/her ordinary rate plus 10 per cent for the period for which they are left in charge, provided that, if the period for which the employee is left in charge exceeds three days, they shall be paid at the ordinary rate plus 20 per cent for the whole period for which they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(3)(a) Child Care Workers	Payable on and from 1/9/98 3%	Payable on and from 1/1/99 2.75%
First year of experience	13.05	13.41
Second year of experience	14.36	14.75
Third year of experience	15.05	15.46
Fourth year of experience	15.75	16.18
Fifth year of experience	16.45	16.90

(b) An employee left in charge of pupils for a full session or more shall be paid no less than the rate applicable to a child care worker in their fifth year of employment for the whole period they are in charge, except where provided for in the Catholic Education Office Aboriginal Teaching Assistants Manual.

(4) An employee who has had previous experience relevant to employment covered by this Agreement may have that experience taken into account in determining the "year of employment" at which an employee is appointed and paid.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

**32.—CLASSIFICATIONS****Level One**

Teachers' Aides in Primary Schools, Pre-Primary Schools or Pre-schools, Teaching Assistants, Home Economic Assistants, Physical Education Assistants.

Aboriginal Teaching Assistants.

Teachers' Aides involved in a Special Education Programme (a part-time programme for one or more students within a mainstream school).

Enter Step 1

Exit Step 5

**Level Two**

Aboriginal Teaching Assistants in secondary schools.

Teachers' Aides in Special Education Centres (a full-time class, serving a region, within a mainstream school).

Enter Step 6

Exit Step 7

Aboriginal Teaching Assistants in Primary schools who have completed the Certificate of Educational Practice or equivalent accredited course.

Step 7

**Level Three**

Aboriginal Teaching Assistants in secondary schools who have completed the Certificate of Educational Practice.

Employees who have completed an approved "Classroom Assistant" Course at a recognised training institution or equivalent as agreed between the Union and the employer.

Teachers' Aides in Special Education Schools (schools with limited enrolment to students with a particular disability).

Aboriginal Teaching Assistants on satisfactory completion of Certificate III in Education (Aboriginal & Torres Strait Islander).

Enter Step 8

Exit Step 10

**Level Four**

Teachers' Aides in Special Education Schools who have completed an approved "Classroom Assistant" Course at a recognised training institution.

Teaching Assistants who have completed Certificate IV in Education (Aboriginal and Torres Strait Islander) or Certificate in Community Teaching as specified in the Aboriginal Teaching Assistants Programme Manual.

Step 11

Employees who have completed the Child Care Certificate, Diploma of Children Services (0-5 yrs), National Nursery Examination Board Certificate or other equivalent qualifications as agreed between the Union and the employer.

Aboriginal Teaching Assistants on satisfactory completion of the second year of Aboriginal Teachers' Training Course.

Teaching Assistants who have completed the Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Community Teaching or one year of Bachelor of Arts (Education) as specified in the Aboriginal Teaching Assistants Manual.

Teachers' Assistants who have completed the Advanced Teacher Aide Certificate Special Needs.

Step 12

**Level Five**

Aboriginal Teaching Assistants who have completed a Diploma in Education (Aboriginal and Torres Strait Islander) or the Associate Diploma in Education (Community Teaching) and are working in specified schools as Community Teaching Associates.

Enter Step 13

Exit Step 15

**33.—VACATION LEAVE**

(1) Except as hereinafter provided an employee shall be allowed the holidays granted by the school in which he/she is employed, including term and Christmas vacations, without deduction of pay.

(2) Subject to the provisions of subclause (3) of this clause, each employee shall be paid his/her ordinary wages for any day on which he/she is relieved of the obligation to present him/herself for work.

(3) An employee who is employed to work less than the full school year shall be entitled to payment at the ordinary rate of pay for or in lieu of the term and Christmas vacation periods related to that school year on the basis of one week's pay for each four weeks which the employee was employed to actually work in the school.

#### PART IV SCHOOL EMPLOYEES

##### 34.—HOURS

(1) Subject to this Agreement, the ordinary working hours for full-time employees shall be an average of 38 hours per week, to be worked in not more than 40 hours in any week, or eight in any day and shall be worked on any five days of the week.

(2) Subject to Clause 36.—Overtime of this Agreement, the spread of shift in any one day shall not exceed 12 and a 1/2 hours.

(3) In addition to meal breaks, there may be one break of at least two hours in each shift for kitchen and dining room employees.

(4) As the means of working a 38 hour week, a full-time employee who works 40 hours per week, shall be entitled to payment including shift and weekend penalties for the following days on which the employee shall not be required to attend for work—

- (a) Three agreed days during the first school term vacation in each year.
- (b) Two agreed days during each of the other school term vacations.
- (c) Five agreed days during the Christmas vacation.

(5) In lieu of the provisions of subclause (4) of this clause and notwithstanding other provisions of this Agreement and by agreement between an employer and a majority of employees covered by this Agreement at a workplace, as a means of working a 38 hour week the following may apply—

- (a) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 76 hours over nine days each fortnight with the tenth day off on full pay; or
  - (b) with at least seven days' notice to the Union by the employer, the hours of work may be arranged so that an employee works 152 hours over 19 days in each four week period with one day off on full pay in conjunction with other day(s) off work; or
  - (c) by agreement with the Union, the hours of work may be arranged so as to provide any other form of implementation of a 38 hour week.
- (6)(a) A part-time employee shall be given payment for the days referred to in subclauses (4) and (5) of this clause in the proportion that the hours worked each week bear to 40. A part-time employee shall be granted the days referred to in subclauses (4) and (5) of this clause in the proportion that the number of days worked each week bears to five.
- (b) By agreement in writing between the employer and the employee, a part-time employee who works 30 hours per week or less may be paid for all hours worked at the 38 hour week rate in lieu of payment for the days prescribed in subclauses (4) and (5) of this clause.

(7) Subject to the provisions of subclause (4) of this clause, during the school vacation periods the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of wages in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided

that the maximum period covered by this subclause shall be four weeks (20 days) in any one year.

##### 35.—ROSTERS

(1) A roster of the working hours shall be exhibited in the office of each school/college and in such other place as it may be conveniently and readily seen by each employee concerned.

(2) Such roster shall show—

- (a) the name of each employee; and
- (b) the hours to be worked by each employee each day and the breaks in shifts to be taken.

(3)(a) The roster in the office shall be open for inspection by a duly accredited representative of the Union at such times and place as the record book is so open for inspection.

(b) A duly accredited representative of the Union shall be permitted to inspect the roster available to the employees not more than once in any week during the times the record book is so open for inspection.

(4) Such roster shall be drawn up in such manner as to show the hours of each employee for one week in advance of the date of the roster, and may only be altered on account of the sickness or absence of an employee, or on account of any contingency that the employer could not reasonably foresee, or due to private arrangement between the employees themselves.

##### 36.—OVERTIME

(1) All work done outside the daily spread of hours provided in Clause 34.—Hours of this Agreement, or beyond eight hours in any one day or beyond 40 hours in any one week shall be deemed overtime.

(2) Overtime shall be paid for at the rate of time and one-half for the first two hours and double time thereafter provided that all overtime worked on Saturday and Sunday shall be paid for at the rate of double time.

(3) All work performed by any employee on his/her rostered days off or on days worked in excess of those provided in Clause 34.—Hours of this Agreement, shall be paid for at the rate of double time except where such day is a public holiday when double time and one-half shall be paid.

(4) Any employee recalled to work after his/her normal hours of duty shall be paid for a minimum of three hours at overtime rates and for all reasonable expenses incurred in returning to work.

##### 37.—WEEKEND WORK

(1) All ordinary hours of work performed between midnight on Friday and midnight on Sunday shall be paid for at the rate of time and one-half.

(2) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employee concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(3) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(4) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

38.—WAGES

(1) The minimum rates of wage payable shall be—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
<b>Level 1</b>				
Cleaner	11.29	22380.67	11.60	22996.14
<b>Level 2</b>				
Domestic employees including—				
Kitchen Attendant/ Canteen Assistant House Attendant Dining Attendant Laundry Attendant Sewing Attendant	11.49	22766.42	11.80	23392.50
<b>Level 3</b>				
Cooks (Other)	11.61	23008.18	11.93	23640.90
<b>Level 4</b>				
Groundsperson	11.85	23486.33	12.18	24132.20
<b>Level 5</b>				
First Cook Grade 1 or Cook working alone Groundsperson / Handyperson Grade 1 Sewing Supervisor	12.09	23970.39	12.43	24629.58
<b>Level 6</b>				
Groundsperson / Handyperson, Grade 2 First Cook, Grade 2	12.33	24448.00	12.67	25120.32
<b>Level 7</b>				
Senior Groundsperson / Handyperson Tradesperson Cook	12.82	25410.21	13.17	26108.99
<b>Level 8</b>				
Head Groundsperson	15.24	30213.21	15.66	31044.07

(2) Junior Employees: Junior employees shall receive the following percentages of the adult rate for the class of work on which they are engaged.

	%
Under 16 years of age .....	60
16 to 17 years of age .....	70
17 to 18 years of age .....	80

(3) General Conditions

(a) Junior employees may be employed in the proportion of one junior to every two or fraction of two not being less than one adult employee employed in the same occupation, provided that this ratio may be altered by written agreement between the Union and the employer concerned.

(b) Senior employees other than the Head Groundsperson and leading hands appointed as such by the employer to be in charge of three or more other employees shall be paid \$16.50 per week in addition to the rates prescribed herein.

(4) For all work done on any day after a break referred to in subclause (3) of Clause 34.—Hours of this Agreement, the employee shall be paid an allowance of \$1.06 per hour for each such hour worked.

(5) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

39.—CLASSIFICATIONS

**Head Groundsperson:** Shall mean a person in charge of the grounds of a large school who would be responsible for the supervision of all grounds staff. The person would have qualifications and/or experience in horticulture, preparation

of turf wickets and lawn tennis courts, and could have the responsibility for a full size swimming pool.

**Senior Groundsperson /Handyperson:** Shall mean a person in charge of the grounds of a small school or section of a large school and who has completed an apprenticeship in horticulture or other relevant horticultural qualifications or who has substantial relevant experience within the horticultural or related industries to such an extent as would justify Grade 2 status. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. Would have at least one full-time equivalent groundsperson under supervision. The senior groundsperson/handyperson could have responsibility for the maintenance of a swimming pool and lawn tennis courts, or equivalent levels of responsibility.

**Groundsperson/Handyperson (Grade 2):** Shall mean a person whose principal duties include tending a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work alone in a small school.

**Groundsperson/Handyperson (Grade 1):** Shall mean a person whose principal duties include tending a garden and grounds or part of a garden and grounds. This person's duties would also consist of maintenance and minor repairs to external and internal fitments, equipment or outdoor furniture. This person would work under supervision.

**Groundsperson:** Shall mean an employee whose principal duties shall consist of tending a garden and grounds, working under supervision or working in a small school under the direction of the principal or bursar.

**First Cook (Grade 2):** Shall mean a person who is appointed as the senior cook in a school, who holds formal qualifications in cooking/catering or who has substantial relevant experience within the catering or related industries to such an extent as would justify Grade 2 status. A person without qualification would normally require a minimum of five years' experience to justify such status. This person could be required to supervise other staff and assist with the ordering of catering supplies.

**First Cook (Grade 1):** Shall mean a person appointed as First Cook or Cook Working Alone who does not have the qualifications or equivalent experience required for classification of First Cook (Grade 2).

**Tradesperson Cook:** Shall mean a First Cook, Grade 2 who has completed an apprenticeship in cooking, baking or pastry cooking.

40.—UNIFORMS

Where an employee is required by the employer to wear special clothing, such clothing shall be provided and laundered by the employer at his/her expense. Provided that alternative arrangements in respect of the supply and laundering of clothing may be made by agreement between an employer and the Union.

41.—PROTECTIVE CLOTHING

(1) Where employees are required to work in water they shall be supplied with rubber boots.

(2) Employees required to clean toilets, use acids, wash dishes, handle detergents, acids, soaps or injurious substances shall be provided with rubber gloves.

(3) Where the conditions of work are such that employees are unable to avoid their clothing becoming wet or dirty, they shall be supplied with suitable protective clothing free of charge by the employer.

(4) Where suitable protective clothing is supplied by the employer to an employee such clothing and footwear shall remain the property of the employer.

PART V

ADMINISTRATIVE AND TECHNICAL OFFICERS

42.—HOURS

(1) The ordinary hours of duty for a full-time employee shall be 37.5 hours per week Monday to Friday inclusive and the hours of duty per day shall be fixed by agreement between the employee and the employer. A full-time employee works a minimum of 40 weeks per year.

(2) In the absence of any agreement reached in accordance with subclause (1) of this clause, the following hours of duty shall apply—

The ordinary hours of duty shall not exceed 37.5 hours per week and shall be worked on Monday to Friday, between the hours of 8.00 am. and 5.00 pm.

(3) The employee shall be allowed a meal break of not less than thirty minutes, nor more than one hour, to be taken between the hours of twelve noon and 2.00 pm.

(4) All time worked at the direction of the employer before the usual starting time or after the usual finishing time, or beyond 7.5 hours in any one day, or outside the spread of hours as prescribed under subclause (1) or (2) of this clause, shall be deemed overtime and shall, at the discretion of the employee, be paid for at the employee's ordinary rate of pay or be given paid time off in lieu equivalent to the time worked. The time in lieu taken in accordance with this subclause shall be at such time as is agreed between the employee and the employer.

(5) During the school vacation periods or any part thereof during which an employee cannot be usefully employed, the employer shall be relieved of the obligation to provide work and the employee shall not be entitled to the payment of salary in respect of any such period during which no work is performed other than any period during which the employee is on annual leave or a public holiday where the public holiday falls on a day on which the employee would normally be employed to work. Provided that the maximum period covered by this subclause shall be eight weeks in any one year.

43.—ANNUAL LEAVE

(1) An employee who has completed 12 months' continuous service or who has been employed for a minimum of 40 weeks in a calendar year shall be entitled to a minimum of 4 weeks' paid annual leave.

(2) All time for which the school is closed due to vacation leave shall count for the purpose of determining an employee's right to payment under this clause.

(3) Leave may be taken at a time agreed to between the employer and the employee.

(4) If after four weeks continuous service in any qualifying period an employee lawfully leaves his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of annual leave proportionate to their length of service calculated to the nearest completed week of service.

(5) If an employee's commencement is after 1 January, then, by agreement between the employer and the employee, the employee may be granted pro-rata annual leave to the end of the calendar year. Subsequent years of employment can commence on 1 January.

(6) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

44.—SALARIES

(1)(a) The minimum salary, according to classification and experience, payable to an employee shall be—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 1	21808.26	22407.99
	22084.30	22691.62
	22360.34	22975.25
	22636.38	23258.88
	22912.42	23542.51
	23188.46	23826.14
LEVEL 2	24016.58	24677.04
	24568.66	25244.30
	25120.74	25811.56
	25672.82	26378.82
	26224.90	26946.08
	26776.98	27513.35

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
LEVEL 3	27881.14	28647.87
	28543.64	29328.59
	29206.13	30009.30
	29868.63	30690.02
	30531.13	31370.74
	31193.62	32051.44
LEVEL 4	29537.38	30349.66
	30641.54	31484.18
	31745.70	32618.71
	32849.86	33753.23
	33954.02	34887.76
	35058.18	36022.88

- (b) On appointment an employee shall be placed at the appropriate salary level according to full time experience and the classifications as prescribed in Clause 45.—Classifications of this Agreement.
- (c) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.
- (d) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level.
- (e) If during progression through the salary steps, and within an appropriate time frame prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.
  - (i) Such reasons should indicate the areas where the employer considers improvement is required.
  - (ii) If the improvement required is achieved, then the employee shall then proceed to his/her appropriate salary level.
- (f) An employee shall only progress from one level to another in accordance with the provisions as prescribed in Clause 45.—Classifications of this Agreement.
- (g) The years of experience are indicated by the equivalent number of steps from the entry level.
- (h) For the purposes of determining weekly or fortnightly salary, the annual salaries as prescribed in subclause (1) of this clause, shall be divided by 52.16 or 26.08 respectively.
- (i) Where the conditions of employment of any employee are subject to the provisions of subclause (5) of Clause 42.—Hours of this Agreement, salary shall be averaged over the period of a full year.

(2) Junior Classification

An employee under the age of 20 years shall receive the following percentages of the rate appropriate to Level 1.

Under 17 years of age .....	60%
17 years of age .....	70%
18 years of age .....	80%
19 years of age .....	90%

45.—CLASSIFICATIONS

On commencement of employment, the employee shall be placed in one of the following levels dependent upon classification, qualification and experience—

(1) Level 1.

- (a) An employee at this level requires no prior experience or formal qualifications in the performance of the job and works under direct supervision.

- (b) Examples of positions which may appropriately be classified as Level 1—

General clerical assistant, switchboard operator, word processing operator, data entry operator, laboratory attendant, school secretary and any assistant employed within the terms of Clause 4.—Scope of the *Independent Schools Administrative and Technical Officers Award 1993*.

(2) Level 2.

- (a) An employee at this level performs duties under general supervision, may have acquired some relevant qualifications and is competent in the performance of tasks associated within Level 1 positions.

- (b) Examples of positions which may appropriately be classified as Level 2, in addition to those prescribed for Level 1, are as follows—

Library assistant, laboratory assistant, accounts clerk, word processing operator, data process operator, secretarial duties, receptionist/switchboard operator and school secretary.

(3) Level 3.

- (a) An employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. The employee is likely to have TAFE/TERTIARY or equivalent qualifications.

- (b) Examples of positions which may appropriately be classified as Level 3:

Technician employed in the audio visual, computer, media, library or laboratory departments and/or any other technician employed in the school, secretary, bookkeeper, computer system supervisor, senior clerk or senior computer operator, accounts, records and school secretary.

(4) Level 4.

- (a) An employee at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

An employee at this level would have a high degree of autonomy, initiative and discretion in the work program and would be responsible for the supervision of other administrative and/or technical employees.

- (b) Examples of positions which may appropriately be classified as Level 4—

Assistant bursar and/or registrar, senior finance employee, senior laboratory technician, school and/or principal's secretary in a secondary school and office manager with supervisory duties.

## PART VI

### (BOARDING HOUSE) SUPERVISORS

#### 46.—HOURS

(1) Subject to this Agreement, the working days and hours of duty shall be determined by written agreement between the employer, the employee and the Union.

(2) In the event of no agreement being reached in regard to hours of duty then the matter may be referred to the Western Australian Industrial Relations Commission for determination.

#### 47.—ROSTERS

(1) The hours of duty for each employee shall be set out in a roster which shall contain the following details—

- the name of the employee/s;
- the starting and finishing times of each employee's shift, including any breaks which may be required during such shift;
- the day/s on which each employee is off duty.

(2) Such rosters shall be drawn up and posted one week in advance and may only be altered by agreement between the employer and the employee concerned.

(3) Where agreement cannot be reached, pursuant to subclause (2) of this clause, the employer may change the roster provided that not less than twelve hours' notice of such change is given to any employee so affected.

#### 48.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the holidays granted by the school in which they are employed, including term and Christmas vacations, without deductions of pay. An employee may be required for duty prior to the beginning of each term and following the end of each term for the purposes of preparing for the opening and/or closure of the boarding house.

(2) If after four weeks' continuous service in any calendar year an employee lawfully terminates employment or such employment is terminated by the employer through no fault of the employee, the employee shall be paid salary in lieu of vacation leave proportionate to the length of service. Provided that an employee who was actually engaged for all school terms in that calendar year shall be entitled to be paid for the whole of the vacation period of that year.

(3) Where an employee has been paid for leave which at the time of termination has not been fully accrued, the employer may deduct from any monies owed, that portion to which the employee is not entitled. Where the employment of an employee is terminated by the employer prior to the attainment of the accrued vacation leave, then the provisions of this subclause shall not apply.

(4) At any time in respect of which an employee is absent from work except time for which the employee is entitled to claim sick leave or leave provided for in the terms of this Agreement, shall not count for the purpose of determining the rights to vacation leave.

#### 49.—SALARIES

(1) The minimum annual salary payable to employees shall be as follows—

- (a) Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	22035.72	22641.70
2nd year of experience	22884.82	23514.15
3rd year of experience	24016.58	24677.04
4th year of experience	25148.35	25839.93
5th year of experience	26280.11	27002.81
6th year of experience	27411.87	28165.70

- (b) Senior Supervisor—

Salary Level	Payable on and from 1 September 1998 (3%)	Payable on and from 1 January 1999 (2.75%)
	Annual Rate \$	Annual Rate \$
1st year of experience	29110.07	29910.60
Thereafter	30807.17	31654.37

- (c) Houseparent—

Notwithstanding the provision of paragraph (a) of this subclause, the maximum salary level for this classification shall be that determined as the fifth year of experience.

(2) On appointment as a supervisor at a boarding school, the employer shall, on production of satisfactory evidence by the employee of previous full-time equivalent experience in a similar school position, place that employee on a salary point commensurate with such previous experience.

(3) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the employee into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in

accordance with either federal legislation or an employer's contributory superannuation fund.

#### 50.—CLASSIFICATIONS

(1) **"Houseparent"**—shall mean any supervisor who works under the direct supervision of a resident teacher or supervisor, is a non-resident at the school and who is required for duty either prior to and/or during and/or immediately following each school day Monday to Friday.

(2) **"Part-Time Supervisor"**—shall mean an employee who works less hours than those usually worked by a full time supervisor at that boarding house.

(3) **"Relief Supervisor"**—shall mean an employee employed as per the boarding house roster for a period not exceeding four weeks.

(4) **"Senior Supervisor"**—shall mean any employee who is responsible for the overall supervision of the boarding house.

(5) **"Shift"**—shall mean the defined hours of duty (including broken periods) allocated to an employee in accordance with the work roster, for any 24 hour period.

(6) **"Supervisor"**—shall mean an employee who is employed to supervise in accordance with Clause 5.—Scope of this Agreement.

#### 51.—LODGING CONDITIONS

(1) Lodging facilities are to be provided free of charge for any employee required to sleep over in a boarding house.

(2) Any employee who is required to sleep over in a boarding house shall have access to kitchen and laundry facilities and shall be provided with adequate privacy and security for personal property including any private motor vehicle utilised by the employee.

#### 52.—GENERAL CONDITIONS

The employer shall make provision for the following—

(1) A boarding house supervisor is to be on duty at all times that boarders require supervision except where such supervision is conducted by a teacher or in sick bay where the supervision is carried out by the school nurse.

(2) Access by employees to telephone facilities for emergency use.

### PART VII NURSES

#### 53.—TIME OFF DUTY

All employees shall be entitled to forty-eight hours off duty each week, such hours shall be consecutive unless the employee and employer agree otherwise.

#### 54.—VACATION LEAVE

(1) Except as hereinafter provided, an employee shall be allowed the leave granted by the school in which he/she is employed without deduction of pay: Provided that such leave shall be not less than six weeks during Christmas vacation nor ten days during each of the term vacations.

(2) If after one month's continuous service in any qualifying twelve monthly period an employee terminates his/her employment or his/her employment is terminated by the employer through no fault of the employee, the employee shall be paid for such proportion of vacation leave as the number of completed months of his/her service in that qualifying period bears to the full qualifying period of twelve months.

(3) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick leave or time spent on school holidays or vacation leave as prescribed by this clause shall not count for the purpose of determining his/her rights to paid leave.

(4) An employee who is justifiably dismissed for misconduct shall not be entitled to the benefits of the provisions of this clause.

(5) No employee shall, during any period when he/she is on leave engage in any employment for hire or reward in substitution for the employment from which he/she is on leave, and if an employee breaches this provision she/he shall thereupon forfeit his/her right of leave upon which he/she has entered, and the employer shall be entitled to withhold any further

payment in respect of the period and to reclaim payments already made on account of such period of leave.

(6) This clause shall not apply to casual employees.

#### 55.—WAGES

(1) The minimum rate of wages payable to employees covered by this Agreement shall be as follows—

	Payable on and from 1 September 1998 (3%)		Payable on and from 1 January 1999 (2.75%)	
	Hourly Rate \$	Annual Rate \$	Hourly Rate \$	Annual Rate \$
1st Year	14.17	28081.95	14.56	28854.20
2nd Year	14.85	29435.28	15.26	30244.75
3rd Year	15.54	30794.52	15.96	31641.37
4th Year	16.22	32153.75	16.67	33037.98
5th Year	16.91	33512.99	17.37	34434.60
6th Year	17.59	34872.23	18.08	35831.22
7th Year	18.28	36225.55	18.78	37221.75
8th Year	18.96	37584.79	19.48	38618.37

(2) Progression through the abovementioned scale shall be by annual increments.

(3) Where an employee is appointed to the position of Nurse, previous relevant nursing experience in an independent school or at a similar level, shall be taken into account in determining the appropriate incremental level. Experience shall include time spent in relevant post basic courses.

(4) Nurse shall mean one who is registered or entitled to be registered as a general trained nurse in Western Australia under the *Nurses Act, 1968-1980*.

(5) The onus of proof of previous experience shall rest with the employee.

(6) On application by the employee and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the nurse into an approved superannuation fund nominated in accordance with the provisions of Clause 25.—Superannuation of this Agreement, and not being an employer contribution to superannuation paid in accordance with either federal legislation or an employer's contributory superannuation fund.

#### 56.—LAUNDRY AND UNIFORMS

(1) Where an employee is required by the employer to wear a special uniform, sufficient uniforms shall be provided at the employer's expense. In lieu of providing uniforms, the employer shall pay an allowance of \$4.70 per week to the employee.

(2) Uniforms shall be laundered free of cost to employees. Where the uniforms of an employee cannot be laundered by the school an allowance of \$1.50 per week shall be paid to the employee.

(3) For the purpose of this paragraph a uniform shall be deemed to be "required" unless the employer advises the employee that the wearing of uniforms is not a condition of employment.

#### 57.—BOARD AND LODGING

(1) The charge for full board and lodging provided to an employee for the employer shall be \$9.00 per night.

(2) Where the employer provides meals only to an employee the following charges shall apply—

	\$
Lunch and dinner	3.50
Breakfast	2.00

(3) An accredited representative of The Australian Nursing Federation, Industrial Union of Workers, Perth, shall be entitled to inspect such food and accommodation at reasonable times.

(4) An employee shall not be charged for board and lodging when absent from the school for more than one day on annual leave, sick leave, long service or leave without pay.

(5) By agreement with the employee the amounts prescribed in subclauses (1) and (2) of this clause may be deducted from the salary of the employee.

(6) Future increases in board and lodging charges shall be adjusted in accordance with increases awarded under the current principles of wage fixation.

**Appendix A  
PARTIES BOUND**

**Employer Parties**

Trustees of the Marist Brothers  
Southern Province 216 Empire Avenue  
Churchlands WA 6018

**Union Parties**

Australian Liquor, Hospitality  
and Miscellaneous Workers Union 61 Thomas Street  
Subiaco WA 6008  
Miscellaneous Workers Division  
Western Australian Branch  
Australian Nursing Federation Level 2  
Western Australian Branch 322 Hay Street  
Industrial Union of Workers Subiaco WA 6008  
The Independent Schools Salaried  
Officers' Association of Western 143 Edward Street  
Australia, Industrial Union of Workers East Perth WA 6004

**Appendix B  
AWARDS**

Independent Schools' Administrative and Technical Officers'  
Award 1993 No. A15 of 1991  
Independent Schools (Boarding House) Supervisory Staff  
Award, No A9 of 1990  
Nurses (Independent Schools) Award No. 21B of 1962  
School Employees (Independent Day and Boarding Schools)  
Award 1980 No. 7 of 1979  
Teachers' Aides' (Independent Schools) Award 1988, No. A27  
of 1987

**ENDORSEMENTS**

Signed for and on behalf of—

The Independent Schools Salaried Officers'  
Association of Western Australia,  
Industrial Union of Workers (Signed I. Sands)

Australian Nursing Federation  
Industrial Union of Workers Perth (Signed M. Olsen)

Australian Liquor Hospitality and  
Miscellaneous Workers Union—  
Miscellaneous Division WA Branch (Signed S.M. Jackson)

Trustees of the Marist Brothers (Signed S. Bugg)  
Southern Province

Signed for and on behalf of—

The Independent Schools Salaried  
Officers' Association of Western  
Australia, Industrial Union of Workers (Signed I. Sands)  
(Signed T. Howe)

*Common Seal*

**AWARDS/AGREEMENTS—  
Variation of—**

**BUILDING TRADES (GOLDMINING INDUSTRY)  
AWARD.**

**Nos. 29 & 32 of 1965 and 4 of 1966.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

WMC Resources Ltd  
(formerly Western Mining Corporation Limited) & Ors  
and

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

No. 742 of 1997.

Building Trades (Goldmining Industry) Award.  
No. 29 & 32 of 1965 & 4 of 1966.

23 August 1999.

*Order.*

HAVING heard Mr R.H. Gifford and later Mr M.J.B. Abdullah  
as agent for the Applicants and Ms J.L. Harrison as agent for

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

THAT the Building Trades (Goldmining Industry)  
Award be varied as follows—

**Schedule C—Parties to the Award:** Delete from  
under the sub-title Employer Parties to the Award  
the words “Western Mining Corporation Limited,  
Central Norseman Gold Corporation N/L and Hill  
50 Gold Mine N/L”.

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

**AWARDS/AGREEMENTS—  
Interpretation of—**

**ELECTRICAL, ENGINEERING AND BUILDING  
TRADES (WEST AUSTRALIAN NEWSPAPERS  
LIMITED) AWARD 1988.  
No. A 17 of 1985.**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

Western Australian Newspapers Limited & Others.

No. 829 of 1999.

COMMISSIONER S J KENNER.

17 August 1999.

*Reasons for Decision.*

THE COMMISSIONER: This is an application pursuant to s  
46 of the Industrial Relations Act, 1979 (“the Act”) by which  
the applicant has sought an interpretation of relevant provi-  
sions of the Electrical, Engineering and Building Trades (West  
Australian Newspapers Limited) Award 1988 (“the Award”).

The application for an interpretation of the Award arises due  
to the introduction by the respondent of a new shiftwork  
pattern known as the “A1” shift cycle. The applicant and the  
respondent filed an agreed statement of facts which, although  
in brief terms, outlines the background to the matter as  
follows—

- Rotating shift workers members of the applicant un-  
ion are required from time to time to work what is  
termed an “A1” roster.
- The roster lasts for a fortnight and commences on  
Sunday (first shift) and finishes on a Saturday (last  
shift).
- The fortnightly cycle of the A1 is as follows—  

A1 Shift	Sun	Mon	Tue	Wed	Thur	Fri	Sat
Week 1	A/noon	Off	Off	ADO	ADO	Day	Day
Week 2	A/noon	Off	Off	ADO	Day	Day	Day
- Hours of work on the A1 roster are—  
  - Sunday 1600-2400 hours
  - Wednesday-Friday 0800-1630 hours
  - Saturday 0800-1600 hours
- The terms and conditions of employees at Western  
Australian Newspapers are governed by—  
  - The Electrical, Engineering and Building  
Trades (West Australian Newspapers Limited)  
Award No. A17 of 1985.
  - The West Australian Production Employees  
(Enterprise Bargaining) Agreement 1997 No.  
AG 122 of 1997 (“the Agreement”).

### Questions to be Answered

The questions contained in the application for interpretation, as amended by leave of the Commission, are as follows—

1. Is an employee who works the A1 roster an intermediate shift employee for the purposes of clause 10(4) of the Award? (“Question One”).
2. Do all weekdays (ie. Monday-Friday) worked on the A1 roster attract a 17.5% penalty? (“Question Two”).
3. Does all rostered work performed from 12 midnight Friday until 12 midnight Sunday on the A1 roster attract a penalty of 25%? (Question Three).
4. Is overtime worked between 12 midnight Friday until 12 midnight Sunday for a person working the A1 roster calculated at the rate of the classification base rate by 17.5%? (“Question Four”).
5. Is overtime worked on a weekday for a person working the A1 roster to be calculated at the rate of the classification base rate by 17.5%? (“Question Five”).

### Award Provisions

The provisions of the Award relevant to the question posed for interpretation in this application are as follows—

#### “8.—HOURS OF DUTY

- (1) ...
- (2) (a) Day shifts shall be worked between 6am and 6pm.
- (b) Night shifts shall be worked between 6pm and 6am.
- (c) Intermediate shifts are those which include hours of both day and night shift.
- (d) ...

#### 9.—SHIFT WORK PENALTIES

- (1) An employee working an intermediate or night shift shall receive a loading of 15% of the total rate of pay for that employee for each shift worked as provided in subclause (1) of First Schedule Wages of the Award.
- (2) For all rostered work performed between midnight Friday and midnight Sunday a penalty of 25% of the all purpose rate for the classification shall be paid. The penalty payment shall be calculated separately and will not apply to the calculation of overtime.
- (3) Where an employee is rostered to work an intermediate or night shift on both a Saturday and Sunday in any weekend he/she shall be paid the full night shift loading for the week.
- (4) For the purposes of this subclause only, a “calendar” week is defined as being Sunday through to Saturday inclusive.

Where an employee works both the Saturday and Sunday in a calendar week, and one of those shifts is an intermediate or night shift, the employee shall receive the full night shift loading for that week.

#### 10.—OVERTIME

- (1) Subject to the provisions of this clause, the aggregate of time worked by an employee before and after his rostered shift shall be paid for at the rate of time and a half for the first two hours and double time thereafter.
- (2) ...
- (3) ...
- (4) Day, night and intermediate shift employees shall be paid at day, night and intermediate overtime rates respectively.
- (5) ...”

It was common ground between the parties that the reference to a 15% intermediate or night shift loading in clause 9(1) of the Award should be read as 17.5% by reason of the terms of clause 13 of the Agreement.

### Contentions of the Parties

The applicant submitted that the questions for interpretation as amended, raise three broad issues for consideration, they being—

- (1) The definition of an “intermediate shift employee”;
- (2) The penalty rates to apply to ordinary hours of work for such an employee; and
- (3) The appropriate overtime formula to be applied to such employees.

In relation to the first issue, the applicant submitted that the A1 roster introduced by the respondent was a two-week roster that included a mixture of day and intermediate shifts as defined in clause 8(2) of the Award. It was submitted that the Award does not contain a definition of what constitutes an “intermediate shift employee”. In applying the principles of award interpretation as set out in the decision of the Industrial Appeal Court in *Norwest Beef Industries Ltd v AMIEU* (1984) 64 WAIG 2124 per Olney J at 2132-2133, the meaning of “intermediate shift employee” can be determined by considering the terms of clause 8(2), in the context of a reading of the Award as a whole.

Approached in this manner, the applicant submitted that the conclusion that an employee of the respondent working the A1 roster is an “intermediate shift employee” is reasonably open, when considering the provisions of the Award as a whole.

In terms of the appropriate penalty rates for working ordinary hours on a rostered shift on the A1 roster, the applicant submitted that by the terms of clause 9(2), a 25% penalty is applied to the all purpose rate for all rostered weekend work. On this basis, rostered weekend work on the A1 roster will attract a 25% penalty.

In terms of rostered work outside of weekend work, the applicant submitted that clause 9(4) was clear and unambiguous and provides that for a person who works during the course of a calendar week (as defined) on both a Saturday and Sunday, and one of those shifts is either an intermediate or night shift (as defined), then the employee should receive the night shift penalty of 17.5% for the whole week. It was submitted that this provision is also clear and unambiguous.

In relation to the more contentious issue as to the appropriate overtime rate, the applicant submitted that by the terms of clause 9(2), the 25% penalty for all rostered work performed on a weekend expressly excluded overtime work. In terms of overtime performed on a rostered shift during a week other than on weekends, the applicant submitted that by reason of the terms of clauses 9(1) and 9(4) of the Award, when read within the terms of the Award as a whole, the conclusion was open that the appropriate “intermediate overtime rate” for the purposes of clause 10(4) is the base rate plus 17.5%. It was submitted by the applicant that these provisions of the Award are clear and unambiguous and this conclusion is able to be reached, having regard to the ordinary and natural meaning of the words used in the relevant provisions of the Award. On this basis, it was submitted that it was both irrelevant and indeed impermissible, to have regard to extrinsic evidence and other materials in reaching this conclusion.

The thrust of the respondent’s submissions in relation to the interpretation of the relevant provisions of the Award, was that these provisions, in view of the established principles of award interpretation, were ambiguous and therefore recourse to extrinsic materials was appropriate.

In this regard, as to the first broad issue, the respondent submitted that the A1 shift roster was a day shift roster, on the basis of what it submitted was an established custom and usage. It was said that historically, employees of the respondent have been required to work three or more consecutive intermediate or night shifts, to be regarded as entitled to the intermediate or night shift penalty rate. This submission was supported by evidence from Ms J Hadida, the respondent’s senior personnel officer. Ms Hadida has been in the position of senior personnel officer of the respondent since September 1991. She said that in or about September 1990, an issue arose in relation to the payment of shift loading for a Mr Phil Kitney. Following her investigations, she concluded that it had been a past practise of the respondent to pay a full weekly shift loading to an employee who works three or more consecutive intermediate or night shifts in a week. Ms Hadida’s witness

statement, with attachments, which included memorandums in relation to the issue concerning Mr Kitney's shift loading, was tendered as exhibit R1.

The respondent also referred to the history of the Award by way of earlier applications to the Commission, in particular application number 78 of 1991 with accompanying transcript. This application led to a variation to the Award by the inclusion of the present clause 9(4) by order of the Commission: (1991) 71 WAIG 681. I pause to note however, that a perusal of the transcript in this matter indicates that it was common ground that the reason for the amendment to the Award to insert clause 9(4) into the Award, was that this provision reflected what was then said to be a custom and practise in relation to shift work. The application was brought for the purposes of formalising this custom and practise in the Award. To this extent, it would appear that the award variation to insert clause 9(4) into the Award, has at least to some extent, if not entirely, overtaken the issue raised by Ms Hadida in her evidence.

In short, it was the respondent's submission that for an employee to be regarded as an "intermediate shift employee" for the purposes of clause 10(4) of the Award, an employee must be required to work at least three consecutive intermediate or night shifts, based upon the respondent's custom and practise. Accordingly, given the terms of the A1 shift roster, employees working this shift roster are not "intermediate shift employees" and should be regarded as day shift employees, so the argument goes.

In terms of shift penalties, the respondent submitted that by the terms of clauses 9(2) and 9(4) of the Award, the A1 roster attracts a 17.5% penalty for the whole week. In respect of weekend work performed between 12 midnight Friday and 12 midnight Sunday, employees on the A1 roster should be paid at a 25% penalty.

As to overtime calculations, it was the respondent's submission that a 17.5% shift penalty is only payable when an employee works overtime on the Sunday of the weekend. In relation to the calculation of overtime worked on a week day, the respondent submitted that the rate for overtime purposes should not include the 17.5% shift loading, as the employees working the A1 roster were not "intermediate shift employees" for the purposes of clause 10(4) of the Award.

### Conclusions

Having considered the terms of the Award, in my view, the relevant provisions are clear and unambiguous in their terms and the answers to the questions posed for interpretation can be decided based upon the ordinary and natural meaning of the words used in the relevant provisions, when read in the context of the Award as a whole. Further, for the reasons which I have noted above, the extrinsic evidence adduced by the respondent in relation to the alleged custom and practise in relation to the classification of an employee as either an intermediate or night shift employee, has in my opinion, been overtaken by the express variation to the Award by the insertion of clause 9(4). In any event, it is well established that a custom and practise, even if it were to be relied upon in circumstances such as these, attracts the rule that "*a person would be presumed to know of the usage if it was of such notoriety that all persons dealing in that sphere could easily ascertain the nature and content of the custom*": *Constan Industries of Australia Pty Ltd v Winterthur Insurance (Australia) Ltd* (1986) 60 ALJR 294. On the evidence of Ms Hadida, it would appear that the alleged custom and practise in relation to the working of at least three consecutive intermediate or night shifts is not so notoriously well known, as it would appear that some supervisors of the respondent in this case, were not aware of its existence.

### Question One and Question Five

Because of the way in which I have approached this matter, I deal with Question One and Question Five together. Whilst both the applicant and respondent focused on the issue as to whether employees working the A1 roster were "intermediate shift employees" or not, in my view, with respect, that is somewhat of a distraction from the real issue to be determined.

By the terms of clause 8(2) day, night and intermediate shifts are defined. Arguably therefore, for the purposes of clause 10(4) dealing with overtime rates on shift work, employees who are working a shift roster comprising all day, night or

intermediate shifts (either on a fixed or rotating basis), could be characterised as day, night or intermediate shift employees respectively. However, the difficulty which arises in the present case is that the A1 roster is, somewhat unusually, a "mixed shift" in that the roster contains work done on both day and intermediate shifts as defined in clause 8(2).

However, in my view, the ordinary and natural meaning to be ascribed to clause 10(4) is really in essence, to do no more than to provide that overtime on shift work is to be paid at the appropriate shift rate. Read in this way, clause 10(4) of the Award is a common provision to be found in awards of the Commission. In the case of a shift employee who works either all day, night or intermediate shifts as prescribed in clause 8(2), the position is clear. In such a case, the employee would be paid for overtime worked on such shift at the rate applicable for the shift ie. day, night or intermediate as the case may be.

Characterised in this way, the answers to the issues posed by the parties to this application can be found by characterising the question as what is the appropriate rate upon which overtime is calculated? This approach to the issue is with respect, entirely consistent with the observations of Olney J in *Norwest Beef* when he said at 2132—

"The award does not define the terms... It is however possible from a reading of the award as a whole to glean sufficient information to enable the general thrust of the disputed clause to be understood."

The answer to that question depends entirely upon the nature of the shift roster worked. For example, as I have noted above, the position is clear in respect of those employees who work consecutive day, night or intermediate shifts as either a fixed or rotating shift roster. In the case of the present circumstances, where the shift work is a "mixed shift" under the A1 roster, the appropriate rate upon which overtime rates are paid is determined by the shift roster itself, having regard to the relevant provisions of clauses 9 and 10(4) of the Award.

By the terms of clause 9(4) (as modified by the Agreement), a shift penalty of 17.5% is payable for an entire week in which an employee works both a Saturday and Sunday in a calendar week as defined, and one of those Saturday or Sunday shifts is either an intermediate or night shift. This provision would appear to prescribe a penalty in the event an employee works an intermediate or night shift over a weekend, albeit on a split weekend basis. When read in this way, in my opinion, it becomes clear that an employee who works a shift roster such as the A1 roster, which satisfies the requirements of clause 9(4), receives a loaded shift rate for the entire week of the roster. When read with the provisions of clause 10(4), this means that for such an employee, the appropriate shift rate for the shift (which in my view is what clause 10(4) really means) is the base rate plus the 17.5% shift loading. The plain meaning of the words used in clause 9(4), when read with the terms of the Award as a whole, make it clear in my opinion, that it was the intention of the parties to the Award that the "shift rate" for employees working a shift roster satisfying the requirements of clause 9(4) was the loaded rate, inclusive of the 17.5% shift penalty.

The meaning of these provisions can, in my view, be illustrated by another example. Take for instance a situation in which the A1 roster was worked on a Monday to Saturday basis or a Sunday to Friday basis on six days of the week, with only one intermediate or night shift worked on the Saturday or Sunday respectively. In these circumstances, the terms of clause 9(4) of the Award would not be satisfied, in which event, the 17.5% penalty would not be payable for the full week. It does no violence in my view, to the ordinary and natural meaning of clauses 9(4) and 10(4) when read together, to provide that shifts worked on such a cycle would be paid for as they fall ie. in the event that an employee works an intermediate shift on a particular day during that shift roster, that employee would receive overtime at the loaded intermediate shift rate and would receive overtime on day shift at the rate applicable for day shift ie. without the 17.5% penalty. This construction of these provisions of the Award is in my view, to be preferred.

When interpreted in this manner, the answers to Question One and Question Five must be that an employee working overtime on a week day on the A1 roster, is to be paid at the rate of the employee's base rate plus the 17.5% shift penalty.

**Question Two**

Given the plain terms of clause 9(4) of the Award, and, in view of my analysis of these provisions above, the answer to this question must be yes.

**Question Three**

Again, in view of the foregoing, and, having regard to the plain terms of clause 9(2) of the Award, the answer to this question must also be yes.

**Question Four**

Consideration of this issue is dependent in part, upon my conclusions in relation to Question One, Question Three and Question Five above.

As I have already observed in relation to Question Three, for all work performed between midnight Friday and midnight Sunday, a penalty of 25% of the all purpose rate is payable. This 25% penalty however, is not applicable in the calculation of overtime. It is therefore clear that this penalty structure has no application when an employee works overtime between midnight Friday and midnight Sunday. It is also clear from the terms of clause 9(2) of the Award, that the 25% penalty is payable in lieu of the 17.5% shift penalty that would otherwise be payable in the circumstance where the requirements of clause 9(4) of the Award are satisfied.

However, in the context of the A1 roster, given that I have already concluded that by the terms of clauses 9(4) and 10(4) of the Award, an employee would be entitled to the 17.5% shift loading for the whole week, it follows in my opinion, that overtime worked between midnight Friday and midnight Sunday on the A1 roster would also attract the 17.5% shift penalty, as this would be the "shift rate" applicable to such work.

Accordingly the answer to this question is yes.

**Conclusion**

I therefore declare that in answer to the questions posed in this application the true interpretation of the award is as set out in the above reasons in respect of each question posed.

Appearances: Mr C Young appeared on behalf of the applicant.

Mr R Joyce appeared on behalf of the respondent.

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## CANCELLATION OF AWARDS/ AGREEMENTS/ RESPONDENTS—

### CLERKS (WHOLESALE & RETAIL ESTABLISHMENTS) AWARD, No. 38 of 1947.

### TRANSPORT WORKERS (GENERAL) AWARD, No. 10 of 1961.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents

No. 76 of 1980, Part 248.

Clerks (Wholesale & Retail Establishments) Award,  
No. 38 of 1947.

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

CHIEF COMMISSIONER W.S. COLEMAN.

31 August 1999.

*Order.*

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, being satisfied that the requirements of the abovementioned Act have been complied with, I, the undersigned, Chief Commissioner of the Western Australian Industrial Relations Commission, acting on my own motion in pursuance of the powers contained in Section 47 of the abovementioned Act, do hereby order and declare—

THAT from the date of this order the following employer be struck out of the Schedule of Respondents to the Clerks (Wholesale & Retail Establishments) Award, No. 38 of 1947 and the Transport Workers (General) Award, No. 10 of 1961

namely—

Swan Portland Cement Ltd

(Sgd.) W.S. COLEMAN,

[L.S.]

Chief Commissioner.

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## EARTHMOVING AND CONSTRUCTION AWARD No. 10 of 1963.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 199.

Earthmoving and Construction Award No. 10 of 1963.

CHIEF COMMISSIONER W.S. COLEMAN.

30 August 1999.

*Order.*

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, 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 Earthmoving and Construction Award No. 10 of 1963 namely—

R & N Palmer Pty Ltd

(Sgd.) W.S. COLEMAN,

[L.S.]

Chief Commissioner.

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## SHOP AND WAREHOUSE (WHOLESALE & RETAIL ESTABLISHMENTS) AWARD 1977

No. R32 of 1976.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

s.47

Deletion of Respondents.

No. 76 of 1980, Part 205.

Shop and Warehouse (Wholesale & Retail Establishments).

Award 1977 No. R32 of 1976.

CHIEF COMMISSIONER W.S. COLEMAN.

30 August 1999.

*Order.*

HAVING read and considered the documents relating to this matter and there being no party desiring to be heard in opposition thereto;

NOW THEREFORE, 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 employers set out in the Schedule attached hereto be struck out of the Schedule of Respondents to the Shop and Warehouse (Wholesale & Retail Establishments) Award 1977 No. R32 of 1976.

(Sgd.) W.S. COLEMAN,  
Chief Commissioner.

[L.S.]

Schedule.

Beatrice Confectionery Ltd  
Bestobell Engineering Products  
Bryce, Robert & Co Ltd  
Burridge and Warren Pty  
Cardale J.  
Casella, G Esq  
Coolbev  
Copmark Pty Ltd  
Diamond Food Supplies Industries Ltd  
FON Pools (WA) Pty Ltd  
Fowler D & J (Aust) Ltd  
Gregsons Pty Ltd  
HBS Operations Pty Ltd  
Hoechst Australia Ltd  
Hugo Fischer Pty Ltd  
Kent L Service Station  
Kriesler A/Asia Pty Ltd  
Lamson Paragon WA Ltd  
Laurel Designs  
Longyear (Australia) Pty Ltd  
Optical Investments  
Perth Cable Distributors Pty Ltd  
Poultry Wholesalers Pty Ltd  
Rigg A.J. & Sons Pty Ltd  
Sauna-Hutts Enterprises  
Sidney Cooke Fasteners (W.A.) Pty Ltd  
Singer (Aust) Ltd  
Smyth and Hickman (North West)  
Southern Cross Machinery Pty Ltd  
South West Trading Pty Ltd  
S.S. Engineering & Foundry Pty Ltd  
Stock Feeders Pty Ltd  
Subiaco Health Foods  
Trojan Joyce  
Vesta Batteries  
W.A. Chain Saw Sales Pty Ltd  
Wesfarmers Tutt Bryant Pty Ltd  
West Coast Aquarium  
Wills G & R & Co Ltd

## INDUSTRIAL MAGISTRATE— Complaints before—

IN THE INDUSTRIAL MAGISTRATE'S COURT  
OF WESTERN AUSTRALIA  
HELD AT PERTH  
IN CHAMBERS

No. CP 107 of 1999

Date Heard: 28 July 1999

Date Decision Delivered: 12 August 1999

BEFORE: Mr G. Cicchini I.M.

Between—

WIJESURIYA PIYASENA

Complainant

and

ZOOLOGICAL GARDENS BOARD

Defendant

APPEARANCES—

Mr J. Rosales-Castaneda appeared for the Complainant.

Mr J. Lang appeared for the Defendant.

*Reasons for Decision.*

On 26 May 1999 a complaint was made that on 5 May 1999 the defendant unfairly dismissed Wijesuriya Piyasena. The defendant by its endorsed plea indicated its intention to defend the proceeding. On 8 July 1999 the complainant filed a chamber summons subsequently served on the defendant seeking that—

1. [The] “matter be listed for a Pre Trial Conference;
2. The defendant produce the complainant’s personal records including, but not limited to, the work sponsorship agreement between the complainant and the defendant within 7 days;
3. The defendant file and serve particulars of defence within 7 days;
4. Such further order or orders as the this Honourable Court deems appropriate.”

When the complainant’s application was heard on 28 July 1999, the defendant argued that the practices and procedures of the Local Court are not permitted in this jurisdiction by virtue of Regulation 3 (1) of the Industrial Relations (Industrial Magistrates’ Courts) Regulations 1980. The defendant submitted that Regulation 3 (1) is an exception provided for by Section 81 CA (2) and therefore it is not open for this Court to make orders relating to discovery, pre-trial conferences and other procedures available by force of the Local Courts Act 1904. It was submitted that the complainant’s application should be dismissed because the procedure followed in bringing the application is not appropriate. It was suggested that the appropriate procedure to be followed is that prescribed by the Justices Act 1902 in respect of proceedings before Justices for a simple offence.

Regulation 3 (1) which came into operation on the 1st March 1980, provides—

**“Proceedings before Industrial Magistrate**

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

Regulation 3 (1) which has not been amended since its introduction, was made in accordance with section 113 (3) of the Industrial Arbitration Act 1979 (No. 114 of 1979) which provided—

**113.**

“(3) The Governor may make regulations for the purpose of regulating the practice and procedure before an

*Industrial Magistrate, for and incidental to the exercise of his powers and jurisdiction under this Act, and prescribing the costs to be allowed in proceedings before an Industrial Magistrate, and the fees to be paid, and the allowances to witnesses in respect thereof and the enforcement of a judgment, order, conviction, direction, or other decision of an Industrial Magistrate."*

Section 82 of the Industrial Arbitration Act 1979 as enacted by No. 114 of 1979 prescribed that proceedings be instituted before an Industrial Magistrate as opposed to an Industrial Magistrate's Court. The section as originally enacted provided—

"82. (1) Proceedings under this Act in respect of the following matters shall be instituted before an Industrial Magistrate and not otherwise, that is to say—

- (a) offences against this Act or the regulations except those in respect of which exclusive original jurisdiction is conferred on the Full Bench or the President; and
- (b) applications made under section 83.

(2) An Industrial Magistrate has jurisdiction to hear and determine the matters referred to in sub-section (1), and for that purpose—

- (a) an Industrial Magistrate has like powers to a stipendiary magistrate sitting as a court of summary jurisdiction; and
- (b) the practice and procedure of such a court apply to and in relation to the exercise of the powers and jurisdiction of an Industrial Magistrate except to the extent that it is otherwise provided by or under this Act."

It is clear from Section 82 as it then was that Parliament intended that the Industrial Magistrate follow the practice and procedure of a court of summary jurisdiction. The court of summary jurisdiction then in existence was the Court of Petty Sessions. It is apparent that Regulation 3 (1) was made consistent with and in contemplation of the approach taken with respect to proceedings in courts of summary jurisdiction. Accordingly the practice and procedure followed by Industrial Magistrates was that which applied to criminal proceedings dealt with under the Justices Act 1902 in respect of proceedings before Justices for a simple offence.

Over the years the name of the Act has been changed and various amendments have been made to it. Of particular relevance is the amendments made to Part III of the Act. Notably Sections 81 and 82 of the Act were repealed and a raft of new sections including Sections 81, 81B, 81C and 81D were inserted by No. 44 of 1991. The 1991 provisions provided inter alia for the establishment of Industrial Magistrate's Courts, the constitution of the same, the sitting of the Courts and the appointment of the Clerk of the Courts. As a consequence of the repeal of Section 82 there was no legislative directive as to practice and procedure to be followed. The practice and procedure was governed by the regulations then in existence.

In 1993 various sections within Part III of the Act were amended and other new sections inserted. Generally speaking those provisions catered for the additional jurisdiction conferred upon the Industrial Magistrate's Court by the Workplace Agreements Act 1993.

Part III of the Act was next amended by the Industrial Relations Legislation Amendment and Repeal Act 1995 (No. 79 of 1995). Part 6 of the amending act dealt exclusively with Industrial Magistrate's Courts. Various provisions were either repealed and substituted or alternatively amended. New provisions were inserted. Of particular significance, Sections 81CA and 83A were inserted. The new provisions that came into force on 16 January 1996 provided—

**"Procedure, enforcement etc.**

81CA. (1) In this section—

**"general jurisdiction"** means the jurisdiction of an industrial magistrate's court under—

- (a) section 77, 83, 96J, 110, 111 or 112;
- (b) Part IV of the Long Service Leave Act 1958; or
- (c) Division 1 of Part 5 of the Workplace Agreements Act 1993;

**"prosecution jurisdiction"** means the jurisdiction of an industrial magistrate's court under—

- (a) section 83A;
- (b) section 100 of the Workplace Agreements Act 1993;
- (c) section 36 of the Long Service Leave Act 1958;
- (d) section 107C (2) of the Child Welfare Act 1947; or
- (e) section 46 of the Minimum Conditions of Employment Act 1993.

(2) Except as otherwise prescribed by or under this Act or another law—

- (a) the powers of an industrial magistrate's court; and
- (b) the practice and procedure to be observed by an industrial magistrate's court, when exercising general jurisdiction are those provided for by the Local Courts Act 1904 as if the proceedings were an action within the meaning of that Act.

(3) Without limiting subsection (2), regulations may extend the circumstances in which an industrial magistrate's court exercising general jurisdiction may hear and determine an action under Part VIA of the Local Courts Act 1904.

(4) Section 88 applies to and in relation to an industrial magistrate's court exercising general jurisdiction as if—

- (a) each reference to the Court in that section were a reference to the industrial magistrate's court; and
- (b) "or the Presiding Judge" in section 88 (4) were deleted.

(5) When exercising prosecution jurisdiction an industrial magistrate's court constitutes a court of summary jurisdiction.

(6) An order or other decision of an industrial magistrate's court made in exercise of prosecution jurisdiction shall be enforced in accordance with the Justices Act 1902.

(7) Subject to subsection (6), a judgment, order, direction or other decision of an industrial magistrate's court may be enforced in accordance with regulations made under section 113 (3).

(8) In the absence of evidence to the contrary, anything done by an industrial magistrate's court shall be taken to have been done within its jurisdiction."

**"Proceedings for offences"**

83A. (1) An industrial magistrate's court has jurisdiction to hear and determine, under the Justices Act 1902, complaints for any contravention or failure to comply with this Act that constitutes an offence.

(2) In subsection (1) the reference to the Justices Act 1902 does not include Part VIII of that Act.

(3) Without limiting section 84, the jurisdiction referred to in subsection (1) shall not be exercised by any other court."

Subsequently Section 81CA was amended by the Labour Relations Legislation Amendment Act 1997 No. 3 of 1997. The relevant part became operative on 20 June 1997. Those amendments were minor and consequential in nature. They delineated certain other provisions to fall into either general or prosecution jurisdiction as the case may be.

On the 21st September 1995 in his second reading speech on the Industrial Legislation Amendment and Repeal Bill No. 79 of 1995 the Honourable Mr Kierath, Minister for Labour Relations said with respect to section 81CA and other relevant provisions the following—

"... the Bill rationalises the jurisdiction of the Industrial Magistrate's Court. It confers on the court a general jurisdiction and a prosecutions jurisdiction. The general jurisdiction enables an industrial magistrate to deal with claims for entitlements under an award, industrial agreement, workplace agreement, the Minimum Conditions of Employment Act and the Long Service Leave Act. It also enables him or her to deal with non-criminal breaches by officials of the fiduciary duties imposed by part 4 of the

*Bill, as well as the recovery of moneys that have been paid to persons contrary to the Act. The prosecutions jurisdiction continues an industrial magistrate's ability to deal with offences under the Industrial Relations Act, the Workplace Agreements Act and the Minimum Conditions of Employment Act and confers the additional jurisdiction to deal with offences against the Long Service Leave Act and new provisions of the Child Welfare Act relating to the employment of children. In the exercise of the industrial magistrate's powers, it is made clear that the practice and procedure of the local courts will apply, with such modifications as are necessary, to general jurisdiction proceedings. The Justices Act will apply in the prosecution jurisdiction."*

The intention of Parliament is clear and unequivocal as is reflected in the words expressed by the Honourable Minister. There is an express distinction made between the practice and procedure to be followed in matters falling under the general jurisdiction and those falling under the prosecution jurisdiction. It is clear that the Parliament intended that there be a new framework to be followed by the Industrial Magistrate's Court. Section 81CA is clear in its terms. The section is specific and expressed quite carefully and deliberately to be prescriptive. In my opinion Parliament did not intend for its own provisions to be defeated by Regulation 3 (1). Although Regulation 3 (1) still operates, it can only operate so far as it is not inconsistent with the Act. The Parliament expressed a new practice and procedure to be followed in matters dealt with under the general jurisdiction. It made it clear that the provisions of the Justices Act are not to apply to matters under general jurisdiction.

It was argued for the defendant that the words "Except as otherwise prescribed by or under this Act or another law" found in subsection 81CA (2) operates to exclude the Local Court, practice and procedure by virtue of the existence of Regulation 3 (1). In my view it would be entirely nonsensical for Parliament on the one hand to enact section 81CA so far as it relates to the adoption of the Local Courts practice and procedure and then have that provision immediately countermanded by Regulation 3 (1). Regulation 3 (1) must be read in the light of the Act as it existed at the time it came into force when the only procedure provided for by the legislation was that under the Justices Act.

Parliament was clear and specific in adopting the powers practice and procedures of the Local Courts in S.81CA (2). In order to change what Parliament intended there must be specific reference in the Act or regulations indicating an intention to alter or override Parliament's intention. The exception provided for in Section 81CA (2) must be viewed in that light. There must be some specificity in the Act or regulation going to the fact that it falls within the exception provided for in section 81CA (2) in order to derogate from what Parliament intended. The exception provided for in the provision in my view implies specific prescription. There is no such specific prescription in Regulation 3 (1)

Regulation 3 (1) continues to be operative so far as it is not inconsistent with the Act. It obviously applies in matters falling under the prosecution jurisdiction. Generally speaking it has little or no application in matters dealt with in the general jurisdiction. The practice and procedures of the Local Courts apply to such matters in the general jurisdiction.

Accordingly the complainant's application is competent.

The defendant also argues that the complaint is defective in that complaint does not disclose an action known to law. It is also argued that the defect is so fundamental that it is incapable of amendment. The defendant's contention is predicated on the fact that reference is made in the narrative of the complaint to Section 51 of the Workplace Agreements Act. I reject the defendant's argument. The complainant's cause of action is clear. The complainant alleges unfair dismissal for which the complainant seeks redress. The defendant is not misled in any way and the basis of the complainant's claim is clear. The second limb of the defendant's argument is also rejected.

I accordingly propose to make orders in terms of the application.

(Sgd.) G. Cicchini,  
Industrial Magistrate.

## UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Davies

and

HVAC Pty Ltd.

No. 44 of 1999.

COMMISSIONER A.R. BEECH

12 July 1999.

*Reasons for Decision.*

*Preliminary Point.*

The respondent to this application is HVAC Pty Ltd. The application before the Commission seeks to substitute for the name "HVAC Pty Ltd" the two names of "HVAC Construction (Qld) Pty Ltd" and "HVAC Process Services Pty Ltd". The application is opposed.

The test to be applied by the Commission when an application is made for it to substitute a respondent is that set out by the Full Bench of this Commission in *Sin-Aus-Bel Pty Ltd trading as The Ascot Inn v. Parfitt* (1994) 74 WAIG 2075. That decision referred to the consideration of this issue by the Industrial Appeal Court in *Owners of Johnson Court Strata Plan v. Dumancic* (1990) 90 WAIG 1285. It is however, to be noted that the matter before the Industrial Appeal Court concerned the decision of an Industrial Magistrate to substitute, or not to substitute, the name of a defendant. The jurisdiction of an Industrial Magistrate is to be contrasted with the jurisdiction of the Commission, as I endeavoured to make clear in *Barrett v. BLPPU* (1997) 77 WAIG 2192 at 2193. The Commission is not bound by the rules of evidence and is to decide matters that come before it according to equity, good conscience and substantial merit, without regard to technicalities or legal form. Whilst that does not necessarily mean that the Commission is not to decide issues of jurisdiction in accordance with established legal principles, if those provisions of the *Industrial Relations Act* are to have any meaning, they do not require the application of the same tests as are applicable to courts which are bound by particular Rules or Orders designed to address this issue.

In *The Ascot Inn* case, the Notice of Application cited *The Ascot Inn* as the respondent. It was subsequently acknowledged that that name was merely the name of a firm and not of a legal person. It was in fact a trading name of a company *Sin-Aus-Bel Pty Ltd* which carried on business under that name. As noted by the Full Bench in that matter—

"The test in matters of this kind was outlined in *Robertson & Co Pty Ltd (In Liquidation) v. Ferguson Transformers Pty Ltd* (1970) 44 ALJR 441 at 443, where it was held that if a reasonable person receiving the document ought to have taken it as being directed to himself, then the misdescription should not be taken as being fatal."

That therefore is the test.

Before applying the test to the facts of this matter, it is also appropriate to note that Mr Davies' application seeks to substitute two companies as respondents. In justification for his application, Mr Davies states that it is in contention which of these two entities was in fact his employer. It is not unknown for an employee to be unaware of the precise legal identity of his or her employer and to cite in a Notice of Application to the Commission more than one respondent (see for example, *Gilmore v. Cecil Bros., FDR Pty Ltd, Cecil Bros. Pty Ltd* (1996) 76 WAIG 1184). By virtue of s.29B, the respondents to matters in the Commission are those persons who have been duly served with a copy of the Notice of Application. An applicant may cite two persons as respondents to an application and, upon them being served, those two persons become the respondents to the application. The circumstances might prompt a preliminary issue of the correct identity of the employer to

then arise but I accept that there is nothing inherently wrong in an applicant seeking to substitute two respondents in place of one. Indeed, it is not argued otherwise.

As to the facts of the matter, the evidence before the Commission, which I accept, is that there is no legal entity by the name of "HVAC Pty Ltd". I also accept the evidence that the two companies which are sought to be named as respondents are separate legal entities. I also find that they are part of a group of companies that have a common parent company. Whilst each company within that group operates totally independently of each other, and even might have a different structure operating in either a different field of activity from other members of the group or in a different geographical location, the two legal entities which the applicant seeks to substitute are able to "transfer" employees' entitlements between them in a manner not dissimilar to the process adopted when a company is acquired and employees are retained in their employment. Also, for purposes of convenience to them, those companies admit that at least for part of Mr Davies's employment, his salary payments were made by HVAC Envirotec Pty Ltd although the respondent says that it was really HVAC Construction (Qld) Pty Ltd that was his employer. (The Commission is informed that HVAC Envirotec Pty Ltd is now known as HVAC Process Services Pty Ltd.) I also take into account that the group of companies operates a group superannuation fund which provides common superannuation fund arrangements for employees of the companies within the group. Furthermore, accounting procedures are centralised for economy and efficiency through the head office of the group.

On that evidence, I have little difficulty in holding that the applicant's citing of "HVAC Pty Ltd" is not fatal to his application. Whilst it is true that even if the claim had been directed to "HVAC Ltd" that would not have identified the particular company within that group which was the applicant's employer, I think a reasonable person at HVAC Ltd receiving the document would have taken it as being directed to one of the group of companies. I draw some strength in that conclusion from the fact that Mr Davies' citing of "HVAC Pty Ltd" caused HVAC Construction (Qld) Pty Ltd to file a Notice of Answer and Counter Proposal in this Commission identifying itself as the employer and presenting an Answer on the merits of the application. I have little doubt that if Mr Davies' employer was considered by the HVAC group to have been HVAC Process Services Pty Ltd, a Notice of Answer and Counter Proposal would have been filed on its behalf. I am therefore prepared to substitute for HVAC Pty Ltd the two organisations HVAC Process Services Pty Ltd and HVAC Construction (Qld) Pty Ltd.

In doing so I ask the parties to note the following. By virtue of s.29(1)(b)(i) of the Act, Mr Davies is only able to bring a claim of unfair dismissal to the Commission against his former employer. For these purposes, that is a reference to his employer at the time of his dismissal. Significantly, he is not able to bring a claim to the Commission against a company that was not his employer alleging that it refused to employ him. Whilst a refusal to employ any person or any class of persons is an "industrial matter" for the purposes of the *Industrial Relations Act, 1979*, an individual is only able to bring a claim to the Commission that he or she has been unfairly dismissed or has been denied by his or her employer a benefit due under his or her contract of employment. Mr Davies cannot have been dismissed by a company which had never been his employer.

This point is significant for the following reason. HVAC Construction (Qld) Pty Ltd is quite certain that the evidence it will now bring to the Commission will establish that at the time Mr Davies was dismissed, it was his employer. If that is correct, then Mr Davies' own Notice of Application in the Commission states that his dismissal from HVAC Construction (Qld) Pty Ltd occurred on what would have been in any event the last day of his employment with that company. His claim before the Commission indicates that he was due to "return to take up a position in the Perth branch which was previously promised". Two possible outcomes therefore suggest themselves, even at this early stage of the proceedings. The first possible outcome is that even if Mr Davies was unfairly dismissed by HVAC Construction (Qld) Pty Ltd, reinstatement will not be practicable because his contract was due to end on the day of his dismissal in any event. Further, it may be difficult

to establish any loss he may have suffered given that his employment was due to end on that day in any event. Any compensation for loss ordered by the Commission in lieu of reinstatement is dependent upon Mr Davies having suffered loss.

The second possible outcome is that Mr Davies' principal concern, and the reason why he has lodged this application, is that his employment was not continued in the "Perth branch which was previously promised". If, as it seems, there is no "Perth branch" of HVAC Construction (Qld) Pty Ltd then, properly characterised, Mr Davies' application may be against a company which was not in fact his employer alleging that it refused to employ him. As previously indicated, he is not able to bring such a claim to the Commission.

I accept that Mr Davies argues that his employer was HVAC Process Services Pty Ltd and that it was only his employment in Queensland which came to an end. However, the Commission is not in a position at this stage of the proceedings to decide which of the two respondents to this application was truly his employer.

The parties are requested to give their earnest consideration to the view of the Commission set out in these Reasons. The issues raised by the Commission may cause either Mr Davies or the respondents to reconsider any position they have previously adopted. It may also be appropriate for the parties to discuss whether they should request the Commission to decide the identity of Mr Davies' employer as a further preliminary point. The application will remain adjourned until the Commission receives a further request from either party for the application to be re-listed in some form.

Accordingly, a Minute of a Proposed Order now issues substituting HVAC Environmental Services Pty Ltd and HVAC Construction (Qld) Pty Ltd in lieu of HVAC Pty Ltd as respondents to this application.

Appearances: Mr R. Kelly (of counsel) on behalf of the applicant.

Mr P. Harris (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mark Davies

and

HVAC Pty Ltd.

No. 44 of 1999.

16 July 1999.

*Order.*

HAVING heard Mr R. Kelly (of counsel) on behalf of the applicant and Mr P. Harris (of counsel) on behalf of the respondent, the Commission, pursuant to powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

THAT the names HVAC Process Services Pty Ltd and HVAC Construction (Qld) Pty Ltd be substituted in lieu of HVAC Pty Ltd as respondents to this application.

(Sgd.) A. R. BEECH,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Eadie

and

Inkcot P/L Trading As Treetop Walk Motel/Restaurant

No. 739 of 1999

and

Rowena Eadie

and

Inkcot (P/L) T/A Treetop Walk Motel/Restaurant.

No. 740 of 1999.

COMMISSIONER P E SCOTT.

17 August 1999.

*Reasons for Decision.*

THE COMMISSIONER: These applications are made pursuant to s.29 of the Industrial Relations Act 1979. On Monday, 26 July 1999, the Commission convened a conference for the purpose of conciliating between the parties.

The Applicants did not attend the conference in person but participated by telephone. The Respondent's representatives attended the conference in person, one of them apparently coming from Walpole for the purpose. When the Respondent's representatives arrived and discovered that the Applicants would not be attending in person they protested at not having an opportunity to meet with the Applicants in person and discuss the claims across the table. However, after an opportunity was given to them to consider the matter they agreed to proceed with the conference.

During the conference parties had an opportunity to express their views and relate the circumstances of the terminations of employment from their own perspective. At the conclusion of the conference, the Applicants indicated that they had decided they did not want to proceed any further with the matters and the conference was on the verge of concluding. In the final minutes, one of the Respondent's representatives indicated that the Respondent would be seeking costs from the Applicants.

On 27 July 1999, the Respondent filed an application for the recovery of costs. The grounds cited in the application are—

“Due to the Applicants wishing to discontinue their application and their advising the Commission that they only wish to use it for the purpose of having someone listen to their grievances? As a consequence we seek reimbursement of some costs incurred by us in defending their frivolous action.”

The Respondent then set out the costs sought which total \$200.00 being transportation costs for Mr Van Stroe, parking, telephone calls to obtain supporting statements and lodgement fees.

On 27 July 1999, my Associate telephoned the Respondent to ask whether the application filed that day constituted the whole of the matters and the grounds on which it relies.

By facsimile transmission dated 28 July 1999, the Respondent provided further detail of its claim for costs, totalling \$1885.80. The final paragraph of this second document says—

“Because we are reasonable people, we are only seeking reimbursement of the sum of \$200.00”.

The Commission has dealt with the issue of costs on a number of occasions including in *Brailey and Mendex Pty Ltd trading as Mair and Co. Maylands* (1993 73 WAIG at 27). In this decision, the Full Bench said—

“The general policy in industrial jurisdictions is that costs ought not to be awarded, except in extreme cases.

In this case, we are concerned with s.27(1)(c) of the Act. S.27(1)(c) gives a discretion to the Commission clearly conferred by the use of the word “may” (see s.3 and s.56 of the Interpretation Act 1984) to order any party to the matter to pay to any other party costs and expenses, including expenses of witnesses as are specified in the order. No costs are to be allowed for the services of any legal practitioner or agent.

The question is what does the phrase “costs and expenses” mean? “Costs”, as defined above, includes all of the expenses. No costs are allowed for the services of a legal practitioner or agent. Thus, the professional costs element is eliminated.

So then what are costs? It would seem to us that “costs and expenses” must, without the distinguishing ingredient of legal or professional costs, be read as a phrase which means all of the cost and expense which the applicant under s.27(1)(c) is entitled to claim. It seems to us that this can only be done on a party and party basis.

The application, too, must be determined under s.26 of the Act. However, part of that equity and good conscience includes what is settled law in industrial matters that costs ought not to be awarded, except in extreme cases, (eg) where proceedings have been instituted without reasonable cause (see *Hospital and Benevolent Homes Award* (1983) AILR 409 where costs were awarded in a matter where the applicant terminated the proceedings after putting the respondent to the expense of defending without obtaining an order).”

The purpose of a conciliation conference is to provide the parties with an opportunity to exchange views for the purpose of them coming to an agreement. That agreement could be any one of a number of possibilities, one of them being that the Applicant, having had an opportunity to express his or her point of view to the other party, and hearing the other party's view, deciding that to proceed further would be inappropriate, unhelpful, or for some other reason not worthwhile. This appears to have been what the Applicants did at the conclusion of the conference convened on 26 July 1999. Accordingly, there is nothing inappropriate in that course of action. On the contrary, it is an entirely appropriate course of action for a party to decide, at that stage, not to proceed further. It is unfortunate for the Respondent that it has incurred expenses in preparation for and attendance at the conference. This is not unusual.

There is nothing within the application put by the Respondent which would indicate that there are grounds for a conclusion that the applications were made frivolously, as suggested, or on any other grounds which would require the Commission's consideration of a costs application particularly in light of the basis on which the Commission considers applications for costs. It could be suggested that by attending and participating in the conference the Respondent played its part in the Applicants coming to the conclusion that they did not wish to proceed further, thereby obviating the need for the costs which the Respondent might otherwise have incurred had the matter proceeded to a formal hearing.

Accordingly, the substantive applications and the application for costs will be dismissed.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rowena Eadie

and

Inkcot (P/L) T/A Treetop Walk Motel/Restaurant.

No. 740 of 1999.

COMMISSIONER P E SCOTT.

17 August 1999.

*Order.*

WHEREAS this is an application made pursuant to Section 29(1)(b)(i) and (ii) of the Industrial Relations Act 1979; and

WHEREAS on the 26<sup>th</sup> day of July 1999, the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of the conference the Applicant advised that she did not wish to proceed with the matter further; and

WHEREAS the Respondent foreshadowed an application for costs; and

WHEREAS the Commission has considered the submissions of both parties in respect of the application for costs, and has issued Reasons for Decision dismissing that application.

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

- (1) THAT the substantive application made pursuant to s.29(1)(b) be and is hereby dismissed; and
- (2) THAT the Respondent's application for costs be and is hereby dismissed.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

William Eadie  
and

Inkcot P/L Trading As Treetop Walk Motel/Restaurant.

No. 739 of 1999.

COMMISSIONER P E SCOTT.

17 August 1999.

*Order.*

WHEREAS this is an application made pursuant to Section 29(1)(b)(i) and (ii) of the Industrial Relations Act 1979; and

WHEREAS on the 26<sup>th</sup> day of July 1999, the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of the conference the Applicant advised that he did not wish to proceed with the matter further; and

WHEREAS the Respondent foreshadowed an application for costs; and

WHEREAS the Commission has considered the submissions of both parties in respect of the application for costs, and has issued Reasons for Decision dismissing that application;

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

- (1) THAT the substantive application made pursuant to s.29(1)(b) be, and is hereby dismissed; and
- (2) THAT the Respondent's application for costs be, and is hereby dismissed.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gayr Robinson French  
and

Bruce Hawley t/a For-Parts.

No. 205 of 1999.

COMMISSIONER A.R. BEECH.

2 September 1999.

*Reasons for Decision—Request for Adjournment.*

THIS application alleges unfair dismissal and denied contractual benefits and is listed for hearing for 22 and 23 September 1999. On 19 August the Commission received a request from the respondent for the application to be adjourned on the basis that the applicant has been charged with stealing a motor vehicle from the respondent. The respondent advises—

This issue of fraud is central to the respondent's defence to the applicant's claim for unfair dismissal. We

therefore request an adjournment of the industrial matter until the criminal matter against the applicant has been heard.

On 1 September 1999 the applicant confirmed that he did not agree to his application being adjourned. He wishes to proceed with the matter on the date set down for hearing.

The essential facts of the matter are that Mr French, the applicant, was employed by the respondent for approximately 5½ years. He was dismissed on 23 January 1999. In his Notice of Answer and Counter Proposal the respondent alleges 12 reasons for the dismissal. The first few of these reasons will suffice to illustrate their nature. They are an allegation that there was a breach of security on the premises; that there were conflicts of interest in that the applicant maintained a business of his own on the premises; that he kept inaccurate records; that he failed to maintain the business registration in the name of the company; and that he drew an incorrect salary. The final allegation is that the applicant failed to return a Falcon wagon belonging to the business. The Commission assumes that it is in relation to this final allegation that Mr French has been charged with stealing a vehicle from the respondent.

Whether a matter is adjourned is a matter for the discretion of the Commission. Where the refusal of an adjournment would result in serious injustice to one party, an adjournment should be granted unless in turn this would mean serious injustice to the other party (*Myers v. Myers* [1969] WAR 19). Ultimately, the paramount consideration is justice in the case (*Queensland v. J.L. Holdings Pty Ltd* (1997) 71 ALJR 294). Further, as Wilcox J. stated in *Schouten v. Telestra Corporation Ltd* (1993) 49 IR 339, there is no general rule that civil proceedings should be stayed pending resolution of criminal charges arising out of the same facts. He stated the current rule as that, in considering whether or not a civil action should proceed to a hearing the court should take into account the chance that this course will occasion injustice in the criminal proceedings and requires the court to consider such matters as possible prejudicial publicity, the imminence of the criminal trial and the burden upon the accused person of defending two sets of proceedings concurrently. However, it is also clear that a person has the right to disclose the substance of his or her defence defending criminal proceedings and that entitlement is something for the person to take into account in considering what defence if any to make to a civil proceeding.

Adopting those considerations in this case leads to the following conclusions. There is no suggestion that there will be any prejudicial publicity if the Commission proceedings are not adjourned. The Commission is not informed that the criminal trial is imminent. There is no burden on either the applicant or the respondent in defending two sets of proceedings concurrently. Indeed, the respondent to these proceedings does not suggest it will suffer any burden at all arising from the criminal proceedings. Nevertheless, the fact is that the adjournment is sought by the respondent.

In my view, any possible prejudice which will be suffered if these proceedings are adjourned is a prejudice to Mr French. Claims of unfair dismissal should be dealt with promptly and the dismissal in this case occurred in January. He will suffer a delay if these proceedings are adjourned. Further, the only person likely to suffer prejudice if these proceedings are not adjourned is, again, Mr French. He is likely, when giving evidence in these proceedings, to be asked questions concerning the allegation that he failed to return a Falcon wagon belonging to the business. He does not seek an adjournment of the Commission proceedings and, apparently, is not of the view that he will suffer a prejudice in that regard. I attach significant weight to his position. Had Mr French sought the adjournment on the basis that he would suffer prejudice if the Commission's proceedings were not stayed pending the determination of the criminal charges, or indeed if he had he consented to the request for an adjournment, I would have been more favourably disposed to granting the adjournment (*Aslanis v. Brambles Australia* (1997) 82 IR 220). That is not the case here however and there is insufficient in the circumstances of this case for the adjournment to be granted.

It should be remembered that the proceedings before the Commission will not require the respondent to justify the dismissal by proving beyond reasonable doubt that Mr French committed a criminal act. Rather, where the issue before the

Commission involves the respondent dismissing the applicant for alleged misconduct the respondent bears a lesser evidentiary onus to demonstrate that insofar as was within his power, before dismissing Mr French, he conducted as full and extensive an investigation into all of the relevant matters surrounding the alleged misconduct as was reasonable in the circumstances; he gave Mr French every reasonable opportunity and sufficient time to answer all allegations and respond thereto; and that having done those things the employer honestly and genuinely believed and had reasonable grounds for believing on the information available at that time that Mr French was guilty of the misconduct alleged and that, taking into account any mitigating circumstances either associated with the misconduct or his work record, such misconduct justified dismissal (*BiLo Pty Ltd v Hooper* (1992) 53 IR 224 at 229-230 as cited with approval in *Western Mining Corporation v AWU* (1997) 77 WAIG 1079 at 1084). If the respondent does discharge that onus it is then up to Mr French to show that the respondent's right to dismiss him has been exercised so harshly or oppressively towards him that it amounts to an abuse of that right. On the information currently before the Commission, the allegation that Mr French failed to return a Falcon wagon belonging to the business is only one of many allegations and I see no reason why the Commission proceedings should be adjourned pending the hearing of the criminal charge. Accordingly, the request for an adjournment is refused.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Joanne Gudgin  
and

Robert Blakeman  
t/a McBride's Collectables and Giftware.

No. 2088 of 1998.

COMMISSIONER A.R. BEECH.

17 August 1999.

*Reasons for Decision.*

The respondent in this matter operates a shop in Bunbury which sells collectables and giftware. The applicant, Joanne Gudgin, was employed by the respondent between 1 April 1997 until her dismissal on 13 November 1998. She was initially employed as a sales assistant and in that position she received 2 bonuses together with letters of commendation from her employer, on 1 March 1998 and 24 April 1998 respectively. On 1 June 1998 she was given the job of junior office administrator. In practice, as I understand the evidence, this position meant that Ms Gudgin no longer worked on the shop floor unless the shop floor was understaffed or particularly busy. Her primary job was upstairs in the office. She had a range of duties but was particularly involved with the respondent's computer system. Part of her duties involved the daily reconciliation of the till and till rolls. The figures from the till rolls were corrected by her and then entered into the computer. This work was in addition to other work such as the daily checking of lay-by books and the entering of invoices and cash receipts and so on. Ms Gudgin was the only employee in the office area.

On the shop floor the respondent employed a manageress, Margaret Sturrock, and 2 other sales assistants. The owner's wife, Mrs Blakeman, also worked on the shop floor although her authority in relation to Mrs Sturrock is not entirely clear. The owner, Mr Blakeman, effectively ran the shop, together with a similar shop in Donnybrook and a rental property in Perth. He is an accountant with a small practice. For a 3 week period from 5 October 1998 Mr Blakeman was overseas on business. During that time, Ms Sturrock asked Ms Gudgin to show her the weekly sales figures on the computer. It was the first time Ms Sturrock had made that request. Ms Sturrock requested that it be printed out. According to Ms Gudgin's evidence, the sales figures were printed out and then placed in a file. On Ms Sturrock's evidence, she also viewed the weekly

sales figures, although not necessarily in printed form, on 2 other occasions. Sometime after Mr Blakeman had returned to Bunbury, and during the course of a conversation with Ms Sturrock, she mentioned that she had seen the weekly sales figures. Mr Blakeman became furious at this and afterwards speaking with Ms Gudgin, he informed Ms Sturrock he intended to dismiss Ms Gudgin on the following Monday, that being 9 November 1998. However, Mr Blakeman did not dismiss Ms Gudgin on that Monday. He in fact dismissed Ms Gudgin on the following Friday. Ms Gudgin brings this application alleging that the dismissal was unfair.

The Commission received evidence from Ms Gudgin, Ms Sturrock and Mr Blakeman. Before dealing with some aspects of their evidence, it is necessary to deal with the preliminary matter raised by Mr Blakeman at the commencement of the hearing when he asked that the application be dismissed at the outset. Mr Blakeman's application was not agreed to and what follows are the reasons for that decision. Mr Blakeman argued that Ms Gudgin's Notice of Application did not give sufficient detail of her grounds for dismissal. The application, in his view, either gave no facts, or stated facts which he believed were false or not relevant. He believed Ms Gudgin's application failed to satisfy the minimum requirements under the Commission's Regulations for bringing an application regarding unfair dismissal to the Commission. Ms Gudgin's failure to provide facts, and even her failure to correctly identify her employer were all seen by Mr Blakeman as reasons why her application should be dismissed at the outset.

However, the reasons Mr Blakeman's application was denied are that the Commission is not a court of pleadings in the traditional sense. A party is not bound by what is written in the Notice of Application or Notice of Answer and Counter Proposal. That does not mean that what is written is not important. It is important. However, the Commission is a tribunal established to decide matters according to equity, good conscience and substantial merit without regard to technicalities or legal form. The ability for individual employees to bring an application to the Commission alleging either unfair dismissal or that they have not been paid by their employer a benefit to which they are entitled under their contract of employment, carries with it a recognition that an application form filled out by an individual employee may well not be drafted in the manner that a lawyer might draft it. Applicants to the Commission will have a wide range of educational and cultural backgrounds and provided the information set out by an applicant in the course of filling out the application form is sufficient to identify the general nature of the matter before the Commission, no serious objection may be taken in relation to it. If there is a lack of detail in an application, the Commission's Regulations provide for further particulars to be requested. The provision of further particulars does not necessarily constitute a "new application" which will be outside the 28 day limitation for bringing claims of unfair dismissal. If the respondent seriously thought that Ms Gudgin's application was not in accordance with the Regulations, it has had ample time to draw that to the attention of the Commission prior to the commencement of the hearing. It did not do so. In any event, non-compliance with the Commission's Regulations will not of itself render proceedings before the Commission void (Regulation 93). Further, in this case, the respondent filed a Notice of Answer and Counter Proposal which set out in detail the nature of the respondent's objection to the merit of the claim which addressed most, if not all, of Ms Gudgin's eventual arguments. For those reasons, the preliminary point was not upheld and the application proceeded.

The Commission turns to consider the merits of Ms Gudgin's application. Mr Blakeman's evidence makes it clear that Ms Gudgin was dismissed for misconduct. Mr Blakeman sought advice regarding the payments to be made to an employee who is dismissed for misconduct. He eventually paid Ms Gudgin 2 weeks' wages in lieu of notice, however he believes he was wrongly advised to do so by the Department of Productivity and Labour Relations. It had not been his intention to pay Ms Gudgin any payment in lieu of notice at all. Further, although he paid Ms Gudgin for her completed periods of annual leave, with leave loading, he only paid to her last completed anniversary date. He did not pay Ms Gudgin her pro rata annual leave. The annual leave payments made

are quite consistent with Ms Gudgin having been dismissed for misconduct. The general rule is that an employee who is dismissed for misconduct is nevertheless entitled to be paid for any completed periods of annual leave completed prior to the misconduct occurring. The employee has no entitlement to be paid for pro rata annual leave for the period in which the misconduct occurred. That rule is now the law: *Minimum Conditions of Employment Act, 1993*, s. 24. On Mr Blakeman's evidence, he viewed Ms Gudgin showing Ms Sturrock the weekly sales figures on more than one occasion as being an act which went to the heart of her employment. The computer system contained not only the weekly sales figures but all aspects of Mr Blakeman's business activities. Anyone with access to the computer will have access to that information. It is confidential information. Ms Gudgin had previously been informed that she was not to divulge confidential information and that if she did so she might be dismissed. In Mr Blakeman's view, she breached that condition of her employment and was dismissed accordingly.

Ms Gudgin admits that she printed off the sales figures for Ms Sturrock on three or four occasions. However, she argues that the sales figures were not confidential. They are merely a consolidation of the various daily till tapes and that the till tapes contain information which is available to the staff in any event. Her evidence is that at the end of each day the sales staff see the figures and see how much they have made. She therefore does not view the matter as seriously as does Mr Blakeman. Further, she was expected to give information from the computer to other employees such as quotes, lay-bys, price lists and newsletters she created. Furthermore, she argues that she was not dismissed because of the printing of the sales figures. Rather, she was dismissed one week later because of her "attitude".

The principles to be applied when an employee is dismissed for misconduct are well known. If an employee is to be dismissed for a single act of misconduct, it is quite clear that it must be of a nature which goes to show that the employee is repudiating the contract of employment or one of its essential conditions and for that reason the disobedience should really connote a deliberate flouting of the contractual conditions (*Laws v. London Chronicle (Indicator Newspapers) Ltd* [1959] 2 All ER 285). Summary dismissal for misconduct is the most extreme penalty available to an employer. It is not always the case that a single instance of unpremeditated behaviour amounting to some degree of misconduct (whether gross or otherwise) will justify dismissal for misconduct (*Undercliffe Nursing Home v. ALHMWU* (1985) 65 WAIG 385; *Coles & Co Ltd v. Howett* 47 SAIR 278 at 286). Once it is acknowledged that not all misconduct justifies dismissal, then there is room for the view that it is not the case that the last resort should be the first response.

What then is to be made of Ms Gudgin's conduct? She admits that she had been told that confidentiality was viewed most importantly by her employer. Further, she had been told that the computer systems were most important and that if they were put under threat, dismissal might follow. It follows that Ms Gudgin knew, or ought to have known, that Ms Sturrock's request for information from the computer raised an issue that might concern her employer. It was a request which had not been made to her before. Indeed, Ms Gudgin's evidence is that she had not been asked by any one, even Mr Blakeman, to run off that type of a report before. Further, this request was made to her on the only occasion when there was a significant period of absence of Mr Blakeman. Ms Gudgin exercised her judgment. While she had not printed off sales figures before, she had given some, limited, information from the computer to other employees, as her evidence shows. She believed the information was not confidential and she knew Ms Sturrock's position as manager on the floor. Nevertheless, as Ms Gudgin admitted, the information on the computer contained the totals and the weekly and monthly averages which do not appear on the till rolls. While it may be true that Ms Sturrock could have kept a note of each till roll when it was completed and worked out the averages for herself, her result would not have been as accurate as the results on the computer. This is because the information the computer is itself the result of checking the till rolls for accuracy and correcting mistakes. Ms Gudgin is not entirely correct, therefore, when she says that the information on the computer is what the staff

see at the end of the day. The information on the computer is not only more accurate, it is presented in a way that allows the reader to compare, contrast, and establish trends relating to a part of the respondent's business operations. As such, Mr Blakeman is quite justified in his view that such information is confidential. Ms Gudgin therefore made an error of judgement in printing off the information and permitting Ms Sturrock to read it.

Did her error justify the dismissal which occurred? The answer to this question involves a balancing of all of the factors. Those factors include the fact that Ms Gudgin did not deliberately act in a manner contrary to the interests of the business. She ought to have at least spoken to Mrs Blakeman and told her what was happening during Mr Blakeman's absence, as she had been told to do: Exhibit A paragraph (k). The evidence does not permit the conclusion, as Mr Blakeman believed, that the print-outs had been removed from the premises. If they were, the evidence did not show that they were. The information that she showed on this occasion was to the manageress of the shop floor. Although Ms Sturrock did not hold a position of authority over Ms Gudgin, and did not have any duties connected with the administration of the respondent, she was nevertheless in a management position in the respondent. Further, I was impressed by her evidence and I have little difficulty reaching the conclusion that Ms Sturrock made the requests in the best interests of her position, and that of her employer. Her evidence is that in the New Year she expected to be discussing improving the sales figures with Mr Blakeman. As the Christmas period approached she wished to gain some idea of sales performance in preparation for that. I do not conclude that she requested the information for any ulterior motive whatsoever. Support for that conclusion might be drawn from the fact that Mr Blakeman took no disciplinary action against Ms Sturrock. He may have been of the view that she had no business requesting that information, but he took the issue no further with her.

Although it is the case that Ms Gudgin would have been able to print off other information, there is no suggestion that she did so although Mr Blakeman says that he just doesn't know if anything else was in fact printed off. On the evidence before me, Ms Gudgin's error relates only to the sales figures she printed off. It is a single error which she repeated for a total of three or four times. She did not do so for her own gain or profit. Further, the evidence that sales staff do take an interest in the sales of the various sections, and even talk about it together does mean that Ms Gudgin's view that the sales figures were not confidential has at least some support. Although Ms Gudgin's error amounted to misconduct on her part, I do not reach the conclusion that it was a deliberate flouting of a rule which went to the heart of her contract of employment. Further, she is entitled to have taken into consideration her previous good conduct. Whilst the 2 letters of commendation she received were for her work on the shop floor, and do not directly relate to her work in the office, it is clear that Ms Gudgin was regarded as a good, if not very good, employee. I have therefore come to the conclusion that Ms Gudgin's error did not warrant the dismissal which occurred.

Furthermore, I also find on the evidence that Mr Blakeman initially had reached a conclusion that he would not dismiss Ms Gudgin. Ms Gudgin gave evidence that after he found out what had happened, Mr Blakeman did not dismiss her immediately but rather offered her a new position on the floor in lieu of working in the office. On Ms Gudgin's evidence, Mr Blakeman gave her the choice. Ms Gudgin's evidence is that she accepted the opportunity to return to working on the shop floor. Mr Blakeman's evidence is that after he had discovered she had shown figures from the computer to Ms Sturrock, he would not have her back to work in the office and he sent her to the shop floor to reconsider her position. His evidence is that her attitude was aggressive, her voice was raised and her body language "demonstrated contempt for the situation." Mr Blakeman points out that there was not a vacant position on the shop floor into which Ms Gudgin could simply be moved. His intention was to allow her an opportunity to reconsider her position. The difference in their evidence is, in my view resolved by the evidence of Ms Sturrock. I have little hesitation in deciding that she gave her evidence truthfully and impartially, at least so far as what she saw and heard herself. I accept that Ms Sturrock might have felt some remorse if

Ms Gudgin had been dismissed by Mr Blakeman on the Monday, as he had told Ms Sturrock that he would do. However, that did not occur. I even take into account that Ms Gudgin resided with Ms Sturrock for 3 months because Ms Gudgin wanted to live closer to Bunbury. Nevertheless, I regarded Ms Sturrock as dealing with the issues raised in the evidence with a professionalism which stemmed from her 23 years' experience in the retail industry, the last 11 of which have been in managerial positions. I therefore accept Ms Sturrock's evidence that Mr Blakeman spoke to her and said that he had decided that Ms Gudgin would work on the shop floor but be under the supervision of Mrs Blakeman. I also accept Ms Sturrock's evidence that Mr Blakeman also told the junior staff to this effect. I accept that Ms Sturrock assumed that Mr Blakeman had decided not to dismiss Ms Gudgin.

I find as a fact also, that Ms Gudgin's employment continued from the Monday when she was returned to the shop floor until the following Friday which is the day upon which she was ultimately dismissed. She therefore worked all day Monday. It is agreed that the following Tuesday and Wednesday she was absent due to sickness. She also worked on Thursday. It is also agreed that Mr Blakeman was not present in the store on Thursday. It was early on the Friday morning that Mr Blakeman then dismissed Ms Gudgin. Although I suspect that Mr Blakeman's decision to dismiss Ms Gudgin on that Friday related to an event, or an "attitude" he believed had been exhibited by Ms Gudgin on the Thursday, he was not at the shop and there is no evidence that Ms Gudgin acted on the Thursday in a way which would then warrant her dismissal.

For those reasons I have come to the conclusion that the dismissal which actually occurred was harsh towards Ms Gudgin. Whilst Ms Gudgin's actions in revealing information from the computer may have warranted some other disciplinary action, her actions in all of the circumstances did not warrant dismissal and to the extent that Mr Blakeman's decision to dismiss Ms Gudgin was due to some perceived "attitude" on her part, the evidence does not justify her dismissal for that reason alone.

It is common ground that reinstatement is impracticable and I agree with that position. I therefore consider the question of awarding Ms Gudgin compensation in lieu of reinstatement. The compensation to be ordered by the Commission is not a "penalty" as such. Rather it is to compensate a dismissed employee for the loss which was suffered resulting from the dismissal. Ms Gudgin admits that the loss which she suffered for which compensation should be awarded consists only of the wages she would have earned between the date of dismissal and a date 5 weeks later when she commenced in her new job. Although Ms Gudgin was not paid for that 5 week period, she did receive 2 weeks' wages in lieu of notice, and therefore her financial loss is 3 weeks' wages. An order will issue that she now be paid a sum equal to that 3 week period, together with any pro rata annual leave due to her, and this matter is determined accordingly.

A draft of the order to issue is now distributed to the parties and the parties are requested to check that it reflects the decision reached.

Appearances: The applicant on her own behalf.

Mr R. Blakeman on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Joanne Gudgin

and

Robert Blakeman

t/a McBride's Collectables and Giftware.

No. 2088 of 1998.

COMMISSIONER A.R. BEECH.

26 August 1999.

*Supplementary Reasons for Decision.*

Following the Reasons for Decision which issued in this matter the respondent queried from which of the positions Ms

Gudgin was dismissed so that the payments are able to be calculated at the correct rate. Mr Blakeman makes the point in his correspondence that the salary stated by Ms Gudgin in her original application is the position she held in the office and not the position held on the retail floor. The difference in the wage rate is some \$43.00 per week.

Ms Gudgin advises that in her view she should be paid at the rate of office assistant.

On page 8 of its decision, the Commission noted Ms Gudgin's admission that her loss consists only of the wages she would have earned between the date of dismissal and a date 5 weeks later when she commenced in her new job, less the 2 weeks for which she had been paid. The loss is the loss of the wages she would have earned had she not been dismissed. The evidence is clear that Mr Blakeman would not have continued to pay Ms Gudgin at the "office" rate for work on the shop floor and Ms Gudgin's evidence does not contradict that. Therefore the wages she would have earned would have been at the shop floor rate and the compensation to be paid is to be calculated at that rate.

The Commission also decided that Ms Gudgin should be paid for any pro rata annual leave due to her. That is not compensation as such. It is an entitlement. Mr Blakeman paid Ms Gudgin for her untaken completed period of annual leave. Fairness indicates that payment for the pro-rata component of her annual leave entitlement is to be paid at the same rate at which the rest of her annual leave was paid.

The order which issues reflects these conclusions. The respondent has not requested time to pay however Ms Gudgin is content with an order requiring payment to be made within 7 working days and the order is worded accordingly.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Joanne Gudgin

and

Robert Blakeman

t/a McBride's Collectables and Giftware.

No. 2088 of 1998.

26 August 1999.

*Order.*

HAVING heard Ms J. Gudgin on her own behalf as the applicant and Mr R. Blakeman on behalf of the respondent now therefore I, the undersigned, pursuant to the powers conferred on me under the *Industrial Relations Act 1979*, hereby—

1. DECLARE THAT—

- (a) The dismissal of Joanne Gudgin by the respondent was harsh; and
- (b) Reinstatement is impracticable.

2. ORDER THAT McBride's Collectables and Giftware pay Joanne Gudgin within 7 working days of the date of this order—

- (a) a sum equal to 3 weeks' wages at the shop floor rate by way of compensation for the dismissal which occurred; and
- (b) the pro rata annual leave due to her for the period between the last anniversary date of her employment to the date of her dismissal calculated at the rate at which her completed periods of annual leave were paid to her.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gregory R Hutchinson  
and

Cable Sands (WA) Pty Ltd.  
No. 549 of 1998.

COMMISSIONER P E SCOTT.

23 August 1999.

*Reasons for Decision.*

THE COMMISSIONER: This is a claim of unfair dismissal made pursuant to s.7G of the Industrial Relations Act 1979.

On 12 October 1998, I issued Reasons for Decision in respect of a number of issues arising from this application. On 8 March 1999, the matter was remitted by the Full Bench on the basis that the merits of the claim were to be heard and determined.

The Commission has heard evidence from the Applicant; Richard John Garner, Machine Operator; Charles Nicholas Lazarou; Susan Germon, Human Resources Superintendent; Stephen Cyril Horner, Operations Supervisor; Warren Dudley Kingswood, Senior Supervisor; Kenneth Clarence Bell, Mining Superintendent; Michael Royce Butler, Senior Supervisor; and from William Richard Kemp, currently a Control Room Operator but who was, at the time of the Applicant's termination of employment, employed by the Respondent as a Supervisor.

The Applicant was engaged by the Respondent as a minesite operator based at its Jangardup Minesite commencing on Monday, 1 December 1997. The contract of employment (Exhibit 1) indicated that the Applicant reported to the Jangardup operations supervisor, Mr Stephen Horner. The contract of employment also noted that his employment was subject to a three month probationary period, during which time a period of notice of one week would apply on either side.

When the Applicant applied for employment, he was interviewed by Mr Butler and Ms Germon, at which time duties were explained. The Applicant says that during his employment he did not receive any written warnings but he recalls a verbal warning/counselling given to him by Mr Bill Kemp on his last day of employment in respect of a safety issue.

In the last twenty minutes of his probationary period, at about 3.40pm on 28 February 1998, the Applicant was called into the office to meet with Mr Horner and Mr Wishart. He was told that he did not fit the company's criteria and no particular reason was given to him for his employment being terminated. Although his agent placed a great reliance upon a lack of advice to the Applicant of the specific reasons for the termination and on the first day of hearing said that the Applicant was not aware of the reasons for his dismissal, the Applicant made it clear that he had been made aware of the reasons subsequent to his dismissal—he simply did not agree with them.

The Applicant understood that he had been on probation, that he had been on trial, and that "at the end of that 3 months and if I hadn't been—hadn't done any wrong or hadn't been put off in that time or had left that my termination—my employment would continue." (Transcript p. 17)

As to the grounds on which the Applicant says his dismissal was unfair, when asked in examination in chief, he said that he should have been told if he was doing something wrong, and told that his job was in jeopardy. However, he also complains that the Respondent terminated his employment even though the "Mining Probationary Employees Assessment" ("the assessment") which was completed in respect of his probationary period by Mr Butler recommended his ongoing employment.

The Applicant also complains that he was not told that the company's policy regarding counselling/disciplinary procedure (Exhibit 2) did not apply to him while he was on probation.

The history of the assessment is that it was undertaken by Mr Butler on 18 February 1998, some ten days before the termination of the Applicant's employment. Mr Butler

completed the form except for the last section which provided for recommendations. The assessment was as follows—

"Communication skills	Read Write Verbal	<i>Adequate</i> <i>Adequate</i> <i>Degree of Negative Communication</i>
	Listening	<i>Average</i>
Punctuality (time keeping)	Start of day Meal breaks	<i>Good</i> <i>Below requirements</i>
	Days off	<i>Minimal</i>
	Response to start/time changes	<i>Good</i>
Work as a team		<i>Average</i>
Leadership potential		<i>Possible</i>
Own vehicle (reliable)		<i>Good</i>
Mechanical aptitude		<i>Average</i>
Mechanical knowledge		<i>Minimal</i>
Ability to work unsupervised		<i>Needs some supervision in tasks</i>
Capacity to work		<i>Below requirements</i>
Areas worked		<i>Seed picking, mobility and sedge relocation</i>
Operating knowledge		<i>Adequate</i>
Operator skills		<i>Good</i>
Willingness to work		<i>Below requirements</i>
Willingness to learn		<i>Average</i>
Safety Attitude		<i>Good</i>
Industrial disputation		<i>?</i>
Observe minesite rules (speed limits, hard hats, safety glasses, hearing conservation, exercise duty of care, danger tagging).		<i>Good</i>
		<i>Good</i>
Correct recording (log books, time cards)		<i>Good</i>
Housekeeping and hygiene		<i>Average</i>
General physical fitness, health		<i>Overweight, sluggish, healthy</i>
Any particular injuries, sickness or complaints		<i>N/A</i>
Acceptance of extra hrs		<i>Good</i>
Acceptance of shift work		<i>Good</i>
Quality of work		<i>Good</i>
Speed of work		<i>Slow</i>
Ability to reach	<b>CAT 2</b> CAT 3 (plus), (circle one)	

Summary

Greg is happiest when operating machinery but mostly involved with mobility

duties and manual labour.

Lots of complaints never happy with most tasks.

Everything has to be just right. Difficult to supervise from some supervisors.

(Exhibit 3)

The form made its way through the Respondent's systems to the Mining Superintendent, Mr Bell, who said that on receiving and reading it he gained a clear impression that it was a negative report which indicated that the Applicant's performance was below requirements. As the report was incomplete in that there were no recommendations, he sent it back to the site for the recommendations to be made. He had a telephone discussion with Mr Horner indicating that he wanted a recommendation regarding the Applicant's continued employment and asked Mr Horner to consult his front line supervisors. Mr Horner was aware of a number of issues associated with the Applicant's employment from reports he had received from Messrs Kingswood, Kemp and Butler. Mr Horner said that he had not seen the assessment, however, he

then obtained the assessment and reviewed its terms. He consulted his diary notes made following the reports that he had received from other supervisors. He says in his evidence that he believed that he had seen enough evidence to convince him that the Applicant was not the kind of employee that the company wanted permanently. Mr Horner spoke to other supervisors and to the Human Resources Superintendent about the matter. Mr Horner's evidence included diary notes of the reports received in particular from Kemp, Kingswood and Butler as to the Applicant's performance. Mr Kingswood's evidence was somewhat contradictory about whether or not he told Mr Horner that the Applicant should be made permanent. Mr Kemp gave evidence of the difficulties he had experienced in supervising the Applicant, and of his reports to Mr Horner about the Applicant. He also gave evidence that Mr Horner asked him for a personal assessment of the Applicant's performance.

The incomplete assessment made by Mr Butler was returned to him for completion. He did so by recording under the heading of "Recommendations" the following—

"Greg is not suited to too much physical labour but will persist. He is a competent loader operator. Has potential in leadership but needs to do the work first. With the right direction and encouragement would be a good employee."

(Exhibit 3)

There is evidence before the Commission as to a range of incidents involving the Applicant and about which reports had been made. I do not intend to recite all of the evidence in respect of those matters except to say that having heard and observed all of the witnesses, the only matter in which I am satisfied the Applicant was not involved or had any responsibility was in respect of a complaint that he had directed that a path be cut through bush for him. In respect of the remainder of the matters, these appear to be reflections of the Applicant's attitude and approach to his work and I accept the reports of the supervisors in that regard. In particular, I accept Mr Kemp's evidence about the difficulties he experienced in supervising the Applicant, and of the Applicant's general attitude. Even Mr Butler's assessment was that the Applicant's verbal communication skills had a "degree of negative communication", his punctuality at meal breaks was "below requirements", his capacity to work and willingness to work were "below requirements", and his speed of work was "slow". As to the issue of the verbal warning given to the Applicant on the day before his termination, notwithstanding his protests, I find that the Applicant, although working with a supervisor and perhaps with a safety officer, was, as the operator of the equipment, responsible for ensuring the safe operation of the equipment. It is not adequate for him to say that because he was working with the supervisor he abrogates any responsibility for the safe operation of the machinery.

The Applicant's main complaint is that the positive assessment provided by Mr Butler that recommended his on going employment was not accepted by the Respondent. A number of points should be made in this regard. Mr Butler was but one supervisor who observed and supervised the Applicant in the performance of his duties. Mr Butler's assessment of the Applicant was far from glowing. There are a number of negative comments in his assessment, albeit that he made some positive comments under the heading of "Recommendation". I do not conclude that the comments made under the heading of "Recommendation" constitute any particular recommendation one way or the other – they are equivocal. They are also subject to the Applicant being given the right direction and encouragement.

It was clear from the totality of the evidence that Mr Butler's view of the Applicant was far more positive than others who were involved in his supervision and management. In any event, Mr Butler was not the final decision-maker. The decision was Mr Bell's. Based on all the information received by Mr Bell, he was entitled to come to the conclusion which he did. My conclusion in this regard is heavily influenced by the Applicant's status as a probationary employee at that time. He was on trial during this period.

The majority of the Full Bench, in the decision on the question of whether or not the facts of this matter ought to have

been heard in the public interest made the following comments about probation and its effect—

"The Commissioner also held that probation, whether as a condition of permanent appointment or as a separate appointment in its own right, brings with it a number of factors—

1. That the employer, throughout the period of probation, retains the right to see whether he wants the employee or not in his employment.
2. That the employer is entitled to consider the employee as if the employee was still at first interview.
3. The employer is under no obligation to even objectively consider whether or not to continue with or re-engage the employee at the end of the probationary period.
4. Probationary employment is but a step in the selection process and should be distinguished from permanent employment. Later in these reasons, the nature of probation is considered by us.

It is noted that in Airline Hostesses Association v Qantas Airways Ltd (1974) AILR 785, Stanton C stated—

"In my view, probation is—

1. An extension of the selection process.
2. A period of training.
3. A time for criticism, assessment and adjustment to standards of performance and conduct."

In Carter and Another v Community Aid Abroad Trading Pty Ltd (1991) AILR 264, the Queensland Industrial Relations Commission held that, although a probationary employee should be able to seek reinstatement if effect is to be given to the word "probation", then an employer should be able to terminate the employment of a probationary employee more easily than that of an employee whose employment is not subject to probation.

We would add that "more easily" would seem to us to be a description of the process which follows from the terms of the contract, which provide for probation. However, probation is not a licence for harsh, oppressive, arbitrary capricious or unfair treatment of a probationer."

(79 WAIG 951 at 952)

The matter determined by the Full Bench was not so much the issue of probation but bearing in mind the Applicant's probationary status whether or not it was in the public interest to hear the merits of the matter. Its comments recited above, both in summarising my own comments in respect of probation and the additional comments and references make it clear that probation is a different phase of the employment process for the purposes of considering unfair dismissals. In this context, I am satisfied that the Respondent, having observed the Applicant during his probationary period, during the period when he ought to have been aware that his employment was the subject of a trial and that he ought to have performed accordingly, was entitled to come to the conclusion it did and that there has been no unfairness in its decision.

I also note that the Applicant was given a verbal warning on the day before the termination of employment. As stated by Mr Bell, a probationary employee being subject to a formal warning must raise serious questions about his long-term future with the employer.

As to whether or not the policies relating to counselling and discipline, and dispute resolution applied to the Applicant, as a matter of nature justice it ought to have been made clear to the Applicant if these policies were not to apply to him. Having said that however, a reading of the counselling/disciplinary procedure does not lead me to believe that there was any automatic requirement that that procedure would apply to the Applicant. The procedure as set out is not one which necessarily applies to each employee in any particular circumstance. There are certain aspects of that procedure which apply in certain circumstances but not in others. There are certain circumstances which require the application of only part of the procedure. There is nothing within the procedure which requires its application to any particular incidents or requires that each step be followed in succession. For example, although Stage 1 applies to Verbal Counselling (Job Corrective

Measure), and Stage 2 Verbal Warning (Previous Repeated Counselling) which would appear to apply after Stage 1, there is no requirement for Stages 1 and 2 to have been applied prior to Stage 3. Stage 4 can apply to some serious first offences. Stage 5 Termination is able to apply to a first offence if considered to be gross misconduct. An employee does not necessarily go through the Stages 1-5. He may go through all stages or Stages 4 and 5, or 5 only.

Where an employee is in a probationary period of employment, where he knows that he is on trial, that his job is not assured or in any way permanent, it should not be necessary for him to go through a counselling process the purpose of which is generally to give employees with ongoing employment the opportunity to be made aware of aspects of their performance or attitude which may place that employment in jeopardy. An employee on probation may need training and coaching regarding skills, processes or work functions. However, he ought throughout the period, be aware that his attitude and performance are under scrutiny. The Applicant's status as a probationary employee, with the attached conditions as set out earlier, should have made the Applicant aware that he was on trial and therefore there should have been no need for the procedures for counselling in respect of performance or attitudinal matters to have been applied to him. The Applicant's evidence was that he was aware that he was on probation, on trial.

The Applicant received verbal counselling in respect of the safety issue. However, it was not the Respondent's intention that the counselling procedure per se would apply to the Applicant. The safety issue arose and as was appropriate the matter was formally raised with him.

I am not satisfied that in the overall scheme of things, taking account of his probationary status and his employer's consideration of his performance and attitude, that the failure to advise the Applicant that the procedure did not apply to him or the failure to actually apply the procedure constitutes an unfairness as to warrant the Commission's intervention.

As to the question of whether or not the Applicant ought to have been given reasons for the termination of his employment, I note that a number of the issues which formed the basis of Mr Kemp's and Mr Horner's views were raised with the Applicant at the appropriate time during the course of employment, albeit not on a formal basis, but in the course of work. The employer was entitled to form an opinion taking account of those things. The Applicant's status as a probationary employee means that the employer was entitled to come to a conclusion about the Applicant's suitability as if the Applicant were in the initial employment process. During the selection process, of which the authorities say the probationary period is an extension, a prospective employee is not usually entitled to be told why he or she was not successful, or be given an opportunity to respond. The prospective employer bears no obligation to discuss with the person why he or she was not selected. However, if there were an unfairness in this regard, I am not satisfied that the Applicant has suffered any loss on account of the unfairness. This could have been remedied within the last twenty minutes of the Applicant's employment, during his final discussions with the employer, by the employer putting those matters to the Applicant and allowing him to respond. This would also have overcome any unfairness which might have arisen by the Applicant not being told that the dispute settlement procedure did not apply to him. Having heard the Respondent and the Applicant and their respective witnesses, I am satisfied that the Applicant's responses to those issues, as given in evidence, would not have satisfied the Respondent such as to convince the Respondent that the Applicant's employment should be made permanent. The only exception is in respect of the allegation that the Applicant had caused or had directed that a path be made for him. The Applicant's explanations were not likely to have overcome the Respondent's general assessment of the Applicant which caused it to decide that he did not meet its requirements. The incident regarding the making of the path, which was wrongly attributed to the Applicant, was not, in the scheme of things, a matter that seemed to sway the Respondent in any decisive way. It was only one of a range of matters taken into account by the Respondent.

Accordingly, I find that the Respondent was entitled to come to the decision not to continue to employ the Applicant on the

expiration of his probationary period. Further, I am not satisfied that the Applicant has been denied procedural fairness which requires the Commission's intervention

Appearances: Mr R Clohessy on behalf of the Applicant.  
Mr R H Gifford on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gregory R Hutchinson

and

Cable Sands (WA) Pty Ltd.

No. 549 of 1998.

COMMISSIONER P E SCOTT.

23 August 1999.

*Order.*

HAVING heard the Union Industrial Advisory Services Pty Ltd (Mr R Clohessy) on behalf of the Applicant and Mr R H Gifford on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be, and is hereby dismissed.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Damian Francis Jardine

and

Retail Management Australia Pty Ltd.

No. 2099 of 1998.

COMMISSIONER P E SCOTT.

11 August 1999.

*Reasons for Decision.*

THE COMMISSIONER: This is a claim of harsh, oppressive or unfair dismissal. The Commission has heard evidence from the Applicant and from Kevin John Wells, the General Manager of IPF Finance Corporation Limited.

The Respondent is a management company and employs staff to perform the work involved in the business of IPF Finance Corporation Limited ("IPF"). IPF provides insurance premium finance to other businesses – i.e. it is a wholesaler of finance for businesses wishing to pay insurance premiums. The business commenced in 1997. In April 1998, the Applicant was engaged by the Respondent following an interview with the company's then National General Manager, David Richardson. The Applicant's position as described in his letter of appointment dated 16 April 1998 was as "WA Sales Manager, IPF Finance Corporation Pty Ltd." (Exhibit 1). The letter of appointment provided remuneration as follows—

"REMUNERATION

\$55,000 per annum paid fortnightly in arrears

\$10,000 car allowance

6% Superannuation

BONUS: \$5,000 having achieved \$2.5m

\$5,000 having achieved \$5m

\$5,000 having achieved \$7.5m

\$5,000 having achieved \$10m"

(Exhibit 1)

The Applicant denies that the figure of \$10m constituted the budget or target for sales he was required to achieve. It was merely a bonus or an incentive scheme. However, he says that

Mr Richardson spoke to him about setting the initial budget for sales of \$10m to be made by him. The Applicant says in his evidence that \$10m in sales would eventually be achievable but not in the first year. He says that when he took up employment with the Respondent he understood the industry and the nature of his role.

The evidence indicates that on 10 July 1998, during a 3 month review with Mr Wells the Applicant said that he thought that he could achieve \$6-7m in sales. He says that this estimate was based on having the necessary resources in place, which he says were not in place for some time. Mr Wells told the Applicant that he was to start afresh in that his sales figures up to July had not been to the level required and his targets or budgets would begin again in July, and he would not be doing some of the non-sales work previously done by him.

The Applicant accepts that if he did not achieve a reasonable sales performance his employment would terminate however, he says he was surprised when his employer approached him and offered the alternatives of termination of employment or a significantly lesser salary.

The Applicant says that one of the key bases of his claim that he was unfairly dismissed was that he was not advised that his position was in jeopardy. He also says that when he was advised that the Business Planning Group was not satisfied with his performance, he sought to meet directly with the Business Planning Group and this was denied to him. Therefore, he has been denied a proper opportunity to put forward his position for his employer to consider. He also says that the Respondent's rejection of his proposal as a means of resolving the matter was unreasonable. Accordingly, the Applicant says the Respondent's decision to terminate his employment was unfair. He says that it was the manner in which the Respondent sought to avoid its contractual obligations to him which added to the procedural and substantive unfairness suffered by him.

The Respondent's evidence was that in around July/August 1998, Mr Wells, previously the sales manager of IPF, was appointed Acting General Manager following the departure of Mr Richardson. Mr Wells was confirmed in the position of General Manager in November 1998. The Respondent says that by the middle of 1998, the company's financial performance was unsatisfactory. If that performance was not improved the business would be in serious difficulty, and in fact, would be under threat. Mr Wells conveyed this to the sales staff in telephone conferences. Minutes of sales staff meetings in the months from July reflect that Mr Wells was attempting to focus the sales staff's attention on their performance and to find ways to improve that performance.

In July 1998, the sales targets were revised downwards and the Applicant's target became \$8m in sales for that coming financial year. Exhibit 5 shows this revised target and contains a schedule which allocates a sales figure for each month, and this figure varies according to the time of year. The Applicant says that in around August/September 1998 he had heard that there were "some mutterings" that the company was not likely to meet the expectations of franchise owners and before he left, he started to question the financial viability of the business.

The Applicant received a memorandum from Mr Wells dated 21 August 1998 which stated—

"Please find attached the budgets/targets for the above.

These are in line with previous discussions and indications from the writer, at telesales conference meetings.

The budgets/targets are now broken into monthly allotments and they will show on the System Management reports to come to you each month with comparison to actuals.

I need from you by August 28th the following—

- Targets/budgets you are setting on numbers of brokers/distributors who are to be signed up on a weekly basis. (You have existing list).
- Implementation of a call cycle program for existing relationships and new relationships.
- Targets/budgets set for new business development on a weekly basis through to June 30 1999.
  - i.e. No. of new telephone calls per week.
  - No. of new visits per week, and the monitoring thereof.

As previously indicated we need to be fully sales/business development focussed. The above will assist us all in reaching our goals.

Should you have any queries, please do not hesitate to contact me.

Regards  
(Signed)  
John Wells  
National Sales Manager"

(Exhibit 5)

Attached to this was the document referred to earlier which set a schedule of monthly targets, actual sales and cumulative actual sales.

By memorandum dated 22 September 1998, from Gerry Baker, a director of the company, the Applicant was advised that—

"At a recent Business Planing Group meeting concern was expressed as to the performance of IPF (WA). It was resolved that I write to you and ask what plans to (sic) have in hand to rectify this position.

They have also asked that a full performance review be completed on 31/10/98.

The aim of this inquiry is to ensure the future growth of the IPF operations are in accordance with the Group's expectations and your continued involvement in this process.

Regards,  
Gerry Baker"

(Exhibit 9)

By letter dated 8 October 1998, the Applicant was advised by Gerry Baker that—

"At a recent Business Planning Meeting, your performance was reviewed.

The members expressed disappointment in your failure to supply budget figures as requested by the writer two weeks ago.

Damian as you are aware IPF performance is well below budget as are your personal targets.

The time has come for the Corporation to make some hard decisions and you can be assured that the appropriate action will be made to achieve our objectives.

This is the second time the group has questioned your performance and I once again urge you to provide the information requested.

Yours Sincerely  
(signed)  
Gerry Baker  
Director"

(Exhibit 10)

By memorandum dated 8 October 1998, the Applicant responded to Mr Baker regarding his sales targets and performance. This document is some four pages long and attaches information such as a business plan, business analysis, premium finance marketing action plan and a graph of sales. In his memorandum, the Applicant asserted that \$6m would be a likely and more realistic budget for the first year. In his evidence, the Applicant said he thought that \$5-6m was achievable.

The Respondent says that by mid October 1998 there had been insufficient improvement in the Applicant's performance and the company needed to consider quite significant measures to maintain its activities and to turn around its results. The Applicant's sales performance for July 1998 was \$54,914.00 behind his target for that month of \$400,000.00. His August cumulative deficit was \$533,170.00. By September, the Applicant was \$891,749.00 behind his target. By October, he was \$940,000.00 behind his cumulative target of \$2,400,000.00.

The Respondent says that correspondence and discussions with the Applicant to October 1998 ought to have made it clear to the Applicant that his continued employment with the Respondent was in jeopardy and that his performance needed substantial improvement. Mr Wells says that as there had been no substantial improvement in the Applicant's performance,

he met with the Applicant on 21 October 1998 and told him that his figures were only half of the estimates, that the senior management group was not happy with his performance, that he had been with the company for 6 months and he had not delivered anywhere near his original estimates and he was behind his own amended estimate. He told the Applicant that there were two options for him—

1. To reduce his salary to \$30,000 plus incentives, by which Mr Wells says he meant commission entitlements which would be a product of what sales the Applicant could achieve; or
2. The Applicant would receive two weeks notice in writing of the termination of his employment.

The Applicant said that he wanted to consider the matter and to explain to Mr Wells the difficulties associated with his performance by problems within the company. Mr Wells rejected the Applicant's view of this and said that he was not prepared to discuss previous difficulties with the Applicant—there were two options available and they needed to be considered. The Applicant said that he would advise Mr Wells the next day of his intentions.

On 22 October 1998, the Applicant agreed to accept the lower salary plus commission entitlements offered to him the previous day. The next day, 23 October 1998, the Applicant wrote to the Respondent saying that when he had made the offer the previous day to work to a reduced salary he had felt pressured to provide a response within the time limit set by the company (Exhibit 13). He said in his letter to the Respondent that he was extremely worried about his financial circumstances and now wished to withdraw the offer he had made the previous day. He sought an extension of time to allow him to consider his position and respond by 4.00pm on Tuesday 27 October 1998. This was agreed to.

On 27 October 1998 the Applicant wrote a letter to Mr Wells in which he set out his perspective of his performance (Exhibit 14). His letter was a little over three pages long and included a proposal for a different arrangement between himself and IPF based on a commission structure. He set out terms which were satisfactory to him. He and Mr Wells then met and discussed this letter and its terms. They went through both the Applicant's and the Respondent's proposals. The Respondent says that part of the problem with the Applicant's proposal was the level of commissions sought by the Applicant. Further, the Applicant was seeking to use what the Respondent saw as captive business coming from Chambers Insurance Brokers, and the Applicant wanted exclusive rights to sell the company's products in Western Australia. These items were not acceptable to the Respondent.

Following this discussion, the Respondent responded to the Applicant's proposal in detail in a letter dated 30 October 1998, agreeing to some points within the Applicant's proposal, rejecting others and making other comments (Exhibit 15).

Ultimately, the parties were unable to agree to terms for any future arrangement between them. Accordingly, also by letter dated 30 October, the Respondent advised the Applicant that he was to be provided with two weeks notice of termination effective from that day, to cease on Friday 13 November 1998 (Exhibit 16).

The Respondent says that it put proposals similar to its original proposal made to the Applicant to other members of staff. Some accepted those proposals, others did not. A new person has now been engaged in Western Australia who has a considerably lower base salary than the Applicant enjoyed, receives commission but has a lower budget than applied to the Applicant, receives no mobile phone and no car allowance and does a range of other duties. The Respondent says that it can afford the lower salary based on lower performance expectations. The Respondent says that no one is getting more than \$40,000 per annum salary. It also says that if the Applicant had written \$10m in business, on the arrangement it proposed, he would have received approximately the same income as before.

The Respondent says that although it has dismissed the Applicant it has not done so unfairly. The Applicant did not perform and was advised, in terms that he should have been able to understand that his position was in jeopardy. He was experienced within the industry and knew what position he was undertaking when he accepted the job. When the Applicant

failed to perform, and he must have been aware of this failure and the Respondent's concern, he must have been aware that his position was in jeopardy. The Respondent put to the Applicant a means of saving his job being a lesser salary and a changed package of employment conditions which the Respondent says would have seen the Applicant in substantially the same financial position subject to achieving sales. It provided the Applicant with additional time to consider his position when he so requested, and when he sought to withdraw his agreement, the Respondent agreed to this. It considered and discussed with him the proposal he put to the company for changed arrangements between them but in the end they were unable to reach agreement. The Respondent says that this failure to reach agreement was not based on any unfair approach by the Respondent, but on some unreasonable proposals by the Applicant. The Respondent was not able to agree to those unreasonable proposals. Accordingly, the Respondent says it had no alternative but to bring the employment to an end as it could not afford to continue to employ the Applicant with the results that he was achieving. Therefore, it says that it has not unfairly dismissed the Applicant.

The test to be applied in these matters is whether the employer has so harshly, oppressively or unfairly exercised its lawful right to dismiss as to constitute an abuse of the right. Such an abuse will warrant the Commission's intervention.

I have considered all of the evidence and the submissions in this matter and make the following findings—

1. On engagement, the Applicant was familiar with the nature of the industry and the job he was to perform.
2. The inference is open that in setting the original salary packages, the Respondent was overly optimistic and, perhaps with the benefit of hindsight, had created unsustainable salary levels. However, it seems from the evidence that the salaries and the sales targets when set were within industry standards and were acceptable to the Applicant on his appointment.
3. The Applicant was aware of the sales target assigned to him on his appointment.
4. The sales targets assigned to him and to others were revised downwards in light of the company's experience over its initial trading period.
5. The Applicant's own estimates of his performance were revised downwards at least twice, to \$6-7m, then \$5-6m.
6. The Applicant did not achieve either the targets set for him by his employer and was not on track to achieve his own targets. By the end of October 1998, the Applicant had fallen short of the revised target assigned to him by approximately 40%.
7. At least twice, the Respondent formally made the Applicant aware of its expectations and that his performance was inadequate. Correspondence was sent to the Applicant which contained terms which should have alerted someone of the Applicant's intelligence, education standard and position that his future with the business was in jeopardy (Exhibits 9 and 10). The Applicant was also aware that the company's position was not healthy.
8. The Respondent made efforts to refocus, direct and assist the Applicant's efforts in an endeavour to achieve the required sales.
9. By the end of October 1998, no significant improvement was evident.
10. The Applicant was not the only member of the Respondent's sales staff failing to achieve targets, although there is no detail before the Commission about the extent of those failures.
11. By October 1998, the Respondent's business was in serious jeopardy. Action was required to sustain the business.
12. The Respondent put to the Applicant and other employees proposals for their continued employment. In the Applicant's case, this proposal would have significantly altered his contract of employment.
13. As to the issue of whether the figures set out in the Applicant's letter of employment under the heading

"Bonus" reflected a required level of sales or constituted an incentive scheme, I note that these figures were specified in the letter as being part of a bonus scheme. There is no evidence that the Applicant was advised that if he did not achieve \$10m in sales, his employment would terminate. It is normally accepted that a bonus scheme does not set out, as its highest level of bonus payment, the minimum level of performance required. However, one would question what was to happen if the Applicant made no sales, or if in the whole of the year, made only the first level of sales being \$2.5m which would have attracted a \$5,000.00 bonus. I conclude from the evidence that the Applicant initially thought that \$10m was an achievable figure based on his experience within the industry. However, by July, he thought \$6-7m was achievable. In any event, by July 1998, it was made clear to the Applicant, regardless of the terms of the bonus scheme, that he was expected to achieve a certain level of sales, being \$10m. That figure was revised downwards to \$8m. He revised his figure in October to \$5-6m. At the rate of sales the Applicant was making, it is likely that by the end of the financial year he would have made only \$3.2m in sales which is significantly less than both his employer's and his own last revisions. Having said that, it would appear that the Respondent has recognised that its sales expectations were unreasonable, or alternatively has found that there have been changes in the market which have made its expectations unrealistic. This is evident because, following the Applicant's termination of employment, it has revised downwards its expectations of sales to be made by its Western Australian representative. Nonetheless, the real difficulty arose in that the Applicant's salary level was unsustainable at the level of sales being achieved by him.

14. Accordingly, the Respondent had cause to seek to alter the terms of the Applicant's employment by agreement with him. If agreement could not be reached between the parties for new contractual terms then it was clear that his employment would need to come to an end.
15. As to the Applicant's claim that, at least in the first part of his employment, necessary resources were not available, it would seem that this was so for the first 3 months, however, I am not sure that these problems continued beyond July.
16. As to the Respondent's failure to allow the Applicant to speak directly to the Business Planning Group, there was no right for him to do so. It is not unreasonable nor unusual in the management of businesses, that such matters are dealt with between the effected employee and his/her manager, rather than with any other group such as an executive group or a board of directors except where the employee's reporting line is to such a group or board. Therefore, the Respondent's refusal to allow the Applicant to address the Business Planning Group as to his situation was not unfair or harsh. He was able to deal with those matters in communications with Mr Wells and Mr Baker.
17. The Respondent, having decided that change was essential, and having put a proposal for change to the Applicant, asked for his response within a certain time frame. The Applicant initially agreed to the changes proposed. Having reflected on the situation he sought to withdraw that agreement and to have more time to consider his position. This was agreed and fairly so.
18. The Applicant put forward a proposal of his own. The Respondent genuinely considered and discussed the proposal and all of its terms with the Applicant. This involved negotiation of some terms. Some terms were agreed but ultimately the parties were unable to come to mutually agreed sustainable terms. I am not satisfied that the Respondent's rejection of some of the terms of the Applicant's proposal was unfair. On the contrary, the Applicant's proposal contained some terms which would have been unfavourable to the Respondent, and it was entitled to refuse. This

being so, there was no option for the Respondent but to terminate the Applicant's employment as had been foreshadowed.

I find no unfairness in this process. The realities of the business world are that well laid plans are sometimes unachievable in practice. Businesses need to modify those plans to remain viable. They also need to treat their employees fairly where those modifications effect their employees. If there is any unfairness in this matter, it is that in defending its position, the Respondent has focused on the Applicant's failure to achieve targets in isolation of the failures elsewhere. I have nothing before me which would indicate that the Applicant's performance was substantially better or worse than that of other sales personnel whose performances also appear to have been inadequate to the needs of the business. However, in light of the Applicant's own assessments and revisions, I am unable to find that his performance was adequate. Clearly, in the circumstances, it was not adequate to sustain the salary package he was receiving. In any event, the Applicant's failure to achieve the sales figure required of him was not such that the Respondent found him entirely unsatisfactory and wanted to be rid of him. Rather it wanted to pay him a salary package more in keeping with his level of sales. To do so, it needed his agreement. Failing that agreement it had no option but to terminate the contract of employment. This aspect of the Respondent's reasons for the termination is reasonable and not unfair.

I am satisfied that in undertaking the process which ultimately resulted in the Applicant's dismissal, the Respondent was fair and reasonable. In all of the circumstances, I am unable to conclude that there was such harsh, oppressive or unfair treatment of the Applicant in his dismissal to warrant the Commission's intervention. Accordingly, I find that in both the reasons for dismissal and the process applied that this dismissal was not harsh, oppressive or unfair.

APPEARANCES: The Applicant appeared on his own behalf

Mr Stavrianou (of Counsel) appeared on behalf of the Respondent

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Damian Francis Jardine

and

Retail Management Australia Pty Ltd.

No. 2099 of 1998.

COMMISSIONER P E SCOTT.

11 August 1999.

*Order.*

HAVING heard the Applicant on his own behalf and Mr Stavrianou (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 this matter be, and is hereby dismissed.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dragoscav Jovanovic  
and

Crossbreed Nominees Pty Ltd.

No. 1905 of 1998.

COMMISSIONER J F GREGOR.

16 August 1999.

*Reasons for Decision.*

THE COMMISSIONER: Crossbreed Nominees Pty Ltd as trustees for the Narrogin Machinery Centre Unit Trust, trading as Dumbleyung Ag Repairs (the respondent) operates a business in Dumbleyung and Narrogin. The business involves selling new and used agriculture equipment, servicing agriculture equipment, sale of spare parts, equipment and motor cycles. Early in 1993, Dragoscav Jovanovic (the applicant) visited the respondent's premises at Dumbleyung with a view to entering into an employment relationship. The applicant decided to take up the position and the principal of the respondent, Mr G Perkins, travelled to Medina and drove the applicant to Dumbleyung.

The relationship between the parties continued until 1998. It came to an end in controversial circumstances which are the subject of proceedings in another jurisdiction. The applicant mounts his claim under a number of heads. He says that in 1994, he borrowed money from the respondent in two amounts; \$2,250.00 and \$1,000.00. The total loan amounted to \$3,250.00, which was to be repaid at 10% flat interest. That is, the total amount that he owed the respondent was \$3,575.00. The respondent says that there was an additional amount of \$600.00 borrowed. The total amount of \$3,850.00 was to be paid at 10% simple interest but not on a flat rate as alleged by the applicant. During 1994 to 1998, the applicant claims he repaid \$4,070.00 plus \$530.00 interest. He claims that he overpaid the loan amount and has repaid \$1,550.00, which was more than agreed.

Additionally, the applicant claims contractual entitlements including \$24.05 related expenses, incurred during the period employment. The applicant claims that, when he was first employed, he would be paid \$500.00 per week. The applicant alleges that an agreement made between the respondent and Jobstart (*Exhibit S1*) proves that he was to be paid \$500.00 per week. The applicant was paid \$493.00 per week until June 1995, when he says he was promoted to manager. The applicant's pay increased to \$550.00 per week. However, he was required to work an additional 2.5 hours per week. Over the 18 month period from when the applicant commenced employment, until June 1995 when his pay increased, there was a shortfall of \$28.00 per month, totalling \$504.00. The applicant also claims that he worked 4 ½ hours per week overtime during the period of December 1993 to June 1995. Applying the overtime formula contained in the Metal Trades General Award, he is entitled to overtime payments of \$88.77 per week or \$6,924.06. From June 1995 to December 1997, overtime was underpaid at the rate of \$97.70 per week totalling \$12,700.65. In total, the applicant claims that the respondent owes him \$19,624.71 for underpayments during the period December 1993 to December 1997. The applicant's Statement of Claim alleges that underpayments totalled approximately \$21,000.00.

The contractual source of these entitlements need to be considered. The applicant alleges that arrangements with Mr Perkins for two loans, not three as Mr Perkins alleges, were made and reduced to writing. However, the documents have become lost and were not produced before the Commission. It is argued that the parties agreed to accept the Metal Trades General Award (the Award) as a guide for conditions of employment. The applicant therefore relies upon the overtime provisions from that Award to sustain his claim for underpayments of wages. He points to the schedule in the Jobstart Agreement (*Exhibit S1*) in support of that contention.

The respondent admits there was an overpayment of loan monies. However, the total borrowing was increased by \$600.00 in a separate loan. The loan was subject to a written

memo but the book that recorded the loan details, the memo and the cheque butts is missing. The respondent says that the loan was for \$3,850.00 and that the total amount repayable was the principal plus interest at 10% per annum not 10% flat which would be a total of \$4,592.44. It is conceded that the payments continued until 16 January 1998. There is an overpayment in the sum of \$457.56 and the respondent consents to repay that amount. Mr Perkins has a clear recollection of advancing the additional \$600.00 to the applicant 10% per annum is more realistic than the suggestion made by the applicant which if calculated would only amount to 3% to 4% per annum.

The respondent says there is no written contract of employment. The Award was used as a guide but the agreement was fundamentally a common law agreement. There were certain terms in respect of hours to be worked and amounts to be paid which differed substantially from the Award. However, the Award was used to calculate overtime. The contract and the Award both contemplate circumstances where overtime was payable. However, these circumstances differed between the contract and the Award. The Jobstart Agreement was not the actual contract of employment. According to the respondent, it was completed after the employment commenced and cannot be relied upon to establish the contract according to the respondent. The respondent says that there was a notional 38 hour to 40 hour week to be worked between the hours of 8.00am to 5.00pm. There were generous morning tea, lunch and afternoon breaks which meant that the total amount of actual work each week was in the vicinity of 38 hours. Overtime was only to be paid in respect of hours worked after 5.30pm on Monday to Friday or any hours worked on Saturday.

The arrangement was different to that prescribed in the Award. Staff members at the respondent's business in Dumbleyung would start work at 8.00am and go home at 5.30pm. They would work their hours in between because they were given generous morning tea, lunch and afternoon tea breaks. The hours that they were paid for were covered by the wages that they were receiving. The respondent's other employees were paid on exactly the same basis and the example of Mr Schultz, who gave evidence, was bought to the attention of the Commission. Mr Schultz was paid the same as the applicant. All the employees filled out their time cards in the same way. What they did is total their hours up to 8.5. The hours were made up of work done on the client's machinery. Any difference between the time spent working on client's equipment and 8.5 hours was shown on the job cards as workshop time.

It was denied that the Jobstart Agreement (*Exhibit S 1*) meant that the applicant would be paid \$500.00 for a 38 hour week. It was filled out on the basis that a Commonwealth Employment Service had asked the respondent to indicate the applicant's potential earnings. Soon after he started, he was paid \$493.00 per week and 12 months later his pay increased to \$550.00 per week. According to the respondent, that illustrates the potential for the applicant's pay to increase. Mr Perkins, in his evidence, said that he intended the applicant's pay to be in the vicinity of \$440.00 and review the rate after 3 months. However, by clerical error he was paid \$493.00 almost immediately after he commenced. The applicant was paid overtime from time to time. This is shown in the wage book, which the applicant had signed. On various occasions, the applicant was given small and large loans as a wage advance. He was also supplied with boots and overalls. Accommodation was provided when he moved to Dumbleyung and was later given accommodation in a caravan park and had use of a company vehicle. It is the respondent's contention that it can properly identify the amount of money that was actually paid. There are records of those payments and a wage book with the applicant's signature accepting the amount he was paid each week.

The respondent claims that it would be extremely unusual for the applicant to leave his family in Medina to take a job in Dumbleyung and not discuss the rate of pay before he did so. There was also evidence of long lunch breaks and the time that he took travelling between Katanning, Wagin and out to a gold mine on which he worked. There are dubious claims in terms of overtime on the gold mine and there was an extravagant use of petrol in respect of the work vehicle, which is not explained or explainable by the applicant. There were substantial quantities of tea, coffee and sugar purchased. There

was the unexplained use of hundreds of light bulbs, which were purchased for use in the Dumbleyung workshop. The respondent had arranged the applicant's transport from Perth to Dumbleyung. He paid the applicant's accommodation, lent him a caravan and substantial sums of money, provided him with overalls, boots and gave him favourable treatment.

It is suggested that this application has its genesis in a falling out between the parties. Relations became difficult when the applicant found a CES form stating that he may be entitled to more money than he had received, and tried to obtain it. He decided to try and obtain this additional money. Additionally, there was an incident at work, involving workers compensation, when the applicant asked Mr Perkins to give him a note saying that he was the manager of the workshop. A minor altercation ensued between the parties and the applicant made threats about playing games with each other. The applicant then erected spurious claims for money, which he was not entitled to receive. The money paid to the applicant was well above the Award and was the money that he was entitled to receive under his contract. The workshop was open between 8.00am and 5.00pm but there were substantial breaks for morning tea and lunch, during which time, employees were encouraged to socialise with customers. There was a large amount of idle time. By arrangements which may not be good business arrangements, but nevertheless existed, all of that idle time was attributed to the workshop and timesheets were topped up to by the idle time to show 8.5 hours daily. In practice, all employees were paid on exactly the same sort of basis. Overtime was paid when it was claimed as long as it was after 5.30pm and/or on Saturday. Therefore, the respondent has paid the applicant all his entitlements although it did concede that there was approximately \$450.00 owing for overpayments of the loan. This is a sufficient examination of the issues in this case for the purposes of these reasons.

An industrial matter may be referred to the Commission where an employee claims that his employer has not allowed him a benefit, not being a benefit under an Award or Order, which he is entitled under his contract of service. The prevailing view is that the task before the Commission in dealing with such applications is not merely a fact finding exercise but a judicial inquiry. In *Reginald Simons v Business Computers International Pty Ltd 1985 (65 WAIG 2039)—Simons Case—Edwards AP on behalf of the Full Bench said—*

*“The jurisdiction of the Commission which is founded by proceedings under s. 29b(ii) of the Act is judicial. It is not arbitral or legislative. The Commission jurisdiction such limited to the ascertainment existing rights by determination of whether or not an employee has been denied a benefit, not being a benefit under an Award or Order, to which the employee is entitled under the contract of service.”*

The stance of the Full Bench in *Simons Case* was modified in *Gandy Timbers Pty Ltd v. Gresty 1986 (66 WAIG 1951)*. In that case, it was suggested that whether a contractual benefit existed or not, the Commission is bound to adopt legal principles. It remains enjoined by s. 26 to determine any claim, not only on the substantial merits but having regard to the equity of the matter. Although the substantial merits of a case might warrant a finding that the employee had been denied a contractual benefit, the circumstances might be such that it would be inequitable to make an order enforcing the benefit. In *Perth Finishing College Limited v. Watts 1989 (69 WAIG 2307)* Sharkey P, adopted with approval, the following words found in *Barblett v. Pacific Pty Limited 1988 (68 WAIG 2508)* which describe a contractual entitlement claim—

*“By its very nature, that requires that the Commission ascertain what benefits are embodied in the particular contract. Since the contract is a legal phenomenon, its legal scope can only be sensibly determined by having regard to legal concepts and particularly the laws of contract”.*

In my mind, these authorities give rise to concern about the status of the loan agreement between the parties. I will say more about that later. I first turn my mind to the witnesses. The applicant gave evidence on his own behalf. There was no other witness called to support the contentions. I have the feeling that a considerable amount of the applicant's evidence is self-serving. In my view, he seems to construct situations,

which suit the propositions he urges on the Commission, for instance, his entitlement to overtime. The way the applicant responded to Mr Perkins has all the hallmarks of an employment relationship, which soured because of an incident between the parties. I have considerable doubts about the quality of the applicant's evidence. Particularly when one weighs the applicant's evidence of Mr Schultz. Mr Schulz supported the respondent when he could be regarded as an employee of the same status as the applicant. I have no such concerns about the evidence of Mr Perkins. He was attacked on his evidence by the applicant's Counsel, when that evidence related the original terms of engagement and much reliance was placed upon Exhibit S1—the Jobstart Agreement. Mr Perkins explanations about the way the agreement was drafted, how and when it took place seemed to be logical and do not give rise to concern, in my mind, about the probity of his evidence. In the circumstances, I have doubts about the quality of the applicant's evidence and do not have the same doubts about that of the respondent. Where the evidence differs on material matters, I favour that of the respondent.

What the applicant is required to do in this case is set out clearly in *Simons Case* so to is the duty of the Commission. It is to act in a judicial way and to discover the terms of contract. If those terms of contract have not been given effect to the Commission subject to s.26 of the Industrial Relations Act, 1979. If s.26 is applied, the Commission is required to issue orders which have the effect of insuring that the applicant receives entitlements due to him under the terms of the contract. That is, I must ascertain what benefits are embodied in the contract. This must be done by having regard to legal concept and particularly the laws of contract. The application of these principles to the evidence before me creates doubts about the status of that loan as an industrial matter. If I exceeded to the applicant's submission, and entertained the claim, it could be said, that I would be making an order on a claim for a debt (in puro) which perhaps is not an industrial matter. However, the respondent did not argue before me that the proper legal identification of the loan is a debt of that character. Despite the doubts I have concerning the status of the loan as an industrial matter, I need to deal with what has been put to the Commission.

No documentation has been put to the Commission to support the applicant's contention about the loans. Although it is clear, though the admissions of the respondent, that there were loans. The respondent says that the loan was in three portions. The applicant says it was in two portions. The applicant says the interest was a different formulation to that suggested by the respondent. In the circumstances, I conclude that more likely than not the loan was of the character described by Mr Perkins. It seems to me that the applicant's contention about evidence for instance, is a mere convenience to his case. To assess interest on a loan in this manner, he suggests would be quite unusual. The method of calculating interest is more likely than not to be in the form suggested by the respondent. If it were not, the applicant has been given a loan at an absurdly low rate of interest. Therefore, I find that insofar as the claim effecting the loan is concerned, the arguments of the respondent should be accepted. The respondent concedes that there is a sum of \$457.56 owing to the applicant and I will issue an order by consent that amount of \$457.56 be paid.

Insofar as the balance of the claim is concerned, the success or not of the applicant's case turns on whether he can establish that the relationship was to be governed in precise terms of the Award. The applicant relies upon his own evidence for this and that the Award is mentioned in Exhibit S1. In determining this claim, I have taken in to account the evidence of Mr Schultz and Mr Perkins. I accept the evidence that the Award was used by the respondent as a guide. Clearly, it was only used as a guide for wages. The weekly wage of the applicant was considerably above the Award for the whole of his employment. If that were the case, it is not unlikely that the parties had modified the Award in other ways. The story of Mr Perkins concerning the way the workshop is organised, the hours it works and the way that employees are encouraged to have long breaks seems plausible given the location of the respondent's business and the type of customers that it has. I therefore conclude, on the balance of probabilities, that the entitlement to overtime was in the form argued by the respondent and not that proposed by the applicant. The

claim for underpayment of overtime payments will be dismissed.

The respondent's case contained a number of allegations or suggestions about the applicant's conduct for instance, the excessive use of fuel, light bulbs, tea and coffee. None of these issues are issues, which fall for determination in this case, although I have taken account of them when making my assessment of witness credibility. There remains the matter of an underpayment of wages. The applicant alleges that he was underpaid the amount of \$7.00 per week for an amount of time which would create an entitlement to him for an underpayment of \$504.00. I think it more likely than not that he was over paid \$50.00 per week from the time that he commenced work until the time Mr Perkins discovered that he was receiving \$493.00 per week. In other words, I accept Perkins evidence about the salary stating rate. In that case, I decline to find that the applicant is entitled to \$500.00 per week from the period of December 1993 to June 1995. I am unable to conclude on the evidence before me, that the applicant is owed \$24.00 for expenses and that claim will be dismissed.

The contractual benefits claimed by the applicant will be dismissed save an order for \$457.06 as over payment to loan account.

Appearances: Ms J Stevens, of Counsel, appeared on behalf of the applicant.

Mr M Patterson, of Counsel, appeared on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dragoscav Jovanovic

and

Crossbreed Nominees Pty Ltd.

No. 1905 of 1998.

COMMISSIONER J F GREGOR.

16 August 1999.

*Order.*

HAVING heard Ms J Stevens, of Counsel, on behalf of the applicant and Mr M Patterson, of Counsel, on behalf of the respondent, the Commissioner pursuant to the powers vested in it by the Industrial Relations Act, 1979 hereby orders—

THAT the contractual benefits claims of the applicant be dismissed save that the respondent pay the applicant for the sum of \$457.06 being overpayments of a loan account.

(Sgd.) J. F. GREGOR,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Vivienne Laura Longley

and

Director General of Education

of the Education Department of Western Australia

No. 518 of 1999.

COMMISSIONER P.E. SCOTT.

27 August 1999.

*Reasons for Decision.*

THE COMMISSIONER: This is an application made pursuant to s.29 of the Industrial Relations Act 1979 ("the Act") by which the Applicant claims that she had been the subject of a harsh, oppressive or unfair dismissal.

On 27 July 1999, the Commission convened to hear submissions from the parties as to preliminary matters raised by the Respondent. In summary, those preliminary matters are—

1. That the Applicant, being a "teacher" as defined has made a claim pursuant to s.29 of the Act based on the Respondent's inquiry and decision to impose a punishment on the Applicant pursuant to s.7C of the Education Act 1928 and that the proper manner in which the Applicant should deal with such a matter is to bring an appeal pursuant to s.23B of the Industrial Relations Act 1979. It is said by the Respondent that the claim under s.29 is beyond jurisdiction and ought be dismissed.
2. The application is premature in that the application was filed prior to the Respondent having made a decision on which the application could have been grounded.
3. That the action of the Respondent, against which the Applicant complains was a demotion and does not amount to a dismissal, in the context of the full terms of her employment which includes provision for demotion quite separate from dismissal.

The background to this matter is set out in the statement of agreed facts and the attached documents. The statement of agreed facts provides—

1. The Applicant was appointed from 1 January 1974 as Mistress/Probation from Secondary Teachers' College to York Junior High.
2. As of 31 December 1975 the Applicant was deemed to have completed her period of probation.
3. From 1 January 1979, the Applicant was promoted to Deputy Principal Female at Bridgetown High School under the provisions of the *Education Act 1928* and *Education Act Regulations 1960*.
4. From 1 January 1992, the Applicant was promoted to Level 6 Principal at Carnarvon Senior High School under the provisions of the *Education Act 1928* and *Education Act Regulations 1960*.
5. From 1 January 1995, the Applicant was transferred from Level 6 Principal to Principal Como Senior High School under the provisions of the *Education Act 1928* and *Education Act Regulations 1960*.  
See Attachment A.
6. On 8 January 1999, Dianne Kerr, the R/Director-General of the Education Department, wrote to the Applicant informing her that an inquiry had been initiated under Section 7C(3) of the *Education Act 1928* in relation to allegations that may amount to misconduct, suspending the Applicant without pay with effect from 28 January 1999 until the completion of the inquiry.  
See Attachment B.
7. On 27 January 1999, the Respondent wrote to the Applicant informing her that she would be paid her salary for the period of suspension.  
See Attachment C.
8. On 13 April 1999 the Respondent wrote to the Applicant outlining her provisional view and requesting a written submission from the Applicant in relation to this provisional view.  
See Attachment D.
9. On 15 April 1999, the Applicant filed an application in this Commission seeking remedies for her alleged unfair dismissal.
10. On 16 April 1999, the Applicant wrote to the Respondent regarding the Respondent's press release and the Applicant's application in this Commission.  
See Attachment E.
11. On 20 April 1999, the Applicant's agent, Mr O'Toole, wrote to the Respondent.  
See Attachment F.
12. On 22 April 1999, the Director of Employee Relations with the Education Department, Mr Danny Cloghan, wrote to the Applicant.  
See Attachment G.

13. On 27 April 1999 the Applicant's agent, Mr Ralph O'Toole, wrote to the Respondent in response to the request from the Respondent dated 18 April 1999. See Attachment H.
14. On 10 May 1999, the Respondent wrote to the Applicant stating that she had been found guilty of misconduct under Section 7C(2) of the *Education Act 1928* and that the following penalties would be imposed with effect from 10 May 1999—
- the Applicant's position was reduced from that of Principal to a teacher level 2.3, with a consequential reduction in salary; and
  - the Applicant was to be transferred to Central Office as a member of the teaching staff to the position of Curriculum Directorate.
- See Attachment I.
15. On 26 May 1999 the Respondent wrote to the Applicant. See Attachment J.
16. On 27 May 1999 the Applicant wrote to the Respondent indicating that she had been unfairly dismissed. See Attachment K.
17. From at least 1 January 1999 the terms of the Applicant's employment with the Respondent were governed by —
- the *Certified Agreement for Secondary Principals 1998*;
  - the *Teachers (Public Sector Primary and Secondary Education) Award 1993*;
  - the *Education Act 1928*; and
  - the *Education Act Regulations 1960*.

The parties to this Application certify that the foregoing facts (together with the attachments) have been agreed for the purposes of determining the jurisdictional issues at the preliminary hearing before Commissioner P.E. Scott."

At the commencement of the hearing on 27 July 1999, the Applicant noted that point 17 was no longer agreed and sought the deletion of point 17 and this occurred.

It is also noted that point 8 refers to the date of 13 April 1999. The Applicant says that she does not concede that this was the date of this letter as the date is hand written immediately following the signature of the writer and the Applicant says that date should be 18 April 1999.

I shall deal firstly with the question of this date. The letter of 13 or 18 April 1999 is a letter from the Respondent's Director General, Cheryl Vardon, addressed to the Applicant, referring to correspondence of 8 January 1999 "concerning the allegations of misconduct made against (the Applicant) and the Section 7C Inquiry into these matters". This letter states that "after considering the report from the Independent Inquirer, I have found that you are guilty of misconduct under Section 7C(2)," and certain matters said to constitute that misconduct are set out. The letter goes on to say that the misconduct is considered to be serious, and that Ms Vardon had reached the "provisional view" that she should impose penalties of the Applicant being reduced from the position of Principal to a teacher Level 2.3 with a consequential reduction in salary and be transferred to the Central Office as a member of the teaching staff to a position in the Department's Curriculum Directorate. The final paragraph of this letter is most significant in that it says—

"To help determine this matter, I am providing you with a copy of the Inquirer's Report and an opportunity of furnishing a written submission addressing my findings and the penalties I am considering imposing. Please ensure that your submission is received no later than Friday 24 April 1999 at this Office. In the event that no submission is received by 24 April 1999, I shall proceed to determine this matter."

By a letter addressed to the Director General, which contains at the top of the page the date 16/04/99, the Applicant thanked the Director General for providing her with a copy of the report and advised her that "the matter of your preliminary disciplinary decision has been lodged in the Industrial

Relations Commission." I note the terms of point 14 of the schedule of particulars of claim attached to the Notice of Application filed on 15 April 1999 in which the Applicant specified the date of termination as being 13 April 1999. On the basis that the Applicant's letter of response to Cheryl Vardon's letter being dated 16 April 1999, and that the Notice of Application was filed on 15 April 1999, and that it states the date of termination as 13 April 1999, I am satisfied that the letter referred to is dated or intended to be dated 13 April 1999. If it were dated 18 April, then the Applicant could not have accurately dated her letter in reply, nor could she have filed her application when and in the terms she did.

At the commencement of proceedings there was argument by the parties as to whether or not the Applicant has another avenue available to her should this matter be dismissed. This is dependent on whether the Applicant is a teacher as defined by the Industrial Relations Act 1979 and by the Education Act 1928. The Applicant does not concede that she is a teacher for these purposes, however, the Respondent says that she is.

The definition of a "teacher" prescribed by s.7(1) of the Industrial Relations Act 1979 includes—

- any person engaged in teaching in a government school within the meaning of the *Education Act 1928*;
- any person employed by the Minister for Education and engaged in teaching in a pre-school centre within the meaning of the *Education Act 1928*; and
- any person holding or acting in a position in respect of which a teaching academic qualification is required in the department of the Public Service principally assisting the Minister for Education in administering the *Education Act 1928*."

The definition of a "teacher" prescribed by s.3(1) of the Education Act 1928 is—

- in relation to any school not being a Government school, includes any person forming part of the teaching staff of the school; and
- in relation to a Government school or the department, includes any person engaged in teaching and any person holding or acting in a position in the department in respect of which a teaching academic qualification is required but does not include any person, whether or not he holds such a qualification, who is a public service officer within the meaning of the *Public Sector Management Act 1994*;

A history of the Education Regulations demonstrates that to have been eligible to apply for and be appointed to the position of Deputy Principal Female in 1979, and to Level 6 Principal in 1992; and then transferred to Level 6 Principal in 1995, the Applicant would have been required to hold a teaching academic qualification as specified in the definitions of "teacher" referred to above. The Applicant agrees that she holds a teaching academic qualification. In these circumstances, I find that the Applicant is a teacher for the purposes of these proceedings, because she meets the definition of a teacher pursuant to s.7(1) of the Industrial Relations Act 1979, in particular paragraph (c) of that definition.

I now turn to the first preliminary matter raised by the Respondent as to whether the Commission has jurisdiction to deal with a claim made pursuant to s.29 of the Industrial Relations Act 1979 in respect of a teacher. The Respondent says that the appropriate course for the Applicant is via s.23B which specifically deals with appeals by teachers against the type of decision made by the Respondent. The Applicant says that her demotion amounts to a dismissal and she is entitled to bring her claim pursuant to s.29.

Section 23B of the Industrial Relations Act 1979 provides that—

"**23B.**(1) The Commission has jurisdiction to hear and determine—

- an appeal by a teacher against any punishment for alleged misconduct imposed on the teacher under the *Education Act 1928* other than a punishment that is a reprimand or a fine that does not exceed \$50;
- an appeal by a teacher (not being a person to whom subsection (2) applies) against the

dismissal, or reduction to a position carrying a lower salary or remuneration, of the teacher for inefficiency under any regulations relating to the assessment of inefficiency and made under the *Education Act 1928*; and

- (c) an appeal under section 7D (4) of the *Education Act 1928*.
- (2) This subsection applies to a person who is —
- (a) a teacher appointed on probation; or
  - (b) a teacher who is reduced to a position carrying a lower salary or lower remuneration but whose salary or remuneration is not by reason only of that reduction reduced to the level of the lower salary or lower remuneration.
- (3) Without limiting the generality of subsection (1) the Commission may confirm, modify or reverse any decision, determination, finding or declaration appealed against.
- (4) No record relating to an appeal against a punishment imposed on a teacher shall be open to public inspection.”

Section 49(2b) of the Industrial Relations Act 1979 provides that—

“(2b) An appeal does not lie under this section from a decision of the Commission on an appeal under section 23B.”

Regulation 34 of the Industrial Relations Commission Regulations 1985 still contains a procedure for appeals by government teachers pursuant to the provisions of the Industrial Relations Act 1979 where, prior to the enactment of the Industrial Legislation Amendment Act No. 1 of 1995, those matters went before the State School Teachers Tribunal, pursuant to s.78(1).

An examination of s.23B demonstrates that the legislature intended that a teacher appealing against any punishment for alleged misconduct imposed on the teacher under the Education Act 1928 is to be dealt with in a particular way. This section deals with the specific circumstances of the matter currently before the Commission where the Applicant has been demoted on the basis that the Director General of Education, having conducted an inquiry pursuant to s.7C of the Education Act 1928, has determined that the Applicant was guilty of misconduct and has imposed a punishment other than a reprimand or a fine that does not exceed \$50.00. The legislature has decided that:

1. The Commission may confirm, modify or reverse any such decision appealed against;
2. That the record relating to such an appeal is not to be open to public inspection; and
3. There is no right of appeal from the decision of the Commission on an appeal under s.23B.
4. There is no time limit placed on the institution of such an appeal.

By contrast, s.29(2) provides that a claim of harsh, oppressive or unfair dismissal referred under subsection (1)(b)(i) of s.29 cannot be made more than 28 days after the day on which employment terminated. A decision made in respect of an application made pursuant to s.29 of the Industrial Relations Act, 1979 can be appealed to the Full Bench. There is no requirement for the record of a matter brought pursuant to s.29 to be closed and not available for public inspection. The powers of the Commission in dealing with a claim of harsh, oppressive or unfair dismissal are set out in s.23A. Amongst other things, this section provides for reinstatement or compensation for loss or injury caused by the dismissal. There is a prohibition to the ordering of compensation unless reinstatement or re-employment is impracticable. There is a limit placed on the amount of compensation that can be awarded, and a direction as to how it may be calculated.

The dicta of *Anthony Hordern v Amalgamated Clothing and Allied Trades Union of Australia* (1932) 47 CLR 1, *R v Wallis and Another* (1947) 78 CLR 528 and *Downey v Trans Waste Pty Limited* (1990 – 1991) 172 CLR 167 is that where the legislature sets out a particular means for dealing with a limited subject, subject to limitations and qualifications, then a court or tribunal should use the specific powers conferred for

the purpose of dealing with those matters, and is excluded from relying on a general power applicable to its jurisdiction.

It is clear that the legislature intended that teachers should be able to appeal to the Commission against any punishment for alleged misconduct imposed under the Education Act 1928, on particular terms, not on the terms applicable generally under s.29 of the Industrial Relations Act 1979, which is part of the Commission’s general jurisdiction. In accordance with the authorities, the Commission is excluded from dealing with this matter pursuant to its general jurisdiction under which s.29 falls. On this basis, the application ought be dismissed. Clearly, the Applicant is not without a remedy in these circumstances, but can appeal pursuant to s.23B.

Although it is unnecessary to do so because of my decision regarding the appropriate avenue for this matter, I intend to deal with whether or not the application was premature. I referred earlier to the date of a letter from Cheryl Vardon, Director General, and found that it was dated 13 April 1999. I note that this was not the letter which advised the Applicant that the Director General had decided to impose certain penalties. It is the penalties imposed by the letter of 10 May 1999, not those foreshadowed in her letter of 13 April 1999, against which the Applicant is entitled to claim. The Respondent says that because the Notice of Application which commenced this matter, which was filed on 15 April 1999, was filed prior to the Respondent deciding to or actually taking any action against the Applicant which might base her claim, there was no decision against which to claim.

The Applicant relies on a decision of the Full Industrial Relations Commission of South Australia in *Grivell v Advertiser Newspapers Ltd 1998 SAIR Commission 65*. The Applicant refers in particular to a paragraph contained within a summary of that decision produced by CCH that says—

“Further, the Full Bench found that in keeping with the objects with the Act the word “dismissal” should be interpreted as broadly as possible, so as to enable the applicant to commence proceedings for unfair dismissal before cessation of employment.

This decision sets out the history of relevant passages of legislation dealing with unfair dismissal claims, finally noting that “the provisions were repealed by the Industrial and Employee Industrial Act 1995 section 105 which read—

- (1) If an employer dismisses an employee, the employee may, within 14 days after the dismissal takes effect, apply to the Commission for relief under this Part.

For this reason, and in the circumstances then before the South Australian Commission, whether the application was made “within 14 days after the dismissal takes effect” was significant. The issue which followed was whether the “cessation of the relationship” was the jurisdictional fact upon which the power of the Commission depended. The decision concludes by the Commission stating that “there is also force in the view expressed by Von Doussa J. on this question. An interpretation of section 105 that permits an application to be made to the South Australian Commission in the period between the giving of notice of dismissal and the actual termination of the employees employment is more consonant with the concepts underlying the Termination of Employment Convention, to give effect to which is the avowed object of the South Australian Parliament.”

The Applicant relies, in particular on the reference to an applicant being able “to commence proceedings for unfair dismissal before cessation of employment.” This decision does not resolve the issue now before this Commission. The statement upon which the Applicant relies relates to a case where the circumstances regarding this particular point are quite different in that in the matter before the South Australian Commission, the employer had made a decision and conveyed that decision to demote the Applicant after which the Applicant made the application to the Commission even though employment had not at that time terminated. In the Applicant’s case, it has not been established that a decision had been reached by the Respondent by the time the application was filed. The Respondent had merely reached a provisional view, and then provided the Applicant with an opportunity to address the Respondent’s “findings and the penalties (she was)

considering imposing". A second difference of significance is that the South Australian legislation specifically refers to the employee applying within 14 days *after* the dismissal takes effect. Western Australian legislation is couched in quite different terms. On this basis, I am not satisfied that this decision provides the answer which the Applicant seeks.

In contrast, in *Wigan v. Edwards and Another*, a decision of the High Court of Australia (1973) 47 ALJR 586 at 596, Mason J. says that "to succeed a plaintiff must establish his cause of action at the date of the plaint, for that is the origin of the action... although the District Court is not a strict court of pleading, there is no good reason for concluding that in the absence of appropriate statutory provisions, or the consent of the defendant, the respondents could succeed in obtaining a judgment on a cause of action which had not accrued at the date of the plaint." In *Baldry v. Jackson* (1976) 2 NSW LR 415, at 419, Samuels JA. with whom Moffatt P. and Glass JA. agreed, said "it seems to me, therefore, impossible to permit any amendment to this statement of claim which would have the effect of introducing into it a cause of action based upon facts which had not arisen when the statement of claim was filed... I cannot see how a plaintiff can commence proceedings by a statement of claim dated November 1995 (and that date would remain after amendment) which pleads facts which did not occur until the 1<sup>st</sup> December 1995...". The learned judge concluded that "at the date of the statement of claim, there were no facts in existence that entitled the appellant to seek a declaration. All that existed was an hypothesis" (page 420).

On the basis of these authorities and in the circumstances before the Commission, I find that at the date of the filing of the application, there was no basis on which the Applicant could proceed before this Commission. The basis of any action was a letter dated 10 May 1999, which is subsequent to the filing of the application. This appears to be conceded by the Applicant in her letter identified as "K" in the book of agreed facts and documents addressed to the Director General in which she says "as you are aware an appeal to that effect was lodged with the Western Australian Industrial Relations Commission in response to your *provisional* decision and before your determination of 10 May 1999" (emphasis added). Accordingly, it is appropriate that the application be dismissed.

In light of these two objections raised by the Respondent being sustained, it is not necessary to deal with the question of whether or not the demotion constituted a dismissal.

As noted earlier, the Applicant is not without an opportunity to seek a remedy as s.23B is available to her and there is no objection from the Respondent on the basis of the amount of time which has now passed since its decision of 10 May 1999.

APPEARANCES: Mr R O'Toole on behalf of the Applicant.

Mr M Lundberg (of counsel) on behalf of the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Vivienne Laura Longley  
and

Director General of Department of Education.

No. 518 of 1999.

COMMISSIONER P E SCOTT.

27 August 1999.

*Order.*

HAVING heard Mr R O'Toole on behalf of the Applicant and Mr M Lundberg 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 this application be, and is hereby dismissed.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Guy Davey Melhuish

and

Smith Nominees Pty Ltd.

No. 373 of 1999.

COMMISSIONER A.R. BEECH.

13 August 1999.

*Reasons for Decision.*

Mr Melhuish lodged an application on 17 March 1999 alleging that he was unfairly dismissed. When Mr Melhuish's application came on for hearing before the Commission there was no appearance on behalf of the respondent. In such a circumstance, it is fundamental to the Commission's jurisdiction that Mr Melhuish prove that his application has been properly served upon the respondent. The Commission is only able to exercise its jurisdiction if the employer who is the respondent to the application is aware of it. Hence the requirement for the employee to serve the application on the respondent.

After reviewing the application, the Commission dismissed Mr Melhuish's claim because either it had not been properly served, or, if it was served, was not Mr Melhuish's former employer. First, in relation to service, it is clear that Mr Melhuish believes his former employer was a company. He named the respondent as "Smith Nominees Pty Ltd" (the respondent). The respondent has an address in Queensland. Mr Melhuish filed a Declaration of Service on 17 March 1999 stating that on 17 March he served the respondent by registered post at the Queensland address. A company must be served by leaving the application at, or sending it by prepaid post to, the principal place of business or the principal office in the state of the registered office of the company. In this case, as the respondent cited by Mr Melhuish is not in Western Australia, the application needed to be served outside of Western Australia and must comply with section 51 of the *Service and Execution of Process Act 1992*. Mr Melhuish was unable to show that he had complied with that Act and accordingly his purported service of the application was invalid.

Mr Melhuish filed a second Declaration of Service which states that on the 22 April he served an unfair dismissal claim on "a person introduced as Paul Smith (representative)" by personal delivery on a building site in Goderich Street, East Perth. However, if Mr Melhuish's former employer was a company, it cannot be properly served with an application by leaving a copy of the application with an individual on some building site in East Perth. As previously noted, a company needs to be served at its principal place of business. For all of those reasons, the Commission is just not satisfied that Mr Melhuish properly served his application and accordingly, the Commission does not have the jurisdiction to proceed with his claim in the absence of the respondent.

This result should have come as no surprise to Mr Melhuish. The Commission wrote to him, as a courtesy to him, on 4 May and 18 May 1999 pointing out these issues to him for his information and his attention. Much of what was referred to is also referred to in a letter from Mr Kroon from the Housing Industry Association who was acting on behalf of one of its member companies who, apparently, eventually received the documentation which Mr Melhuish served at the building site. A copy of Mr Kroon's letter was sent to Mr Melhuish for his information. Although this advance warning to Mr Melhuish covered all of the points which have been covered in these Reasons for Decision, at the end of the day, if his application was not properly served then that must be the end of it.

For these reasons the Commission issued an Order which struck out the application for want of jurisdiction.

Appearances: Mr G. Melhuish on his own behalf.

No appearance on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Guy Davey Melhuish  
and

Smith Nominees Pty Ltd.  
No. 373 of 1999.

3 August 1999.

*Order.*

HAVING HEARD Mr G. Melhuish 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 the application be struck out for want of jurisdiction.

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

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Loui Montuolo  
and

Amcor Packaging (Australia) Pty Ltd trading as  
Amcor Flexibles Australasia.  
No. 1674 of 1998.

COMMISSIONER S J KENNER.

30 July 1999.

*Reasons for Decision.*

THE COMMISSIONER: Mr Loui Montuolo ("the applicant") was employed at all material times by the respondent as a printing supervisor at the respondent's Kewdale printing operations. The applicant first commenced employment with Gromark Packaging, a company subsequently acquired by the respondent on or about 20 July 1991. The applicant's employment with the respondent came to an end on 28 August 1998 as a result of a voluntary redundancy. The applicant brings this claim pursuant to section 29(1)(b)(ii) of the Industrial Relations Act 1979 ("Act") claiming that the respondent denied him a benefit under his contract of employment on termination, that being an entitlement to a pay out of unused sick leave in the sum of \$14,400.

The applicant says his claim arises out of the terms of an unregistered collective industrial agreement, providing for enhanced benefits on redundancy. The respondent denied the relief claimed or any relief.

By leave of the Commission, the notice of application and the notice of answer and counter proposal were amended to reflect the proper name of the respondent. The proper name of the respondent being Amcor Packaging (Australia) Pty Ltd trading as Amcor Flexibles Australasia. The Commission was satisfied that this was a matter of misdescription of the respondent and not a case of the proceedings being brought against the wrong respondent.

**Contentions of the Parties**

The applicant argued that the terms of an agreement between the respondent and the AMWU, known as the Redundancy and Relocation Agreement 1996 ("the Agreement") constituted an enforceable legal right for the applicant. It was submitted by counsel, Ms Cosentino, for the applicant that this conclusion should be reached for the following reasons—

- (a) It was an express term of the Agreement that it covered monthly paid employees.
- (b) The only employees of the respondent that were paid on a monthly basis were staff/salaried employees.
- (c) The Agreement cannot be confined to award employees.

- (d) The respondent provided the applicant with a copy of the Agreement.
- (e) The respondent stated that the Agreement was intended to cover supervisors and salaried staff.
- (f) The Agreement had been applied to supervisors and salaried staff.
- (g) Prior to 25 August 1998 the respondent did not indicate to the applicant that what was contained in the Agreement was inapplicable or otherwise inaccurate.

In the alternative, counsel for the applicant submitted that the Agreement formed part of the applicant's conditions of employment on the basis that the Agreement expressly applied to all employees covered by the Graphic Arts General Interim Award 1995 ("the Award") and the applicant was so covered. It was submitted that this conclusion should be reached by reason of the fact that the applicant, at the material times, was engaged in work covered by the classifications contained in the Award.

Mr Jones, as agent for the respondent, submitted that on termination of his employment, the applicant had no entitlement to unused sick leave as a part of his redundancy entitlements. It was submitted that redundancy entitlements for staff employees, of which the applicant was one, were different to those for Award employees and they did not include a pay out of unused sick leave entitlements on termination on the grounds of redundancy. Furthermore, it was submitted on behalf of the respondent that this situation was made clear in or about May 1997, by a memorandum from the then general manager of the respondent, in which managers were advised of their entitlements in the event of redundancy.

**Facts**

The applicant and the respondent filed an agreed statement of facts as to matters not in contention. This provided as follows—

1. The respondent carries on business as a manufacturer of plastic packaging materials.
2. The respondent is a business operating in the plastics manufacturing and printing industry and is within the scope and coverage and therefore bound by the Award.
3. The respondent employed persons whose work was covered by Part 5 of the Award.
4. The applicant was employed by the respondent on 20 July 1981 and the applicant remained in continuous employment with the respondent to 28 August 1998.
5. During his employment with the respondent the applicant was employed in the positions and for the periods below—
  - (i) Conversion machine operator, conversion machine setter, conversion supervisor: 20 July 1981-31 March 1987;
  - (ii) Conversion manager: 1 April 1987-31 June 1989;
  - (iii) Conversion supervisor: 1 July 1989-31 March 1996;
  - (iv) Printing Supervisor: 1 April 1996-31 July 1996;
  - (v) Remill supervisor: 1 August 1996-15 February 1998; and
  - (vi) Printing supervisor: 16 February 1998-28 August 1998.
6. The applicant's duties as a Printing Supervisor included supervising and directing up to 15 employees, co-ordinating resources including staff and materials, allocating tasks to employees to meet production requirements and occasional driving of forklifts.
7. In September 1996 the respondent entered into an agreement with the Printing Division of the AMWU known as the "Relocation and Retrenchment Agreement 1996."
8. The respondent was bound by the terms of the Relocation and Retrenchment Agreement 1996 in respect of all employees within the Containers Carton Division, Flexible Packaging Division, Sack Division and

Containers Graphic Division and whose employment was covered by the Graphic Arts Award.

9. It is a term of the Relocation and Retrenchment Agreement 1996 that employees covered by the agreement are entitled to 100% of unused sick leave to a maximum of 640 hours if the employee is retrenched.
10. An undated document entitled "Redundancy and Relocation Agreement" was distributed internally within the respondent company. This document states that the Relocation and Retrenchment Agreement covers weekly and monthly paid employees.
11. The respondent produced a memorandum dated 29 May 1997 advising all management staff that the Relocation and Retrenchment Agreement did not apply to professional staff, functional managers, senior functional managers and senior managers.
12. As at 22 July 1998 the respondent published an internal policy purporting to apply to all staff in relation to redundancy entitlements. The applicant asserts that he was unaware of this policy until August 1998 when he was provided with a copy of the policy.
13. On 25 August 1998 the applicant completed and submitted to the respondent a Form A "Request for Calculation of Retrenchment Package". On either 25 or 26 August 1998 the applicant attended a meeting with the General Manager, which was also attended by the Employee Relations Manager and the Human Resources Administrator and was advised that he was not entitled to a sick leave pay out on retrenchment and that his redundancy would be on the basis of the staff policy and not the Retrenchment and Relocation Agreement.
14. On 28 August 1998 the applicant completed and submitted to the respondent a Form B "Confirmation of Expression of Interest in Applying for Retrenchment." On the same day the applicant was notified by the respondent that his expression of interest was accepted and his employment was terminated on 28 August 1998.
15. The applicant was advised by letter dated 28 August 1998 that his expression of interest in retrenchment had been accepted and that the terms and conditions of the package were those outlined in the Retrenchment Agreement 1996.
16. The applicant's termination payment did not include any payment for unused sick leave.
17. As at the date of the applicant's termination of employment the respondent remained bound by the Relocation and Retrenchment Agreement 1996.

I should also observe this point, that Mr Jones on behalf of the respondent, conceded that for employees covered by the terms of the Agreement, it was the intention of the respondent to confer upon such employees an entitlement to the benefits contained in the Agreement under their contracts of employment.

The applicant carries the onus in this matter of establishing that he was entitled to the benefits claimed in his application on termination of his employment. This requires the applicant to establish on the balance of probabilities, that he was an employee of the respondent entitled to the benefits contained in the Agreement or that part of it in relation to sick leave, by an express term of his contract of employment or by necessary implication, and that on termination of his employment, the respondent denied him this benefit.

There was a considerable body of evidence adduced by the applicant and the respondent in these proceedings. For the applicant, evidence was led from the applicant, Mr Trapple, an organiser for the AMWU and Mr Taylor, an employee of the respondent. On behalf of the respondent, evidence was adduced from Mr Widdison, the respondent's Employee Relations Manager for Containers Packaging, Mr Lever, the respondent's Planning and Print Manager, Mr Moncrief, the General Manager of the respondent and Ms Kelly, the respondent's Human Resources Manager.

In summary, to the extent that the evidence is not covered by the agreed statement of facts, it is as follows.

The applicant testified that all material times leading up to the termination of his employment he was a monthly paid employee. He said that he was occupying a supervisory position and at some stage, approximately two years prior to his termination, he had the use of a motor vehicle supplied by the respondent. The applicant said that he was a salaried employee and was not paid under terms of the Award. On occasions the applicant was required to assist in setting up machines on the floor and also drove a forklift from time to time. In relation to the Agreement, the applicant testified that he received a copy of exhibit A1, which was a draft copy of the Agreement, in 1996 from a manager whilst the applicant was working at the respondent's Belmont operations. He said that all employees received copy of this document as at about this time. The company was proposing to relocate to new premises and as a result, there may have been a need for redundancies. In relation to the Agreement, the applicant said that he attended a meeting of all employees, including salaried employees, where the Agreement was discussed. A Mr Blanche, who apparently was the accountant for the respondent, attended this meeting on behalf of the respondent.

The applicant testified that those at the meeting were told that salaried staff would receive the same benefits as contained in the Agreement. The applicant referred in his evidence to a document which accompanied exhibit A1, which was an explanatory memorandum as to the content of the Agreement. In particular, reference was made to the terms of this explanatory memorandum, which referred to the Agreement as covering all print and packaging permanent employees, which included both weekly and monthly paid employees. The applicant testified that from this information provided to him by the respondent, he had no doubt that in the event of redundancy, he would receive the benefits as contained in the Agreement.

The applicant described the events leading up to his application for voluntary redundancy in August 1998. He said that as a result of seeing a staff notice with attached organisational charts in relation to the restructuring of the respondent, which charts did not contain his name, he assumed that he was being targeted for redundancy by the respondent. It was not in contest that at this time, there were to be some redundancies effected in the respondent's business, which was planned to involve the reduction of approximately 14 Award covered employees.

Subsequently, the applicant was advised by the respondent that this omission of his name was an error. The applicant had by this time, told others that he was going to be terminated. The applicant said that following this, on 28 August 1998, he completed a "Form A", regarding an expression of interest by him in receiving a calculation of entitlements for retrenchment under the Agreement. The first paragraph of "Form A" referred to the following: "In response to the announcement dated 25 August 1998, I wish to apply for a calculation of my entitlements under the Retrenchment Agreement." The "Form A" was exhibit A5 in these proceedings. The applicant said that on the same day at approximately 3:30pm he met with Mr Moncrief, Mr Widdison and Ms Kelly, the respondent's then Human Resources Administrator. He said that at this meeting, he raised the fact that his calculation of retrenchment package indicated that there was no sick leave included. He queried this as it was inconsistent with his understanding of his entitlements based on the Agreement. He said that he was referred to a memorandum dated 29 May 1997, which was exhibit A3, from the respondent's then general manager, to all "management staff." This memorandum referred to the Agreement and said the respondent had "published a general notice to all staff within Gromark advising them of the redundancy and relocation agreement that was agreed to as an outcome." The memorandum further advised that the Agreement did not apply to "Professional Staff, Functional Managers, Senior Functional Managers and Senior Managers." A copy of the redundancy agreement applying to these employees was attached to exhibit A 3. That agreement contained no reference to sick leave benefits being paid out on redundancy.

The applicant testified that he told Mr Widdison and that he had never seen this memorandum before. Reference was also made during the meeting by the General Manager, Mr Moncrief, to a staff policy for redundancy to apply to all Amcor

staff (exhibit A6). The applicant said that he had not heard of this before either. The applicant was told by Mr Widdison and that if he proceeded to continue with his interest in voluntary redundancy, the respondent would not pay him sick leave, in accordance with the terms of exhibit A6. The applicant said that from this, he understood that the respondent was not going to pay him sick leave if he proceeded with his expression of interest for voluntary redundancy. Despite this, the applicant completed a "Form B", which was a Confirmation of Expression of Interest in Redundancy (exhibit A7). In exhibit A7, the applicant indicated that he was a supervisor in the printing department and the document said that he wished to register his interest in applying for retrenchment, "as per the terms of the 1996 Retrenchment Agreement." Subsequently, on the Friday of that week, the applicant met with Ms Kelly and he told her that he wished to proceed with the voluntary redundancy.

The applicant's evidence was that he decided to proceed with voluntary redundancy, despite the earlier meeting with the respondent, because first, he had told other employees he was going to be retrenched after reading the earlier staff notice produced (in error), and secondly, because he was disappointed and upset with the respondent in that he was not being treated the same as other employees in terms of the retrenchment package, given his length of service with the respondent. As far as the sick leave claim was concerned, the applicant said that following the meeting with representatives of the respondent, he acknowledged that the respondent was not going to pay him the sick leave, but he was not happy with this and may have to pursue the matter "in other forums."

Subsequently, the applicant's expression of interest in voluntary redundancy was accepted by the respondent and this was confirmed in a letter to the applicant dated 28 August 1998 from the respondent. Attached to this letter was a schedule setting out the termination benefits paid to the applicant. It was common ground that the applicant did not receive any payment for unused sick leave on termination of employment. The applicant's sick leave records during the course of his employment were tendered as exhibit A10.

Mr Trapple gave evidence for the applicant. At the material times, Mr Trapple was an organiser for the AMWU. He said that at the time that the Agreement was reached, he attended the premises of what was then Gromark Packaging, to explain the terms of the Agreement to employees and to secure an affirmative vote in support of the Agreement. Mr Trapple's evidence was that whilst he accepted that he did not negotiate the Agreement with the respondent's management on behalf of salaried staff, he confirmed his understanding that the respondent would extend the benefits of the Agreement to salaried staff, according to the assurances of Mr Blanche given at the time. He also confirmed in his evidence that Mr Blanche was in attendance at the meetings.

Also called in support of the applicant was Mr Taylor. Mr Taylor was employed by the respondent as a senior moulder. He gave evidence that at the time of the Agreement, the union came out to the workplace and did a presentation of the terms of the Agreement and the Agreement was voted upon by union members. When referred to the last page of the terms of exhibit A1, that being the explanatory memorandum, Mr Taylor indicated that it was his understanding also that the Agreement would extend to monthly paid employees.

Mr Widdison said that he was the respondent's representative involved in the negotiations with the AMWU for the Agreement. He said that it was the intention of the parties to the Agreement, that it would apply to employees covered by the Award, to the deliberate exclusion of staff employees. As the terms of exhibit A2 indicated, the Agreement was finally signed by all parties in or about October 1996. Mr Widdison was taken to the terms of exhibit A3, that being the memorandum from the general manager of the respondent to management staff dated 29 May 1997. He said that the reason for the delay in the time between the conclusion of the Agreement and the memorandum of 29 May 1997 regarding redundancy to apply to certain categories of staff and managers, was that it was a considerable period of time before this matter was detected. I should pause to observe that Mr Widdison indicated that he was not involved in this process and was not able to indicate in his evidence, the circumstances surrounding the publication of exhibit A3 and to whom it was distributed.

In relation to the new Amcor staff redundancy policy (exhibit A6), Mr Widdison said that this policy was developed to apply to all non-award employees of Amcor Ltd as the redundancy policy for management. He was not able to indicate in evidence, to what extent the respondent in Perth dealt with this policy.

The circumstances surrounding the redundancies effected by the respondent in August 1998 were outlined by Mr Widdison. He said that there was a need to reduce employee numbers by approximately 14. This was targeted at Award employees. He referred to the various voluntary redundancy forms referred to above in the applicant's evidence, and said that those documents were prepared in anticipation of only Award employees expressing an interest in voluntary redundancy. The respondent did not contemplate that staff positions would be involved. Mr Widdison described the circumstances of the meeting between he, Ms Kelly, Mr Moncrief and the applicant which took place concerning the applicant's entitlements. It was his evidence that this meeting took place on 26 August and not 25 August 1998, as said by the applicant. He testified that he told the applicant that there would be no sick leave paid to the applicant in his redundancy package, as this provision did not have application to salaried staff. According to Mr Widdison, the applicant was told in this meeting that if he continued to progress his voluntary redundancy application, it would be on the terms as applicable for staff, contained in the Amcor staff redundancy policy set out in exhibit A6.

Mr Lever gave evidence generally as to the error contained in the original staff notice, setting out the department's organisational structure. He said that once the error was detected, he replaced the notice with an accurate notice which contained the applicant's name and position and furthermore, he spoke with the applicant to explain the previous error. In terms of the applicant's expression of interest for voluntary redundancy, Mr Lever testified that he was asked by management whether he could do without the applicant's position and, after some consideration of the future structure of the department, indicated that he could. He gave some general evidence as to the applicant's position in terms of his relative reporting level within the respondent's structure and indicated that he would be at approximately the same level as Mr Taylor. I pause to observe that the final organisation chart, reflecting the final structure of the department, was not in evidence.

Mr Moncrief gave evidence in relation to the meeting held with the applicant which he also said was on 26 August 1998. He said that the applicant had a difficulty with the omission of sick leave from his redundancy entitlement calculation. He also referred to the error in exhibit A4, and testified that he corrected it by indicating to the applicant that he was not targeted for redundancy. In relation to the sick leave issue, Mr Moncrief said that he indicated to the applicant that the staff redundancy package was different as staff employees had higher salaries than employees covered by the Award. As to the terms of the Amcor staff redundancy policy (exhibit A6) Mr Moncrief testified that this was received by him and only discussed with the respondent's senior management group in Perth. Neither the policy document itself nor its content was in any way distributed to or otherwise published to any of the respondent's Perth employees.

Ms Kelly testified that in or about August 1998, the respondent's general manager held a briefing session with staff in relation to impending redundancies. She indicated that at this session, no specific group of employees was identified. On Wednesday 26 August 1998, a meeting took place with those persons set out in the above evidence. Ms Kelly confirmed that the applicant was told that he would not get payment of accrued sick leave on termination. Her evidence was that the applicant understood this but was not happy with it. Later in that week on 28 August 1998, she saw the applicant in relation to his expression of interest for voluntary redundancy. She testified that she told the applicant that she would not accept his "Form B" unless it was on the understanding that he would only receive staff benefits. In terms of exhibits A5, A7 and A8, Ms Kelly gave evidence that to the extent that those documents were used for the applicant's redundancy, they were used in error, as it was not the respondent's expectation that employees other than Award employees would be interested in voluntary redundancy.

Ms Kelly expressed the view that if Mr Taylor and another employee, a Mr Williams, were to have expressed an interest in voluntary redundancy, the Agreement would apply to them. Furthermore, she testified that in relation to two employees, they being Mr J Clarke, an engineering supervisor and Mr C Yates, a sales representative, those employees had accrued sick leave included in their redundancy packages.

### Findings

I turn now to my findings in relation to this matter. This is not a case where I have a clear preference for the evidence of witnesses for either the applicant or the respondent. However, having heard and observed the applicant give his evidence in the course of the proceedings, I have no reason to doubt the veracity of his testimony. I make the following findings on the evidence—

1. That at the time of the applicant's voluntary redundancy, the applicant was employed in a supervisory position and was paid a monthly salary.
2. The applicant, as a part of his duties, had occasion (infrequently), to work on machines and set-up processes, however the major and substantive portion of his duties and the principal purpose of his position was that of the supervision and co-ordination of other employees.
3. The applicant received a copy of exhibit A1, along with other employees, at the time of the conclusion of the Agreement. The applicant was told by the respondent (through Mr Blanche), that the terms of the Agreement would apply to monthly paid staff employees, as confirmed in the attached to exhibit A1. From this time, the applicant understood that in the event of redundancy, he would be entitled to a pay out of accrued sick leave on termination of employment.
4. That up until in or about August 1998, the applicant was never put on notice by the respondent that terms and conditions applying to him in the event of redundancy, were other than those as contained in the Agreement.
5. That when the respondent was contemplating redundancies in or about August 1998, it was not the respondent's intention to target staff employees.
6. That the original version of exhibit A4, to the extent that it did not show the applicant in the respondent's organisational structure, was an error, which error was subsequently advised to the applicant.
7. Notwithstanding 6 above, the applicant applied for voluntary redundancy and used the respondent's forms prepared for this purpose, which reflected that redundancy conditions would be on the basis of the Agreement.
8. The applicant was told in a meeting between himself and the respondent's management either on 25 or 26 August 1998, that a pay out of accrued sick leave would not be made to him as he was a staff employee and he would receive benefits in accordance with exhibit A6. Whilst the applicant understood this he was not content with it.
9. Despite this, the applicant elected to proceed with voluntary redundancy and did not receive a pay out of accrued sick leave on termination of employment.
10. Mr Trapple, the AMWU representative at the material times, whilst not negotiating on behalf of staff employees for the Agreement, was of the understanding that the terms of the Agreement would also apply to staff employees, based upon what Mr Blanche told him, the meetings on-site and the content of the last page of exhibit A1.

### Is the Applicant Covered by the Award?

The first issue to determine in relation to the application of the Agreement to the applicant's employment, is whether the terms of the Award covered his employment at the material times. Clause 1.7 – SCOPE AND PARTIES BOUND of the Award relevantly provides as follows—

*"This award shall be binding on—*

- 1.7.1 *In respect of the Industry prescribed in sub-clause 1.5.1 of this Award;*

- 1.7.1 (a) *The Printing and Allied Trades Employers Federation of Australia and its members;*
- 1.7.1 (b) *The Graphic Arts Services Association of Australia and its members;*
- 1.7.1 (c) *The Australian Chamber of Manufacturers and its members;*
- 1.7.1 (d) *The employers named in Schedule A incorporated in this award, in respect to;*
- 1.7.1 (d) (i) *All members of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union;*
- 1.7.1 (d) (ii) *All other persons employed by them; and*
- 1.7.1 (d) (iii) *All persons whatsoever who under any agreement with a person bound by this award perform any employment of the industry herein mentioned."*

Furthermore, clause 1.7.3 is relevant and provides as follows—

- 1.7.3 *Notwithstanding anything to the contrary contained in this clause—*
- 1.7.3 (a) *Members of the organisations referred to in subclause 1.7.1 and 1.7.2 hereof, and the employers named in Schedule A of this award, are bound by this award only in respect to persons whose work is covered by Part 5 of this award.*
- 1.7.3 (b) *Employees, whether members of a union or not, are bound by this Award only if their work is covered by Part 5 of this award."*

The applicant was required to establish on balance, that he was "covered" by the Award in the sense in which that term is used in the Agreement. It is trite to observe that for an award made under the Commonwealth legislation, there is a distinction to be drawn between persons upon whom an award shall be binding, and the award's coverage: *Re National Tertiary Education Industry Union; Ex-parte Quickenden* (1996) 70 IR 348 at 351. In *Quickenden*, Toohey J observed as follows at 351—

*"But the clause unhappily begins by stating upon whom it shall be binding (which is not the same as its coverage). ...At least since Metal Trades Employers Association v Amalgamated Engineering Union (4) unions have made demands on employers with respect to the wages and conditions of members and non-members and awards have been made in settlement of claims of that kind in terms which bind employers in respect of all employees, whether or not they are members of the union which is party to the award. (5) But where there is a dispute between an employer and a union, an award cannot impose obligations on employees who are not members of the union. (6)."*

Furthermore, it is also the case that an award may bind an employer in respect of all employees employed by it and not just those employees specified and performing work in any classifications set out in the relevant award: *Dazmany Pty Ltd trading as Sails Resort* (1997) 42 AILR 3-610. It all depends on the particular scope and application of the relevant award under consideration. In this case, if one reads the terms of causes 1.7.1 and 1.7.2 in isolation, one may be driven to the conclusion that the Award binds employers bound by the award in respect of all employees and not just those employed in classifications contained in the award, as was the case in *Dazmany Pty Ltd*. However, in this case, clause 1.7.3 makes it clear that it was the intention of the Award makers that the Award would only bind employers engaged in the industry to which the Award applies, in respect of persons employed in classifications contained in Part 5 of the Award. Therefore, the applicant needs to establish on balance, that he was engaged in work falling within the scheme of Part 5 of the Award, to be "covered" by terms of the Agreement.

The principles applying to the interpretation of an award are the same as those for the purposes of the interpretation of other instruments. That is, in the interpretation of an award, regard is to be had to the language of the award read in its ordinary and natural sense: *Norwest Beef Industries Ltd v The WA*

*Branch, Australasian Meat Industry Employees Union* (1984) 64 WAIG 2104 at 2133. Counsel for the applicant submitted that the applicant, during the course of the period of his employment, was from time to time, performing various duties caught by Part 5 of the Award, including that of proof reading and/or revising; printing machinist; plate preparer; cylinder preparer; operating a fork-lift; in charge of, supervising, directing or responsible for the work of other employees, or was classified as “any other adult employee”.

For the reasons that follow, I do not agree with the contentions of counsel for the applicant in this regard. In *Nornews Pty Ltd & Another v Everett* (1998) 81 IR 76 the Full Bench of the Industrial Relations Commission of New South Wales in Court Session considered on appeal, relevant principles in determining whether an employee’s work was covered by classifications contained in an award. Marks J made the following observations at 83—

*“A convenient starting point is the decision of Sheldon J. in the Industrial Commission of New South Wales in Ware v O’Donnell Griffin (Television Services) Pty Ltd (1971) AR (NSW) 18. In those proceedings his Honour adopted what he called “a practical approach”. In his Honour’s opinion it was “not merely a matter of quantifying the time spent on the various elements of work performed” but it was necessary to take into account as a relevant consideration “the quality of the different types of work done.”*

*This approach was adopted by the Chief Industrial Magistrate in Briggs v Customtone Kitchens Australia Pty Ltd (1988) 24 IR 446. Having reviewed earlier authorities his Worship said that the correct approach was (at 452-453)—*

*“to place the major emphasis on the major and substantial purpose or object of the complainant’s engagement rather than on the major and substantial time spent of the performance of the duties. This view, in my opinion, is not in conflict with the view expressed by Sheldon J in Ware v O’Donnell Griffin.”*

*In Comdex Pty Ltd v Dawson (1993) 49 IR 450 Maidment J in the Industrial Court of New South Wales held that in determining whether an employee was entitled to be paid monies under an award as a shop assistant the mere fact that he was “called upon from time to time to sell goods by retail in the retail shop does not, in my view, necessarily result in his being entitled for all time worked, to the wages prescribed by the award for a shop assistant.” Maidment J cited with approval the judgement of Ludeke J in J Fenwick and Co Pty Ltd v Merchant Service Guild of Australia (1973) 150 CAR 99. At 101-102 Ludeke J said—*

*“To ascertain the course of the calling of particular employees, it is not enough merely to make a quantitative assessment of time spent in carrying out various duties. In my opinion, not only should the nature of the work done by the class of employee be examined but it is equally relevant to consider the circumstances in which they are employed to do the work; if a worker is required by his employer to carry out diverse duties, the inquiry should be directed to ascertain the principal purpose for which the worker is employed.”*

In this jurisdiction, a similar approach has been adopted by the Industrial Appeal Court and by the Full Bench of the Commission. In *Doropoulos v Transport Workers Union of Australia, WA Branch* (1989) 69 WAIG 1290 the Full Bench referred to the test of “major and substantial employment” and in referring to *FCU v Carey* (1977) 57 WAIG 585 observed as follows at 1293—

*“Thus, incorporated in the consideration of major and substantial employment on that authority, are questions of substantial nature of the employment, the substance of it, and the purpose to be achieved by it. One has to look at the contract or evidence of it, and obtain a comprehensive picture of the whole of the employment to enable one to apply Burt J’s test”.*

In this case, indisputably, at the time of termination of his employment, and for most of the time during his employment preceding the termination, the applicant was engaged in a

position which had as its major and substantial purpose, that of supervision.

Neither counsel for the applicant nor the agent for the respondent were able to assist the Commission in the interpretation of the relevant classifications contained in Part 5 of the Award. Part 1 of Part 5, dealing with the printing industry section, contains a large number of classifications. Interestingly, the classification scheme in this part of Part 5, contains various classifications in which the words “whether working under a foreman or otherwise” appear. In my opinion, the classification of the applicant, in terms of the major and substantive purpose for which he was employed, was to supervise, for which a foreman type position would otherwise be described. It appears that those who made the Award, by the inclusion of classifications containing such an exclusion, were indicating in my opinion, that the classification structure did not extend to foreman or supervisory type positions. The inclusion of classification levels of “employee supervising etc...” would not cover the applicant’s employment. Clearly, when taken in the context of the classifications structure in Part 5 as a whole, those classifications are second lowest in terms of the level of wages. It would indeed be surprising, that it was the intention of the makers of the Award that such a classification would receive a level of wage below, for example, a “store person” or a “packer and/or dispatch” under the Award. Similarly, I do not accept the applicant’s submission that the applicant could be classified as “any other adult employee”, as this classification is a classification containing the lowest rate of wage in the classification structure. In my view, this classification is a general classification, designed to capture a general labourer or other unqualified type of position.

Therefore, I reject the applicant’s argument that he is covered by the Award for the purposes of the Agreement.

#### **The Agreement and the Applicant’s Contract of Employment**

Having concluded that the applicant was not an employee covered by the terms of the Award and therefore entitled to benefits under the Agreement as a matter of course, the next issue to consider is whether, given that the applicant at all material times understood that the terms of the Agreement would be applied to him, the Agreement, by the manner in which it has been dealt with by the respondent, has led to a variation of the applicant’s contract of employment.

There is often a legal difficulty with the enforcement of unregistered, collective industrial agreements, that are negotiated between a union and an employer. An unregistered collective agreement may become contractually binding, by the express incorporation of the agreement or a term of it into an employee’s contract of employment, or alternatively, the agreement or a term of it may become a term of an employee’s contract of employment by a variation of that contract as a result of a course of dealing between the parties. For example, in *Ajax Cooke Pty Ltd trading as Ajax Spurway Fasteners v Nugent* (1994) AIRL 231 Phillips J held that a collective agreement for redundancy benefits, negotiated between an employer and a union, was contractually binding on the employer and employee, as a result of the posting of a notice of the redundancy agreement. It was held by the court that the posting of the redundancy agreement by notice, would be considered to be an offer which, in that case, the employee had accepted as he remained in employment with the employer up until the time that he was retrenched. Also in that case, it was held that although the employer had negotiated the terms of the redundancy package with unions who were signatories to the agreement, the redundancy package was applicable, according to the words of the notice, to employees generally. It was held that if there was an intention to limit the benefits of the redundancy agreement to only employees who were members of the relevant unions, the notice would have made this clear (see also: *National Coal Board v Galley* (1958) 1 All ER 90; *Edwards v Skyways Ltd* (1964) 1 All ER 494).

In the context of the facts of this case, in my view, it can reasonably be concluded that as in *Ajax*, a course of dealing took place such that the terms of the Agreement had become a term of the applicant’s contract of employment, at least in so far as entitlements to unused sick leave on retrenchment was concerned. In this regard, I refer to the uncontradicted evidence of the applicant that he attended a meeting with Award employees at the time the Agreement was announced and

explained to employees. The evidence, upon which I have already made my findings, clearly indicates that there was no distinction made by the respondent at the time that the Agreement was published to the workforce in terms, that it would only apply to employees covered by the Award. Indeed, on the contrary, the evidence indicates that at the time, the respondent informed employees that the terms of the Agreement would extend to monthly paid employees also. Additionally, the explanatory memorandum attached to exhibit A1 is clear in its terms and in a number of places refers to its coverage and application to both weekly and monthly paid employees. Whilst the respondent attempted to deal with this matter by submitting that Mr Blanche, the respondent's representative at the time, had no authority from the respondent in this regard, that is not the point in that it appears that it was Mr Blanche who represented the respondent in the meetings with the union and the employees to explain the operation and effect of the Agreement and presumably also, to secure its acceptance. Moreover, on the basis of this and the document prepared by him attached to exhibit A1, as far as the applicant was concerned, he had the actual or ostensible authority to do what he did at the time. There was certainly no evidence that at the time or subsequently, the respondent communicated to employees that Mr Blanche did not have any authority to do what he did at the time.

The subsequent memorandum dated 29 May 1997 to "management staff" was not received by the applicant and nor was he aware of its content. In those circumstances, in the absence of a consensual variation to the terms of his contract of employment, in my opinion, the applicant was entitled to rely upon the respondent's publication of the Agreement, as communicated to him. As was the case in the *Ajax* case, the publication of the terms of the Agreement could be properly characterised as an offer which the applicant accepted by reason of his continuing in employment with the respondent up until his voluntary retrenchment. Furthermore, my conclusion in terms of the respondent's course of dealing in this matter is somewhat reinforced by the uncontradicted evidence of the respondent, that it has extended the benefit of a pay out of unused sick leave on redundancy, to employees other than those covered by the terms of the Agreement. In this regard, I refer to the evidence of Ms Kelly, noted above, when referring to the circumstances of Mr Clarke and Mr Yates. In any event, the terms of the memorandum dated 29 May 1997 (exhibit A3), in my opinion, are far from clear as to whom it refers. The second paragraph of the memorandum refers to "professional staff, functional managers, senior functional managers and senior managers." It is not clear from its terms, that this would necessarily refer to persons occupying a position of foreperson or supervisor and moreover, without evidence before me as to the respondent's then organisational structure and classification titles, it is very difficult to conclude from the document itself, with any certainty, that it was intended for someone such as the applicant.

Moreover, whilst I accept the evidence of the respondent that the applicant's use of the forms prepared for voluntary redundancy was an error, their reference to the Agreement would have done little to assuage the applicant's concerns in relation to his entitlements.

On this basis, I conclude that least up to and including August 1998, the applicant had an entitlement, as a term of his contract of employment, to a pay out of unused sick leave on redundancy.

The issue that next arises, is what effect, if any, did the various meetings that took place between the applicant and the respondent on or about 25 to 28 August 1998, have on this contractual position?

#### The Meetings

I have already dealt with the evidence as to the various meetings that took place between the applicant and representatives of the respondent in the applicant's final week of employment, leading up to the respondent's acceptance of the applicant's expression of interest for voluntary redundancy. The evidence discloses that on becoming aware that the applicant's entitlements on voluntary redundancy did not include a pay out of unused sick leave, the applicant raised this matter with the respondent. In the meeting with Mr Widdison, the applicant was advised by the respondent that

the terms and conditions applicable to him on redundancy would be those as outlined in the Amcor policy (exhibit A6). For the reasons which I have already outlined, in my opinion, this policy did not at that time have any contractual effect as it had not in any way been published to those to whom it was intended to apply. This was clearly illustrated by the applicant's evidence, when he said that when told of this policy, that he had never heard of it or seen it before. In my opinion, the respondent cannot rely upon this to assert the applicant's entitlements.

The next question that arises is whether by his conduct, the applicant, in proceeding with the voluntary redundancy in view of the statements made to him by the respondent as to his entitlements, agreed to a further variation to his contract of employment to withdraw his previous entitlement to a pay out of unused sick leave on redundancy. In my opinion, the meeting that took place on the evidence, and the applicant's understanding of the respondent's position, could not be properly characterised as the applicant freely and genuinely consenting to a variation to the terms of his contract of employment. It was clear on the evidence, that the respondent was telling the applicant that if he proceeded with his expression of interest for voluntary redundancy, he would not be paid accrued sick leave on termination. This was a unilateral position adopted by the respondent. On the evidence, the applicant indicated that whilst he understood that this was the respondent's position, he was not happy about it. He also said in evidence, that he considered that he may have to pursue what he saw as his entitlement in this regard, in "another forum".

Moreover, in my view, it was inappropriate and quite unfair of the respondent, in the meeting with the applicant, to rely on exhibit A6 in circumstances where it had not been published to any of the respondent's employees and the respondent knew this. In my opinion, the applicant was not, in these circumstances, freely and genuinely consenting to a variation to the terms of his contract of employment. The applicant also gave evidence that given the circumstances surrounding his termination, in that he had advised other employees that he was being retrenched and furthermore, by reason of his dissatisfaction with the respondent's position on sick leave, he felt he had no option but to continue with his decision to proceed with voluntary redundancy.

#### The Entitlement

On the basis that I have concluded that the applicant had a contractual right to a pay out of unused sick leave on termination of employment on the grounds of retrenchment, the issue that finally needs to be considered is whether the applicant's claim as to his entitlement to unused sick leave on termination is established. The applicant claims a total of 640 hours at his rate of salary of \$22.50 per hour in the total amount of \$14,400. Regrettably, there was little evidence before the Commission as to the terms of the applicant's employment when he commenced with the respondent. In relation to sick leave, the only evidence before the Commission was a schedule of the applicant's sick leave taken over various dates in the period from 7 August 1985 to 31 May 1996 (exhibit A10). This indicated the applicant took approximately 124 hours of sick leave over this entire period. There was apart from this, no evidence led by the applicant as to his sick leave entitlements.

There is no clear Australian authority for the proposition that a court or tribunal should, in the absence of an express term as to sick leave in a contract of employment, imply such a term as a matter of industrial policy. Reliance should therefore be placed upon relevant English authority which has dealt with the issue: *Marrison v Bell* (1939) 1 All ER 745; *Petrie v MacFisheries Ltd* (1940) 1 KB 258; *Orman v Saville Sportswear Ltd* (1960) 1 WLR 1055. A consideration of those authorities suggests that the proper approach in any case will turn upon the facts of the employment. As a general proposition, one first considers whether there is any express term dealing with a right to sick leave. If this does not resolve the issue, there should be a consideration as to whether there may be a term implied as a matter of fact into the contract to determine the parties rights as to sick leave. Finally, if this approach does not resolve the issue, consideration may be then given as to whether there should be the implication of a term regarding an

entitlement to sick leave as a matter of law, given the nature of a contract of employment.

In the circumstances of this case, it is apparent from the evidence as indicated in exhibit A10, that over the course of his employment, the applicant has requested and has been provided with sick leave. This is sufficient in my view, to support the implication of a term into the applicant's contract of employment by a course of dealing, such that in the case of his absence from the workplace on the grounds of illness, the respondent would continue to pay him. This however, does not resolve the issue of firstly, the quantum of any entitlement to sick leave, if it was indeed limited at all, and furthermore, whether such entitlement would accrue from year to year such as to give rise to an entitlement on termination of employment, consistent with the Agreement.

Apart from the implication of a term in fact or law, the applicant would of course be entitled to sick leave under Division 2 of the Minimum Conditions of Employment Act 1993 ("MCEA"), from in or about December 1993. I note however, that this entitlement would not accrue from year to year: s 21 MCEA.

In the circumstances of this case, given all the facts to which I have referred, I would be prepared to imply a term that the applicant be entitled to the accrual of sick leave at least consistent with the entitlement applicable to employees covered by the Award and that such entitlement would accrue from year to year. This conclusion is consistent with the nature of the applicant's employment and moreover, is necessary such that it would ensure that the terms of the applicant's employment, in relation to his redundancy entitlements, "were not rendered nugatory, or seriously undermined" on the basis that to imply such term would ensure the enjoyment of the rights conferred by the applicant's contract of employment, as it relates to his entitlement to a pay out of sick leave on retrenchment in accordance with the terms of the Agreement: *Byrne and Frew v Australian Airlines Ltd* 131 ALR 422; *Nullagine Investments Pty Ltd v Western Australian Club Inc* (1992-1993) 77 CLR 635 at 647-648, 649; *Lawson Surace and Hall v Joyce Australia Pty Ltd* (1996) 76 WAIG 20 at 23. In my opinion, having concluded that the applicant would be entitled to a pay out of unused sick leave on redundancy under the Agreement, it would be quite unfair and inequitable to deny the applicant the benefit of such an entitlement, on the basis that his sick leave did not accrue from year to year. This is all the more so when regard is had to the terms of the applicant's sick leave record, (exhibit A10) which discloses that the applicant has taken very little sick leave over the entire course of his employment with the respondent and its predecessors. On this basis, the applicant would have accrued more than 640 hours of sick leave as at termination of his employment.

### Conclusion

This case highlights the importance of employers taking considerable care in the method and manner of communicating to employees the terms of agreements or policies, that may have contractual effect. I should however also emphasise that this decision has dealt only with the circumstances of the claim of the applicant and the terms of his contract of employment, and not other employees of the respondent.

I find in favour of the applicant and will order the respondent to pay the applicant the sum of \$14,400 as an entitlement due to him under his contract of employment on its termination.

Minutes of proposed order now issue.

APPEARANCES: Ms R Cosentino of counsel appeared on behalf of the applicant.

Mr D Jones as agent appeared on behalf of the respondent.

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Loui Montuolo

and

Amcor Packaging (Australia) Pty Ltd trading as  
Amcor Flexibles Australasia.

No. 1674 of 1998.

COMMISSIONER S J KENNER.

12 August 1999.

#### Order.

HAVING heard Ms R Consentino of counsel on behalf of the applicant and Mr D Jones as agent on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby –

- (1) ORDERS that the name of the respondent in the notice of application and the notice of answer and counter proposal be deleted and in lieu thereof there be inserted "Amcor Packaging (Australia) Pty Ltd trading as Amcor Flexibles Australasia".
- (2) DECLARES that the respondent denied the applicant a benefit under his contract of employment on termination in respect of an entitlement to a pay out of 640 hours of accrued but unused sick leave;
- (3) ORDERS the respondent pay to the applicant within 21 days of the date of this order the sum of \$14,400 less any amount payable to the Commissioner of Taxation pursuant to the Income Tax Assessment Act 1936 and actually paid.

(Sgd.) S. J. KENNER,

Commissioner.

[L.S.]

### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rhys Morgan

and

Grasby Holdings Pty Ltd t/a  
Fuller's Auctions.

No. 711 of 1999.

COMMISSIONER A.R. BEECH.

26 August 1999.

#### Further Reasons for Decision.

In accordance with the wishes of the parties they were given a further opportunity to discuss between themselves whether agreement could be reached on terms to finalise this matter given the decision of the Commission that Mr Morgan's dismissal was unfair. Regrettably, the parties were unable to reach an agreement and the Commission then received written submissions from the parties regarding any compensation to be awarded.

It is submitted on behalf of Mr Morgan that he is a 57 year old man who is unskilled. He is unable to do heavy work because of injuries to his back caused during the time when he was the owner of a concrete contracting business. His evidence, uncontroverted, is that since the date of his dismissal he has applied for between 3 and 4 jobs each week and has also registered with 6 different employment agencies. He has not succeeded in finding any alternative employment. Although Mr Morgan's evidence is that he, together with his wife, carries out a boarding kennel business and operates a mobile dog washing van, that evidence is that there are 3 regular customers per week all of whom have their dogs washed by Mr Morgan on a Saturday afternoon. Mr Morgan stated that this business was based upon existing clients at the kennels and that although the business was advertised in the paper the workload at the moment is 3 dogs per week.

The respondent, however, argues that Mr Morgan has failed to provide reasons why he has not expanded the dog washing business instead of being prepared to work only part-time on a Saturday. It points out that there is no evidence before the Commission whether the business may or may not be expanded. It urges the Commission to find that it is possible for the business to be expanded but no attempts have been made. The respondent also has refused to consider reinstatement and his willingness to obtain employment may therefore be called into question. The respondent urges the Commission to take into account the conduct of Mr Morgan in assessing compensation. At the least, the Commission is urged to reconsider its conclusion that the request made by Mr Krollig Snr that Mr Morgan apologise was a reasonable request and that it was therefore unreasonable of Mr Morgan to refuse.

#### Conclusion

The Commission has already concluded that reinstatement is impracticable. This conclusion was reached because Mr Morgan did not claim reinstatement and neither Mr Morgan nor the respondent raised any possibility of reinstatement during the course of the hearing. Although the respondent now says that Mr Morgan has refused an offer of reinstatement, if an offer of reinstatement was made during the course of informal discussions between the parties in an endeavour to resolve the matter, not only might such an offer not be admissible during formal arbitration proceedings if it was "without prejudice", but in any event the Commission has not been asked to re-open the proceedings in order to receive evidence of the offer. Accordingly, the Commission finds that the only remedy available pursuant to section 23A of the *Industrial Relations Act* is that of compensation.

Compensation is to be ordered for the loss or injury arising from the dismissal. It is not an exact science. Rather, it is compensation which is fair and reasonable in all of the circumstances of the case. As to Mr Morgan's loss, the Commission accepts that Mr Morgan has not been able to secure alternative employment although he has tried. His evidence on that point was not contradicted. He has applied for an average of 2 or 3 jobs per week and is registered with 6 employment agencies. His age and his back injury may well work against his suitability for employment. He has not found alternative work to date and it is difficult to predict when he will be able to find alternative employment within the near future. His measurable loss to date is approximately 3 months' wages being the time between the date of the hearing and the dismissal.

There is an obligation on an employee who has been dismissed to attempt to mitigate his or her loss. The Commission is to decide the matters which come before it according to fairness and it would not be appropriate to permit a person whose employment has been terminated to simply sit back and not try and obtain alternative employment in the belief that the Commission will order the employer to pay compensation for that entire period. A dismissed employee should diligently seek suitable alternative employment. The onus of proof of failure to mitigate loss is on the respondent. As to the respondent's submission regarding the dog washing business, I find that the current workload of the dog washing business which operates as an aside to his wife's small boarding kennels is best performed on a Saturday afternoon. The point Mr Morgan makes is that there are no other customers than the current 3 customers even though he has advertised for more business. I am not prepared to hold that Mr Morgan has failed to mitigate his loss because he still has only three customers. In any event, at \$10 per dog washed, the potential income to be generated would not appear to be significant when compared to the wage foregone with the respondent. Any offset of compensation on the basis of a potential increase in dog washing clients would not be great.

There is no direct evidence on the issue of how long Mr Morgan would have continued in employment. From his viewpoint, he states that he enjoyed the job. He certainly stated that the day Mr Krollig Jnr took over the business he would look for another job however the evidence is that he was not looking for another job at the time of his dismissal. Further, there is no evidence that Mr Krollig Jnr was to "take over the business". On the evidence, Mr Krollig Jnr's status did not change from his being in charge only during the absence of Mr Krollig Snr and, perhaps, if Mrs Krollig also was absent. There is

nothing in the evidence to show that Mr Krollig Jnr will play a more direct role in the running of the business in the predictable future which could warrant Mr Morgan leaving the respondent's employment.

However, I am not confident that the respondent would have retained him in his employment indefinitely. Mr Morgan's conduct in the incident with Mr Krollig Jnr, even if not entirely without reason, had left an issue between him and Mr Krollig Jnr. I accept the evidence that Mr Krollig Jnr found the situation somewhat stressful even though the working relationship with Mr Morgan had improved somewhat. It was Mr Krollig Jnr's reaction which prompted Mr Krollig Snr to raise the issue again with Mr Morgan in February and then to decide to dismiss him. I conclude on the balance of probabilities that even if Mr Krollig Snr had decided not to dismiss Mr Morgan on that occasion his son's ongoing concerns would nevertheless require him to deal with the relationship between them in the future. That may have involved Mr Morgan leaving the respondent's employment if he did not apologise. For those reasons I am not confident that the respondent would have retained him in his employment indefinitely.

I do not conclude that Mr Morgan was in danger of losing his employment in the short term. Rather, I see little reason why his employment would not have continued for some months. On balance I assess Mr Morgan's loss as the potential income for a period of 4 months. That is a sum of \$6,720.00 and I order that he be paid that sum by way of compensation for the dismissal which occurred. A minute of that order now issues.

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#### WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Rhys Morgan  
and

Grasby Holdings Pty Ltd  
t/a Fuller's Auctions.

No. 711 of 1999.

1 September 1999.

#### *Order.*

HAVING HEARD Mr C. Clifton (of counsel) on behalf of the applicant and Mr M. Hynes (of counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby—

#### 1. DECLARES THAT—

- (a) The dismissal of Rhys Morgan by the respondent was unfair; and
- (b) Reinstatement is impracticable.

2. ORDERS THAT Grasby Holdings Pty Ltd forthwith pay Rhys Morgan the sum of \$6,720.00 by way of compensation for the dismissal which occurred.

[L.S.]

(Sgd.) A.R. BEECH,  
Commissioner.

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WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barry Phelan

and

Minenco Proprietary Limited & Another.

No. 81 of 1999.

30 August 1999.

*Reasons for Decision.*

**SENIOR COMMISSIONER:** The Applicant, was at all material times, employed by the first named Respondent as a senior contract engineer. It is common ground that with effect from 1 October 1997 ownership of the first named Respondent was transferred from Rio Tinto Ltd to the second named Respondent. It is also common ground that early in September 1997 a written "Announcement" was distributed to the staff of the first named Respondent, most notably to the Applicant, advising of the pending transfer of ownership and informing the staff of changes to employment conditions. The Announcement indicated that "a one-time transition bonus will be paid to all staff remaining with" the first named Respondent. In addition, the Announcement stipulated—

A staff member who, having accepted the transition bonus, resigns with an effective date on or prior to 30 June 1998, will be required to repay 100% of the bonus received. In this respect, Minenco will reserve the right to withhold all or part of the gross amount from termination payments. As the bonus payment and the resignation in these circumstances will take place in the same tax year, the staff member will not be disadvantaged tax-wise.

A staff member who is made redundant prior to 1 October 1998 will have approximately 60% of the bonus received deducted from the redundancy payment received under the current 'Rio Tinto/Minenco' Retrenchment Policy which, as advised above, is preserved until that date. This rate of repayment takes into account the lower tax regime applicable to redundancy payments.

It is common ground that the Applicant was paid the transition bonus in January 1998. The gross bonus paid to him was \$20,075 which, after deduction of tax, translated into a sum of \$10,338.62.

It is common ground too that at the time of the transfer of ownership and subsequently, the Applicant had little work to perform. It is also common ground that on or about 25 August 1998 the first named Respondent's managing director discussed with the Applicant the prospect of him being retrenched. The Applicant testified that he was not surprised at this turn of events because he was not attracting enough work to earn his salary. It is common ground that on or about 1 September 1998 the first named Respondent's managing director notified the Applicant that he was to be retrenched effective from 30 September 1998. As is common ground his employment was terminated with effect on and from that date. Upon termination he was given a redundancy payment calculated on the basis of the Rio Tinto Ltd package, which it is acknowledged, is significantly more generous than that normally applied to employees retrenched by the first named Respondent. From this sum the first named Respondent deducted 100% of the net transition bonus paid to him in January 1998. It did so on the basis of the condition relating to the payment of the bonus paid in the Announcement given to employees shortly before the transfer of ownership of the first named Respondent to the second named Respondent.

The Applicant challenges the veracity of that deduction. He does so on the basis that the Announcement did not form part of his contract of employment and hence the first named Respondent was not entitled to deduct the money in question. Alternatively, the Applicant argues that any right the first named Respondent had to deduct the bonus from the redundancy payment had expired. It was a term of his employment that he was entitled to five weeks written notice of any pending retrenchment. As he was given notice, albeit oral, on 1 September 1998, the earliest date upon which he could be retrenched was 6 October 1998 which took him outside the category of employees liable to account to the first named Respondent for the bonus. The Applicant also argued, but in the end abandoned

the argument, that even if the first named Respondent was correct in its contention that it was entitled to deduct the transition bonus from the severance payment, it was only entitled to deduct 60% of the bonus payment and not the entire 100%.

The first named Respondent for its part argues that the Announcement made early in September 1997 was clear and unambiguous and by its terms varied the employment conditions for the Applicant. The Applicant accepted the bonus and in doing so is taken to have accepted the conditions on which it was paid. Counsel for the first named Respondent submitted that the Applicant's interpretation of the arrangements under which the bonus was paid is both "illogical and selective". Counsel for the first named Respondent also argues that if, as the Applicant contends, the effective date of his redundancy was some time after 1 October the Applicant did not have any entitlement to a redundancy package of the magnitude of that paid to him. Thus, far from there being a question of underpayment he was in fact overpaid.

In determining whether or not a contract of the kind in question existed, the test is not what the Applicant believed but what was said and done between the parties. The Announcement which sets out the arrangements regarding the transition bonus is clear and unambiguous. In its introductory paragraph it mentions the fact that as part of the finalisation of the transfer of ownership from the first named Respondent "the employment conditions for Minenco personnel have also been finalised". The same paragraph also makes mention of "major elements of the changed package" being set out in the document. In addition, the Announcement outlines "the guiding principles" in determining the changed employment conditions. Furthermore, the penultimate paragraph of the Announcement refers to "other employment conditions" and to the fact that "advice has been provided previously on all other employment conditions".

The Applicant admits that he received and read the Announcement. Moreover, he admits that entitlement to the bonus was a condition of his ongoing employment. In the circumstances it is, as Counsel for the first named Respondent submits, somewhat illogical for him to suggest that in effect only some of the arrangements specified in the document relating to the bonus should form part of his contract of employment. His claim that the arrangements with respect to deductibility of the bonus were not drawn to his attention as being a condition of his employment is, to say the least, self serving. In any event, it is not consistent with the facts. The letter advising him that he would be paid the bonus in January 1998 makes specific reference to that entitlement being "as outlined" in the "announcement on 8 September 1997". That Announcement, as previously indicated, clearly specified that the bonus was, in effect, repayable under certain conditions. For the Applicant now to be heard to say that the bonus was not liable to be repaid under these conditions is, in the circumstances, somewhat fanciful. I am quite satisfied and find that it was a condition of the Applicant's ongoing employment that it was not only to be paid the bonus but that it was to be repaid by him in the circumstances outlined in the announcement on 8 September 1997.

Even if I am wrong so finding, and it could not be said to be a condition of his employment in the strict legal sense, I would still not be minded to uphold his claim. The Commission, in dealing with matters before it, is enjoined to resolve matters having regard to equity and good conscience as well as the substantial merits of the matter. In this case when the Applicant was first informed of the bonus, he was informed in clear and unambiguous terms, which he read, that the bonus was repayable should his employment terminate on the grounds of redundancy within the ensuing 12 months. The Applicant has accepted the bonus and the first named Respondent has done nothing to indicate that in paying the bonus it was doing so other than in accordance with the detailed presentation given to employees regarding the bonus. In those circumstances to make an order, which in effect required that the Applicant be paid a bonus without regard for that obligation, would be quite inequitable.

Likewise, I consider there to be no merit in the Applicant's contention that he should be taken to have been made redundant with effect from some time after 1 October 1998 and thus not be liable to bring into account the bonus previously paid to

him. I accept the evidence of Mr Fryer, the first named Respondent's managing director, that in his dealings with the Applicant the Applicant agreed that 30 September should be the retrenchment date. I accept his evidence that whilst the Applicant did not ask to be retrenched on that date or indeed at all, he was content to go on that date because it gave him an entitlement to a more generous redundancy package than would have otherwise been the case, at least at the time when the arrangements were made. The Applicant acknowledged that the redundancy package payable under the Rio Tinto Ltd scheme was more generous than that otherwise payable and I am satisfied that was a factor that influenced him in agreeing to have his employment terminated with effect on and from 30 September. It is perhaps noteworthy that in an e-mail sent by the Applicant to the first named Respondent approximately a week before his employment was terminated, although he complained about the deduction of the transition bonus, he made no mention of the fact that the process by which the redundancy was being effected was defective. He merely noted that subsequent to being informed of his retrenchment the Rio Tinto Ltd benefit had been extended to 31 December and that by "delaying my departure date by one day there would be no penalty". The conditions of employment on which the Applicant relies to substantiate his argument in this respect include the provision that the notice requirements can be waived by the first named Respondent. I have not the slightest doubt on the evidence, that the Applicant also agreed to waive these requirements and I so find. In any event, the facts are that the Applicant's employment was, as he admits, terminated on 30 September, and that is the basis upon which his claim was advanced.

It follows that the Applicant has failed to establish that the sum of \$10,338.62 was either withheld without his consent or retained contrary to the first named Respondent's redundancy policy. It was withheld in accordance with the terms of his contract of employment. Accordingly, the application should be dismissed.

Appearances: Ms A J Drew-Forster of counsel for the Applicant.

Mr A D Lucev of counsel for the first named Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Barry Phelan

and

Minenco Proprietary Limited & Another.

No. 81 of 1999.

30 August 1999.

*Order.*

HAVING heard Ms A J Drew-Forster of counsel on behalf of the Applicant and Mr A D Lucev 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 this Application be and is hereby dismissed.

(Sgd.) G.L. FIELDING,

[L.S.]

Senior Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Andrew Richardson

and

Pipunya Pty Ltd (Administrator Appointed) and Aboriginal  
Business Development Pty Ltd

No. 254 of 1999

Sandra Richardson

and

Pipunya Pty Ltd (Administrator Appointed) and Aboriginal  
Business Development Pty Ltd.

No. 255 of 1999.

17 August 1999.

*Reasons for Decision.*

SENIOR COMMISSIONER: The first and second named Respondents own and operate the Marble Bar Liquor and General Store.

On or about 22 June 1998 the first named Respondent entered into a management agreement with the second named Respondent under which the second named Respondent was to provide the first named Respondent "with professional support services to manage the Store" and provide the first named Respondent with other professional support services. Those other professional support services included liaison with the person employed to manage directly the store on a day to day basis and to provide that person with "business advice" in relation to the Store. It was a condition of the agreement that the second named Respondent "advise and assist" the first named Respondent in recruiting and training the store manager and "monitor and report and make recommendations" to the first named Respondent "in relation to that person's performance of his obligations as manager of the Store". The agreement expressly provided by clause 6.2, that the store manager was to be an employee of the first named Respondent and that the first named Respondent was to be responsible for all costs associated with the employment of that person. Furthermore the agreement by clause 7, provided that the second named Respondent was to have "exclusive control and discretion in the operation of the Store" and that the first named Respondent was to direct the store manager "to comply with the lawful directions" of the second named Respondent "in relation to the operation of the Store". The agreement also empowered the second named Respondent, if it became aware of the existence of grounds for dismissal of the store manager, to notify the first named Respondent of that fact and to submit a recommendation to the first named Respondent in that regard.

In July 1998 the Store was without a store manager and the second named Respondent set about to obtain one. In or about September 1998 the second named Respondent's director of management and marketing services, Mr Forward met the Applicants, Mr and Mrs Richardson, socially in the course of which he mentioned the vacancy to them. At that time Mr Richardson was in business as an electrical contractor in partnership with his wife. The Applicants expressed an interest in taking up the position and in due course again met with Mr Forward to ascertain more about the job. They met in the office of the second named Respondent. It is accepted by the Applicants and the second named Respondent that that meeting was a somewhat informal one. It was in the nature of an information gathering meeting rather than a formal job interview. As well as the nature and requirements of the job, the details of the relationship between the first named Respondent and the second named Respondent were explained to the Applicants by Mr Forward. The Applicants say that nothing was said about who was to be the employer. Mr Forward says he indicated that there was a management agreement between the first and second named Respondents and that because of the fact that the Store had a liquor licence, they would be employed by the first named Respondent. Approximately a week later the Applicants, who by this time had formed a desire to take up the job, had a meeting with the second Respondent's general manager, Mr Pitman and its managing director, Mr Fitzpatrick. The Applicants claim Mr Forward was also present at this meeting. Messrs Forward, Pitman and Fitzpatrick deny that that was the case. It is accepted that this was a formal job

interview at which time it was agreed that, subject to the approval of the first named Respondent, the Applicants should be appointed as joint managers of the Store at a remuneration of \$65,000 per annum and be provided with a house and motor vehicle in Marble Bar. At or about the same time, and at the suggestion of Mr Forward, the Applicants attended a seminar arranged by the second named Respondent for its store managers. It is accepted by the second named Respondent that normally where it managed retail stores for aboriginal communities it was the employer of the relevant staff. Subsequent to that conference the Applicants met with the chairperson of the first named Respondent during the course of which she approved, on behalf of the first named Respondent, the employment of the Applicants.

It is common ground that Mr Richardson commenced work in the Store on 7 December 1998 and Mrs Richardson on the day following. The uncontradicted evidence suggests that almost from the start some members of the board of the first named Respondent made life very difficult for the Applicants in the conduct of their duties. It is common ground between the Applicants and the second named Respondent that the Applicants were given to understand that they were to take instruction in the operation of the business from Mr Forward and other employees of the second named Respondent rather than from the directors of the first named Respondent. As the events transpired this was an arrangement which some of those directors had found difficulty in accepting.

The Applicants testified that when it came for them to be paid for the first time, approximately two weeks after they started work, a member of the first named Respondent's board asked them how their remuneration was to be split. This left them somewhat puzzled. They took the view that this matter had nothing to do with the first named Respondent. At the same time they were asked by the director to fill out time sheets which annoyed them. In consequence, they contacted Mr Forward. He said he was sorry if they were under the impression that the second named Respondent was their employer. He indicated that they were employed by the first named Respondent and thus had to do what its directors requested.

Late in December Mr Fitzpatrick met with the Applicants to discuss the difficulties being faced by them. Subsequently, those difficulties appear to have come to a head in mid January when the first named Respondent's secretary directed that all of the staff of the Store attend a meeting "to discuss issues that relate to the shop". At this meeting the Applicants were told that they were to take directions from the first named Respondent and not from the second named Respondent. The Applicants expressed their concern at this situation and indicated that they would only take instructions from the second named Respondent. Apart from any other consideration, they had no respect for the business acumen of the representatives of the first named Respondent. As a consequence of the Applicants' stance at this meeting, it appears that the directors of the first named Respondent contacted the second named Respondent to clarify the position. The second named Respondent's managing director Mr Fitzpatrick confirmed that the first named Respondent was the employer of the store managers and the staff, albeit that the second named Respondent had exclusive control in the operation of the Store.

Thereafter the Applicants continued apparently without interference to take day to day instruction on the management of the store from Mr Forward and other employees of the second named Respondent. However, on 17 February 1999 the directors of the first named Respondent wrote to the second named Respondent indicating that the board had decided that the Applicants were not suitable managers for the Store and that the first named Respondent "wishes to terminate their employment effective at the close of business on the eighteenth of February 1999". The directors indicated that the first named Respondent understood that the Applicants were still in their probationary period and that the first named Respondent would pay them one week in lieu of notice. On 18 February Mr Forward informed the Applicants that their employment had been terminated by the first named Respondent and expressed his regrets. After agreeing to remain in charge of the Store until a relief duty manager could be obtained the Applicants ceased to work in the shop.

The Applicants each complain that they were unfairly dismissed from their employment as managers of the Store. They

seek relief from the Respondents in the form of compensation and also seek to recover the equivalent of 21 months remuneration as and by way of a benefit alleged to have been denied them under their contract of employment. The Applicants assert that they had a contract with the second named Respondent to manage the Store for a period of two years subject to three months probation.

The second named Respondent denies that it was the employer of the Applicants and therefore denies any liability in respect of each of the applications. It asserts that at all times it was merely acting as agent for the first named Respondent, as the Applicants well knew.

The first named Respondent admits that it was the employer of the Applicants. However, by the time these proceedings came on for hearing an administrator of the first named Respondent had been appointed in accordance with section 436A of The Corporations Law. As leave had not been sought to proceed against the first named Respondent the proceedings against it were, by force of The Corporations Law, stayed (see: *Richardson v Pipunya Pty Ltd & Anor* (1999) 79 WAIG 1459).

For the Applicants to succeed against the second named Respondent it is necessary that they first establish that they were employed by the second named Respondent. It is not the issue that the Applicants were employees. That appears to have been accepted by the second named Respondent. What is in issue is the identity of their employer. Essentially, that is a question of fact (*Western Australian Carpenters and Joiners, Bricklayers and Stoneworkers Industrial Union of Workers v Izzo* (1994) 64 WAIG 411).

There is very little conflict in the evidence adduced by or on behalf of the relevant parties, but there are some differences. Whilst I feel bound to record that I was impressed by the apparent honesty of all the witnesses and by the attitude of the parties to the current proceedings to each other, in the end I found the evidence of the second named Respondent's managing director Mr Fitzpatrick, the most convincing. In particular, I accept and find that the Applicants were informed at the formal interview, at which I am satisfied that he and Mr Pitman but not Mr Forward were present, that they were to be employed by the first named Respondent. The Applicants both testified that no mention was made before they took up work at Marble Bar of who was to be their employer and certainly they have no recollection of the matter being raised before then. They say they simply assumed that the second named Respondent was to be their employer. In the case of Mr Richardson he testified that he would not have worked for the first named Respondent because of the trouble they had caused in the past and in the case of Mrs Richardson, she testified that she doubts that they would have worked for the first named Respondent had they known it was to be their employer. Despite that I am quite satisfied and find that the matter was explained to the Applicants at their meeting with Messrs Pitman and Fitzpatrick as Mr Fitzpatrick testified. I accept and find that it was explained to them that the second named Respondent had a management agreement with the first named Respondent but that they would be employed by the first named Respondent. Mr Fitzpatrick testified that he prepared an agenda for the meeting, an item of which was: "Store Managers Marble Bar (Employed by Pipunya—Store Control ABS)". Not only was this matter listed to be discussed, Mr Fitzpatrick is adamant that it was in fact discussed. I accept that he was concerned about the potential for interference by the directors of the first named Respondent and for this reason, apart from any other, raised it with them. He impressed me as having the best recollection of that meeting. What he says in this respect is to some extent verified by the second named Respondent's former general manager, Mr Pitman, who also says that the Applicants were told on that occasion that the first named Respondent was to be their employer. Mr Forward also testified that he mentioned the matter to them.

In this context it may not be insignificant that Mrs Richardson testified that she did not recall Mr Pitman saying that the first named Respondent was going to be their employer "but that's not to say that he did not say it". Also, both Applicants accept that they knew that before their employment began that the Store was in a special position because the first named Respondent held the liquor licence. Indeed, Mr Richardson says that before he left for Marble Bar he asked Mr Fitzpatrick

how they were to be paid and was told because their arrangement was different they would not be paid by the second named Respondent but were to pay themselves from the Store's own funds. To some extent this supports the evidence of Messrs Pitman, Forward and Fitzpatrick that the Applicants were told that the first named rather than the second named Respondent was to be their employer.

The second named Respondent's conduct throughout was consistent with the first named Respondent being the employer, as indeed the management agreement stipulated. It is not in dispute that the Applicants were not recorded in the books kept by the second named Respondent as its employees, nor is it disputed that from the outset the Applicants were paid from funds held by the first named Respondent. Also, it is admitted that the Commissioner for Taxation has made a claim against the administrator of the first named Respondent for group tax and for the statutory superannuation payable in respect of the Applicants. The fact that in other places the second named Respondent employed store managers is of no assistance on this occasion. As I find, the Applicants were told before they took up their employment that the arrangement in respect to the Marble Bar Store was different. Equally, the fact that the Applicants attended a conference organised by the second named Respondent for its managers, although a factor to be taken into account in favour of the Applicants' case, loses much of its force by reason of the fact that they had been told that they were to be employed by the first named Respondent and indeed attended the conference in the knowledge that their employment as managers had not been guaranteed but depended upon the approval of the first named Respondent whose chairperson they had not yet then met.

The Applicants place much reliance on a letter written by Mr Forward on the letterhead of the second named Respondents confirming their "employment as managers of the Marble Bar Liquor and General Store". It is common ground between the Applicants and the second named Respondent that this letter was written at the request of the Applicants for the purpose of enabling them to obtain a loan. Whilst the letter is clearly a factor to be considered, it was not written with the intention that it should represent a formal contract between the parties. Moreover, it was written as I find, after the Applicants were told that they were to be employed by the first named Respondent.

The Applicants also refer to and rely on the fact that they received day to day control over their actions from Mr Forward rather than from anybody associated with the first named Respondent. However, as I find the second named Respondent in acting in this way through Mr Forward was, in effect, acting as agent for the first named Respondent, as indeed it was authorised to do by the management agreement. Furthermore as I find, the Applicants were told of this agency arrangement by the second named Respondent before they took up their employment albeit that they were not shown the management agreement itself. In any event, the fact is that the second named Respondent did not have the ultimate power of control over the Applicants. It did not have the power to suspend or dismiss the Applicants nor did it purport to do so. Furthermore, as the Applicants well knew and indeed acknowledged, the second named Respondent did not have the ultimate power to engage them but this rested with the first named Respondent. The Applicants refer to and rely on the fact that they were not informed by the first named Respondent that their employment had been terminated but instead by an employee of the second named Respondent. However as I find, the second named Respondent in relaying that information was acting as agent for the first named Respondent. The notification given to the second named Respondent by the first named Respondent in this respect clearly indicates that it was the first named Respondent which decided to terminate the Applicants' employment and not the second named Respondent. Indeed, the evidence suggests that the second named Respondent did not agree with the decision to terminate their employment. All that it did was to relay the decision of the first named Respondent. That is perhaps not surprising given the agency relationship which existed between the two. Even the evidence of the Applicants does not suggest that the decision to terminate their employment was other than that of the first named Respondent.

For these reasons I am simply not satisfied, even on balance, that the Applicants were at all material times employees of the second named Respondent. It may be that the Applicants intended to be employed only by the second named Respondent but there is absolutely no evidence that they made that fact known to the representatives of either the first named Respondent or the second named Respondent. Indeed on their own admission, they simply assumed that they were to be employed by the second named Respondent.

It follows that both of the applications, so far as they affect the second named Respondent, should be dismissed, the Applicants having failed to make out their claim that they were employees of the second named Respondent. On balance I am not satisfied that the second named Respondent was, in fact, the employer of the Applicants.

In the circumstances it is not necessary to consider the remaining aspects of the claim. I should perhaps indicate that on the basis of the evidence addressed in the current proceedings, which of course did not involve the first named Respondent, it appears that the dismissal of the Applicants from their employment was unfair, if not oppressive. There was no evidence to suggest that their work performance was in any way defective. Indeed, such evidence as there is suggests that they were good managers and it was only because of a desire on the part of some members of the board of the first named Respondent to have some other person with closer links to the board to be the manager that their employment was terminated. Equally, on the basis of the evidence I am satisfied and find that the Applicants were employed, as they say, on the basis of a contract for two years albeit subject to three months' probation. Although the evidence of Mr Pitman suggests that the normal arrangement was to employ store managers initially on contract for a fixed probationary term of three months, followed, all being well, by a fresh contract for a period of 21 months, the evidence does not suggest that that was made entirely clear to the Applicants. Indeed, a letter written for the purposes of enabling them to obtain a loan indicated that the basis of their employment was to be "a two year contract with a three month probationary term". That is consistent with what the Applicants said they were told by Mr Forward earlier.

Appearances: Mr T H F Caspersz of counsel for the Applicants.

Mr G K Paull of counsel for the second named Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sandra Richardson

and

Pipunya Pty Ltd (Administrator Appointed) and Aboriginal  
Business Development Pty Ltd.

No. 255 of 1999.

17 August 1999.

*Order:*

HAVING heard Mr T H F Caspersz of counsel on behalf of the Applicants and Mr G K Paull of counsel on behalf of the second named Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) G. L. FIELDING,  
Senior Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Andrew Richardson

and

Pipunya Pty Ltd (Administrator Appointed) and Aboriginal  
Business Development Pty Ltd.

No. 254 of 1999.

17 August 1999.

*Order.*

HAVING heard Mr T H F Caspersz of counsel on behalf of the Applicants and Mr G K Paull of counsel on behalf of the second named Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) G. L. FIELDING,

[L.S.]

Senior Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Valerie Mary Woodruffe

and

The West Australian Auto Trader Pty Ltd.

No. 874 of 1997.

10 August 1999.

*Reasons for Decision.*

COMMISSIONER C.B. PARKS: The respondent company publishes and distributes a motor vehicle advertising magazine and employed the applicant, Ms Woodruffe, to deal with accounts and administration. Ms Woodruffe was summarily dismissed from the employment for alleged misconduct on 11 April 1997, by Anthony Thomas Hay, a then director of the respondent company and Manager of the business.

Ms Woodruffe contends that her dismissal was unfair, and further, that the respondent has not allowed her benefits allegedly due under her contract of employment. In remedy the applicant seeks, an award of the maximum compensation allowable on account of her dismissal, and that the Commission also order the respondent to pay her the benefits of "holiday pay", "sick pay", plus a sum of interest, together with the difference between remuneration she would have earned for the remainder of the five year term of her contract of employment, ie from 21 October 1998 to 31 January 2000, and that which is her projected remuneration for the period.

The stated cause for the dismissal of the applicant is that she made the personal purchase of an underwater camera via the wrongful use of a company order form so as to evade the payment of sales tax. Ms Woodruffe does not deny that she purchased the camera with a company order form but firstly asserts that she did so with the prior express oral approval of Robert James Hay, the Sales Director for the respondent at the time of purchase and who was empowered to authorise the use of an order form. Secondly, Ms Woodruffe asserts that upon the purchase in December 1996, Mr A.T. Hay was informed of the manner of purchase and he sanctioned it. Ms Woodruffe contends that the true reason Mr A.T. Hay acted to dismiss her was related to a compensation claim by her regarding a disputed injury to her left wrist.

Both the brothers, Mr A.T. Hay, who is no longer a director of, nor an employee of, the respondent company, and Mr R.J. Hay, now the Managing director for the respondent company, deny the allegations made by Ms Woodruffe.

On or about 8 April 1997, according to Mr A.T. Hay, he received an invoice from City Arcade Photographics which stated that the company owed payment for an item which had been purchased. He therefore inquired of several employees regarding the purchase, including Mr R.J. Hay and Ms

Woodruffe, however all said they had no knowledge of the purchase. Subsequent telephone inquiries to City Arcade Photographics, and their separate accounting operation, drew the conflicting responses that the sum said to be owed had been paid, and not paid. The item purchased was then identified to be a yellow underwater camera. Mr A.T. Hay recollected seeing the applicant with such a camera prior to Christmas 1996, he ascertained that Ms Woodruffe had issued the related order form, and therefore, on 11 April 1997, he again addressed the invoice with her in his office. Ms Woodruffe is said to have brought her handbag with her to his office, the implication being that she anticipated a need to justify herself with regard to the invoice, and then sought to do so by producing her Visa statement. And, when questioned regarding the use of a company order form, she said that such had been approved by Mr R.J. Hay, Mr C. Ratnakumar, and by him. Mr R.J. Hay was immediately asked whether he had approved the use of a company order form and he denied that he had. Mr Ratnakumar was said to be overseas at the time but it was not believed that he would have approved the use of an order form and the evasion of sales tax. Ms Woodruffe was then summarily dismissed.

It is not in dispute that in the office of Mr A.T. Hay, on 11 April 1997, his first indication to Ms Woodruffe was that their employment relationship was not satisfactory and he suggested to her that she resign. Ms Woodruffe refused to resign and it was following that refusal that Mr A.T. Hay indicated he was aware that the invoice related to her camera purchase and that that conduct warranted her dismissal. It is following this that Ms Woodruffe sought to show that she had paid for the camera and that her method of purchase had been approved.

Mr A.T. Hay was equivocal as to when he first brought the invoice to the attention of Ms Woodruffe. According to her that occurred on 10 April 1997 following a proceeding she and Mr A.T. Hay had attended regarding a disputed wrist injury.

Ms Woodruffe described the document Mr Hay received from City Arcade Photographics as a statement, and not an invoice. It is plain on the oral evidence that the document, which for the purposes of these reasons I will continue to describe as an invoice, gave no description of what the stated debt related to. Ms Woodruffe had recommenced work on 7 April 1997 after a one month absence and it is her evidence that, because she had no knowledge of what purchases had occurred in that period, and there was nothing which prompted her to associate the invoice with her camera purchase, she informed Mr A.T. Hay that she did not know what it was the document related to. The applicant says that during a conversation with her husband on the night of 10 April 1997 there was the inkling that the invoice might relate to the camera she had purchased as a gift to him and therefore she took her Visa statement to work the following day in order to show that payment had been made for, and hence the debt did not relate to, her purchase, if that became necessary.

Ms Woodruffe says that, when on 11 April 1997 she declined to resign at the suggestion of Mr A.T. Hay, he then, in reference to the camera purchase, expressed the view that she had engaged in fraud and theft whereupon she left his office, visited the reception area where she had been working, obtained her briefcase and then returned and produced from it the Visa statement showing that she had paid for the camera. There was an indication at some point that she had wrongly used an order form and in response to that she informed Mr Hay that his brother had approved her use of the order form. Mr R.J. Hay was called to the office of Mr A.T. Hay where he denied approving her use of the form. Mr A.T. Hay is then said to have stated that it did not matter that she had paid for the camera because he was able to effect her dismissal on account of using the order form to evade sales tax, a situation he described as "karma" and in relation to which he, with the use of an expletive, declared "I just want you out of my f...ing company", the inference being that the circumstance presented him with an awaited opportunity to end the employment relationship. Mr A.T. Hay says he does not remember using the words fraud and theft with the applicant, he did concede that it was likely he used an expletive at the time however he was not pressed to explain the context of its usage.

According to the applicant about November 1996 she sought advice regarding a suitable underwater camera to purchase as

a gift for her husband, from another employee who often performed photographic work for the respondent. Mr McFeate, the employee concerned, recollects such a conversation with the applicant when he suggested to her that she speak with a particular person at City Arcade Photographics, but he was unable to recollect when such occurred. Ms Woodruffe says that she knew Mr R.J. Hay engaged in underwater diving and therefore, around the time she spoke to Mr McFeate, she spoke to him regarding that interest and of her intention to purchase an underwater camera for her husband. That conversation, she says, was followed by a later oral request to Mr R.J. Hay that she be authorised to purchase the camera with a company order form which, according to her, he orally approved. A request said by her to have been made because he had approved other personal purchases in this way.

The order form issued by Ms Woodruffe (exhibit B) and directed to City Arcade Photographics is dated 16 December 1996. Ms Woodruffe made the purchase of the camera with her Visa card. A Visa card statement issued to her for a period ending in January 1997 (exhibit N) states 19 December 1996 as the date at which the transaction was "processed". According to Ms Woodruffe when she approached City Arcade Photographics and chose the underwater camera, that which she chose was not available and the vendor obtained the camera for her approximately three weeks later. The applicant says that she issued and dated the order form on the day the vendor informed her the camera had become available. And, it was that same day she made the purchase and returned to the office with the camera where it was displayed and viewed by several persons. It is not in dispute that Mr A.T. Hay saw the underwater camera at this time. However, he denies that there was mention by Ms Woodruffe at that time that the camera had been purchased with a company order approved by his brother, and he denies that he sanctioned that method of purchase at the time.

Mr R.J. Hay told the Commission that he did not approve Ms Woodruffe using a company order to make a personal purchase. He denies having knowledge of the underwater camera prior to the controversy arising in relation to it in April 1997, he having been absent from the office visiting the United Kingdom for the period 11 to 29 December 1996. It is expressly denied that he discussed the camera with her husband in January 1997. Mr R.J. Hay confirmed that he had approved the issue of company order forms by the applicant, and therefore the non-payment of sales tax, when a camera lens was purchased for the personal camera of Mr McFeate and when tyres were purchased for the personal vehicle of his daughter because in both cases he holds the view the goods purchased were to be used substantially for the business. Mr Hay denied that he also approved the purchase of tyres for Ms Woodruffe by means of a company order she issued, but says he would have done so had he been asked because of her motor vehicle usage for the business.

Graham John Woodruffe, the husband of the applicant, told the Commission that on or about 6 January 1997, on the first day of work for his wife following "the Christmas break", he attended the premises of the respondent to "pick up" his wife and was greeted by Mr R.J. Hay who, among other things, referred to the underwater camera, inquired whether he was satisfied with it, and said he was thinking of purchasing an underwater camera because he was soon to undertake a holiday.

In mid February 1997 Ms Woodruffe advised the respondent that she had sustained a work related injury to her left hand/wrist which was then in a splint. It followed later that Ms Woodruffe had a related absence from work for a period of one month. Mr A.T. Hay does not accept the injury claim of Ms Woodruffe is genuine, he refused to forward her claim to the respondent's insurer, and he attempted to prevent the claim being recognised and Ms Woodruffe appropriately compensated according to what statutory entitlement she might have. Ms Woodruffe initiated a claim independent of the respondent and at the proceeding their dispute brought about, on 10 April 1997, liability for the statutory compensation was accepted by the respondent's insurer in the face of strong objection by Mr A.T. Hay. On the day, Mr A.T. Hay declared to the representative of the insurer that she was "sacked", which he has explained was intended to convey that the insurer would lose the business of the respondent. He refused to facilitate compensation payments to the applicant approved by the insurer.

The Commission had the benefit of observing Mr A.T. Hay in the hearing of this the substantive matter and in earlier interlocutory proceedings. In the earlier proceedings I found him to be evasive and to obfuscate at times. On a number of occasions his evidence in the hearing suffered from confusion. He had questions to him repeated when it was obvious he had clearly heard them and there was no outward sign that he did not understand them, and that I conclude was for the purpose of affording him time in which to reflect upon the answer he would give. Ms Woodruffe was forthright and prompt in her response to questions and in general convinced me that her evidence was the more reliable. I also find the evidence of Mr Woodruffe to be reliable.

It is plain that when Mr R.J. Hay attended the office of his brother on the day of dismissal his visit was brief and limited to his being asked, and him then responding to, whether he had approved the use of the company order form. There is no indication that when Mr A.T. Hay was faced with the different stories he allowed the applicant the opportunity to address that situation further or that he attempted to inquire further. On his version, Ms Woodruffe also said he had approved what she had done, and given her evidence I think it probable that she did, but not in the way which Mr Hay has implied, that is, she proffered it in the alternative to his brother when he did not corroborate her claim. Furthermore, Mr A.T. Hay was her accuser and it seems improbable in the extreme that Ms Woodruffe would attempt to rely upon what was a known fiction, given he would personally know that were the case. I am convinced that at the time Ms Woodruffe attempted to convey that which she has told the Commission, that is, Mr R.J. Hay had given his approval and Mr A.T. Hay had later sanctioned that. I am left with no doubt that Mr A.T. Hay felt enmity toward the applicant as a consequence of all that transpired regarding her injury claim, and that he was in that frame of mind when he dealt with Ms Woodruffe on 11 April 1997. Mr A.T. Hay wanted her gone from the business and he entered upon the meeting with her intending to achieve that result. Before the meeting he had conferred with a business associate in Sydney and decided to end her employment and to seek that through her resignation. The meeting with Ms Woodruffe commenced with Mr Hay proposing she resign. That occurred prior to the accusation of wrongdoing, Ms Woodruffe had not been provided any opportunity to defend herself, and consequently no reasonable investigation could have been conducted before the decision to end her employment on that ground was taken. The subsequent inquiry to Mr R.J. Hay was cursory and the result too readily embraced by Mr A.T. Hay.

I am satisfied that, as stated by Mr Woodruffe, in early January 1997 Mr R.J. Hay spoke to him and inquired regarding the underwater camera which his wife had purchased. Given that Mr Hay was absent from the office between 11 and 29 December 1996, and according to Ms Woodruffe she had observed a two week break from the office and had returned from that on the day he spoke to her husband regarding the camera, his knowledge of the camera had to have been gained prior to the start of his absence. That knowledge I believe was gained when, at about the end of November, Ms Woodruffe spoke to him of purchasing the camera and he approved that it be done with a company order form. I am equally satisfied that Mr A.T. Hay later sanctioned that method of purchase in what was probably no more than a passing exchange with the applicant. Ms Woodruffe was wrong to avoid the payment of sales tax however such was done with the complicity of her superordinates, Messrs Hay, and therefore it was not open to Mr A.T. Hay, the principal superordinate for the respondent, to hold that the applicant committed an act of misconduct against the respondent. Section 23AA of the Industrial Relations Act 1979 applies to the determination of this application by reason of the transitional provisions of s22(2) of the Labour Relations Legislation Amendment Act 1997, and hence there is an onus upon the respondent to show there is a ground or there are grounds on which the Commission could find that the dismissal of the applicant was justified. The respondent has not discharged that onus. The summary dismissal of the applicant was not justified and was unfair.

Tendered to the Commission is a statement of particulars wherein there is contained the "holiday pay" and the "sick pay" entitlements calculated upon each amount of leave said to have accrued and accumulated to the benefit of the

applicant. Also tendered in support thereof are extracts from the records of the respondent (exhibits K and P). There was evidence before the Commission which addressed the contents and accuracy of the documents before the Commission however for the reasons which follow there is no need for the Commission to determine the quanta of the leave to which the applicant had become entitled. The claims made by Ms Woodruffe are in the nature of each type of leave being benefits under her contract of employment which she is due and both have been denied her by the respondent. However, no evidence was led which establishes there were terms of her contract of employment which provide that, if the right to take leave is not exercised, she became entitled to payments in lieu thereof upon the termination of the employment. The need for such to be established is well settled in this Commission. Rights to paid annual leave (holiday pay) or a payment in lieu of untaken leave, and paid leave for sickness or injury (sick pay), are provided for employees under the Minimum Conditions of Employment Act 1993. Their enforcement is however outside the jurisdiction of the Commission. The claims for payment of untaken "holiday pay" and "sick pay" will therefore be dismissed.

It is the claim of the applicant that she entered into a written agreement with the respondent which prescribes the salary, and other terms of her employment not specified to the Commission, and that such is for a fixed term of five years from 1 February 1995. The respondent denies that such an agreement was made between the parties. No written agreement is in evidence before the Commission. According to the applicant a group of employees subordinate to her and other managers entered into registered Workplace Agreements with the respondent which contain five year terms. It is said that it then followed that agreements of a different character, but also with a five year term, were proposed to her and other managers by the respondent, the terms of which she accepted, it was executed by her and Mr R.J. Hay and she then placed it on file in the office. There is evidence that late in 1996 Ms Woodruffe submitted her resignation to the respondent which was to have effect after a stated period of notice elapsed. On its face the applicant acted believing it was her right to end the employment upon giving a period of notice, notwithstanding the said five year term of her agreement. It appears equally apparent that the respondent did not deny that the applicant had such right to end the contract of employment in that way. I think in all probability a written agreement was executed as Ms Woodruffe claims and therein there was mention of a five year term however, I am not satisfied that such was a fixed term during which both parties were bound to an employment relationship until the expiration of such term. A guaranteed period of employment is not a benefit provided by the contract of employment and consequently the claim made on this ground is dismissed.

In consequence of the unfair dismissal the applicant asks the Commission to exercise the power provided to it by s23A (1) (ba) of the Industrial Relations Act 1979 to order that the respondent pay to her compensation in the sum of 6 months salary, that is, \$18,900, based on the annual salary of \$37,800. Section 23A (1) (ba) empowers the Commission to order the payment of compensation "..... to the claimant for loss or injury caused by the dismissal", however sub-s (1a) directs that the Commission not make such an order unless it is satisfied that reinstatement or re-employment of the claimant is impracticable, or the employer has agreed to pay compensation instead of reinstating or re-employing.

Eighteen months elapsed between the dismissal of Ms Woodruffe and her application being heard by the Commission throughout which time she has continued to receive treatment, including surgery, and participated in a rehabilitation process in relation to the injury sustained whilst employed by the respondent. Ms Woodruffe has obtained part-time employment with which she has been able to cope and is reluctant to return to the work involving the volume of repetitive data entry which caused the injury. A report from a clinical psychologist, Mr S. Runciman, who has counselled the applicant throughout the period since her dismissal expressed the opinion "She (Ms Woodruffe) needs to experience a measure of long term stability in her current employment before she will regain her confidence in herself and employers. She remains anxious and more insecure than before and it will be some

time before she regains that confidence fully". It is therefore my view that it would be impracticable to return the applicant to employment with the respondent.

The current employment of Ms Woodruffe is remunerated at the rate of \$390 per week however, as submitted on her behalf, she suffered no loss in remuneration to the date of hearing because her total remuneration has been maintained at the level of the salary she had received when employed by the respondent by reason of compensation payments relating to her injury. Given the report of Mr S. Runciman, and his testimony, it appears most unlikely that Ms Woodruffe will obtain more lucrative employment for quite some time and it is plain that she has suffered stress and lacks confidence. There is no precise formula to assess what may be the future loss of remuneration by Ms Woodruffe. I bear in mind that prior to her dismissal she had become dissatisfied with her employment to the point of resigning and therefore it would be wrong to assume that had the dismissal not occurred she would have remained indefinitely with the respondent. The Commission has been told that the prognosis for the applicant is that she is expected to complete a physical rehabilitation with regard to her injury shortly following the hearing. I am satisfied that there is every chance that it will be not less than six months following that before she is likely to obtain remuneration at the level she previously enjoyed. Her loss for that period I therefore assess at \$8760 and I assess the value of the injury suffered by her to be \$5000.

I have assessed the loss upon the salary of \$37,800 per annum and made no allowance for the portion of that income paid to the family company, Benedek Holdings. That arrangement with the respondent was plainly a device. Benedek Holdings had no contract with, nor did it perform any service for, the respondent and the total salary is that the respondent granted Ms Woodruffe (see exhibit L) as remuneration for her services, and as a term of her employment. The applicant has applied for costs. It is a well settled practice of the Commission to grant costs only when it has been shown that there are special circumstances warranting an order requiring the payment of costs. That has not been shown.

Appearances: Mr N. Dobree, of Counsel on behalf of the applicant

Mr N. Singh, of Counsel on behalf of the respondent

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Valerie Mary Woodruffe

and

The West Australian Auto Trader Pty Ltd.

No. 874 of 1997.

17 August 1999.

*Order.*

HAVING heard Mr N. Dobree, of Counsel on behalf of the applicant and Mr N. Singh, 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 West Australian Auto Trader Pty Ltd pay to Valerie Mary Woodruffe Compensation of \$13,760 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.

Robyn Dawn Yewdall

and

McInerney Sales Pty Ltd t/a

McInerney Ford.

No. 315 of 1999.

COMMISSIONER A.R. BEECH.

25 August 1999.

*Reasons for Decision.*

THE applicant, Robyn Yewdall, was employed by the respondent from 25 November 1996 until 5 March 1999. She was employed as a receptionist/cashier on a permanent part-time basis for 31.5 hours per week. Her hours were 7 am to 6 pm on 3 days of the week. She worked there together with another receptionist/cashier who, by the time of Mrs Yewdall's dismissal, was herself working full-time.

Mr Peatey, the operations manager for the respondent, gave evidence about the respondent's operations. I accept his evidence. It was not contradicted at all by the evidence given by Mrs Yewdall. His evidence is the respondent has been operating for 25 years. Currently, servicing has become a growth area. Between late 1996 to the middle of 1997 there was an increase of 36% in the technicians employed. There was an increase of 55% in vehicle through-put. Work also increased as Ford Australia devolved further work to dealers such as the respondent. As a whole, therefore, the service department grew considerably. That is the department in which Mrs Yewdall worked. The respondent decided that it needed the receptionist/cashier position to become a full-time position and that the part-time position would cease.

Mr Peatey met with Mrs Yewdall and explained the decision to her. He offered the full-time position to her and asked her to consider the offer and let him know her answer by the following Monday, in 3 days' time. Mr Peatey's recollection is that Mrs Yewdall initially accepted the offer but requested the hours to be specified in writing. There was some dispute in the hearing about whether this was done or whether it was not done however, it is agreed that the hours that the company wanted Mrs Yewdall to work were 42.5 hours one week (Monday to Friday, 9 am to 6 pm) and 47.5 hours the other week (working every second Saturday). I am satisfied that Mrs Yewdall knew the hours that were being offered because she referred to them in her letter of 8 January (exhibit 3). Mrs Yewdall was unable to work those hours and refused the position. She stated her preparedness to work additional hours or to work elsewhere in the company if a position was available. However, her offer was not acceptable to the respondent and as a consequence the respondent advised her that she would be terminated by reason of redundancy and was given slightly over 3 weeks' notice. The respondent employed a replacement who commenced on 15 February 1999.

Mrs Yewdall claims that her dismissal was unfair. Firstly, she queries the genuineness of the respondent's decision. However, I accept the evidence of Mr Peatey regarding the upturn in business. There was therefore a need for the respondent to increase the hours in its service area. Indeed, on Mr Peatey's evidence, the other clerical employee had initially been job-sharing with Mrs Yewdall but she had since become a full-time employee. There is nothing in the evidence presented by Mrs Yewdall that would allow me to conclude that the evidence of Mr Peatey is incorrect. It therefore seems to me quite clear that the respondent needed to have a full-time employee in the position then being held by Mrs Yewdall.

Furthermore, the company offered the position to Mrs Yewdall. The evidence is quite clear that the company was quite satisfied with Mrs Yewdall's work and had hoped that she would accept the position. Ultimately, Mrs Yewdall decided against accepting the position. She explained her reasons in the Commission hearing and I accept that her decision was for the most genuine of reasons. Although she would have been prepared to increase her hours, she would not have been able to work on a Wednesday due to commitments to her parents on that day. On the evidence of Mr Peatey, the primary reason to make the position full time was to cover the Monday

to Friday period. Accordingly, it is clear that although Mrs Yewdall would have been prepared to increase her hours, the increase in hours as such would not have satisfied the respondent's need.

In such a circumstance the part time position occupied by Mrs Yewdall did become redundant. The respondent did not want the part-time position performed by anyone. That position would be abolished and recreated as a full-time position. Mrs Yewdall was offered the full-time position and as previously indicated, was not able to accept that position. On the evidence of Mr Peatey, and in the absence of any evidence to the contrary from Mrs Yewdall, there was no other position in which Mrs Yewdall could be employed. Accordingly, her employment was terminated. Although the argument presented on behalf of Mrs Yewdall challenges the genuineness of the redundancy, there is no conclusion other than that it was a genuine redundancy open on the evidence.

It was submitted on behalf of Mrs Yewdall that if the redundancy was not genuine then her termination would have breached "unfair dismissal laws". That may be the case, but given that her termination was for genuine reasons of redundancy, then much of the argument put on behalf of Mrs Yewdall, as I understood it, falls away. The respondent observed the minimum legal requirements to be observed when an employee is to be made redundant. It did not do more than it was obliged to do. It is arguable that if it had given greater notice to Mrs Yewdall than the minimum she decision may have been less inclined to challenge the decision of the respondent. Nevertheless, and after a close examination of the transcript of this matter, I have been unable to conclude that the dismissal of Mrs Yewdall was unfair merely because only the minimum provisions relating to redundancy were observed.

During the hearing, Mrs Yewdall relied upon a decision of the Industrial Relations Court of Australia (as it then was) in *Goulding & TWU v Quality Bakers Australia Ltd*. The decision actually cited was the decision of Farrell JR, which in fact was appealed (*Quality Bakers of Australia Limited v John Goulding & Anor* No. RWIR 142 of 1994, Beazley J, 23 June 1995) although not overturned on appeal. The decision of Farrell JR, however, shows that on the facts of that matter there was not a genuine reason for the redundancy of Mr Goulding. He was one of 57 breadcarters and he was made redundant. Farrell JR concluded that the termination was unfair because Quality Bakers lead no evidence as to why it chose Mr Goulding rather than any other employee. There was no evidence as to the criteria used for selecting him for redundancy and furthermore there were references in the evidence that suggested the reasons for his termination related to other factors. Neither that decision, nor the decision on appeal, show any relevance to the facts concerning the termination of Mrs Yewdall's employment.

Mrs Yewdall stated that she was very humiliated when applicants for the full time job came to her at the reception desk to attend interviews. She thought the respondent could have shown greater sensitivity and scheduled interviews for days when she was not at work. She does acknowledge that to some extent the respondent had to take into account the times the applicants were available but states that it could have had them report elsewhere. I am prepared to accept that Mrs Yewdall found the situation embarrassing and indeed, that the respondent could have shown some consideration towards her in this regard. However, that conclusion is only one factor and by itself does not lead to the conclusion that the termination of her employment by reason of redundancy was itself unfair.

Ultimately the Commission is to decide the matters that come before it from the evidence and arguments presented. And further, it is not up to the Commission to run the respondent's business for it. If there were any reasonable alternatives to dismissal open to the respondent these were not demonstrated in the case presented to the Commission. Accordingly, Mrs Yewdall's application has not been made out and an order dismissing the application now issues.

Appearances: Mr J. Yewdall on behalf of the applicant.

Mr R. McPherson on behalf of the respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Robyn Dawn Yewdall

and

McInerney Sales Pty Ltd t/a  
McInerney Ford.

No. 315 of 1999.

25 August 1999.

*Order.*

HAVING HEARD Mr J. Yewdall on behalf of the applicant and Mr. R. McPherson 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,

Commissioner.

[L.S.]

### SECTION 29(b)—Notation of—

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Aberline ED	PM & EA Masters Pty Ltd	695/1999	Kenner C.	Discontinued
Anthony DT	JNS Corporation t/a JNS Transport	456/1999	Beech C.	Discontinued
Antonelli V	Donald F Munro & Associates Pty Ltd t/a Trustee for Donald F Munro & Associates Unit Trust	355/1999	Gregor C.	Discontinued
Bailey R	Starwest Management Pty Ltd	921/1999	Kenner C.	Discontinued
Balaam RW	Mechanical Project Management Pty Ltd	70/1999	Gregor C.	Consent Order
Bambridge DJM	Work Direct Carpentry & Cabinet Making Services	760/1999	Scott C.	Dismissed
Beattie BF	Proxima Pty Ltd t/as Chester Coffey & Associates	401/1999	Gregor C.	Discontinued
Berridge K	Defense Shield Pty Ltd	1111/1999	Fielding SC	Withdrawn
Biggin G	Force Equipment Pty Ltd	939/1999	Kenner C.	Discontinued
Booth AC	S.J. & W. Leopold Nominees Pty Ltd ATF Leopold Family Trust t/as Steve Leopold Constructions	737/1999	Gregor C.	Consent Order
Burridge CJ	Mr Neville Kirk Commercial Hotel	1197/1999	Fielding SC	Discontinued
Burrows TF	Robert Tester Torta Caffè	1066/1999	Kenner C.	Discontinued
Caie K	Neville Hedrick/Garford Pty Ltd	561/1999	Gregor C.	Consent Order
Cain AP	Trading as Golden Silo Pty Ltd As Northam Toyota	830/1999	Kenner C.	Discontinued
Chamoun J	Chambers Capital Group Ltd	224/1999	Fielding SC	Discontinued
Chan WHCK	Carrigart Pty Ltd t/as Belmont Forum Foods (Aroma Café)	537/1999	Gregor C.	Consent Order
Clancy JAC	Corporate Body Management Newhaven Retirement Village	529/1999	Gregor C.	Dismissed
Clausen AD	Travel the World Intan Wisata Pty Ltd	143/1999	Gregor C.	Dismissed
Cole-Cooke E	Hill 50 Gold Mine NL	1086/1999	Beech C.	Withdrawn
Comito D	Buttercup Bakeries	645/1999	Beech C.	Discontinued
Cornelius J	Capricorn Resources Australia NL	1033/1999	Gregor C.	Discontinued
Coxe R	Complete Site Services	378/1999	Scott C.	Dismissed
Craig BJ	Suncity Tavern (Two Rocks)	599/1999	Gregor C.	Discontinued
Cripps V	G & B Bainbridge t/a Brookton Mobile Road House	568/1999	Beech C.	Discontinued
Crotty AP	Cockburn Corporation Ltd & Another	457/1999	Beech C.	Discontinued
Dann C	Central Drilling Limited & Other	162/1999	Kenner C.	Discontinued
Davenport J	G & S Willcocks-Happy Snapper	601/1999	Gregor C.	Discontinued
Davidson LS	Drillcorp Western Deephole	404/1999	Kenner C.	Dismissed
Dunne JC	The President, Athena Soccer Club	694/1999	Gregor C.	Discontinued
Evans SF	ICF Kaiser Engineers (Asia) Pty Ltd & Bechtel Australia t/a Kaiser Bechtel (Aditya) Joint Venture	282/1999	Gregor C.	Discontinued
Favazzo TJ	Auto Action	490/1998	Scott C.	Dismissed
Gaffney BR	Danesse Pty Ltd Trafalgars Hotel	417/1999	Gregor C.	Discontinued
Gordin DM	John Franklyn Pty Ltd	1169/1998	Parks C.	Discontinued
Gordon S	Prefet Pty Ltd	422/1999	Scott C.	Dismissed

APPLICANT	RESPONDENT	NUMBER	COMMISSIONER	RESULT
Hartree P	Microfusion Pty Ltd	1459/1998	Beech C.	Discontinued
Hayward J	Koast Corporation Pty Ltd	1017/1999	Beech C.	Discontinued
Hopkins GP	Cadbury Schweppes Pty Ltd	521/1999	Beech C.	Struck Out
Howell M	Hotel Dynamics	1912/1998	Beech C.	Discontinued
Humble KW	Centurion Transport Co Pty Ltd	1215/1998	Gregor C.	Discontinued
Hunt NS	High Road Café Deli	67/1999	Scott C.	Dismissed
Hyne RW	TKK Engineering	665/1999	Gregor C.	Consent Order
Jolly NG	H & HD Transport T/A Wiluna	596/1999	Kenner C.	Discontinued
Kelly KL	Maureen Thomas t/as A Touch of Elegance	721/1999	Gregor C.	Consent Order
Keys A	Mechanical Project Management Pty Ltd	642/1999	Gregor C.	Consent Order
Laginha M	GA Perry Pty Ltd	38/1999	Scott C.	Dismissed
Lalli-Cafini V	AAPT Sat-Tel Ltd	927/1999	Beech C.	Discontinued
Lang JM	Windcrest (WA) Pty Ltd	936/1999	Kenner C.	Discontinued
Lee J	GW & JF Renolds	1160/1999	Scott C.	Withdrawn
Lindh AM	Tele 2000 Corporation Pty Ltd	1048/1999	Gregor C.	Discontinued
Lobo SP	The West Australian-Auto Trader	785/1999	Kenner C.	Discontinued
Loiacono S	Max Winkless Pty Ltd	732/1999	Gregor C.	Dismissed
Mader M	RCR Tomlinson Ltd	679/1999	Gregor C.	Discontinued
McCarthy MR	Newport Drycleaners	649/1999	Beech C.	Discontinued
McEwan K	Chubb Protective Services	541/1999	Gregor C.	Dismissed
Metcalfe A	Programmed Maintenance Services Pty Ltd	527/1999	Gregor C.	Discontinued
Murray DJ	Lasi Pty Ltd t/a Helen's Choice Boutique	776/1999	Beech C.	Discontinued
Murray MA	Abacus	276/1999	Parks C.	Discontinued
Nguyen CH	Fallright International Pty Ltd	2214/1998	Beech C.	Discontinued
Pearse AJ	Chambers Capital Group Ltd	223/1999	Fielding SC	Discontinued
Perham CP	Sun Star Electric Pty Ltd	769/1999	Kenner C.	Discontinued
Platt A	Starwest Management Pty Ltd	920/1999	Kenner C.	Discontinued
Radice D	Arasi Peter	1184/1999	Fielding SC	Discontinued
Saylor JR	Hallmark Industries	622/1999	Kenner C.	Discontinued
Schmidt MP	Shark Lake Piggery	251/1999	Scott C.	Dismissed
Sekendy F	South Metropolitan College of TAFE	1156/1999	Fielding SC	Discontinued
Shields LM	Sanford Securities Pty Ltd ACN 076 515 930	1187/1999	Fielding SC	Discontinued
Simpecas N	The Country Women's Association of Western Australia	513/1999	Gregor C.	Discontinued
Slobe M	Fallright International Pty Ltd	490/1999	Beech C.	Discontinued
Smith AH	Capella Investments t/a Ground Transport Services WA Pty Ltd	595/1999	Beech C.	Discontinued
Smith KE	TKK Engineering	666/1999	Gregor C.	Consent Order
Smith L	Michael Vernom	560/1999	Scott C.	Dismissed
Smith M	Travel the World Intan Wisata Pty Ltd	410/1999	Gregor C.	Dismissed
Sputore-Keller R	Christine Towers Executive Officer Womens Economic Development Organisation Inc.	2101/1998	Scott C.	Dismissed
Sumner R	Interval Resort Networks (Australasia) Pty Ltd-Holiday Pack Vacation Exchange Networks	962/1999	Gregor C.	Dismissed
Thomas K	Bowra & O'Dea Pty Ltd	284/1999	Beech C.	Discontinued
Thorington DJ	United Construction Pty Ltd	325/1999	Gregor C.	Discontinued
Torney RS	Prestige Catering	701/1999	Gregor C.	Discontinued
Turner R	Lady Gowrie Centre WA (Inc)	1003/1999	Scott C.	Withdrawn
Vaughan KP	Transfield Pty Ltd t/as Transfield Coatings (WA)	441/1999	Scott C.	Dismissed
Vieyra SA	Photo Corporation of Australia Pty Ltd	832/1999	Scott C.	Dismissed
Vise K	Video Ezy Wembley	479/1999	Beech C.	Discontinued
Watts L	Amarino Holdings Pty Ltd t/a Reno's Haircare	506/1999	Parks C.	Dismissed
Weir TJ	ETRS Pty Ltd	624/1999	Beech C.	Discontinued
Williamson M	Tele 2000 Pty Ltd	1078/1999	Beech C.	Discontinued
Young N	Moon Dance Nominees Pty Ltd as Trustee for the Cooperative Unit Trust T/as Cooperative Plumbing Services	565/1999	Gregor C.	Consent Order
Zeiser R	Starmaker Holdings Pty Ltd t/a Joondalup Automotive Centre	1824/1998	Parks C.	Discontinued

## CONCILIATION ORDERS—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Federated Liquor and Allied Industries Employees' Union of  
Australia, Western Australian Branch, Union of Workers and  
Others.

No. 1149 of 1999.

3 September 1999.

*Order.*

WHEREAS a Notice of Application was lodged in the Commission on 23 July 1999 wherein there is an application for "orders s. 23/32" that are described in Schedule B in the following terms —

1. That neither Burswood nor the LTU nor any officer or employee of either of them shall discuss any proposal to do with any industrial agreement to be or proposed or contemplated to be entered into between them or any part thereof without first having given the applicant reasonable notice of the intention to engage in those discussions and without also first having given the applicant the opportunity to be present at and participate in those discussions.
2. That neither Burswood nor the LTU nor any officer or employee of either of them shall enter into any industrial agreement which relates to any person who is not a financial member of the LTU.
3. That neither Burswood nor the LTU nor any officer or employee of either of them shall enter into any industrial agreement which relates to any person who is eligible to be a member of the applicant unless the applicant is a party to that agreement.
4. In this order —

"Burswood" includes Burswood Nominees Pty Ltd A C N 078 250 307 and Burswood Resort (Management) Pty Ltd A C N 009 396 945

"LTU" means Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers

"applicant" means Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Australian Liquor, Hospitality and Miscellaneous Workers Union

"industrial agreement" means an agreement which relates to or affects the terms or conditions of employment or any of them of Burswood's employees. Australian Liquor, Hospitality and Miscellaneous Workers Union"

WHEREAS on 27 August 1999 the Commission conducted a conference pursuant to s.32 of the Industrial Relations Act 1979, attended by the parties named in the application to the Commission, whereat the claimed order 4. was amended by leave of the Commission to that set out hereunder —

"Burswood" means Burswood Resort (Management) Pty Ltd A C N 009 396 945

"LTU" means Federated Liquor and Allied Industries Employees' Union of Australia, Western Australian Branch, Union of Workers

"applicant" means Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

"industrial agreement" means an agreement which relates to or affects the terms or conditions of employment or any of them of Burswood's employees.

WHEREAS an answer to the application was lodged in the Commission on 16 August 1999, by each of the "Burswood" corporate entities, wherein the orders sought are opposed,

several objections are also taken thereto including the assertion that the Commission is "without jurisdiction to deal with the claim as it does not relate to an industrial matter"; and

WHEREAS at the aforementioned conference the Commission was informed that "Burswood" and the "LTU" —

- (A) have completed negotiations upon several new terms of employment for employees of "Burswood" which they are prepared to implement by means of an industrial agreement.
- (B) the execution of an agreement and the subsequent registration thereof as an industrial agreement is subject to the approval of the new terms by a ballot of the employees to whom the terms are to apply, which ballot is not likely to be conducted before the end of the first week of September 1999.
- (C) the employees to whom the terms are to apply are eligible to be members of the "LTU" or the "applicant" and it is known that each organisation has employees enrolled as members and that there are other employees who are not members of either organisation; and

WHEREAS at the aforementioned conference the Commission was further informed that action has been commenced before the Australian Industrial Relations Commission by the Australian Liquor, Hospitality and Miscellaneous Workers Union with the purpose of gaining regulation of the terms of employment of the employees of "Burswood" by means of an instrument of that Commission, which action has not been resolved by conciliation to date; and

WHEREAS at the aforementioned conference the "applicant" complained that although there are employees who are members of the "applicant", and those employees will be bound by the terms of employment that come to be reflected in a future industrial agreement, the "applicant" has not been allowed to participate in the negotiation of the proposed new terms of employment; and

WHEREAS the Commission recommended to the "applicant" that the organisation notify "Burswood", in writing, of whatever new terms of employment the organisation may wish to claim, and negotiate upon, for employees; and

WHEREAS the "applicant" submitted to the Commission in conference that the claimed injunctive orders ought be granted otherwise the rights of the "applicant", and those of the employees the organisation represents, to firstly participate in the negotiation of new terms of employment, and secondly to influence and be party to any industrial agreement made in consequence, will be rendered nugatory if "Burswood" and the "LTU" are allowed to proceed in the manner they intend; and

WHEREAS "Burswood" contends that the claims contained in the application before the Commission are not industrial matters, hence they do not fall within the jurisdiction of the Commission and may not, on the authority *Springdale Comfort Pty Ltd trading as Dalfield Homes v. Building Trades Association of Unions of Western Australia (Association of Workers)*, 67 WAIG 325, be dealt with by the Commission until such time as the Commission is satisfied that it has the necessary jurisdiction; and

WHEREAS the "applicant" concedes there is an arguable case whether the Commission has the requisite jurisdiction but contends that, on the authority *Australian Paper Limited v. Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia and Others*, (1998) 81 IR 15, the Commission is not required to decide whether a matter falls within jurisdiction before granting injunctive relief; and

WHEREAS the Commission adjourned the conference to consider how it might proceed with the matters before it and was thereafter referred to the additional authority the Hon Minister for Education v. State School Teachers' Union of Western Australia (Inc), 76 WAIG 3376, by "Burswood";

WHEREAS, subsequent to the conference, the "applicant" acted in accordance with the recommendation of the Commission and provided to "Burswood" the claims that organisation wishes to negotiate upon; and

NOW THEREFORE the Commission, having considered the authorities raised by the parties and their respective

positions regarding the orders sought, and having taken into account that there has been a history of difficulty between them with their industrial relations, has arrived at a preliminary conclusion and declares that it is of the opinion that —

- (1) the “applicant” and the “LTU” are both organisations registered pursuant to the Act and each is thereby entitled to act in their own right as a party principal and in which capacity either may be a party to an instrument of the Commission which regulates terms of employment ie an Industrial Agreement or an Award, to the exclusion of the other organisation, which binds members of both organisations and also binds employees who are not members of, but are eligible to be members of, the organisations.
- (2) the “applicant” being a registered organisation which has members who are employees of “Burswood” is entitled to represent the interests of those employees and those employees are entitled to have the “applicant” represent their interests.
- (3) the current terms of employment of the employees mentioned in paragraph (2) hereof will, in the ordinary course, be altered by whatever new terms of employment may be contained in any industrial agreement made between “Burswood” and the “LTU”.
- (4) an alteration to the terms of employment of the employees mentioned in paragraph (2), to the extent those terms are described in the “Burswood” circular to employees (19 August 1999) and are intended to be reflected in a new industrial agreement, are industrial matters and hence they fall within the jurisdiction of the Commission as plainly discernible at this present time.
- (5) the Commission is to endeavour resolving an industrial matter by conciliation and may exercise the power of s.32 of the Act to conduct a conference, and make interlocutory orders allowed by that section, in relation to an identified industrial matter.
- (6) the Commission is limited to the jurisdiction bestowed upon it by the Act and is required to apply the related law as held by the Industrial Appeal Court in the authorities cited on behalf of “Burswood” (67 WAIG 325 & 76 WAIG 3376) and the right of the Commission to make interlocutory orders of an injunctive nature is not at large but limited to the conciliation process involving the parties to an industrial matter.
- (7) the Commission is not empowered to make injunctive orders which will affect the relations, and the conduct thereof, between “Burswood” and the “LTU” and employees who are members thereof, or between “Burswood” and employees thereof who are not members of the “applicant” or the “LTU”, upon the application before the Commission until such time as it is determined the relations and conduct thereof are industrial matters.

NOW THEREFORE the Commission, pursuant to the powers provided by s.32 of the Act, and to prevent the deterioration of relations in respect of the industrial matter until such is resolved by conciliation or arbitration, hereby orders —

THAT “Burswood” shall answer, in writing, the claims made by the “applicant” as a consequence of the recommendation by the Commission, no later than 6 September 1999; and

THAT “Burswood” and the “applicant” shall forthwith after the provision of the answer by “Burswood”, attempt to conciliate upon the terms of employment in issue; and

THAT either “Burswood” or the “applicant” may request that the Commission reconvene pursuant to s.32 of the Act for the purpose of assisting the process of conciliation; and

THAT “Burswood” shall not commence, or be a consenting party to, any separate action before the Commission the effect of which would require the observance of new terms of employment for employees who

are members of the “applicant” until such time as conciliation between “Burswood” and the “applicant” has, in the opinion of the Commission, been exhausted.

(Sgd.) C.B. PARKS,  
Commissioner.

[L.S.]

## CONFERENCES— Matters arising out of—

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fluor Daniel Diversified Plant Services Pty Ltd  
and

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

C 219 of 1999.

COMMISSIONER S J KENNER.

25 August 1999.

### *Recommendation*

WHEREAS on 29 July 1999 the applicant applied to the Commission for an urgent conference pursuant to s 44 of the Industrial Relations Act, 1979.

AND WHEREAS the Commission convened compulsory conferences pursuant to s 44 of the Industrial Relations Act, 1979 on 2 August, 19 August, 20 August and 25 August 1999 in relation to a dispute between the applicant and the respondent as to—

- (a) Enterprise bargaining negotiations following the nominal expiry on 5 July 1999 of the Fluor Daniel Power & Maintenance Services Power Plant Maintenance Enterprise Agreement 1998 (“the Agreement”);
- (b) The quantity and quality of water at the applicant’s site at the Muja Power Station, Collie, Western Australia; and
- (c) A claim for payment for 17 casual employees employed by the applicant in respect of those employees presenting for but not required to work on Friday 13 August 1999 due to a delay of materials on site.

AND WHEREAS despite the extensive conciliation proceedings which have taken place to date the applicant and the respondent have not reached agreement on all of the issues in dispute.

NOW THEREFORE the Commission having regard for the public interest and the interests of the parties directly involved and to prevent any further deterioration of industrial relations in respect of the matters in question, pursuant to the provisions of s 44 of the Industrial Relations Act, 1979 hereby recommends—

- (1) THAT in terms of the enterprise bargaining negotiations the applicant increase base rates of pay and allowances contained in the Agreement by 4% with such payment being retrospective to the commencement of the present outage works at Muja Power Station on or about 2 August 1999.
- (2) THAT in relation to the casual employee payment issue the applicant pay to each of those employees affected an amount equal to six hours pay at ordinary rates of pay.
- (3) THAT for future planned outage works the applicant will give employees eight working hours notice in the event that employees are not required to attend for work as rostered.
- (4) THAT the terms of paragraphs (1) and (3) of this recommendation be incorporated into a new

industrial agreement for a term of 12 months which agreement is to be registered pursuant to s 41 of the Industrial Relations Act, 1979.

- (5) THAT the applicant and the respondent continue to confer as to the quantity and quality of the water supply on the Muja Power Station site.

[L.S.] (Sgd.) S.J. KENNER,  
Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fluor Daniel Diversified Plant Services  
and

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

No. C 219 of 1999.

COMMISSIONER S J KENNER.

19 August 1999.

*Order.*

WHEREAS on 29 July 1999 the applicant applied to the Commission for an urgent conference pursuant to s 44 of the Industrial Relations Act, 1979.

AND WHEREAS on 2 August 1999 the Commission convened an urgent compulsory conference between the parties pursuant to s 44 of the Industrial Relations Act, 1979.

AND WHEREAS at the conference the Commission was informed that the applicant and the respondent were in dispute in relation to enterprise bargaining negotiations following the nominal expiry on 5 July 1999 of the Flour Daniel Power and Maintenance Services Power Plant Maintenance Enterprise Agreement 1998, No. AG 101 of 1998 ("the Agreement") an agreement registered pursuant to s 41 of the Industrial Relations Act, 1979.

AND WHEREAS at the conference the Commission directed the parties to confer in relation to further negotiations concerning the renewal of the Agreement.

AND WHEREAS on 19 August 1999 the Commission convened a further urgent s 44 compulsory conference following advice from the applicant that employees of the applicant members of or eligible to be members of the respondent commenced strike action at approximately 11.30 am on 18 August 1999 in support of claims in relation to the present enterprise bargaining negotiations and also a dispute as to the quality of water available on the applicant's site at the Muja Power Station, Collie, Western Australia and a claim for payment for 17 casual employees of the applicant in respect of those employees presenting for but not being required to work on Friday 13 August 1999 due to a delay of materials on site.

AND WHEREAS the Commission is satisfied that these matters the subject of dispute between the applicant and the respondent should be dealt with further by conciliation and/or arbitration as necessary without recourse to industrial action or further industrial action.

NOW THEREFORE the Commission having regard for the public interest and the interests of the parties directly involved and to prevent any further deterioration of industrial relations in respect of the matters in question, pursuant to the provisions of s 44 of the Industrial Relations Act, 1979 hereby—

- (1) ORDERS that each of the employees of the applicant who are members of or eligible to be members of the respondent engaged in work at the Muja Power Station, Collie, WA shall cease all industrial action to ensure a return to work by the commencement of night shift at or about 5.00pm on Thursday 19 August 1999 and shall thereafter work in accordance with their contracts of service.
- (2) ORDERS that the respondent and each of its officials shall take all necessary steps to ensure that work resumes in accordance with the terms of paragraph (1) of this order.

- (3) ORDERS the respondent and each of its officials to bring the terms of this order to the attention of the employees referred to in paragraph (1) of this order using all usual and reasonable means of communication available to them.
- (4) DIRECTS the applicant in conjunction with the respondent, to immediately investigate the respondent's complaints in relation to the quality of water available to employees at the Muja Power Station site and to take whatever remedial steps may be necessary to ensure that the drinking water available on the site is not only not harmful to health but is also of an acceptable standard in terms of taste and odour for consumption by employees.
- (5) DIRECTS the applicant to further investigate the circumstances alleged by the respondent in which casual employees engaged by the applicant, but not required for work on a particular day, are either paid eight hours pay or provided with suitable alternative duties and to confer with the respondent in relation to this matter.
- (6) DIRECTS that this application be otherwise adjourned to a further s 44 report back compulsory conference to be held within seven days of the date hereof.
- (7) ORDERS that the applicant or the respondent may on giving 24 hours notice to the other apply to the Commission to vary revoke or otherwise set aside the terms of this order.

[L.S.] (Sgd.) S.J. KENNER,  
Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Automotive, Food, Metals, Engineering,  
Printing & Kindred Industries Union of Workers, WA  
and

Lamberta Pty Ltd.

No. C 229 of 1999.

COMMISSIONER S J KENNER.

23 August 1999.

*Order.*

WHEREAS an application was lodged in the Commission pursuant to s 44 of the Industrial Relations Act, 1979 and an urgent compulsory conference held on 13 August 1999 from which orders of the same date were issued by the Commission ("the Order");

AND WHEREAS on 23 August 1999 as prescribed in the Order the Commission convened a further compulsory conference between the parties pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS at the conference the parties informed the Commission that the issues raised in the proceedings before the Commission had not been resolved and in particular it appeared to the Commission that the terms of paragraph (3) of the Order had not been fully satisfied;

AND WHEREAS the Commission was not satisfied that the parties had genuinely conferred as to the terms and conditions of employment for those employees not covered by workplace agreements under the Workplace Agreements Act 1993 and those persons had not had an adequate opportunity to consider their terms and conditions of employment;

NOW THEREFORE, the Commission, having regard for the public interest and the interests of the parties immediately involved and to prevent any further deterioration of industrial relations in respect of the matters in question and pursuant to

the powers conferred on it under the Industrial Relations Act 1979 hereby orders—

- (1) THAT the terms of the Order be and are hereby extended for a further 7 days on and from 23 August 1999.
- (2) THAT the application be otherwise adjourned to a further s 44 compulsory conference on 30 August 1999 at 3.15pm.
- (3) THAT the parties have liberty to apply on 48 hours notice.

[L.S.] (Sgd.) S.J. KENNER,  
Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Automotive, Food, Metals, Engineering,  
Printing & Kindred Industries Union of Workers, WA

and

Lamberta Pty Ltd  
No. C 229 of 1999.

COMMISSIONER S J KENNER.

13 August 1999.

*Order.*

WHEREAS an application was lodged in the Commission pursuant to s 44 of the Industrial Relations Act; 1979;

AND WHEREAS on 13 August 1999 the Commission convened a conference between the parties pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS the parties informed the Commission that the respondent had purchased the assets of Forward Engineers Pty Ltd and intends to commence business from on or about Monday 16 August 1999;

AND WHEREAS the respondent has made offers of employment to employees of Forward Engineers Pty Ltd who were and are presently employed on terms and conditions as prescribed in the Metal Trades General Award No 13 of 1965 ("the Award") and the Forward Engineers Agriculture Workshop Enterprise Agreement 1999;

AND WHEREAS the respondent has offered the employees employment on terms of a workplace agreement under the Workplace Agreements Act 1993 or the Award and some employees have not accepted employment on a workplace agreement;

AND WHEREAS the parties are in dispute as to the terms and conditions of employment to apply to those employees who have not entered into a workplace agreement and those employees are concerned to ensure that they have an adequate opportunity to consider their future terms of employment;

NOW THEREFORE, the Commission, having regard for the public interest and the interests of the parties immediately involved and to prevent any further deterioration of industrial relations in respect of the matters in question and pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders—

- (1) THAT the respondent offer those persons employed by Forward Engineers Pty Ltd and who have not entered into a workplace agreement with the respondent employment on terms and conditions no less favourable than those presently applicable to their employment with Forward Engineers Pty Ltd.
- (2) THAT employment with the respondent on the terms of paragraph 1 of this order commence on and from 16 August 1999 for a period of 7 days.
- (3) THAT in the interim period the applicant and respondent confer as to the terms and conditions of employment to apply at the conclusion of the 7 day period if employment is to continue.
- (4) THAT the application be otherwise adjourned to a further s 44 compulsory conference on 23 August 1999 at 4.15pm.

- (5) THAT the parties have liberty to apply on 48 hours notice.

[L.S.] (Sgd.) S.J. KENNER,  
Commissioner.

**CONFERENCES—  
Matters referred—**

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch,  
Industrial Union of Workers

and

Argyle Diamond Mines Pty Ltd.  
No. CR 376 of 1998.

3 September 1999.

*Reasons for Decision.*

SENIOR COMMISSIONER: The Respondent mines and processes diamonds at or near Argyle in the north west of the State. At all material times it employed a Mr Leggett and a Mr Williams to assist it with that process. They were both classified as process plant operators. Both worked in the diamond recovery area. Mr Leggett had been employed by the Respondent continuously since mid 1985 and Mr Williams since 1993.

The processing of diamonds, and in particular diamond recovery, requires the use of hydrochloric acid. For this purpose acid is delivered to the Respondent's Argyle work site in sealed fibre glass containers from Perth. From these tanks the acid is pumped by self priming pumps via piping into the sorthouse as part of the diamond recovery system. Normally the air or vapour pressure within the acid tank is sufficient to prime the pump for this purpose. On occasions when the air pressure is insufficient to prime the pump this way, it is necessary to prime the pump manually. The normal procedure in those circumstances is to prime the pump using water.

On 21 November 1998 Messrs Leggett and Williams were required to connect a new tank of acid into the system. It is common ground that the new tank had been overfilled by the suppliers in Perth causing it to leak en route to Argyle and that the two employees were aware of this fact. The two employees followed the proper procedure to prime the pump by the natural air method, including wearing the proper safety clothing and waiting for a nurse to be present. However, this was one occasion when that was insufficient to prime the pump. It appears in retrospect that the tank was so full that there was insufficient air in the tank to prime the pump. As a consequence, Mr Leggett suggested that the pump be primed by pumping a small amount of compressed air into the tank. That method was apparently standard practice for priming the pump where caustic soda was used in the nearby sorthouse. Mr Williams, who was assisting Mr Leggett, expressed some misgivings about this process. In particular, he was concerned about over pressurising the tank. Mr Leggett informed him that he only intended to put a small amount of air into the tank and was confident that nothing would go wrong. Mr Williams then obtained the necessary fitting to attach the air line to the tank. There is some dispute on the evidence as to where he located that fitting. He says he found it in a nearby cupboard in the bulk acid storage area, but the Respondent's security officer says he obtained it away from the acid bulk storage area. In any event, it is common ground that together Mr Leggett and Mr Williams connected the fitting to allow extra air to be pumped into the tank. Mr Williams then left to go to the sorthouse to monitor the acid flow. He could not see what Mr Leggett did thereafter. Mr Leggett turned the necessary valve to enable air to be pumped into the tank. Almost immediately there was an explosion resulting in acid being expelled from the top of the tank into the air and raining down around the area where the acid tanks were positioned. At about that time Mr Williams noticed that the acid was coming into the

sorthouse more rapidly than should have been the case. Also at about that time Mr Williams said he heard an "emergency" call. The security officer, Ms Miller who was outside in the bulk acid storage area with Mr Leggett in the vicinity of the acid tank, ran to the building where Mr Williams was to inform him that there had been an acid spill. Mr Williams then ran outside to find Mr Leggett having a shower though still wearing the required protective equipment. Mr Williams, who is trained in fire and rescue, activated the appropriate emergency equipment for an acid spill and, against the advice of Ms Miller, ran to the assistance to Mr Leggett. Mr Leggett did not appear to be seriously injured although he was having some breathing difficulties. Ms Miller was temporarily overcome by fumes from the acid and received minor acid burns. As the events transpired, no person was seriously injured and both employees were back on duty within half an hour.

Later that day each of the employees, including Ms Miller, gave a detailed statement as they were required to do to the investigating team. Subsequently, following a preliminary investigation by the Respondent's managers and following a discussion with their supervisor, Mr Piotrowski, Messrs Leggett and Williams were both stood down on full pay for allegedly breaching the Respondent's procedures. In essence, the investigation revealed that the acid spill resulted from a failure on the part of Messrs Leggett and Williams to follow the standard procedure for priming the pump. Following further enquiry the employment of both employees was terminated on or about the 17 December 1998 with one month's pay in lieu of notice.

The Applicant Union, on behalf of each of the employees, contends that termination of their employment was either harsh, oppressive or unfair. The Applicant Union argues that the dismissals were defective both substantively and procedurally. To their credit both employees accept that they should not have done what they did, and to its credit the Applicant Union accepts that they should suffer some penalty – but something short of dismissal. In short, the Applicant Union submits that the penalty did not fit the crime. The Applicant Union contends that each of the employees had an exemplary record of service prior to this incident. That fact, the fact that each employee had a relatively long length of service with the Respondent and the circumstances surrounding the incident together suggest that in both cases the dismissal was either harsh, oppressive or unfair for the Respondent to terminate their employment. The Applicant Union argues that the incident was in part due to the fact that the acid tank was full and because the pump was in poor condition. Furthermore, it contends that each of the employees had inadequate training regarding the proper procedures to be followed for priming the pump, particularly where the tank was overfull. Moreover, it is said that the Respondent encouraged employees to exercise initiative which is what the employees did on this occasion. In addition, the Applicant Union complains that investigation into the matter took too long. It suggests that normally the investigation into incidents of this nature were completed within a matter of a few days not a matter of weeks as occurred in this instance. In any event, it is said that in dismissing the employees the Respondent acted inconsistently with its previous practice. The Applicant Union asserts that other employees, most notably non-award employees, guilty of breaches of established safety procedures, in circumstances which were said to be more life threatening than that now in question, had not been dismissed. Indeed, the Applicant Union asserts that at least in respect of Mr Leggett, the Respondent was looking for an excuse to terminate his services because he was a shop steward for the Applicant Union. As well, the Applicant Union argues that the Respondent is in the process of reducing the size of its workforce and it was convenient to terminate the employment of these particular employees.

The Respondent, for its part, disputes that dismissal from employment of either of the employees was harsh, oppressive or unfair. The Respondent contends that the employees together embarked upon what counsel for the Respondent asserts was a potentially dangerous "frolic" of their own without first undertaking a proper job hazard analysis and without reference to the duty superintendent as the Respondent's procedures required. It asserts that the employees knew the correct procedure to be followed to prime the pump but deliberately chose, without good reasons, to adopt a different procedure knowing it to

be potentially dangerous. In doing so this caused an explosion which created a life threatening situation. The Respondent says that in each case it took into account the length of service and prior good record of each of the employees but the nature of their conduct was such a significant departure from normal work practices that in an environment of heightened safety requirements it had little option but to terminate their employment. Certainly, it could not be said on balance that the termination of their employment was either harsh, oppressive or unfair. The Respondent suggests that if it is not able to dismiss employees who transgress in the way done by Messrs Leggett and Williams, it is difficult to see how it could ever effectively enforce proper standards of safety in the workplace and so discharge the obligations imposed on it under the *Mines Safety and Inspection Act 1994*. In any event the Respondent says that neither employee should be reinstated. It no longer has any faith in their ability to comply with the strict safety regime necessary for a properly run mining operation.

There is little or no dispute about the facts surrounding this matter as in closing, the agent for the Applicant Union rightly acknowledged. The real issue is whether the dismissal in each case was a fair and just outcome for the admitted misdeeds of the two employees concerned. In the circumstances one would have thought that the matter could have been disposed of rather quickly. Instead the hearing for the matter occupied almost five days during which time evidence was adduced from ten witnesses and 44 exhibits were tendered including two video recordings of the incident which gave rise to the dismissals.

To the extent that there is any conflict surrounding the events giving rise to the mishap, I am satisfied and find, that those events occurred substantially as outlined in the written statements made by Messrs Leggett and Williams and by Ms Miller shortly after the event of 21 November. With regard to the events which followed thereafter I accept as being the most reliable account of those events the account given by Mr Piotrowski. In particular, where his evidence conflicts with that of Messrs Leggett and Williams, I take his evidence to be the most reliable. Mr Leggett impressed me as being so concerned to protect his position and damn the Respondent that I doubt the accuracy of his testimony where it conflicts with that of others. Whilst my initial reaction to the testimony of Mr Williams was that it was reliable, he sounded less convincing in the course of his cross examination.

I am satisfied and find that both Mr Leggett and Mr Williams knew that the correct procedure for priming the pump, when the natural air method failed, was the water method. They both admitted as much in their written statements made to the Respondent shortly after the event. Mr Leggett admitted that he had been taught the method on the job but complained that he had not undergone any formal training. However, I accept the evidence of Mr Piotrowski that the normal method of training was on the job training. Mr Leggett did not suggest that he did not know that the proper method was the water method or that he did not know how to perform it. Instead, he said he did, "not like using the water priming method as it seems to be more trouble than its worth". It was for that reason and that alone that he suggested to Mr Williams that they use compressed air. Mr Williams was an authorised tagger for the bulk acid area which involved a detailed understanding of the process for bulk chemical tank change out. In his statement he acknowledged that the use of water was the usual method but as he said in his testimony he allowed Mr Leggett to persuade him to use the air injection method despite his misgivings about it.

The law on matters of this nature is well set out. The onus is on the Applicant to show that the employees were either harshly, oppressively or unfairly dismissed. That requires that the Applicant establish on the balance of probabilities, that the Respondent, in all circumstances, abused its right to terminate the employment of Messrs Leggett and Williams, bearing in mind that it is not for the Commission to act as if it were a surrogate manager of the Respondent's enterprise.

In the case of Mr Leggett the matter is entirely clear. The idea to use compressed air rather than the water method was, as he admits, his idea. As previously indicated, he adopted that method because he believed that the water method was more trouble than it was worth. However, he admits that on each occasion, despite those troubles, he had used the water method in the past with success. Furthermore, whenever he had to prime acid tank pumps artificially, he had always used

the water method. Indeed, it appears that he had not been taught any other method for the acid tanks. Despite this he chose to adopt another method, knowing that there were hazards associated with the change over of acid tanks. As he admits, he did so without first carrying out a five minute job hazard assessment which he acknowledges he should have done "to ensure hazards were controlled", which the Respondent's procedures required. Moreover, it is common ground that he embarked upon, what in reality was an experiment, in the knowledge that Mr Williams, who was a more experienced operator, had expressed concern to him about the method and in particular, the consequences of that pressure being too great.

Despite his protestations to the contrary, Mr Leggett left me with a distinct impression that he had little regard for the Respondent's safety procedures except when it suited him. Apart from the occasion in question, on another occasion, as I find, he told Mr Piotrowski that if employees followed the Respondent's procedures to the letter, nothing would get done. I accept and find that he told Mr Piotrowski that if employees carried out their tasks by following job hazard analysis requirements, the job would never get done. To some extent that attitude is reflected by his conduct on this occasion. I also accept and find that in November 1997, following an incident where an employee used compressed air to move oil to a higher point which resulted in a ruptured drum, the risks associated with the use of compressed air were explained to employees at a safety meeting at which both Messrs Leggett and Williams were present.

The Respondent says, and I accept it to be a fact, that it took into account Mr Leggett's good record of service before terminating his employment. Indeed, because of that record it decided to terminate his employment with payment in lieu of notice rather than terminate his employment immediately. Clearly, in considering the fairness or otherwise of the dismissal, regard must be had to that record. On the other hand, the Respondent cannot be criticised for concluding, as did Mr Piotrowski, that it was "simply unacceptable" for experienced employees to operate outside normal procedures by conducting dangerous experiments that threatened their lives and those of others. As counsel for the Respondent rightly observed the Respondent has an obligation to maintain a safe working environment for all those who work on the mine site. By his conduct Mr Leggett seriously undermined that obligation. Without good reason, and without first making a proper analysis of the consequences and in deliberate disregard of the established procedures he embarked upon an experiment, for which he had no authority and which endangered himself and others. In the circumstances, I do not consider it cannot reasonably be said that the right vested in the Respondent under the contract of employment to terminate the employment was abused. Certainly, I am far from satisfied that in Mr Leggett's case his dismissal was either harsh, oppressive or unfair. The claim that Mr Leggett was dismissed because he was a shop steward is simply not supported by the evidence. In fairness, the agent for the Applicant Union did not in the end press the point.

In my opinion, the case for Mr Williams is stronger. It is common ground he was not the instigator of the experiment and indeed cautioned Mr Leggett about proceeding with it. I accept that he was not in a position to stop Mr Leggett from embarking upon the experiment. It is common ground that he was not in any position of authority over Mr Leggett. Equally, he was not obliged to be part of the experiment. Mr Leggett was not in any position of authority over him. Not only did Mr Williams know the correct procedure but he had serious misgivings about what was being done. Nonetheless, as he said he allowed Mr Leggett to persuade him to use the air injection method despite his own misgivings about it. He could have declined to be part of the experiment. Instead, it was he who obtained the fitting to enable the experiment to be undertaken. In many respects he was therefore the facilitator. To his credit he agreed that he is prepared to take the consequences for his action.

In the circumstances, for much the same reasons as apply to Mr Leggett, I do not consider it can be said that the Respondent abused the right vested in it to terminate the employment of Mr Williams notwithstanding his prior good record. He deliberately chose to disregard what he knew to be the correct procedure and knowing there were dangers associated with the exercise. By his actions he assisted to undermine safety in

the workplace in a way in which the Respondent is reasonably entitled to say was totally unacceptable. As I find, the dangers of using compressed air in circumstances such as these had been explained to him, and indeed he appears to have appreciated those dangers. In those circumstances to play such an active role as he did on the occasion in question was a serious departure from his obligations to the Respondent.

The Applicant Union and both Messrs Leggett and Williams suggested that a major contributing factor for this mishap was the overfull acid tank. In my opinion, and as Mr Piotrowski testified, that was not the real cause of the mishap, rather it was the failure on the part of Messrs Leggett and Williams to follow the correct procedures. Indeed, having regard to the evidence of Mr Afflick, whose evidence I unreservedly accept, had the tank not been so full, the explosion might have been more violent. The fact is that when, for whatever reason the pump does not prime itself, the proper method of priming is the water method.

Likewise, the claim that Messrs Leggett and Williams were dismissed as a means of the Respondent avoiding having to make a redundancy payment is equally not supported by the evidence. I accept the evidence of Mr Piotrowski that that was not the case. Similarly, to suggest that the policy of the Respondent, designed to encourage employees to use their initiative, could be taken to allow them to disregard established procedures, especially in cases where there were misgivings as to potential for mishap, is quite unreal. Equally, to suggest that the Respondent's "no blame" policy, designed to encourage employees to be open and frank with respect to accidents in the workplace, can hardly be taken as a licence to do anything without accountability. Indeed, Mr Leggett acknowledged as much.

Further, I do not accept that in terminating the employment of Messrs Leggett and Williams the Respondent dealt with them in a manner which was inconsistent with the way it had dealt with others who had committed breaches of the Respondent's safety requirements. The other instances to which the Applicant Union referred are simply not comparing like with like, as Mr Piotrowski testified. In any event, if after notifying the workforce that it proposed to place an increased emphasis on safety in the workplace, as the Respondent did, the Respondent must surely be entitled to take a different stand to that previously taken otherwise things would never improve.

In my opinion there was nothing associated with the procedure used to terminate the employment of either Mr Leggett or Mr Williams, whether taken alone or in conjunction with the other circumstances, to render the dismissals either harsh, oppressive or unfair. Though the process took longer than the employees might have wished, the delay mainly occurred because it appears that the Respondent was concerned to see that a thorough investigation was conducted and that it was acting properly in terminating their employment. During the period leading to their dismissals the employees were allowed to leave site early as Mr Williams at least, had requested. At the same time they were encouraged to seek professional counselling at the Respondent's expense, to alleviate their concerns. Approximately two weeks later they were called into the Respondent's office to discuss the matter further and informed that the likely outcome was dismissal. At the same time they were invited to put any further material to the Respondent in an endeavour to avoid that outcome, which opportunity they exercised. All this time both employees remained on full pay. In the circumstances, I am not satisfied that the process was, by any measure, unfair.

Appearances: Mr M.J. Lourey as agent for the Applicant.

Mr A.D. Lucev of counsel for the Respondent.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Workers' Union, West Australian Branch,  
Industrial Union of Workers

and

Argyle Diamond Mines Pty Ltd.

No. CR 376 of 1998.

3 September 1999.

*Order.*

HAVING heard Mr M.J. Lourey as agent on behalf of the Applicant and Mr A.D. Lucev of counsel on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders—

THAT the application be and is hereby dismissed.

(Sgd.) G.L. FIELDING,  
Senior Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing  
and Kindred Industries Union of Workers,

Western Australian Branch

and

WA Access Pty Ltd.

No. CR 50 of 1999.

COMMISSIONER S J KENNER.

30 August 1999.

*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 by leave.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Broadwater Resort.

No. CR 247 of 1998.

COMMISSIONER J F GREGOR.

20 August 1999.

*Order.*

WHEREAS on 11 August 1998, The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch applied to the Commission for a conference pursuant to Section 44 of the Industrial Relations Act 1979; and

WHEREAS that application was No. C 247 of 1998; and

WHEREAS on 11 September and 9 November 1998 the Commission conducted conferences between the parties on which occasions the dispute was not settled; and

WHEREAS on 17 December 1998 the Commission issued a Memorandum of Matters for Hearing and Determination under section 44 of the Industrial Relations Act, 1979; and

WHEREAS that application was No. CR 247 of 1998; and

WHEREAS the matter was scheduled for conference on 9 April 1999; and

WHEREAS on 6 April 1999, the applicant advised the Commission that it wished to vacate the conference; and

WHEREAS on 11 August 1999, the applicant filed a Notice of Discontinuance with the Commission; and

NOW THEREFORE, 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.) J.F. GREGOR,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood International Resort Casino.

No. CR 61 of 1999.

2 September 1999.

*Order.*

WHEREAS an application was lodged in the Commission pursuant to section 44 of the *Industrial Relations Act, 1979*;

AND WHEREAS on 6 April 1999 this application was referred for hearing and determination;

AND WHEREAS the applicant subsequently filed a Notice of Discontinuance in the Commission;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT the application be discontinued.

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

**CONFERENCES—Notation of—**

	PARTIES	NUMBER COMMISSIONER	DATE	MATTER	RESULT
Australian Workers Union	Envirotechnics Pest Management	Parks C C241 of 1999	30/8/99	Unfair Dismissal	Concluded
Australian Workers Union	BHP Iron Ore Ltd	Scott C C200 of 1999	14/7/99	Contractual Benefit	Concluded
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Stramit Industries	Kenner C C228 of 1999	—	Withdrawal of labour to attend union rally	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Hine Motors Pty Ltd	Kenner C C116 of 1999	20/7/99	Contract of Employment	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Transport Spares and Repairs	Kenner C C167 of 1999	12/7/99	Withholding of Monies Owed	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Transfield Pty Ltd	Fielding SC C214 of 1999	27/7/99	Injuries at HBI Operation	Discontinued
Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union	Westrac Equipment Pty Ltd	Kenner C C147 of 1999	28/7/99	Victimisation	Discontinued
Builders' Labourers, Painters and Plasterers Union	BGC Construction & Other	Kenner C C121 of 1999	27/5/99	Right of Entry	Discontinued
Civil Service Association	Executive Director Education Department of Western Australia	Scott C PSAC73 of 1998	13/10/98 8/12/98 11/3/99	Alleged Breach of Discipline	Concluded
Civil Service Association	Central Metropolitan College of TAFE	Scott C PSAC13 of 1999	30/3/99	Restructure/ Redeployment	Concluded
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union	Goldfields Contractors WA	Kenner C C23 of 1999	12/2/99	Alleged Unfair Dismissal	Discontinued
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union	RCR Tomlinson Ltd	Kenner C C119 of 1999	3/5/99	Redundancies	Discontinued
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union	Schindler Lifts Australia Pty Ltd	Kenner C C155 of 1999	—	Process for Calling for Volunteers for Retrenchment	Discontinued
Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union	P B Foods Ltd	Kenner C C183 of 1999	5/8/99	Unpaid Leave	Discontinued
Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union	Ferguson Corporation	Kenner C C225 of 1999	—	Award Entitlements	Discontinued
Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union	Albany Spinning Mills	Kenner C C149 of 1999	9/7/99	Withdrawal of Overtime & Rates of Pay	Discontinued
Liquor, Hospitality and Miscellaneous Workers' Union	Kondinin District Hospital Board	Parks C C197 of 1999	17/8/99	S.44—Alleged Unfair Dismissal	Referred
Liquor, Hospitality and Miscellaneous Workers' Union	PB Foods Ltd	Scott C C202 of 1999	12/7/99	Meeting of Union Members During Regular Working Hours	Concluded
Liquor, Hospitality and Miscellaneous Workers' Union	PB Foods Ltd	Scott C C203 of 1999	12/7/99 11/8/99	Employment Status of Company	Concluded
Transport Workers' Union	Christopher Francis and Leonie Jean Farr, Business Chris Farr's Freightline	Scott C C168 of 1999	27/8/99	Request for Further and Better Particulars	Concluded
Transport Workers' Union	Pioneer Concrete (WA) Pty Ltd	Beech C C6 of 1999	11/1/99 9/2/99	Industrial Action	Concluded

**CORRECTIONS—**WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

PS Adams and Others.

No. 888 of 1999.

Animal Welfare Industry Award.

No. 8 of 1968.

7 September 1999.

*Correcting Order.*

PURSUANT to the powers conferred on it under the Industrial Relations Act, 1979 the Commission hereby orders:

THAT the order issued by the Commission in respect of application 888 of 1999 on the 27th day of August 1999 shall be corrected by deleting instruction 2 in the Schedule to the Order and substituting in lieu thereof the following—

2. Clause 20.—Protective Clothing and Uniforms: Delete subclause (5) of this clause and insert in lieu thereof the following—

- (5) In lieu of the provision of uniforms the employer may pay an allowance of \$3.45 per week.

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Coca-Cola Bottlers (Perth) Pty Ltd and Others.

No. 902 of 1999.

Cleaners and Caretakers Award, 1969.

No. 12 of 1969.

7 September 1999.

*Correcting Order.*

PURSUANT to the powers conferred on it under the Industrial Relations Act, 1979 the Commission hereby orders:

THAT the order issued by the Commission in respect of application 902 of 1999 on the 27th day of August 1999 shall be corrected by deleting instruction 5 in the Schedule to the Order and substituting in lieu thereof:

5. Clause 22.—Wages: Delete subclause (3) of this clause and insert in lieu thereof the following—

- (3) Leading Hands: Any employee in charge of other employees shall be paid in addition to the appropriate wage prescribed, the following—

- (a) if placed in charge of not less than three and not more than six other employees 10.10

- (b) if placed in charge of not less than six and not more than ten other employees 17.90

- (c) if placed in charge of not less than ten and not more than 15 other employees 22.45

- (d) if placed in charge of not less than 15 and not more than 20 other employees 27.20

- (e) if placed in charge of more than 20 other employees 35.00

(Sgd.) A.R. BEECH,  
Commissioner.

[L.S.]

**PROCEDURAL DIRECTIONS  
AND ORDERS—**WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Coca Cola Bottlers Pty Ltd &amp; Others.

No. 1652 of 1998.

COMMISSIONER S J KENNER.

7 September 1999.

*Direction.*

HAVING heard Ms J Harrison on behalf of the applicants and Mr K Dwyer as agent on behalf of certain respondents the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

- (1) THAT any amended notice of answer and counter proposal in the herein application be filed and served by no later than 27 September 1999.
- (2) THAT evidence in chief in this matter be adduced by way of signed witness statements which will stand as the evidence in chief of the maker.
- (3) THAT the parties file and serve upon one another any signed witness statements upon which they intend to rely no later than 14 days prior to the date of hearing.
- (4) THAT the parties give notice to one another of witnesses they require to attend at the proceedings for the purposes of cross-examination no later than 7 days prior to the date of hearing.
- (5) THAT the applicant and respondent file and serve an outline of submissions and any list of authorities upon which they intend to rely no later than 3 days prior to the date of hearing.
- (6) THAT the matter be listed for hearing for one day.
- (7) THAT the parties have liberty to apply on short notice.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

George Camplin

and

Jigalong Community Inc.

No. 1987 of 1998.

COMMISSIONER P.E. SCOTT.

27 August 1999.

*Direction.*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS the Commission convened conferences for the purpose of conciliating between the parties however, agreement was not reached; and

WHEREAS the application was set down for hearing and determination on the 27<sup>th</sup> day of August 1999; and

WHEREAS the Applicant sought to adjourn the hearing; and

WHEREAS the Commission has heard from the parties' representatives on the application for an adjournment and on the Respondent's application that the application be dismissed;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby directs—

1. That no later than 4.00pm on the 3<sup>rd</sup> day of September 1999 the Applicant shall provide to the Commission evidence to demonstrate that—
  - (a) he was intending to attend the hearing on the 27<sup>th</sup> day of August 1999;
  - (b) his surgery could not have been performed at any other time; and
  - (c) his condition would have prevented him from attending the hearing on the 27<sup>th</sup> day of August 1999.
2. That no later than 4.00pm on the 7<sup>th</sup> day of September 1999 the Respondent shall respond to the evidence provided by the Applicant.

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

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brian Raven

and

Roman Catholic Bishop of Bunbury.

No. 82 of 1999.

COMMISSIONER S J KENNER.

6 September 1999.

*Direction.*

Having heard Ms J Quinlivan of counsel for the applicant and Mr I Curlewis of counsel for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

- (1) THAT evidence in chief in this matter be adduced by way of signed witness statements which will stand as the evidence in chief of the maker. Evidence in chief other than that contained in the witness statements may only be adduced by leave of the Commission.
- (2) THAT the applicant file and serve on the respondent any signed witness statements upon which it intends to rely no later than 14 days prior to the date of hearing.

(3) THAT the respondent file and serve on the applicant any signed witness statements upon which it intends to rely no later than 7 days prior to the date of the hearing.

(4) THAT the parties give notice to one another of witnesses they require to attend at the proceedings for the purposes of cross-examination no later than 3 days prior to the date of hearing.

(5) THAT the applicant and respondent file an agreed statement of facts (if any) no later than 3 days prior to the date of hearing.

(6) THAT the parties have liberty to apply on short notice.

(Sgd.) S.J. KENNER,  
Commissioner.

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Roger John Tapiata

and

Olten Pty Ltd

No. 330 of 1999.

COMMISSIONER P E SCOTT.

19 August 1999.

*Direction.*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) and (ii) of the Industrial Relations Act 1979; and

WHEREAS at the conference held on the 16th day of August 1999 it was agreed that the following directions relating to the hearing of a matter of jurisdiction raised by the Respondent would issue—

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby directs—

1. THAT no later than 14 days prior to the date of hearing set for this matter the Respondent shall—
  - (a) file with the Commission and serve on the Applicant an outline of submissions regarding the matter of jurisdiction; and
  - (b) put to the Applicant those matters which it seeks to have the Applicant agree for the purposes of a Statement of Agreed Facts, and those matters that are in issue.
2. THAT no later than 7 days prior to the date of hearing set for this matter the Applicant shall—
  - (a) file with the Commission and serve on the Respondent its outline of submissions regarding the matter of jurisdiction; and
  - (b) put to the Respondent those matters which he seeks to have the Respondent agree for the purposes of a Statement of Agreed Facts, and those matters that are in issue.

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

[L.S.]

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Selina Mary Anderson

and

The Board of Corridors Secondary Vocational College.

No. 1006 of 1999.

COMMISSIONER P E SCOTT.

19 August 1999.

*Direction.*

WHEREAS this is an application pursuant to Section 29(1)(b)(i) of the Industrial Relations Act 1979; and

WHEREAS on the 18th day of August 1999 the Commission convened a conference for the purpose of conciliating between the parties; and

WHEREAS at the conclusion of that conference it was agreed that the Commission would issue the following direction; and

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby directs—

THAT no later than 14 days from the date of the conference the Respondent shall advise the Applicant's representative of any progress in its deliberations regarding the Applicant's claim.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Craig Box

and

Gyewers/Deaye Pty Ltd t/a Yongarloo Farm.

No. 1058 of 1999.

COMMISSIONER S J KENNER.

11 August 1999.

*Order.*

HAVING heard Mr C Box on his own behalf and Mr R Reynolds on behalf of the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the name of the respondent in the notice of application and the notice of answer and counter proposal be deleted and in lieu thereof there be inserted "Geoffrey Leslie Yewers, Carol Francis Yewers, Darren Geoffrey Yewers and Michelle Patricia Yewers trading as Yongarloo Farm".

(Sgd.) S.J. KENNER,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Miriam Anne Angus

and

Child Support Agency.

No. 1045 of 1999.

COMMISSIONER S J KENNER.

16 August 1999.

*Direction.*

Having heard Mr G Droppert of counsel for the applicant and Ms S Nash of counsel for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby directs—

- (1) THAT the respondent file and serve an amended notice of answer by 27 August 1999.
- (2) THAT each party shall give an informal discovery by serving its list of documents by 17 September 1999.
- (3) THAT inspection of documents shall be completed by 24 September 1999.
- (4) THAT the applicant and respondent file an agreed statement of facts (if any) within 14 days of inspection of documents.
- (5) THAT the application otherwise be adjourned sine die.

(Sgd.) S.J. KENNER,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN  
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

A Goninan & Co Limited

and

Alan Firth & Others.

No. WAG 2 of 1999.

COMMISSIONER J F GREGOR.

19 August 1999.

*Order.*

WHEREAS on 15 April 1999, this matter was referred to the Commission pursuant to s. 7F of the Industrial Relations Act, 1979; and

WHEREAS on 11 August 1999, the Commission was advised by Counsel for the respondents that the matter should be discontinued; and

WHEREAS on 11 August 1999, the agent for the applicant advised that the matter can be closed and finalised; and

WHEREAS the Commission has decided to discontinue the proceedings;

NOW THEREFORE pursuant to the powers vested in it by the Industrial Relations Act, 1979 the Commission hereby orders—

THAT the application be and is hereby discontinued.

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

**RECLASSIFICATION APPEALS—Notation of—**

File Number	Appellant	Respondent	Decision	Finalisation Date
PSA 58/97	Peter Anthony Ballantine	Department of Transport	Dismissed	13/08/99
PSA 60/97	Karen Marie Brennan	Department of Transport	Dismissed	13/08/99
PSA 61/97	Mirella Josette Butcher	Department of Transport	Dismissed	13/08/99
PSA 62/97	Dora Carbone	Department of Transport	Dismissed	13/08/99
PSA 63/97	Kathleen Ann Heathcote	Department of Transport	Dismissed	13/08/99
PSA 64/97	Christine Vera Lewis	Department of Transport	Dismissed	13/08/99
PSA 65/97	Carolyn Johnson	Department of Transport	Dismissed	13/08/99
PSA 66/97	Anna Linden Murins	Department of Transport	Dismissed	13/08/99
PSA 67/97	Jean Anne Birch	Department of Transport	Dismissed	13/08/99
PSA 68/97	Barbara Brown Ross	Department of Transport	Dismissed	13/08/99
PSA 69/97	Susan Elizabeth Symes	Department of Transport	Dismissed	13/08/99
PSA 70/97	Dianne Lesley Taylor	Department of Transport	Dismissed	13/08/99
PSA 71/97	Kathleen Mary Tolmey	Department of Transport	Dismissed	13/08/99
PSA 72/97	Trudy Magdalene Sullivan	Department of Transport	Dismissed	13/08/99
PSA 73/97	Paula Renee Weston	Department of Transport	Dismissed	13/08/99
PSA 74/97	Jo Anne Wolf	Department of Transport	Dismissed	13/08/99
PSA 75/97	Fiona Michelle Magri	Department of Transport	Dismissed	13/08/99
PSA 76/97	Anna Meyer	Department of Transport	Dismissed	13/08/99
PSA 77/97	Julia Anne Boucher	Department of Transport	Dismissed	13/08/99
PSA 78/97	Barbara Joan Duce	Department of Transport	Dismissed	13/08/99
PSA 79/97	Judith Fordham	Department of Transport	Dismissed	13/08/99
PSA 80/97	Kay Hofman	Department of Transport	Dismissed	13/08/99
PSA 81/97	Marie Dorothy Mariotti	Department of Transport	Dismissed	13/08/99
PSA 82/97	Edna Joyce Richards	Department of Transport	Dismissed	13/08/99
PSA 84/97	Vassentee McLoughlin	Department of Transport	Dismissed	13/08/99
PSA 85/97	Lorraine Anne Tormey	Department of Transport	Dismissed	13/08/99
PSA 86/97	Karen Lee-Anne Stephens	Department of Transport	Dismissed	13/08/99
PSA 87/97	Murray Sheldon Grey	Department of Transport	Dismissed	13/08/99
PSA 88/97	Teah-Marie Jovic	Department of Transport	Dismissed	13/08/99
PSA 89/97	Jacqueline Rachel Hudson	Department of Transport	Dismissed	13/08/99
PSA 90/97	Emilia Madalena Ferrari	Department of Transport	Dismissed	13/08/99
PSA 91/97	Michael Gerald Peter Freeman	Department of Transport	Dismissed	13/08/99
PSA 92/97	Steven Vytautas Pisarskis	Department of Transport	Dismissed	13/08/99
PSA 93/97	Carol Anne D'Roza	Department of Transport	Dismissed	13/08/99
PSA 94/97	Jennifer Joy Jamieson	Department of Transport	Dismissed	13/08/99
PSA 95/97	Yvonne Gould	Department of Transport	Dismissed	13/08/99
PSA 96/97	Sarah Anne Harris	Department of Transport	Dismissed	13/08/99
PSA 97/97	Vanessa Ann Kosky	Department of Transport	Dismissed	13/08/99
PSA 98/97	Geraldine A McCarthy	Department of Transport	Dismissed	13/08/99
PSA 99/97	Antony D Moore	Department of Transport	Dismissed	13/08/99
PSA 100/97	Roberta Joan Kathleen Smith	Department of Transport	Dismissed	13/08/99
PSA 101/97	Alison Treasure	Department of Transport	Dismissed	13/08/99
PSA 102/97	Sandra Jean Watkins	Department of Transport	Dismissed	13/08/99
PSA 103/97	Sharon Elizabeth Lawlor	Department of Transport	Dismissed	13/08/99
PSA 104/97	Sheila Papaphotis	Department of Transport	Dismissed	13/08/99
PSA 105/97	Linda Maria Hosie	Department of Transport	Dismissed	13/08/99
PSA 106/97	Joyce Brown	Department of Transport	Dismissed	13/08/99
PSA 2/98	Donal Basil Rayner	Department of Transport	Dismissed	13/08/99
PSA 3/98	Michelle Dimitroff	Department of Transport	Dismissed	13/08/99
PSA 4/98	Elizabeth Laidlaw	Department of Transport	Dismissed	13/08/99
PSA 5/98	Jennifer Kaye Findlay	Department of Transport	Dismissed	13/08/99
PSA 6/98	Beverly Dawn York	Department of Transport	Dismissed	13/08/99
PSA 7/98	Kirsty Jane McGann	Department of Transport	Dismissed	13/08/99
PSA 8/98	Helena Ann Innes	Department of Transport	Dismissed	13/08/99
PSA 9/98	Janice Anne Standen	Department of Transport	Dismissed	13/08/99
PSA 10/98	Linda June Pratt	Department of Transport	Dismissed	13/08/99
PSA 11/98	Faye Walton	Department of Transport	Dismissed	13/08/99
PSA 12/98	Mavis C McDermott	Department of Transport	Dismissed	13/08/99
PSA 13/98	Sharmaine Louise Innes	Department of Transport	Dismissed	13/08/99
PSA 14/98	Katherine Anne Osborn	Department of Transport	Dismissed	13/08/99

File Number	Appellant	Respondent	Decision	Finalisation Date
PSA 15/98	Antoinette R Mahony	Department of Transport	Dismissed	13/08/99
PSA 16/98	Shirley Coles	Department of Transport	Dismissed	13/08/99
PSA 17/98	Linda Maria Millard	Department of Transport	Dismissed	13/08/99
PSA 19/98	Karen Maree Ferrier	Department of Transport	Dismissed	13/08/99
PSA 21/98	Kristine Maree McNamee-Pritchard	Department of Transport	Dismissed	13/08/99
PSA 22/98	Joanne Margaret Rudland	Department of Transport	Dismissed	13/08/99
PSA 23/98	Lorraine Summers	Department of Transport	Dismissed	13/08/99
PSA 24/98	Sarah Jayne Renowden	Department of Transport	Dismissed	13/08/99
PSA 25/98	Rita McGinley	Department of Transport	Dismissed	13/08/99
PSA 26/98	Anne Bardzevics	Department of Transport	Dismissed	13/08/99
PSA 27/98	Kerry Margaret Carleton	Department of Transport	Dismissed	13/08/99
PSA 29/98	Lesley Taylor	Department of Transport	Dismissed	13/08/99
PSA 30/98	April Rosa D'Gama	Department of Transport	Dismissed	13/08/99
PSA 31/98	Esther Johns	Department of Transport	Dismissed	13/08/99
PSA 32/98	Lynley May Peers	Department of Transport	Dismissed	13/08/99
PSA 33/98	Julie Ann Bahn	Department of Transport	Dismissed	13/08/99
PSA 34/98	Anita Colette Anderson	Department of Transport	Dismissed	13/08/99
PSA 35/98	Heather Joy Bell	Department of Transport	Dismissed	13/08/99
PSA 36/98	Marina Bernadette Grealisch	Department of Transport	Dismissed	13/08/99
PSA 37/98	Reena Mary Williams	Department of Transport	Dismissed	13/08/99
PSA 38/98	Gale Lorraine Butler	Department of Transport	Dismissed	13/08/99
PSA 39/98	Lexley Patricia Bunter	Department of Transport	Dismissed	13/08/99
PSA 41/98	Jane Allison	Department of Transport	Dismissed	13/08/99
PSA 42/98	Hector Moses	Department of Transport	Dismissed	13/08/99
PSA 43/98	Natalie Biacha Pendergrast	Department of Transport	Dismissed	13/08/99
PSA 44/98	Barbara Gladis Shaw	Department of Transport	Dismissed	13/08/99
PSA 45/98	Margaret Elaine Ramage	Department of Transport	Dismissed	13/08/99
PSA 46/98	Catherine McClusky	Department of Transport	Dismissed	13/08/99
PSA 48/98	Ann-Marie Hickey	Department of Transport	Dismissed	13/08/99
PSA 49/98	Susan Maree Barr	Department of Transport	Dismissed	13/08/99
PSA 51/98	Holmes Marjorie Robyn	Department of Transport	Dismissed	13/08/99
PSA 52/98	Johnson, Lesley Barbara	Department of Transport	Dismissed	13/08/99
PSA 73/98	Trena Margaret Janczyk	Department of Transport	Dismissed	13/08/99

**COAL INDUSTRY TRIBUNAL—  
Awards/Agreements—  
Application for—**

**WESFARMERS COAL LIMITED (COLLIERIES  
STAFF ASSOCIATION) AGREEMENT 1999-2001.**

**No. 6 of 1999.**

COAL INDUSTRY TRIBUNAL OF WESTERN  
AUSTRALIA ACT 1992.

(SECTION 12)

Wesfarmers Coal Limited  
and

Australian Collieries Staff Association, Western Australian  
Branch, Industrial Union of Workers.

No. 6 of 1999.

*Memorandum of Agreement.*

WHEREAS a conference between Wesfarmers Coal Limited and the Australian Collieries Staff Association, Western Australian Branch, Industrial Union of Workers was convened by me pursuant to section 12(1) of the Coal Industry Tribunal of Western Australia Act 1992 on 19<sup>th</sup> April 1999 and on 10<sup>th</sup> August 1999 for the purpose of preventing an industrial

dispute regarding the terms of an enterprise agreement relating to the terms and conditions to apply to certain employees in staff classifications;

AND WHEREAS agreement has been reached between the parties in terms of the schedule annexed hereto and signed by me in accordance with section 12(3) of the Act is a memorandum of the matters upon which agreement has been reached and the terms and conditions agreed upon in replacement of the Western Collieries Ltd (Staff) Agreement 1995 (6 of 1995) and the Western Collieries (Staff) Agreement 1997 (10 of 1996) which are hereby cancelled.

DATED at Perth this 10<sup>th</sup> day of August, 1999.

(Sgd.) G.L. FIELDING,  
Chairman,  
Coal Industry Tribunal of Western Australia.

Schedule.

Wesfarmers Coal Limited (Collieries Staff Association)  
Agreement 1999-2001

1.—TITLE

This Agreement will be known as the Wesfarmers Coal Limited (Collieries Staff Association) Agreement 1999-2001.

## 2.—ARRANGEMENT

- 1 TITLE
- 2 ARRANGEMENT
- 3 DEFINITIONS
  - 3.1 *Day Worker*
  - 3.2 *Day*
  - 3.3 *Week*
  - 3.4 *Afternoon Shift*
  - 3.5 *Night Shift*
  - 3.6 *Non-Continuous Shift Worker*
  - 3.7 *Seven Day Continuous Shift Worker*
  - 3.8 *Six Day Shift Worker*
  - 3.9 *Fixed Term Employee*
  - 3.10 *Casual Employee*
  - 3.11 *Union*
  - 3.12 *Employer*
  - 3.13 *WCSF*
- 4 SCOPE
- 5 DURATION
- 6 CONTRACT OF EMPLOYMENT
- 7 HOURS OF WORK
  - 7.1 *Shift Work*
  - 7.2 *Day Workers*
  - 7.3 *Shift Workers*
  - 7.4 *Spread of Hours*
  - 7.5 *Ten Hour Break*
  - 7.6 *Additional Hours*
  - 7.7 *Change of Rosters*
  - 7.8 *Shift Change*
- 8 ANNUAL SALARIES
  - 8.1 *Salary Policy*
  - 8.2 *Salary Administration*
  - 8.3 *Salary Review*
- 9 ALLOWANCES
  - 9.1 *Seven Day Continuous Shift*
  - 9.2 *Six Day Shift*
  - 9.3 *Non-Continuous Shift*
  - 9.4 *Afternoon/Night Shift*
  - 9.5 *Meal*
  - 9.6 *Payment of Shift Allowance*
- 10 LEAVE OF ABSENCE
  - 10.1 *Annual Leave*
    - 10.1.1 *Day Workers and Non-Continuous Shift Workers*
    - 10.1.2 *Seven Day Continuous Shift Workers*
    - 10.1.3 *Six Day Shift Workers*
    - 10.1.4 *Pro-Rata*
    - 10.1.5 *Taking of Leave*
  - 10.2 *Public Holidays*
    - 10.2.1 *Day Workers and Non-Continuous Shift Workers*
    - 10.2.2 *Six Day and Seven Day Continuous Shift Workers*
    - 10.2.3 *Attendance on Public Holidays*
  - 10.3 *Sick Leave*
  - 10.4 *Long Service Leave*
  - 10.5 *Parental Leave*
  - 10.6 *Bereavement Leave*
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## 3.—DEFINITIONS

- 3.1 *Day Worker*  
Means any employee who works the majority of their hours between 0600 and 1800 on any day of the week.
- 3.2 *Day*  
Means the day of the week on which the majority of the hours of the rostered day or shift is worked.
- 3.3 *Week*  
Means any period of seven consecutive days.

3.4 *Afternoon Shift*

Means any shift where the majority of the hours is worked between 1500 hours and 2400 hours on any day of the week.

3.5 *Night Shift*

Means any shift where the majority of the hours is worked between 2100 and 0700 on any day of the week.

3.6 *Non-Continuous Shift Worker*

Means any employee who is regularly rostered to work as part of a rotating roster covering at least sixteen (16) but less than twenty four (24) hours per day on any of at least five (5) days of the week.

3.7 *Seven Day Continuous Shift Worker*

Means any employee who is regularly rostered to work as part of a rotating roster covering twenty four (24) hours per day on seven (7) days of the week.

3.8 *Six Day Shift Worker*

Means any employee who is regularly rostered to work as part of a rotating roster covering twenty four (24) hours per day on any five (5) days of the week generally Monday to Friday with the provision to work additional rostered shifts on Saturday and/or Sunday as required.

3.9 *Fixed Term Employee*

Means any employee who is engaged for a specific period of time or for the duration of a specific job.

3.10 *Casual Employee*

Means any employee who is engaged on an hourly basis.

3.11 *Union*

Means the Australian Collieries Staff Association, Western Australian Branch, Industrial Union of Workers.

3.12 *Employer*

Means Wesfarmers Coal Limited.

3.13 *WCSF*

Means Wesfarmers Coal Superannuation Fund.

## 4.—SCOPE

This Agreement is binding on the Employer, employees of the Employer who are members or eligible to be members of the Union and the Union and its officers. The terms and conditions and remuneration payable under this Agreement supersede and are in lieu of those applicable under the Coal Mining Industry (Staff) Award 1990 and/or any other agreement, registered/certified or otherwise, between the Employer and the Union.

Employees covered by this Agreement will work as part of flexible multi-functional work teams based on multi skilling principles. There will be no demarcation of tasks or jobs based on classification, organisation structure or union membership.

Employees will carry out any task, which they are competent to perform, subject to safety and legislative requirements, and are required to accept accountability for the outcome of their work performance.

## 5.—DURATION

5.1 Subject to annual review of salaries this Agreement will operate until 30 September 2001 or until such later time as the parties agree.

5.2 The parties agree that no later than three (3) months prior to the agreed expiration date negotiations will commence for a new Agreement.

## 6.—CONTRACT OF EMPLOYMENT

6.1 Employment will be on a monthly basis except for probationary and casual employees. Employment may be terminated by either party on the basis of one (1) month's notice for permanent employees, except for those employees serving a probationary period, and four (4) hour's notice for casual employees. The payment or the forfeiture of payment of entitlements for the agreed notice period may be made in lieu of working the agreed notice period.

6.2 An employee with more than two (2) years service and aged over forty five (45) years is entitled to an additional one (1) week of notice.

6.3 Permanent and Fixed Term employees will serve a three (3) month probationary period of employment from the date of the employee's commencement. At the conclusion of this

period the employee's contract of employment may be terminated.

6.4 The provisions of this clause do not affect the right of the Employer to terminate the contract of employment without notice for misconduct, including but not limited to, where an employee—

- 6.4.1 Commits a serious criminal offence,
- 6.4.2 Commits an act of serious misconduct,
- 6.4.3 Is guilty of wilful neglect in the discharge of their duties,
- 6.4.5 Steals from the Employer,
- 6.4.6 Acts in such a manner so as to endanger the safety of other employees and/or property of the Employer.

6.5 Upon termination of employment the Employer will pay to the employee all existing entitlements based on current salary up until the date of termination.

6.6 Employees will perform any work or task which the Employer may reasonably require, including all work which they are competent to perform and work which they are required to perform for the purposes of training, subject to safety and legislative requirements. Employees not attending for work or refusing to work as directed will not be paid except as is provided for in Clause 10.

6.7 Employees who are, for a reasonable period of time, unable to carry out the duties of their position will be re-assigned to a more appropriate position, subject to such position being available and practicable, and an adjustment made to their salary. If an employee is dissatisfied with the outcome then they should follow the grievance resolution procedure in the performance enhancement guidelines.

6.8 Employees are required to wear any protective clothing or equipment deemed necessary to undertake any task in a safe manner. All such clothing or equipment will be provided by the Employer. Employees on engagement will be provided with two sets of work clothes or uniforms as appropriate which will be replaced annually or on an as needs basis.

6.9 Employees recognise the importance of the guarantee of the supply of their labour and undertake not to engage in any unauthorised industrial action.

Industrial action includes, but is not limited to, any strike, ban, refusal to work as directed, picket, boycott or other act or omission by the employee done with the intention of, causing the work of the employee or other employees of the Employer to cease, or interfering with or interrupting the continuous supply and flow of labour, product or services, except in those circumstances provided for by the laws of the State of Western Australia and/or the Commonwealth of Australia. Any such breach will constitute serious misconduct.

6.10 Any grievance which arises between an employee and the Employer will be resolved in accordance with the Employee Performance Enhancement Policy. If resolution is not able to be achieved internally, then the grievance will be referred to the CIT of WA or an external arbitrator.

6.11 Where a new staff employee is engaged, the employer agrees that as part of their induction process, they will be introduced to the site representative of the Collieries Staff Association.

## 7.—HOURS OF WORK

Subject to the definitions in Clause 3 commencing and finishing times for rostered days and shifts will be agreed by the Employer and the employees directly involved.

### 7.1 Shift Work

The Employer is in business to supply customers whose operations generally cover twenty four (24) hours per day for three hundred and sixty five (365) days per year. Consequently any employee may be required to work shiftwork. Individual, or groups of, employees may be rostered to cover work twenty four (24) hours per day for three hundred and sixty five (365) days per year.

### 7.2 Day Workers

The nominal hours of work for day workers are forty two (42) per week on any day of the week but generally Monday to Friday, with the provision of a paid meal break of reasonable duration which will be taken by individual employees at a time convenient to work requirements.

### 7.3 Shift Workers

The nominal hours of work for shift workers (six day, seven day continuous and non-continuous) are forty five (45) per week and can be worked over any of the seven (7) days. The nominal hours include the provision of a paid meal break of reasonable duration which will be taken by individual employees at a time convenient to work arrangements.

### 7.4 Spread of Hours

Hours of work for all employees will be averaged over a twelve (12) month period. Rostered shifts for all six day and seven day continuous shift workers will be up to twelve (12) hours.

### 7.5 Ten Hour Break

No employee may be required to work more than sixteen (16) hours in any twenty four (24) hour period. All employees will have a ten (10) hour break between the finish of any rostered day or shift and the commencement of the next rostered day or shift except for approved mutually agreed shift swaps.

### 7.6 Additional Hours

Employees are required to attend to planned and unplanned work demands which may occur outside of normal rosters or the nominal working hours. The Employer undertakes to provide sufficient resources to ensure that employees are not regularly required to work hours which are significantly in excess of the nominal annual hours. No additional salary is payable by the Employer as the annual salary paid to the employee includes compensation for reasonable additional hours. The salary is inclusive of travelling time associated with getting to and from work at all times. Employees are responsible for ensuring their own transport to and from work.

Notwithstanding the 12 month averaging of hours employees may, if they feel disadvantaged at any time, raise the issue with their manager and arrange a mutually acceptable solution.

If employees believe that they are being unfairly treated with respect to the number of hours they are required to work, compared with the standard for the position they occupy, and having regard to their overall package of salary and other employment related benefits, they should raise the issue through the Grievance Resolution Procedure outlined in the Employee Performance Enhancement Policy.

### 7.7 Change of Rosters

The Employer may vary shift rosters after account is taken of operational requirements. In every instance an endeavour will be made to give at least forty eight (48) hours notice of a roster change.

### 7.8 Shift Change

Shift workers undertake to provide their labour and services if operational requirements dictate additional resources are required. Shift workers will change over on the job at the location where they are working at the end of the shift and may not cease work until relieved by the next shift.

## 8.—ANNUAL SALARIES

Each year employees will receive a written statement of their salary based on their current salary and any adjustments arising from sub-clause 8.3 and Clause 6 of this Agreement. Employees will be paid the amount determined by the processes described in sub-clauses 8.2 and 8.3. The amount is payable monthly, generally on the 15th day of each month, in equal instalments and is payment of all monies (including salary, wages, allowances, annual leave loading, overtime and penalty payments) due to the employee under this Agreement or any other award, agreement or lawful contractual arrangement between the Employer and the employee.

### 8.1 Salary Policy

The Employer maintains a systematic approach to salary administration.

### 8.2 Salary Administration

8.2.1 All positions within the Organisation are evaluated using the Hay Method of Job Evaluation. The job evaluation determines the relative worth of a position. This process measures the work content and value of a position by analysing the knowledge and skills, problem solving and accountability associated with the position.

8.2.2 All positions except those occupied by new or inexperienced graduates (who are covered by an incremental scale)

are evaluated on a regular basis to take account of changes in job content and responsibility. The review is carried out using detailed information about the job contained in the job description. To obtain a re-evaluation for an existing position, or an evaluation of a newly created position, a revised or new job description must be prepared by the responsible manager. Every employee's job description will be reviewed for currency prior to the annual salary review.

### 8.3 Salary Review

Once this Agreement is registered in the CIT of WA, the salary and allowances prescribed in this Agreement, for each employee, will be adjusted as follows—

3%—1 October 1999

3%—1 October 2000

8.4 Notwithstanding anything else contained in this Clause, all employees will be entitled to pay rises as prescribed in this Clause, with no reduction in the base rate of salary other than in the case of a reclassification of position and job description.

## 9.—ALLOWANCES

### 9.1 Seven Day Continuous Shift

Employees who are rostered to work seven day continuous shift work will be paid an allowance of \$15,410 per annum. The amount will be paid in equal monthly instalments for the period of time spent working the roster.

### 9.2 Six Day Shift

Employees who are rostered to work six day shift work will be paid an allowance of \$10,460 per annum. The amount will be paid in equal monthly instalments for the period of time spent working the roster.

### 9.3 Non-Continuous Shift

Employees who are rostered to work non-continuous shift work will be paid an allowance of \$4,950 per annum. The amount will be paid in equal monthly instalments for the period of time spent working the roster.

### 9.4 Afternoon/Night Shift

Employees who are rostered to work afternoon or night shift for periods of one week or more which is not part of their usual roster will be paid an allowance of \$4,950 per annum. The amount will be paid in addition to salary only for the time actually spent working afternoon or night shift.

Where a rostered day or shift satisfies more than one of the definitions in sub-clauses 3.1, 3.4 and 3.5 then it will be considered to be afternoon or night shift.

### 9.5 Meal

Employees who are required to work more than two (2) hours beyond the scheduled finishing time of their rostered day or shift, will be provided with a meal by the Employer.

### 9.6 Payment of Shift Allowance

Employees who are usually shift workers (seven day continuous, six day and non continuous) will be paid shift allowance whilst on approved leave, workers compensation (subject to participation in a rehabilitation program) and approved training programs. Employees who do not work shift work for periods of two weeks or more for other than the above reasons will not be paid shift allowance.

## 10.—LEAVE OF ABSENCE

### 10.1 Annual Leave

#### 10.1.1 Day Workers and Non-Continuous Shift Workers

Employees will be allowed two hundred (200) hours annual leave (exclusive of public holidays) for each completed twelve (12) months of service.

#### 10.1.2 Seven Day Continuous Shift Workers

Employees will be allowed two hundred and eighty four (284) hours annual leave (inclusive of public holidays) for each completed twelve (12) months on a shift roster.

#### 10.1.3 Six Day Shift Workers

Employees will be allowed two hundred and sixty eight (268) hours annual leave (inclusive of public holidays) for each completed twelve (12) months on a shift roster.

#### 10.1.4 Pro-Rata

Leave will accrue on the basis of completed months of service and employees will be paid for any untaken annual leave on termination.

### 10.1.5 Taking of Leave

Leave may be taken at any time by mutual agreement between the Employer and the employee. Leave may be taken in more than one (1) period subject to work requirements.

### 10.2 Public Holidays

#### 10.2.1 Day Workers and Non-Continuous Shift Workers

The following days—New Years Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day will be observed as public holidays. Day workers and non-continuous shift workers will be allowed time off without loss of salary, provided they are not absent without authority on the day prior and/or the day following the public holiday. Day workers and non-continuous shift workers who are required to work on a public holiday will have an additional day added to their annual leave.

#### 10.2.2 Six Day and Seven Day Continuous Shift Workers

Six day and seven day continuous shift workers will not receive any additional consideration for public holidays whether worked or not as this is compensated for in the respective shift allowances. Six day shift workers may nominate two public holidays in any twelve (12) month period which will be taken as paid time off.

#### 10.2.3 Attendance on Public Holidays

All employees are required to attend for work on public holidays on which they are rostered or forfeit salary payment for the day.

### 10.3 Sick Leave

Employees may access unlimited sick leave without loss of salary provided that—

- Employees notify the Employer of their intended absence and the expected duration of the absence prior to the commencement of the absence.
- Employees may be required to provide proof of illness or incapacity.
- Any period of absence which extends beyond three months will be subject to review.
- Employees who are unable to perform their normal work for an extended period due to illness or injury must make themselves available for an Employer sponsored rehabilitation program at the earliest opportunity.
- If employees are incapacitated for a period greater than one (1) week whilst on annual leave, they may have the annual leave re-credited, provided that the Employer is informed of the incapacity at the time that it occurs and proof is provided if requested.

### 10.4 Long Service Leave

Employees are entitled to thirteen (13) weeks long service leave for each eight (8) years service. Leave may be taken in periods of two (2) weeks or more at a time which is agreed between the Employer and employee. Employees who are forcibly retrenched will be allowed pro-rata long service leave after six (6) completed years of service.

### 10.5 Parental Leave

Employees are entitled to parental leave as prescribed in Division 6 of the Minimum Conditions of Employment Act 1993.

### 10.6 Bereavement Leave

Employees are entitled upon the death of a spouse, child, stepchild, parent, parent-in-law, sibling, brother-in-law, sister-in-law, grandparent or grandchild to two (2) days paid leave. If travel to attend the funeral is required the employee is entitled to one (1) additional day of paid leave.

### 10.7 Jury Service

An employee required to attend for jury service may do so without loss of salary provided that any fees received are remitted to the Employer.

### 10.8 Payment on Approved Leave

Employees will not suffer any loss of income whilst on approved leave subject to those shift work employees on extended sick leave making themselves available for a rehabilitation program at the earliest possible occasion.

10.9 For the purposes of taking approved leave a day will be defined as eight (8) hours Monday to Friday for day workers

or the number of rostered hours on any day for shift workers. For the purposes of accruing leave entitlements a month will be a calendar month.

10.10 The application of this clause is subject to the provisions of the Minimum Conditions of Employment Act (1993).

#### 11.—WORKERS COMPENSATION

11.1 Subject to the prescribed limits under the Western Australian Workers' Compensation and Rehabilitation Act 1981, an employee, who is temporarily incapacitated from employment under this Agreement and who is entitled to a workers' compensation benefit for that incapacity, will be paid at the rate prescribed by Clause 8 not including any applicable shift allowance.

11.2 Where an employee is undertaking an agreed rehabilitation program they will not suffer any loss of salary providing monthly reviews of progress are satisfactory.

#### 12.—SUPERANNUATION

12.1 The Employer will contribute 10% of annual salary (not including any applicable shift allowance) per employee to the WCSF.

12.2 Employees are required under the Coal Industry Superannuation Act (CISA) to join the Coal Industry Superannuation Fund (CISF). In the event of the repeal of and/or amendment to the CISA, to permit exemptions from the CISF, employees engaged at the commencement of this Agreement will have the current Employer contribution to the CISF added to their salary. This amount may be taken as additional cash salary or be contributed to WCSF at the employee's option.

#### 13.—TIME AND WAGES RECORDS

Time and wages records will be maintained in accordance with the requirements of the Inspection of Record 49B of the Western Australian Industrial Relations Act 1979.

#### 14.—PART-TIME EMPLOYEES

14.1 Notwithstanding anything contained elsewhere in this Agreement an employee may be employed to work ordinary hours each week which are less than those prescribed in Clause 7.

14.2 When an employee is employed under the provisions of this Clause the employee will be paid a salary and will be entitled to all other benefits and conditions prescribed elsewhere in this Agreement in the same proportion as the employee's working hours bear to one hundred and sixty eight (168) hours per four (4) week cycle.

#### 15.—UTILISATION OF CONTRACTORS

15.1 15.1.1 In some situations including increased work demands and/or the need for different skills or equipment, the use of contractors is the best means of achieving the essential efficiency and productivity in the performance of work.

15.1.2 No employee of the Employer will suffer any detrimental effect in respect of earnings due to the use of contractors. In the event of a process being contracted, the company will make every endeavour to provide alternative work for employees within Wesfarmers Coal Limited.

15.2 The circumstances in which the Employer may need to have contractors perform work will include but not be limited to—

- 15.2.1 Peak work demands which are beyond the capacity of the Employers permanent employees;
- 15.2.2 Project, expansion or capital works which are beyond the normal labour resources for which the Employer has geared its operations; or
- 15.2.3 Major campaign maintenance or shutdown work or work related to substantial failure of plant, equipment or process, or machinery or equipment warranty work which is beyond the normal labour resources of the Employer and which requires additional labour resources for a temporary period.

15.3 15.3.1 Employees of contractors, who are utilised within the Employers operations, will be required to undertake a safety induction program to a standard relevant to the particular work and the circumstances in which the work is to be performed.

15.3.2 The Employer will require and contractors will ensure, as a condition of the contract, that the terms and conditions

of employment of employees of contractors utilised within the Employer's operations, comply with any awards, agreements and/or any other lawful arrangements, according to any law of the State of Western Australia or the Commonwealth of Australia binding the contractors and their employees, and comply with the Employer's safety regulations, and with all reasonable directions of the Employer.

15.4 This clause has no application to employees of Wesfarmers Limited who work for Wesfarmers Coal Limited.

#### 16.—GRIEVANCE RESOLUTION

16.1 The parties to this Agreement are committed to promoting harmonious workplace relationships based on goodwill, teamwork and honest communication. All personnel involved will use their best endeavours to resolve issues promptly in accordance with the Employee Performance Enhancement Policy.

16.2 Issues will be raised initially with the employee's supervisor. If the matter cannot be resolved then the employee may request further discussion with the supervisor and more senior management and, if the employee requests, a Union representative. If the matter still remains unresolved then it will be referred to a Union official and a senior Employer representative. If the matter can not be resolved internally it will be referred to the CIT of WA or an external arbitrator.

#### 17.—REDUNDANCY

In the event that market and/or economic factors force the Employer to reduce employee numbers, the preferred method of achieving the reduction will be by natural attrition and/or voluntary redundancy. If a satisfactory outcome is not achieved within a prudent timeframe then a retrenchment programme may be implemented. From time-to-time the Employer may institute a voluntary redundancy programme. Employees may apply in writing to offer to take up a voluntary redundancy package. Acceptance of the offer will be at the sole discretion of the Managing Director.

If an offer to take voluntary redundancy package is agreed by the Managing Director the following benefits will be provided—

- 3 months salary in lieu of notice.
- Additional 1 month if aged 45 years or older.
- Minimum payment of 1.5 months severance (in addition to above).
- Additional 0.5 month for each completed year of service up to a maximum of twelve (12) months salary.
- Additional 0.25 months for each year above 45 years of age.
- Additional 0.25 months for each year of service greater than 25 years.
- Total benefit not to exceed fifteen (15) months salary or more than the employee would have received if employed to age sixty five years.
- Payment of all accrued benefits as per this Agreement.
- Relocation assistance to anywhere in Australia to a maximum of \$5,000 upon production of receipts within six (6) months of termination.
- Retraining assistance of \$1,000 upon production of receipts within six (6) months of termination.
- Assistance with preparation of applications for alternative jobs.
- \$25,000 ex-gratia payment.

SIGNED FOR AND ON BEHALF OF—  
WESFARMERS COAL LIMITED

Mr T. Kuzman (signed)

AUSTRALIAN COLLIERIES STAFF ASSOCIATION

Mr C. Pullan (signed)

DATE: 9 July 1999