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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.

Australian Liquor, Hospitality and Miscellaneous Workers
Union, Miscellaneous Workers Division, WA Branch
Appellant

and

Burswood Resort (Management) Ltd
Respondent.

No FBA 30 of 1999.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER A R BEECH
COMMISSIONER J H SMITH.

15 March 2000.

Reasons for Decision.

THE PRESIDENT: This is an appeal by the abovementioned appellant organisation of employees against the decision (and it would appear the whole of the decision) of the Commission, constituted by a single Commissioner, made on 22 October 1999 in matter No CR 159 of 1999, whereby the Commissioner dismissed an application by the abovenamed appellant.

The decision is now appealed against on the following grounds, as amended—

GROUND OF APPEAL

1. The Senior Commissioner erred in finding that the respondents (sic) policy prohibiting the wear (sic) of Union badges is not unreasonable.
2. The Senior Commissioner erred in finding that the respondent had not condoned the wearing of Union badges.
3. The Senior Commissioner erred in finding that the respondent's policy prohibiting the wearing of Union badges is not an unreasonable infringement on employees right to freedom of speech and or expression.
4. The Senior Commissioner gave insufficient weight to the uncontradicted evidence that the Union badge did not interfere with the visual impact made by employees uniforms to the public.

- B. The appellant seeks to have the decision of the Senior Commissioner to dismiss the application suspended and the case remitted to the Commission for further hearing and determination."

BACKGROUND

This matter came before the Commission pursuant to an application under s.44 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") and arose from a dispute between the respondent employer and the appellant employees' organisation because of a desire by some members of the appellant organisation to wear, and, indeed, the wearing of, a "union" badge in the workplace.

There was documentary evidence before the Commission at first instance, as well as oral evidence for the appellant from Ms Leanne Margaret Mary Therese Clayton, President of the Burswood Resort Union of Employees (hereinafter referred to as "the BRUE") and croupier employed by the respondent, Mr Stephen James Farrell, a croupier employed by the respondent and a member of the BRUE's Committee of Management, Mr Leslie James Mellor, an inspector employed by the respondent and a member of BRUE, Mr Daniel Millan, also a croupier employed by the respondent and a member and delegate of BRUE, Mr Michael Paul Koutsoukos, a cleaner employed by the respondent and a member of BRUE.

For the respondent, there was oral evidence given by Mr Michael Ian Kidd, the Vice President, Human Resources of the respondent, Mrs Gaye Josephine Rea employed by the respondent as an environmental services supervisor, Ms Mandy Kaye Italiano, employed by the respondent as a pit boss (a supervisory position), Ms Josephine Ann Italiano, employed by the respondent as wardrobe manager responsible for uniform ordering and supply and grooming, Mrs Kathleen Jan Drage, a pit boss, and Ms Antoinette Brenda Cope, a gaming shift manager for the respondent. There was also a quantity of documentary evidence and two "union" badges tendered.

Inter alia, the respondent conducts the business of a casino at Burswood in this State, where gambling takes place. The appellant organisation, at all material times, had constitutional coverage, but not sole coverage, of many of the employees of the respondent.

The appellant sought a declaration that "in all circumstances it would be harsh, oppressive or unfair for the Respondent to penalise, dismiss or in any other way discipline or disadvantage any employee" because "the employee chooses to wear a membership badge of the union whilst performing work for the Respondent and/or does not comply with an instruction from the Respondent not to wear" the badge whilst performing that work.

The appellant, in effect, sought leave from the Commission for its members to be allowed to wear the badges whilst performing their work, notwithstanding anything to the contrary in either their contracts of employment, any award, or any enterprise agreement regulating the employment. The respondent opposed the application.

It was the contention of the appellant that the wearing of both red and blue "union" badges was forbidden because of the respondent's opposition to the appellant. This was denied by the respondent's witnesses who asserted that the wearing of badges by employees was forbidden by the company's policy.

Since November 1993, and at all material times, both the appellant organisation and the Federated Liquor and Allied Industries Employees' Union of Australia, WA Branch, Union of Workers (hereinafter referred to as "the LTU") have and had constitutional coverage of the employees in question. At all material times, both organisations had members on site.

There was in existence, at material times, an industrial agreement, "The Burswood International Resort Casino Employees' Industrial Agreement 1997" (hereinafter referred to as "the Burswood Agreement"), which regulated the employment of the employees in question. The appellant organisation was not a party to the agreement, but the LTU was. Pursuant to that agreement, only LTU officials had access to the site. Mr Kidd explained in evidence that the respondent dealt with the LTU because it was a party to the Burswood Agreement. There was some evidence of tension between the ALHMWU and the respondent.

An informal body, formed from members of the LTU but later absorbed into the appellant organisation, came into being. It was known as the "Burswood Resort Union of Employees" ("the BRUE").

From about September 1998, following a meeting of BRUE members which decided that members should wear a BRUE badge and promote it, some of those persons who were members of the BRUE began to wear the appellant's union badge whilst performing their work. They did so, because no BRUE badge was available. This was known as "the red badge" which was the ALHMWU badge. They did so to advertise that they were members of that organisation. More recently, commencing at the end of May 1999, they wore a badge identifying them as members of the BRUE and known as "the blue badge".

The appellant's case was that members wore the badges without criticism by the respondent's managers or supervisors until about June 1999, when they were instructed to desist from wearing them. At that time, one employee who refused to comply with that direction was disciplined for continuing to wear the badge. It was the evidence of all of the witnesses that this occurred.

There was evidence that there were 3,000 to 3,500 employees at the respondent's premises. Some of them, such as cleaners, kitchen and administrative staff, were "back of house employees" who, on the evidence, would not be exposed to the public a great deal, unlike dealers, croupiers and other persons working on the floor of the casino.

The respondent maintained that it was a term of the employment of each of the employees that they not wear badges in the course of their employment unless those badges were issued by the respondent or unless they were otherwise authorised by the respondent to wear such badges.

The employees' handbook of regulations and directions contained, amongst others, this regulation (see page 244 of the appeal book (hereinafter referred to as "AB"))—

"No badges, ornamental buttons or jewellery may be worn on your uniform unless issued by the Company. (There are some exceptions which must be authorised by the manager of Wardrobe). Naturally this rule does not apply to your **Employee Identification Badge**."

Specifically, the respondent denied that it consented to or condoned the employees wearing the red and blue "union" badges in question.

It was asserted by witnesses for the appellant that they had worn the red ALHMWU badges for some months and the blue BRUE badges for over a week without comment from management (see exhibit D, a letter from Ms Leanne Clayton to Mr P Kennedy, human resource manager, page 251 (AB), dated 2 June 1999). However, after a week, employees were

told not to wear the blue badges and one employee was threatened with disciplinary action. That was the basis for the application to the Commission.

On 5 January 1998, a memorandum about the enforcement of grooming standards was sent by Ms Kathleen Stephens (later Drage), a pit boss, to assistant gaming shift managers and pit bosses. (Badges are not specifically mentioned in that memorandum (see exhibit Q, pages 270-271 (AB)).

This was reinforced by evidence of a memorandum concerning company grooming regulations from the wardrobe manager of the respondent, Ms Jo Italiano, dated 29 June 1999 (see exhibit P, page 269 (AB)).

A similar memorandum dated 5 January 1998 was directed to all gaming staff, as well as assistant gaming shift managers, pit bosses and gaming shift managers, by Kim Smith, a gaming shift manager (see exhibit R, page 272 (AB)). There then ensued weekly inspections by supervisors, a regime which lasted for a year, with transgressions being entered in the staff record book.

There was evidence from a number of witnesses for the appellant that employees wore a number of badges, apart from their identification badges, these being their service pins, interpreters badges, health and safety representative badges (for those representatives), employee of the month badges, and badges when specifically approved by the company. The badges worn included football badges and charity badges.

Exhibit T, the staff record book, recorded breaches of grooming regulations (see pages 274-384 (AB)).

The evidence of a number of witnesses for the respondent was that, if they had noticed the red or blue badges, they would have directed staff not to wear the badges.

There was evidence, too, from Ms Josephine Ann Italiano, the wardrobe manager, that supervisors do official inspections of grooming twice a week. She did not see anyone wearing a "union" badge. Ms Drage saw no one wearing the red badge. There is no record of the requirement that badges be removed. There are a number of entries in Exhibit T relating to persons wearing badges on their identification badges. All of these were authorised. Some pit bosses told persons to take the red badge off. Some never saw the red badge but did see persons wearing the blue badge. Ms Antoinette Brenda Cope, a gaming shift manager, told employees to take the blue badge off.

There was no evidence that the wearing of union badges was complained about by members of the public or that they were detrimental to the operations (see the evidence of Ms Josephine Ann Italiano, pit boss at page 159 (AB)).

Some persons who said that they did wear union badges passed grooming standards when undergoing formal appraisal, although the evidence of the respondent's witnesses was that they did not see these badges at appraisal time.

Mr Kidd admitted in evidence that the visual impact of the badges may be no different to the visual impact of the company approved badges (see page 118 (AB)). Indeed, significantly, he said that "The issue is not wearing badges, whatever they are and however they look" (see page 121 (AB)). It was also his evidence that it would be impracticable to consider each request to be authorised to wear a badge; thus, as I understood his evidence, a blanket prohibition upon the wearing of badges was enforced; however, there were exceptions as the evidence reveals.

In addition, the respondent contended that, if an exception were made in the case of membership badges issued by the appellant, exceptions would have to be made for others which would give rise to an unmanageable situation.

The respondent contended that grooming and appearance was an important part of the employees' employment. To this end, it provided its employees with uniforms and argued that the badges detracted from the concept of uniform appearance by the staff.

FINDINGS

The Senior Commissioner made the following findings—

1. It is a term of the contract of employment for the employees in question that they not wear badges, ornamental buttons or jewellery on their uniforms unless it is issued by or otherwise authorised by the respondent.

2. It is an express term of their employment that employees observe all of the respondent's policies and procedures and their rules and regulations outlined in the employees' handbook, as amended from time to time.
3. It is common ground that the grooming regulations set out in the handbook prohibit the wearing of badges and the like on uniforms issued by the respondent, unless the badges were issued by the respondent or otherwise authorised.
4. These provisions are neither unlawful or unreasonable.
5. It is not essential for the object of encouraging the formation of unions of employees that employees be allowed to wear a union badge at any time and in any place.
6. The Australian Tramway Employés Association v The Prahran and Malvern Tramway Trust and Others [1913] 17 CLR 680 (HC) ("the Tramways case") is not authority for the proposition that employees have an absolute right to wear union badges in the workplace.
7. It is an object of the Act that the observance and enforcement of agreements should be encouraged.
8. The Burswood Agreement provides, amongst other things, that where the respondent supplies uniforms, the employees are obliged to wear those uniforms at all times and in line with the respondent's standards.
9. There is no authority for the proposition that the employees in question or anyone else have an absolute right to freedom of speech or expression. Such a freedom of speech or expression is qualified.
10. To require employees to comply with reasonable standards of grooming is not an undue infringement on that right.
11. The relevant policies are quite clear and unequivocal in respect of the wearing of badges of any kind and the employees could reasonably be taken to have consented to have waived any rights to the contrary in this respect.
12. Dress standards in the workplace are generally a matter for the employer and an employer may choose to formulate a policy on dress for its employees, as long as the policy is reasonable.
13. It is beyond question that the grooming, dress standards and presentation are important features of the industry.
14. It is an important factor that the respondent's policy with respect to the wearing of badges on uniforms is consistent with that which applies in other casinos in Australia and other five star hospitality establishments.
15. The policy assists the respondent to ensure that there is a high standard of presentation through uniform which, in the industry, is important.
16. If the respondent were to make any exception in this case, it would undermine its efforts in that regard.
17. This would present the respondent with a difficult management problem.
18. It would be difficult, in the circumstances, to refuse to allow members of other unions to wear badges.
19. In the past, union members have worn union badges.
20. The respondent and its other employees did not see the employees wearing the badges and, if they had done so, they would have asked employees to remove the badges. At no time did the respondent sanction the wearing of badges, particularly the badges in question, and ornamental badges other than in accordance with its policy.
21. The respondent has allowed employees to wear badges supporting a number of charitable institutions, but that has been for a limited time and limited to charities supported by the respondent.

22. The respondent allows and, indeed, issues certain badges for its employees to wear, such badges to be in the form of service badges, language badges and the like. These are badges which promote the respondent or its operations.
23. The respondent did not condone the wearing of badges of any kind in breach of its policy and the Senior Commissioner was not convinced that the policy was being applied in a way which discriminated against the appellant organisation and its members. The policy has been consistently applied, at least from January 1998, and there is evidence of employees having been asked to remove ornamental badges.
24. There was no evidence to suggest that the respondent favoured one union over another in the matter of wearing badges.

ISSUES AND CONCLUSIONS

I should observe that the decision appealed against was a discretionary decision as that term is defined in Norbis v Norbis [1985-1986] 161 CLR 513 (HC) at pages 518-519 per Mason and Deane JJ. It follows that the Full Bench cannot set aside that decision and substitute its own decision for that of the Commission at first instance unless the Full Bench is able to conclude that the exercise of discretion by the Commission at first instance miscarried. Of course, the discretion will have miscarried if the Full Bench is able to find that the exercise of discretion erred in any of the respects referred to in House v The King [1936] 55 CLR 499 (HC) (see also Gromark Packaging v FMWU 73 WAIG 220 (IAC)).

Grounds 1 and 3

It was a term of the contract of employment that, because the relevant uniform and grooming regulations formed part of the contract of employment, which they did, the employees at the casino agreed not to wear badges, ornamental buttons or jewellery on their uniforms unless issued or otherwise authorised by the respondent.

That was because it was an express term of the contract of employment of the employees that they observe all of the respondent's policies, procedures and the rules and regulations outlined in the employees' handbook, as amended from time to time. The Senior Commissioner so found. Such findings were borne out by the evidence and not challenged on appeal.

It was also common ground, as the Senior Commissioner found, that the grooming regulations set out in the handbook prohibit the wearing of badges and the like on uniforms unless issued or otherwise authorised by the respondent employer. The Burswood Agreement provides, too, amongst other things, that, where the respondent supplies uniforms, the employees are obliged to wear those uniforms at all times and to the employer's standards. The employer's standards were provided for in the regulations. What, on a fair reading, therefore, the Burswood Agreement requires is the wearing of the uniform provided which, on the evidence, is what occurred.

It would seem to me that the respondent's standards would include, on a reasonable construction of the terms of the contract, a requirement that badges not be worn on the uniform unless issued or authorised by the respondent employer. It was the clear evidence that certain badges were issued to employees or authorised to be worn by them by the respondent employer.

The badges authorised to be worn unequivocally related to the respondent's operations and the employees' part therein. These included performance and service badges, an identification badge, all the sort of badges quite commonly issued by an employer.

In addition, badges were authorised to be worn supporting a number of charitable institutions, but the evidence was that that was for a limited time and limited to charities supported by the respondent. The Senior Commissioner so found and it was reasonably open to him to so find. It was not in issue that the respondent's policies are clear.

Further, dress standards in the workplace are generally a matter for the employer, and an employer may choose to formulate a dress policy for its employees, as long as the policy is reasonable. Indeed, that is what the contract of employment provided.

The evidence was clear and uncontroverted that grooming standards and presentation are important features of the industry of which the respondent is a part and that the "policy" with respect to the wearing of badges on uniforms is consistent with that which applies in other casinos and in five star establishments in Australia. In this case, the dress regulations, given the nature of the respondent's business and the unquestionable need for its employees to be well dressed and well groomed could not be said to be unreasonable, generally speaking, and was quite rightly not submitted to be unlawful.

However, the crux of this matter, notwithstanding Mr Le Miere's submissions which sought to limit it, was this. The appellant's complaint to the Commission was, as the application reveals and, as the case was run on the evidence, that it was a harsh, oppressive and unfair act of the employer, however reasonable and lawful the policy might be, to prohibit the wearing of the union badges under pain of disciplinary action, which might include dismissal, if they continued to wear the union badges.

There are a number of considerations relevant to the determination of that question.

The Senior Commissioner found that the relevant policies were quite clear and unequivocal in respect of the wearing of badges of any kind and the employees could reasonably be taken to have waived any rights to the contrary in this respect. I would observe that the question in that respect is not one of a waiver of rights.

First, insofar as compliance with dress regulations is a term of the contract of employment, then the employees are bound by them. However, the dress regulations themselves confer a discretion upon the employer to authorise the wearing of badges, including "union" badges. In fact, that policy, on Mr Kidd's evidence, is applied as if there was no discretion and, according to Mr Kidd's evidence, means not "no union badges", but "no badges". That policy also constituted a unilateral variation of the regulations without formally varying them. This was because the consideration of permission to wear badges on a case by case basis was impractical and also because it would be difficult not to allow members of other unions to wear badges.

However, notwithstanding that evidence, the clear evidence was that the respondent authorised the wearing of charity badges by employees. Put shortly, however, the respondent refused, in terms of the regulations, to authorise the wearing of "union" badges which it certainly had the discretion to do.

Further, Mr Kidd's evidence was that to allow some of these badges (and make an exception for them) would, as it were, open the floodgates and make it difficult, as the Senior Commissioner found, to maintain a high standard of presentation through uniform. I would observe that the written regulations make provision for exceptions to be made (by way of employer authorisation) and, in the case of charities, exceptions are and have been actually made.

Further, it is relevant to find and the Senior Commissioner should have found that, on the evidence, both the red and the blue badges were not unaesthetic, (being small and well designed); nor were they harmful to the employer's business, critical of the employer, the subject of complaint by customers; nor did they carry slogans. They were tendered at first instance. I have inspected them. Mr Kidd also admitted this in evidence.

Further, for those employees who work "back of house" (such as cleaners) and not on the casino floor and are, for the most part, out of the public eye, on the evidence, the impact of the badges would be even less.

The lack of objectionability of the badges on the grounds of the aesthetic and their innate innocuousness (as badges) was a consideration which was submitted, as I understand it, to be relevant to the unfairness of the decision not to authorise their wearing.

Relevant, also, in my opinion, was the fact that no attempt was made to seek authorisation before the badges were worn.

The Senior Commissioner accepted that the badges were worn when the employee witnesses for the appellant said that they were worn and, further, that they would have been directed to be removed had they been seen by supervisors (pit

bosses and gaming floor managers). Having seen the witnesses, he was entitled, on a fair reading of the evidence, to so find.

In the case of the red badges, they were worn for some months without directions being given to remove them. In the case of the blue badges, they were worn for one week before directions were given to remove them. Ms Antoinette Cope gave such a direction.

There were other relevant considerations related to the right of employees to form organisations of employees. I should observe first that the Tramways case (op cit) is not authority for the proposition that employees have an absolute right to wear union badges in the workplace, and the Senior Commissioner was correct to so find. However, the dicta of Isaacs and Rich JJ at page 694, which formed part of their reasoning in concluding that the question of the right to wear badges was an industrial matter, is significant. At pages 694-695, Their Honours said—

"Consequently the Commonwealth Act, when it provides for organizations, supplies a necessary link in the chain of effective settlement of the claims of individuals. This is a clear and sufficient answer to the suggestion by the respondents that the badge is merely an adjunct to the organization, and not relevant to the industrial claims of the employees themselves.

Everyone knows, and this very contest indicates, that the use of the badge by the employees is a substantial means of strengthening their industrial position relatively to their employers – and thereby both of protecting their existing rights, and of obtaining larger rights. Whether in any particular case the result be fair or unfair, just or unjust, we of course express no opinion whatever; that is for another tribunal; but the nature of the right claimed – one which advances the employees' interests in respect of their employment – indicates, beyond real doubt, that it proximately affects the industrial relations of employers and employed, and so falls within the words of the statutory definition which we have quoted."

A similar approach was taken by Powers J at pages 713-714.

Thus, the wearing of a badge is, on that authority, a substantial means of strengthening the industrial position of employees relative to their employers and, also, proximately affects the industrial relations of employers and employees. That being so, the badges are in different case from other badges and have a significance industrially which sets them apart. The Senior Commissioner correctly adverted to s.6(e) of the Act, which is a principal object of the Act. S.6(e) reads as follows—

"to encourage the formation of representative organizations of employers and employees and their registration under this Act and to discourage, so far as practicable, overlapping of eligibility for membership of such organizations;"

S.6(f) of the Act reads as follows—

"to encourage the democratic control of organizations so registered and the full participation by members of such an organization in the affairs of the organization;"

The Act contains those objects and also provides a right for persons to join such organisations (i.e. organisations of employers and employees) and a facility to register them. Organisations are organisations of employers as well as employees.

The uncontradicted evidence of the employee witnesses for the appellant, which it was open to accept, was that they wore their badges to promote their "union" and to let their fellow employees know that they were members and answer any queries. They belonged to an organisation of employees which had coverage in the workplace. That is consistent with the view that Isaacs, Rich and Powers JJ took in the Tramways case (op cit).

It is an object of the Act to encourage the formation of representative organisations of employers and employees. An organisation becomes more representative the more members it has. The wearing of union badges, which were not offensive aesthetically or otherwise, to promote the union in a workplace of 3,000 to 3,500 employees was one way of making known the existence of a representative organisation with

the members in the workplace and consistent with those objects.

Whilst, then, the Senior Commissioner found that it was not essential to encourage the formation of organisations of employees, that they be allowed to wear a union badge at any place or day, it was open to him to find that the wearing of "union" badges by members in the workplace, having regard to the dicta in the *Tramways* case (op cit) of Isaacs, Rich and also Powers JJ, and the objects of the Act, was an important tool for the promotion of the organisation as a representative organisation in a workplace of 3,000 to 3,500 where the appellant had coverage. A finding to that effect was open to be made and should have been made, together with a finding that the wearing of badges was an act which could be properly said to be advancing the objects of the Act.

It was also open to find that the wearing of union badges was a visible manifestation of the fuller participation of the members wearing them in the affairs of their organisation. S.6(f) of the Act provides, as an object, that, inter alia, full participation by members should be encouraged.

The Senior Commissioner also held that the observance and enforcement of agreements was an equally promotable object, amongst others. That was the effect, as I understood his reasons, of s.6(d) of the Act, which provides as follows—

"to provide for the observance and enforcement of agreements and awards made for the prevention or settlement of industrial disputes;"

The direct question in this matter did not relate to the observance and enforcement of an agreement, but to whether the rights of the employer under the agreement were being exercised unfairly, to the extent where disciplinary action was threatened. Indeed, it is more accurate to say that a policy which waived the agreement was alleged to have been unfairly developed by which the employer would not even consider authorising badges if it had to deal with applications for authorisation on a one by one basis. In that sense, the employer's observance of the agreement was indirectly in question.

Accordingly, it was not open to the Senior Commissioner to find and he erred in finding that the object in s.6(d) was one which the facts of this case was relevant or of greater weight than, for example, s.6(e) and (f). Those were the two main applicable objects, although in particular s.6(e) of the Act, which is capable of standing on its own on the facts and in the context of this case.

Further, it was open to find, although it was not agreed and is not material to my reasons, therefore, that another relevant consideration advanced was the question of freedom of speech or freedom of expression.

The Senior Commissioner correctly held that neither the employees in question, nor anyone else, has an absolute right to freedom of speech or expression. Indeed, as Mr Kelly, who appeared for the appellant, properly conceded, in the recent judgments of the High Court such as *Lange v Australian Broadcasting Corporation* 145 ALR 96 (HC), *Theophanous v The Herald & Weekly Times Limited and Another* [1993-1994] 182 CLR 104 and *Levy v State of Victoria and Others* 146 ALR 248 (HC), the principles in those cases do not create a right in individuals but prevent statutory infringement upon the implied constitutional right under the Australian Constitution to freedom of expression.

However, as Mr Le Miere correctly conceded, our society is a democratic society and freedom of speech or expression is an accepted part of it. Accordingly, any attempt in the workplace to inhibit or prohibit the proper exercise of freedom of expression, where that is an oppressive, unfair, unreasonable or undue infringement upon that freedom, would quite clearly be subject to a matter in which this Commission would exercise its discretion and intervene.

The Senior Commissioner found that, to require employees to comply with reasonable standards of grooming was not an undue infringement, given the reasonable requirement for standards of grooming and dress. The badge, when worn, represented an expression by the member that she/he was a member of an organisation of employees with the right to cover and represent employees in the workplace. Since organisations of employees primarily are involved with representing

them in the workplace, they were, as a matter of industrial fairness, given the objects of the Act and, for the reasons expressed by Isaacs, Rich and Powers JJ in the *Tramways* case (op cit), expressing the fact of their membership as they were entitled to do.

They were also doing so, by wearing badges which, on the evidence, did not offend reasonable standards of grooming, as was open to be found; nor did the badges carry material offensive to or critical of the employer, nor did they invoke customer comment or cause detriment to the employer. They were prohibited from wearing badges because they were badges without consideration of the nature of those badges.

Accordingly, given those considerations, there was an unfair infringement upon the employees' freedom to express themselves as members of an industrial organisation which represented them and others in the workplace. Further, but not essentially, their position was not markedly different from that of safety representatives who wear a not dissimilar badge. That being the case, of course, and, since there is provision for authorisation to wear certain badges such as charity badges and such authorisation is and has been given, it is not to the point that to authorise these badges would open the floodgate and create a difficult management problem.

In any event, the union badges, for the reasons which I have expressed, given their significance in the workplace, are sui generis.

Nor is it to the point that it would be impracticable to consider all requests to authorise badges on a case by case basis. A blanket ban on authorisation of badges is not what the regulations provide. It is an unreasonable policy or application of the policy because it is a blanket prohibition and yet is the subject of an exception in the case of the authorisation of charity badges.

Authorisation of badges can and does take place, notwithstanding Mr Kidd's evidence. It was not open to the Senior Commissioner to find that such considerations could fairly or validly justify the prohibition of the wearing of the appellant's badges.

There was some evidence that other employees might be offended if union badges were permitted. That was a mere opinion expressed in a vacuum and it was not apparent that it carried much weight with the Senior Commissioner. Indeed, I do not see how it could have without evidence of which there was none.

The Senior Commissioner also found that it would be difficult, in the circumstances, to refuse to allow members of other organisations of employees to wear badges. In my opinion, that is not, given the reasons which I have expressed above, a valid reason for depriving the appellant's members or the members of other organisations of the ability to promote their organisations and express their membership by wearing union badges, subject to proper and reasonable dress and grooming requirements.

An issue arose at first instance as to whether, by the prohibition of the wearing of the appellant's badges, there was the manifestation of an attitude of discrimination against the appellant by the respondent. This was denied by the witnesses for the respondent, particularly Mr Kidd. His attitude, as expressed, was that the respondent wanted to deal with the LTU because it was a party to the Burswood Agreement. There was evidence, too, from the appellant's witnesses that their organisation was being discriminated against. There was no evidence that any other organisation's members had sought to wear or were permitted to wear union badges. The Senior Commissioner found that the appellant organisation was not being discriminated against.

Having regard to the principal in *Abalos v Australian Postal Commission* [1990] 171 CLR 167 (HC), as explained in *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq)* (1999) 73 ALJR 306 (HC), it is to be presumed that the Senior Commissioner accepted the evidence of the respondent's witnesses that what occurred did not represent an act of discrimination against the appellant and its members, as he did, and their evidence that, had they seen the badges being worn, they would have directed that they be removed. Upon a reading of the evidence, there is no reason to find that he misused his advantage in seeing the witnesses.

That finding was, therefore, open to the Senior Commissioner to make.

In relation to ground 1 (which should be read with ground 3), Mr Kelly's submission was that the respondent's decision to direct that the appellant's members not wear their badges under pain of disciplinary action was within the framework of the principles in *House v The King* (HC)(op cit), unreasonable or plainly unjust. That contention was denied by Mr Le Miere for the respondent.

The relevant dictum from *House v The King* (HC)(op cit) at page 505 is as follows—

“If the judge acts upon a wrong principle, if he allows extraneous or irrelevant matters 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.”

Although not precisely pleaded in the grounds of appeal, the argument for the appellant which evolved was directed to submissions that the Senior Commissioner acted in part upon a wrong principle and did not or did not properly take into account material considerations.

For the reasons which I have expressed above, namely that the unilateral ban on badges, but not charity badges, was unreasonable, that the badges worn were not contrary to a proper standard of grooming and dress to the employer, or detrimental to the employer or its business, not complained of by customers, that the wearing of the badges was consistent with the objects of the Act, namely s.6(e) and further and alternatively, s.6(f), that the proper and fair exercise of the employer's discretion to authorise badges would have resulted in no prohibition, that the failure of the appellant to seek that authorisation should not have constituted an obstacle to authorisation, given all of the circumstances, that the threat to discipline the appellant's members for wearing the badges was an industrially unfair infringement upon the proper ability of the members whom the appellant represented to express their membership in the workplace, promote their organisation and their interests as members of it in accordance with the objects of the Act and that clear ability to express themselves freely in the workplace was unfairly infringed upon.

The direction was unreasonable and unfair, represented also a harsh, oppressive or unfair exercise of rights under the contract, and the finding that it was not so represented a miscarriage of the Commission's discretion, such as to warrant the Full Bench substituting its decision for that of the Commission at first instance.

Ground 2

This ground challenges the Commission's finding that there was a condonation of the wearing of badges. I do not think that condonation is the correct term. There was alleged a waiver or even an acquiescence. The appellant's badge was, on the evidence, worn from 3 September 1998 until May 1999 when the respondent began to take disciplinary action, a period of nine months. This situation continued, notwithstanding the policy against badges and the weekly checks.

The evidence of employees was that persons were not dealt with in relation to other badges like football badges. Charity badges were generally in different case because there was approval of them and they were authorised by the respondent.

There is no record of a person being dealt with in relation to badges, except for wearing a badge on their identification badges (see exhibit T (see pages 274-384 (AB))).

There is evidence of some enforcement of the no badge policy, but not of minimal enforcement by about 60 pit bosses. Against that, there have been memoranda in January 1998, for example, on this subject.

There is no evidence of condonation as such, even if the doctrine of condonation was applicable, in any event, because there was enforcement of the policy in relation to the badges. It was submitted that the prohibition of badges was,

therefore, more related to the discouragement of the appellant's enterprise bargaining campaign.

The Commission at first instance made a finding that from time to time the witnesses for the appellant wore badges and when they claim to have done so, but no finding otherwise about the wearing of badges. The Commission, having found no condonation, it was submitted, the doctrine in *Abalos v Australian Postal Commission* (HC)(op cit) was applicable, as was the ratio in *Devries and Another v Australian National Railways Commission and Another* [1992-1993] 177 CLR 472 (HC) per Brennan CJ, Gaudron and McHugh JJ at page 479.

In particular, the Commission at first instance accepted the evidence of the witnesses called on behalf of the respondent that they did not see the employees wearing union badges and if they did they would have asked them to remove them. There was evidence to this effect from Mr Kidd, Ms Mandy Kaye Italiano, Ms Josephine Ann Italiano and Ms Kathleen Jan Drage, as well as Ms Antoinette Brenda Cope.

The Senior Commissioner's finding that there was no “condonation” was reasonably open on the evidence and there was no error. That ground is not made out.

Ground 4

There was no evidence that the badges were visually or otherwise exceptionable. Indeed, there was evidence to the contrary and a finding should have been made accordingly, for the reasons which I have expressed above.

FINALLY

For those reasons, I find that the exercise of the discretion at first instance miscarried. I find, for those reasons, that the exercise of the discretion was unfair or unreasonable and/or erroneous otherwise. However, because of the order expressly sought, I would suspend the decision at first instance and remit the matter to the Commission at first instance to be heard and determined according to the reasons of the Full Bench and according to law.

COMMISSIONER A R BEECH: The background to this matter is set out in the Reasons for Decision of His Honour the President and I do not need to repeat it here. It is appropriate to deal with the union's grounds of appeal in the order they were addressed by the union. In its second ground of appeal, the union attacks the finding of the Commission at first instance that the respondent had not condoned the wearing of union badges. The union argues that this finding is contrary to the evidence. The union points to the evidence before the Commission at first instance of four or five employees who had worn a union badge without complaint from the respondent between September 1998 and May 1999, a period of some nine months. The Commission at first instance acknowledged that this had occurred. It cannot be said that the Commission at first instance did not take that evidence into account. It clearly did so. The Commission at first instance equally took into account the evidence of witnesses called on behalf of the respondent to the effect that they did not see employees wearing the badges and, if they had done so, they would have asked the employees to remove the badges. It cannot be said that the Commission at first instance erred in accepting the evidence of witnesses called on behalf of the respondent. Their evidence was supported by the evidence that not each of the four or five employees had worn the badge every single day during that period. Further, it is not insignificant that the colour of one of the union badges was consistent with the colour of the uniform such that the badge “just blended in pretty much, you couldn't really see them that well” (AB 26).

The union says that the Commission at first instance erred in that insufficient regard was had to other evidence, particularly a staff record book of infringements of grooming standards which the union states shows that for the period when the employees were wearing the union badges the grooming standards were not “applied in a serious fashion” (transcript p.6). The complaint of the union is that insufficient weight was given to the evidence of the staff record book. The difficulty which the union faces, as it correctly acknowledges, is that the question of weight poses particular problems in appeals from discretionary judgements (*Lovell v Lovell* (1950) 81 CLR 513 at 519 as cited in *AMWSU v RRIA* (1989) 69

WAIG 985 (Stott's case) per Kennedy J at 988). In the absence of the Commission at first instance excluding relevant considerations, or including irrelevant considerations, then an appellate tribunal should not set aside an order made unless the failure to give adequate weight to relevant considerations really amounts to a failure to exercise the discretion actually entrusted to the Commission. The Commission at first instance did take the staff record book into account. It concluded from the staff record book that at least from January 1998 the employer had consistently applied its policy of no unauthorised badges or jewellery. That conclusion was open on the evidence. The Commission did not refer to the contents of the staff record book in the detail referred to by the union. However, there is evidence elsewhere that not all infringements noted by pit bosses were written into the book. That lessens the effectiveness of the evidence referred to by the union and makes it more difficult for the union to show that the failure to refer to the contents of the staff record book amounts to a failure on the part of the Commission to exercise discretion.

Further, it could only be validly argued that the respondent had condoned the wearing of badges if it had done so with a full knowledge that the employees were wearing badges (*Australasian Transport Officers v. The Department of Motor Transport* (1988) 25 IR 235 at 244; *Woolworths (Western Australia) Limited v. Locke* (1983) 63 WAIG 1907 at 1908). There is certainly evidence that some pit bosses had not requested employees wearing union badges to remove them when the pit bosses had noticed the badges. However, there was also evidence that in the context of a large workforce working shifts some pit bosses had been less diligent than others in enforcing the respondent's policy. Accordingly, it was open to the Commission at first instance to reach the conclusion that it did that the respondent itself had not sanctioned the wearing of union badges. In the context of the evidence overall, the evidence that on one occasion the vice president of gaming was aware of a union badge being worn yet appeared to accept the employee's assertion that she had the right to wear it cannot alone amount to condonation.

The union is correct in pointing out that the Commission at first instance did not refer to the performance appraisals in his Reasons. This is a reference to the evidence before the Commission (at AB 233) that three employees had performance appraisals of them done by the respondent and even though they had been wearing the union badges the appraisals indicated that—

Grooming and presentation are good in keeping with job requirements (as outlined in the Employee Handbook).

It is not necessary for the Commission to refer to all of the evidence in its Reasons for Decision (*re FMWU Rules* (1985) 65 WAIG 2033 per Brinsden J at 2034) and where the decision of the Commissioner at first instance was one that was reasonably open on the evidence, the failure of the Commission at first instance to state all of the reasons for reaching its conclusion will not be fatal on appeal. Although the Commission at first instance did not refer to the performance appraisals in his Reasons the effectiveness of the evidence of the appraisals is considerably lessened by the later evidence from two staff members who did two of the appraisals that they had not been aware at the time of the appraisals that the employees were wearing a union badge and that if they had been aware they would have asked the employees to remove it (AB 130, 133). The evidence of the performance appraisals is thus not as significant as the union would have it and it follows that the failure of the Commission at first instance to refer to them does not amount to a failure to properly exercise a discretion. Ground 2 is not made out.

Ground 3 is that the Commission at first instance erred in finding that the respondent's policy is not an unreasonable infringement on an employee's right to freedom of speech and/or expression. The union referred in general terms to the evidence before the Commission at first instance that the employees wore the union badge to promote the union and enterprise bargaining. It argues that the promotion of enterprise bargaining in the workplace and the use of the union badge to promote collective bargaining was something that was recognised as valid by the High Court in the *Tramways* case (*Australian Tramways Employees Assoc v Prahran and*

Malvern Tramways Trust (1913) 17 CLR 680). The union refers to the passage by Isaacs and Rich JJ at pp 694/5—

Everyone knows, and this very contest indicates, that the use of the badge by the employees is a substantial means of strengthening their industrial position relatively to their employers – and thereby both of protecting their existing rights and of obtaining larger rights. Whether in any particular case the result be fair or unfair, just or unjust, we of course express no opinion whatever; that is for another tribunal.

The union argues, therefore, that a union badge should not be regarded as merely another item of jewellery in the context of the respondent's policy because it is recognised as having special significance in industrial relations between employees and employers. The union links that recognition to the object of the Act "to encourage the formation of representative organisations of employees". The union acknowledges that the wearing of the badge needs to be balanced against the rights of the employer to set a reasonable standard for grooming and require observance of that standard. It submits, however, that the evidence did not demonstrate any material detriment to the respondent by the wearing of the badge and that further the respondent sanctions the wearing of some badges such as language or service badges.

The wording of this ground of appeal is not without its difficulties. As the union itself acknowledges, and as the Commission at first instance found, there is no authority for the proposition that employees have an absolute right to freedom of speech or expression as its wording of this ground of appeal suggests. In its submissions in support of the ground the union emphasises the recognition in the *Tramways* case of a special significance of employees wearing a union badge and the object of the Act "to encourage the formation of representative organisations of employees" to draw a distinction between a union badge and ornamental badges or jewellery and I read the ground in that context.

As the concluding sentence from the passage of the *Tramways* case to which I have referred indicates, the wearing of a union badge by employees may, in any particular case, result in a fair or unfair outcome. Whether or not it will do so will be a matter for the Commission in each case. In this case, the manner in which the case was presented to the Commission at first instance did not strictly follow the terms by which the matter had been referred for hearing and determination. Rather the issue to be determined by the Commission was seen to be "whether the respondent's policy with respect to grooming so far as it applies to the wearing of union badges in particular is unreasonable" (AB 224). The union is correct, in my respectful view, in submitting that in the context of that issue the Commission was required to balance the reasons advanced by the employees for wearing the badge against the right of the employer to set reasonable standards of dress. For the Commission to decide whether the respondent's policy with respect to grooming so far as it applies to the wearing of union badges in particular is unreasonable would require it to take into account the relevant evidence before it about why the badge was worn.

That evidence, which was referred to in general terms by the union in its submissions in support of this ground of appeal, concerned not only a desire to promote the union at a time of a "heavy recruitment campaign" but also that it showed who could be approached regarding industrial matters (AB 49, and see too AB 25, 57, 61 and 83) and that it might help in pushing forward negotiations for enterprise bargaining (AB 72). It is not apparent the extent to which the Commission took that evidence into account in its reasoning. Although the Commission observed that some employees began to wear the badge to essentially advertise their membership, in the context of the issue to be determined by the Commission, the comments in the *Tramways* case and the object of the Act to encourage the formation of representative organisations of employees, that evidence suggests a more positive role for wearing the badge than advertising. I conclude that insufficient weight was given to that evidence.

The union also referred to the evidence that there was no material detriment to the employer in the wearing of a union badge. That is also the substance of ground 4. In ground 4 the union argues that the Commission at first instance gave insufficient weight to "the uncontradicted evidence that the union

badge did not interfere with the visual impact made by employees' uniforms to the public". There was evidence to the effect that the visual impact of the badges was negligible in that they do not offend the grooming regulations (AB 158). In the context of the presentation of the employees to the public and the requirement of the respondent that employees be neat, clean and tidy the wearing of the badge had no impact (AB 159). The average patron is unlikely to know the difference between the union badges and the badges otherwise approved by the respondent (AB 158).

For its part the respondent submits that the visual impact of the badge is not to the point. It is a condition of the terms of employment that no ornamental jewellery, buttons or badges may be worn. The physical appearance of the badge is irrelevant to the respondent: the issue is that no badges at all are to be worn.

Although the union's appeal ground is that the Commission at first instance gave insufficient weight to the evidence regarding the visual impact of the badge it is more accurate to state that the Commission did not refer to it at all. The conclusion of the Commission at first instance was that the respondent's prohibition of all badges other than ones specifically designated as assisting the respondent's public image was not unreasonable. While the concept of what may or may not be reasonable is not a fixed concept and there is a band of reasonableness within which one person might reasonably take one view while another might reasonably take another view, in giving consideration to whether the respondent's policy with respect to grooming so far as it applies to the wearing of union badges in particular (emphasis added) is unreasonable, the particular badge itself is a relevant consideration. While I recognise that from the point of view of the respondent, the issue is its entitlement to set uniform grooming presentation standards, especially in this industry, the issue to be determined by the Commission was wider than that entitlement. In deciding that wider issue it was relevant to consider whether, and if so the extent to which, those uniform grooming presentation standards set by the respondent are affected not just by the wearing of any unauthorised jewellery or badges but by the particular badges concerned. There was evidence, as the union has indicated, which might permit the conclusion that there was no, or negligible, detrimental effect upon the respondent's uniform grooming presentation standards. That evidence might permit a different conclusion regarding the reasonableness or otherwise of the respondent's policy with respect to grooming so far as it applies to the wearing of union badges in particular.

In the circumstances, I consider that the appeal should be upheld. A conclusion of whether or not the respondent's policy with respect to grooming so far as it applies to the wearing of union badges in particular is unreasonable should take into account the evidence regarding the visual impact of the badge and the relevant evidence before it about why the badge was worn. That conclusion is a matter for the Commission at first instance and I agree that the matter should be remitted for further hearing and determination. I have not found it necessary to deal with the union's ground 1. In that ground the union argues that the Commission at first instance erred in finding that the respondent's policy prohibiting the wearing of union badges is not unreasonable. The wording of that ground incorporates much of ground 3 and I have nothing to add to the Reasons I have given in relation to ground 3.

COMMISSIONER J H SMITH: The Appellant organization appeals against the decision of the Senior Commissioner dismissing its application for a declaration—

"That in all circumstances it will be harsh, oppressive or unfair for the Respondent to penalize, dismiss or in any other way discipline or disadvantage and employee because—

- (a) the employee chooses to wear the membership badge of the union whilst performing their work for the employer and/or
- (b) the employee does not comply with an instruction from the Respondent not to wear the membership badge of the union whilst performing their work for the employer."

The Commission made a number of findings at first instance that are not challenged by the Appellant. These are—

- (a) It is a term of the contract of employment of all employees of the Respondent that they observe all of the Respondent's policies and procedures and the rules and regulations as outlined in the Employees Handbook.
- (b) It is a term of contract that the employee must not wear any badge on their uniform unless issued or otherwise authorized by the Respondent, as the grooming regulations set out in the Employees Handbook prohibits the wearing of badges and the like on uniforms unless issued or otherwise authorized by the Respondent.
- (c) The Burswood International Resort Casino Employees Industrial Agreement 1997 provides that where the Respondent supplies uniforms, the employees are obliged to wear those uniforms at all times and in line with the Respondent's standards.

The Senior Commissioner found in essence that the Appellant sought a declaration that its members be allowed to wear union badges whilst performing their work, notwithstanding anything contrary in either the contracts of employment, or the industrial award, or enterprise agreement regulating their employment.

In January 1998 the Respondent notified all of its staff that it intended to monitor grooming inspections by requiring pit bosses to scrutinize grooming on a daily basis by inspecting uniforms and the appearance of each employee under their supervision. The pit bosses were directed to record any breaches of the grooming standards in a staff record book. The staff were notified of this by memorandum circulated by the Gaming Shift Manager, Kim Smith.

The staff record book, recorded that between January 1998 and May 1999 there were 49 incidents of employees being required to remove unauthorized badges from their uniforms. Most of these incidents occurred prior to July 1998. The Appellant points out that only 15 of these incidents occurred after July 1998 and prior to May 1999.

Whilst the staff record book does not generally reveal the type of badge in each case, it appears from some of the entries in the book and from the evidence given by a pit boss Ms Drake, that some of the breaches related to ornamental badges and charity badges. Ms Drake said that not all incidents of badge wearing were recorded in the staff record book by pit bosses.

Each of the Appellant's witnesses said that they first started wearing a LHMWU badge in September 1998 following a meeting of the committee of management of Burswood Resort Union of Employees, a division of the Appellant organization ("BRUE"). At that meeting it was agreed to begin development of BRUE badges. Ms Clayton, Mr Farrell, Mr Mellor, Mr Millian, Mr Koutsoukos, said they wore the LHMWU badges from September 1998 until the BRUE badges became available in June 1999. After the BRUE badges became available they wore the BRUE badges.

In relation to the frequency of the wearing of the union badges Ms Clayton said that she did not wear her LHMWU badge every day, as she sometimes gave the badge to other delegates to wear until she was able to get another one. She also said that she did not wear the BRUE badge if she worked in the private rooms and she did not wear the BRUE badge on particular uniforms.

Mr Farrell said that he wore a union badge every day and the only time he was challenged about wearing a badge was by his pit bosses in January 1999. He said he was asked by his pit bosses if he was allowed to wear the badge. He said he replied he was entitled to do so as a High Court case allowed him to do so.

Mr Mellor said that he would wear his badge on his jacket or on his identification badge. He said he was not spoken to by anyone from management about wearing the LHMWU badge but that he was asked on several occasions by his pit bosses to take his BRUE badge off.

Mr Millian gave similar evidence. Neither Mr Mellor nor Mr Millian was asked if they wore the union badge every day between September 1998 to June 1999.

Mr Koutsoukos said he wore a union badge every day from September 1998 until July 1999 when he was asked to remove a BRUE badge.

Ms Clayton said following the meeting in September 1998 seven employees started to wear the LHMWU badge. Although Ms Clayton said that she gave her union badge to other delegates to wear there was no clear evidence before the Commission as to how many employees of the Respondent came to wear the LHMWU or the BRUE badges at any one time.

The Appellant invited the Full Bench to consider the grounds of appeal by first considering Grounds 2, 3 and 4. The Appellant presses Ground 1 as an alternative ground, which it says is only necessary to be considered by the Full Bench, if Grounds 2, 3 and 4 are not made out.

Ground 2

The Appellant contends that the Senior Commissioner erred in finding that the Respondent had not condoned the wearing of union badges.

The Appellant argues that the Senior Commissioner's finding is contrary to the evidence.

In *Abalos v Australian Postal Commission* (1990) 171 CLR 167 at 178 McHugh J (with whom Mason CJ, Deane, Dawson and Gaudron JJ agreed) pointed out with reference to the trial judge—

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

In *Devries v Australian National Railways Commission* (1993) 177 CLR 472 at 479, Brennan, Gaudron and McHugh JJ said—

“... If the trial judge’s finding depends to any substantial degree on the credibility of the witness, the finding must stand unless it can be shown that the trial judge ‘has failed to use or has palpably misused his advantage’ (*SS Hontestroom v SS Sagaporack* [1927] AC 37 at 47) or has acted on evidence which was ‘inconsistent with facts incontrovertibly established by the evidence’ or which was ‘glaringly improbable’ (*Brunskill* (1985) 59 ALJR at 844; 62 ALR at 57).”

In *State Rail Authority of New South Wales v Earthline Constructions Pty Ltd* [1999] HCA 3 (1999) 73 ALJR 306, a case involving allegations of fraudulent claims for payment by construction contractors, findings by the trial judge based on an adverse view of the credibility of a witness were overturned because insufficient account had been taken of a body of documentary evidence which supported the evidence of the witness. Gaudron, Gummow and Hayne JJ referred to the passage from *Devries* above and said at [3] – [4]—

“Deane and Dawson JJ pointed out in the same decision that no short exhaustive formula, such as ‘glaringly improbable’, meets every case. [*Devries* (1993) 177 CLR 472 at 480]

[4] The gravamen of the appellant’s complaint in this court is the failure by the intermediate court of appeal to accept that the adverse finding by the trial judge with respect to the evidence of one of its witnesses attracted the application of the statement by Jacobs J in *Agbaba v Witter* [(1977) 51 ALJR 503 at 508]. His Honour gave, as an example where primary findings based on credibility of witnesses might be displaced, a case—

‘where in a complex pattern of events incontrovertible evidence can only be fitted into the pattern if a different view of the credibility of a witness is taken by the court on appeal.’”

In my opinion, this is not a case in which the Senior Commissioner has misused his advantage by acting on evidence which was inconsistent with facts incontrovertibly established by the evidence or accepting evidence that was improbable, notwithstanding that it was given by witnesses whom the Senior Commissioner regarded as otherwise credible.

The Senior Commissioner in his reasons for decision accepted the evidence of the witnesses called on behalf of the Appellant that from time to time they wore union badges as and when they claim to have done so. He also accepted the evidence of the witnesses called on behalf of the Respondent. In my view the issues raised by the Appellant in relation to this ground of appeal do not depend to any substantial degree on credibility. The gravamen of the Appellant’s complaint in Ground 2 of the Appeal is that the Senior Commissioner failed to have sufficient regard to all relevant evidence. In particular, the Appellant says that the Senior Commissioner’s finding is contrary to the following evidence—

- (a) The staff record book shows less than 10 percent of the pit bosses ever enforced the general no badges policy and no pit bosses ever asked an employee to remove a union badge prior to the Respondent’s actions in May 1999.
- (b) The staff performance development appraisal forms of Ms Clayton, Mr Koutsoukos and Mr Millian. Each of those documents records that the person who conducted the staff performance review indicated (by ticking the box grooming and presentation) that the grooming and presentation of the employee in question is good and in keeping with job requirements as outlined in the Employees Handbook.
- (c) Evidence given by Ms Clayton that Mr Paul Symons, the Vice President of Gaming, observed her wearing a union badge whilst she was standing at the roster board. The substance of her evidence was as follows: She said, “I was standing at the board and he noticed my badge as well and he asked me what was I doing wearing the badge and again I said that I was allowed to wear it because under the High Court decision of the Tramway I could wear it, and he went, “I see,” and never said anything more about it.” She also said that she had comments from pit bosses that the BRUE badges were very nice and that she was never questioned about wearing the LHMWU badge.

The Appellant says that the staff record book establishes that the Respondent did not require any of its employees to remove a union badge from July 1998 until May 1999. The Appellant says that the staff record book should be considered in light of the evidence of Ms Clayton and the other Appellant’s witnesses that after the union meeting on 3 September 1998 a group of casino employees began wearing a LHMWU union badge. It is argued by the Appellant that the staff record book is evidence that the Respondent condoned the wearing of union badges in that period of time. However the staff record book does not substantially assist the Appellant. Firstly the Appellant says that there are 15 entries of enforcement of the no badges policy after September 1998 and prior to May 1999.

Secondly as the Respondent points out the staff record book is not a complete record. For example when Ms Clayton was asked by a pit boss to remove a BRUE badge in late May 1999, that incident is not recorded in the staff record book.

A major difficulty with the Appellant’s contention that only a small number of pit bosses enforced the no badges policy is that it can be inferred from all of the evidence that there were only a small number of persons wearing union badges at any one time in a large workplace. Mr Kidd the Respondent’s Vice President of Human Resources gave evidence that the Respondent has some of 3,500 staff. He said that it was not surprising that not all of the Respondent’s managers were up to speed with the obligations to enforce compliance with the grooming regulations. He said he first became aware that union badges were being worn in the Casino in June 1999 when BRUE badges began to be worn.

The Respondent’s wardrobe manager Ms Josephine Italiano gave evidence that she and other supervisors conducted grooming checks by walking the floor twice a week and that she had never during the course of those grooming checks seen any employees wearing any union badges. She acknowledged that given the number of employees, it was possible that some employees had worn a union badge and that she had not seen them do so. The Senior Commissioner accepted her evidence.

The Respondent’s gaming shift manager Ms Cope said that 50 pit bosses work under her supervision. She said she only

became aware that staff were wearing union badges shortly before she received a copy of a memorandum dated 1 June 1999 from Ms Lloyd a Human Resources Officer in which Ms Lloyd addressed and refuted Ms Clayton's claim that the High Court decision in *Tramway* gave her the right to wear a union badge.

In relation to the appraisal forms, each were tended by consent after Messrs Millian and Koutsoukos and Ms Clayton gave evidence. For some reason the parties agreed that it was not necessary to recall any of those witnesses. Consequently none of the employees were asked whether they were wearing union badges at the time of the appraisal.

In relation to Ms Clayton's performance appraisal, Ms Mandy Italiano a pit boss gave evidence that she completed Ms Clayton's performance appraisal on 21 May 1999. Ms Mandy Italiano said that at the time she completed the report Ms Clayton was not wearing a union badge.

As to Mr Koutsoukos' performance appraisal report, Ms Ria, an Environmental Services Supervisor, said that she completed Mr Koutsoukos' appraisal on 27 June 1999 and 2 July 1999. She said that at the time the report was completed he was not wearing a union badge. She also said that at the time she completed the report she was not aware that he had previously worn a union badge.

In respect of Mr Millian's performance appraisal report the person who completed his appraisal report did not give evidence. However Ms Drake said that she had regular contact with Mr Millian as a pit boss and that she had never seen him wear a union badge.

It is my view that the performance appraisal reports do not substantially assist the Appellant in its argument. As to Ms Clayton, her evidence was that she did not always wear a union badge each day. As to Mr Millian, there is no direct evidence that he was wearing the badge on the day the appraisal was carried out. In relation to Mr Koutsoukos' appraisal report, Ms Ria's evidence is that he wore a union badge every day. In any event, even if all three employees were wearing a union badge at the time the performance appraisal reports were completed, that evidence in itself would be insufficient to establish that the Respondent condoned the wearing of union badges given that there are 50 pit bosses and Ms Clayton, Mr Millian and Mr Koutsoukos are three of 3,500 employees. Further the appraisal reports are consistent with the Senior Commissioner's finding that some pit bosses had been less diligent than others in enforcing the Respondent's grooming policy.

As to Ms Clayton's evidence that Mr Symons, the Vice President of Gaming, did not challenge her when he saw her wearing a BRUE badge, when this event is said to have occurred is not clear.

Having considered all of the evidence referred to by the Appellant and its submissions, I find there is no merit in Ground 2 of the Appeal.

Ground 3

The Appellant contends in this ground that the Senior Commissioner erred in finding that the Respondent's policy prohibiting the wearing of union badges is not an unreasonable infringement on an employee's right to freedom of speech and/or expression.

As Mr Le Miere QC points out, the Appellant's case is not that the Respondent should authorize the union badges but that the Appellant's members have a right to wear a union badge.

Mr Kelly on behalf of the Appellant argues that the right to wear a union badge arises out of the objects of the Industrial Relations Act 1979, namely "to encourage the formation of representative organizations of ... employees". The Appellant argues that the right to wear a badge arises out of the right of persons and unions to organize.

Mr Kelly on behalf of the Appellant conceded that he was not able to cite any authority that establishes the proposition that the wearing of a union badge in a workplace is a right recognized at law. In particular he conceded that the implied constitutional guarantee of freedom of communication and discussion as to political matters that precludes the curtailment of the protected freedom by the exercise of legislative and executive power considered in *Lange v Australian*

Broadcasting Corporation (1997) 189 CLR 520 has no application to this matter.

The implied limitation has no application to this matter for two reasons. Firstly the implication is negative in nature: it invalidates laws and executive action. Secondly the implied limitation confers no rights on individuals. (*Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520 per Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow, Kirby JJ at 560)

It is also conceded by the Appellant that the decision of the High Court in *The Australian Tramway Employees Association v The Prahran and Malvern Tramway Trust* (1913) 17 CLR 680 ("the *Tramway* case") is not authority for the proposition that employees have a right to wear union badges in the workplace. Mr Kelly however argues that the observations of Isaacs and Rich JJ at 694 in the *Tramway* case establish the proposition that the wearing of a union badge by employees is an integral part of the right of employees to organize. The Appellant contends however that the Commission should wherever possible uphold the principle that employees should be entitled to freedom of expression on matters which directly affect and relate to their employment, such as the right to promote your union and the right to enterprise bargaining.

Ms Clayton said the purpose of wearing the union badge was to show that the belief in union was strong at a time when people were scared to stand up and be noted as to who they were. She also said it was the beginning of unity within the workforce and the badge allowed people to know who to come to, to speak about the union. Mr Mellor and Mr Koutsoukos also said the badge showed people they were a member of the union and they were someone they could talk to if they had problems or queries about it. Whilst evidence was given by the Appellant's witnesses that the Respondent was "anti-union" and had refused to deal with them ("the union"), there was no evidence that if employees could not wear the union badges their capacity or the union's capacity to organize would or could be interfered with. More importantly the Appellant did not run its case at first instance or in the appeal on this basis.

Although the Senior Commissioner had regard to the object in s.6(e) of the Industrial Relations Act 1979 ("the Act") which is to "encourage the formation of representative organizations of ... employees", he also had regard to the object in s.6(d) of the Act which is "to provide for the observance and enforcement of agreements". The Appellant does not dispute the finding made by the Senior Commissioner that Clause 26(4) of the Burswood International Resort Casino Employees Industrial Agreement 1997 requires that where uniforms are supplied, employees are obliged to wear those uniforms at all times and in line with the Respondent's standards. Both objects of the Act are relevant to this Appeal. The Appellant contends in its written submissions that the provision in the Industrial Agreement is restricted to the wearing of uniforms and not to wearing a union badge. Alternatively it says that Clause 26(4) should be interpreted by only requiring compliance with the standards, where these standards are reasonable. In my view the Appellant's arguments have no merit, as the words in Clause 26(4) are clear and unambiguous.

Further, it is not necessary to consider whether any conflict between the objects of the Act arise in this matter. In my view the Senior Commissioner properly found that employees do not have an absolute right to freedom of speech or expression. Whilst a right to organize may arise out of the object of the Act in s.6(e), in the absence of any evidence that a restriction on the wearing of union badges is likely to restrict the Appellant or its members in its ability to organize as a union, or to enterprise bargain, it cannot be concluded that the Senior Commissioner erred in failing to find that the application of the standards of grooming in this case constituted an undue infringement on the right to organize. If such evidence had been given and the hearing and appeal run on a different basis, the outcome may have been different.

Accordingly it is my view that Ground 3 is not made out.

Ground 4

The Appellant contends that the Senior Commissioner gave insufficient weight to uncontradicted evidence that the union badge did not interfere with the visual impact made by the employees' uniforms to the public.

The question at law in this ground of appeal is whether in the exercise of his discretion the Senior Commissioner has erred by failing to take into account some material consideration within the meaning of the principles outlined in *House v King* (1936) 55 CLR 499.

The Appellant essentially contends the grooming policy is about the visual impact on the public in relation to the uniform presentation of all staff. It says the badges are too small to impact on the standards of uniformity in a way that is unacceptable. The difficulty with the Appellant's case is that it does not contend that in relation to the LHMWU or BRUE badges that the Respondent should grant permission to its employees to wear the badges. To do so would be within the provisions of the grooming standards, as the grooming standards expressly provide for the Respondent's representative, the Wardrobe Manager to approve the wearing of badges. The Appellant's case was that it did not require permission, that is, it did not seek permission, nor did it contend that permission to wear the badges was unreasonably withheld by the Respondent. That argument could have been put, as the badges are as the Appellant contends, small. However its case was that its members had a right to wear a union badge and that the grooming standards were unfair, so that the Commission should make an order that the Respondent's employees be allowed to wear the badges, notwithstanding anything contrary in their contracts of employment and the Industrial Agreement.

It is well settled that the principles governing interference by an Appellant body with the exercise of a discretionary judgment at first instance is the existence of an error of law or fact as an indispensable condition of a successful appeal. It is not enough that the Appellant body considers that if they had been in the position of the primary decision maker they would have taken a different course. It must appear that some error has been made in the exercise of the discretion within the principles set out in *House v King* at 504—505.

The Respondent says that the visual appearance of the badge is not a relevant consideration in relation to the Respondent's policy in respect of its prohibition on badges. Its prohibition applies to badges of all sizes. Mr Le Miere QC submitted that it is not a question of the appearance of the particular badge, whether it is small or large, the issue is uniformity and standards in grooming. The Respondent contends that the policy is the most practical way to ensure uniformity of appearance and high standards of presentation and grooming. The Senior Commissioner accepted the Respondent's submissions.

It is my view that the Appellant's case does not reveal an identifiable error within the principles considered in *House v King*. I agree with the Senior Commissioner's finding that the policy assists the Respondent to ensure a high standard of presentation through uniformity, which is important in the Casino industry.

Accordingly it is my view that Ground 4 is not made out.

Ground 1

The Appellant contends that the Senior Commissioner erred in the exercise of his discretion in finding that the Respondent's policy prohibiting the wearing of union badges is not unreasonable.

The Appellant says that the decision of the Senior Commissioner is plainly unjust, unreasonable and that a substantial wrong has in fact occurred. However the Appellant is unable to identify any specific error other than to say that the Respondent's policy in respect of the wearing of union badges is unfair and that the Respondent's advice to its employees that if they are to wear a union badge they will be disciplined, whereby if the badge is continued to be worn by an employee, the employee in question will be terminated. Mr Kelly on behalf of the Appellant contended that the policy is untenable unless there is some material reason why the wearing of a union badge interferes with the legitimate rights of employer. The Appellant's argument is in my view predicated upon its argument in relation to Ground 3. This argument is difficult to maintain in light of the fact that the Appellant does not directly challenge the findings of fact made by Senior Commissioner that the no badges policy is a contractual condition of, and is arguably a term of, an Industrial Agreement.

If there was any evidence before the Commission that it was necessary for employees of the Respondent to wear a

union badge to organize, or that the threat of not being able to do was likely to mean that the ability of the employees or the union itself to organize, was impeded in some way, the Appellant's argument may have had some merit. In the absence of evidence of any impairment it is my view it is difficult to hold that the Senior Commissioner erred in the exercise of his discretion.

In all the circumstances I would dismiss the appeal.

PRESIDENT: For those reasons, the appeal is upheld. The order made at first instance is suspended and the matter is ordered to be remitted to the Commission, as constituted at first instance, to be heard and determined in accordance with the reasons for decision of the majority of the Full Bench, expressed in relation to Grounds 3 and 4, and otherwise, according to law.

Order accordingly

APPEARANCES: Mr D J Kelly on behalf of the appellant

Mr R L Le Miere (of Queens Counsel), by leave, and with him Mr B Di Girolami (of Counsel), by leave, on behalf of the respondent

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood Resort (Management) Ltd
(Respondent).

No FBA 30 of 1999.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER A R BEECH
COMMISSIONER J H SMITH.

30 March 2000.

Supplementary Reasons for Decision.

THE PRESIDENT: The Full Bench issued Minutes of Proposed Order in this matter on 15 March 2000, in accordance with its reasons for decision issued on 15 March 2000.

The respondent sought to speak to the Minutes of Proposed Order and proposed an amendment to those Minutes before they issued as an order. The proposed amendment was that Order 3 in the Minutes of Proposed Order be amended by substituting therefor the following—

“3. THAT the order made at first instance in application No CR 159 of 1999 be and is hereby suspended and the matter be remitted to the Commission, as constituted at first instance, to be heard and determined according to law.”

The crux of the submissions for the respondent was that the Senior Commissioner had been found to have erred in the exercise of his discretion and the matter was remitted to him to exercise his discretion afresh, because the Full Bench decided not to exercise its own discretion. Thus, the Full Bench cannot partly exercise its own discretion by instructing the Senior Commissioner of the comparative weight to be given to relevant considerations.

I agree that an appeal is determined in accordance with the opinion of the majority as to the order which gives effect to the legal rights of the parties, irrespective of the steps by which each of the members of the majority reaches the conclusion. The Full Bench was referred to *Hepples v Federal Commissioner of Taxation (No 2)* (1992) 104 ALR 616 at 617. In that case, the court observed that an appeal from a final judgment which, if successful, could conclude the rights of the parties, has traditionally been determined according to the opinion of a majority as to the order which gives effect to the legal rights of the parties, irrespective of the steps by which each of the justices in the majority reaches the conclusion (see also the

notes in (1940) 23 ALJ 355 and (1950) 66 LQR 298 and in *Commonwealth v Verwayen* (1990) 170 CLR 394).

But, when an issue of law is determined for the purposes of proceedings pending in a court or tribunal, an order on appeal must declare the majority "opinion" as to the issue of law, irrespective of any conclusion as to the ultimate rights of the parties to which the reasons of the respective justices would lead.

In this case, the appeal was one from a final judgment which concluded the rights of the parties. The rights of the parties in this matter with which the appeal before the Full Bench was concerned, were rights pertaining to the upholding or the dismissing of a decision on an application pursuant to s.44 of the Industrial Relations Act 1979 (as amended).

That involved a decision, in this case, that the exercise of the discretion miscarried and that the rights of the parties were to have the matter dealt with. The Full Bench, because it was not sought that it do so, did not substitute the exercise of its own discretion. What the Full Bench did find was that the exercise of the discretion miscarried and the majority gave reasons for so finding. However, it would be quite wrong for the Commission, as constituted at first instance, to make findings contrary to those made by the Full Bench.

However, it is clear, from the reasons for decision and as a matter of law, that the Senior Commissioner cannot exercise a discretion which repeats the errors identified by the Full Bench. If the order is that the matter be heard and determined according to law, then to repeat the errors identified in the reasons for decision of the Full Bench would be to not hear and determine the matter according to law and to repeat any errors in the exercise of the discretion.

It is, I think, erroneous to apply rules of the doctrine of precedent to this matter. The Commission, as constituted when the matter is remitted, is required to deal with the matter in accordance with those principles of law which the Full Bench applied and in accordance with its findings. To do otherwise would be to fall into errors already identified.

Accordingly, whilst I was of the opinion that the order should be amended to reflect the ultimate decision as to the rights of the parties, I am also clearly of the opinion that the decision should express the fact that the appeal was upheld by both members of the majority of the Full Bench in relation to Grounds 3 and 4 to make it clear that the Commission at first instance not repeat the errors identified in those grounds.

I would also add that, because, as I understood part of Mr Le Miere's submissions on behalf of the respondent, he submitted that parts of the minority's reasons for decision coincided with a part of one member of the majority's decision, the reasons for decision of the minority cannot form part of the ratio or, by definition, part of the reasons which bind the Commission at first instance.

It remains open, however, in my opinion, to argue on a future occasion that the Commission at first instance, as a matter of law, cannot repeat any of the errors identified in the reasons for decision of the majority of the Full Bench.

I have considered all of the submissions and relevant material. For those reasons, I agreed with my colleagues to issue an order herein in the terms in which such order issued.

COMMISSIONER A R BEECH: My Reasons for agreeing at the conclusion of the Speaking to the Minutes that an order should issue in the terms that it did can be shortly stated. I considered it was necessary for the order to reflect the Reasons for Decision by identifying that the basis upon which the Full Bench reached the decision that the appeal be upheld was the finding of the majority in relation to grounds 3 and 4. Once the basis upon which the Full Bench reached the decision that the appeal be upheld was identified, the order should then remit the matter to the Commission at first instance to be heard and determined according to law.

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

APPEARANCES: Mr D J Kelly on behalf of the appellant

Mr R L Le Miere (of Queens Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Burswood Resort (Management) Ltd
(Respondent).

No FBA 30 of 1999.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER A R BEECH
COMMISSIONER J H SMITH.

23 March 2000.

Order:

This matter having come on for hearing before the Full Bench on the 28th day of January 2000, and further for a speaking to the minutes hearing on the 23rd day of March 2000, and having heard Mr D J Kelly on behalf of the appellant and Mr R L Le Miere (of Queens Counsel), by leave, and with him on the hearing of the matter, Mr B Di Girolami (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 15th day of March 2000 wherein it was found that the appeal should be upheld and the Full Bench having determined the form of order to issue with supplementary reasons for decision therefor to be delivered at a later date, it is this day, the 23rd day of March 2000, ordered and directed as follows—

- (1) THAT the appellant be and is hereby granted leave to amend the grounds of appeal by deleting the word "visional" in the third line of Ground 4 and inserting the words "the visual".
- (2) THAT appeal No FBA 30 1999 be and is hereby upheld on Grounds 3 and 4.
- (3) THAT the order made at first instance in application No CR 159 of 1999 be and is hereby suspended and the matter be remitted to the Commission, as constituted at first instance, to be heard and determined according to law.

By the Full Bench

[L.S.]

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Chief Executive of the Western Australian Tourism
Commission
(Appellant)

and

The Civil Service Association of Western Australia
Incorporated
(Respondent)

(No FBA 32 of 1999)

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

27 March 2000.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Public Service Arbitrator (hereinafter referred to as "the Arbitrator"), constituted by an order made on 30 November 1999 (see page 17 of the appeal book (hereinafter referred to as "AB")).

Formal parts omitted, the order reads as follows—

“THAT the Chief Executive, Western Australian Tourism Commission pay to its employees covered by *Western Australian Tourism Commission Enterprise Bargaining Agreement 1998*, the sum set out in Table A of this Schedule which corresponds with their level of employment.”

I omit the table, but it appears in copy form at pages 18-19(AB).

GROUNDS OF APPEAL

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

- “1. The Commissioner erred in law and acted in excess of jurisdiction in making an order that the Appellant pay to its employees covered by the Western Australian Tourism Commission Enterprise Bargaining Agreement 1998 (“the EBA”) the sums of money set out in Table A of the order (“the Order”) as the Order gives retrospective effect to an industrial agreement and such an order is not authorised or permitted by the provisions of the *Industrial Relations Act 1979* (“the Act”).

PARTICULARS

- 1.1 The EBA was registered by the Western Australian Industrial Relations Commission on and from 30 April 1999.
- 1.2 The Order, when read with the reasons for decision, requires the Appellant to pay to its employees covered by the EBA the salary increases payable under the EBA from 1 January 1999.
- 1.3 The terms of the Order, when read with the reasons for decision, operate to give retrospective effect to the EBA.
- 1.4 There is no power in the Act which authorises or permits the Commission to order that an industrial agreement have effect from a date prior to its registration.
2. Further, and in the alternative, the Commissioner erred in law and acted in excess of jurisdiction in making the Order in that the Order varies an industrial agreement otherwise than as permitted under the provisions of the Act.

PARTICULAR

- 2.1 None of the circumstances provided for in sections 41(3), 43(1) and (2) of the Act were present in this case.
3. Further, and in the alternative, the Commissioner erred in law in not dismissing or refraining from further hearing the application.

PARTICULARS

- 3.1 A registered industrial agreement is a final document recording the consensus of the parties to the document on all issues raised during negotiations leading up to that final document.
- 3.2 The date upon which the salary increases payable under the EBA were to commence was a matter which was the subject of negotiations between the parties and which was dealt with in the EBA.
- 3.3 Once a matter is dealt with in an industrial agreement a party to that agreement ought not be permitted to agitate that matter in further proceedings, whether or not those proceedings were contemplated before entry into the industrial agreement.
- 3.4 Further, a party which has a clear opportunity to raise an argument ought not be allowed to reserve the argument and raise it at a later time.
- 3.5 The argument as to whether the first pay period under the EBA ought to have been 1 January 1999 should have been raised and determined prior to registration of the EBA.

3.6 Further, an agreement by which an employer agrees to pay to employees a salary increase otherwise than under an award or industrial agreement offends s114 of the Act.

3.7 The Commission ought to have found that continuation of the hearing of the application was not necessary or desirable in the public interest or that, for other reasons, the matter should have been dismissed or the hearing thereof discontinued.

4. Further, and in the alternative, the Commissioner erred in law and acted in excess of jurisdiction in issuing an order in circumstances which amounted to an exercise of judicial power otherwise than as permitted under the provisions of the Act.

5. Further, and in the alternative, the Commissioner ought not to have made the Order where it was clear that the salary increase was in consideration of workplace changes that would only occur upon registration of the EBA. Insofar and to the extent that there was an agreement, that agreement ought not have been enforced.”

Grounds 3.6 and 4 were not pursued, as Mr Matthews, who appeared for the appellant, informed us, upon the hearing of the appeal. Accordingly, I do not propose to deal with them in these reasons.

BACKGROUND

There was a claim before the Arbitrator by the respondent organisation of employees that the appellant should pay to its employees, who are covered by the Western Australian Tourism Commission Enterprise Bargaining Agreement 1998 (hereinafter referred to as “the Agreement”), compensation for breach of its promise to pay “administratively” the first salary increase of 1%, effective from 1 January 1999 and to pay the second salary increase of 2% from 1 February 1999. The claim was opposed by the appellant which is a body corporate constituted by and under the Western Australian Tourism Commission Act 1983 (as amended) (hereinafter referred to as “the Tourism Commission Act”).

During the latter half of 1998, the parties were engaged in negotiations concerning a new Enterprise Bargaining Agreement to replace the then existing Enterprise Bargaining Agreement. (Those negotiations had begun on 31 March 1998.) Each of the drafts forwarded by the respondent to the appellant provided that the date of operation of the Agreement would be the date the Agreement was registered as an industrial agreement in the Commission. An in-principle agreement was reached between the parties on 11 November 1998.

On 21 November 1998, the appellant, in an e-mail communication, suggested that the effective date of the Agreement be 1 January 1999 rather than the date of registration. That suggestion was accepted by the respondent organisation.

The Board of the appellant approved the draft Agreement for registration by the Commission, effective as at 1 January 1999. The specific changes, inter alia, were as follows—

1. “Salary increase of 2% effective 1 January 1999 in recognition of the introduction of a 38 hour week” and other measures.
2. “Up to an additional 1% effective 1 February 1999 and up to an additional 3% effective 1 January 2000 for the attainment of Key Performance Indicators (see schedule D)” (see page 1 of Exhibit A of the Exhibit Book (hereinafter referred to as “EB”)).

Part of the background prepared for the Board of the appellant provided specifically that, subject to the Board’s endorsement and pending a staff ballot, “the in-principle agreement”, would be submitted to the Department of Productivity and Labour Relations (hereinafter referred to as “DOPLR”) for endorsement. If that occurred, the Agreement would be submitted to the Cabinet Sub-Committee on Labour Relations for approval, then to the Commission for registration.

Importantly, the background note says “This process may be completed some time after 1 January 1999, however, for administrative purposes, the parties have agreed to a 1 January 1999 commencement date” (see page 1 of Exhibit A(EB)).

The appellant commenced the process which it was required to follow to secure DOPLR and Cabinet approval on 24 December 1998 (see pages 56-61 of Exhibit A(8)(EB)).

The Board of the appellant was then advised that government policy meant that the industrial agreement would only operate from the date of registration in the Commission and the Agreement was registered in the Commission on 30 April 1999 as No PSA AG 17 of 1999 (see 79 WAIG 1686). The Agreement was registered and provided that it would operate from the date of registration by the Commission.

It is noteworthy that the application did not plead an agreement, but claimed compensation for an alleged breach of promise, namely to pay administratively the first salary increase of 1% effective from 1 January 1999 and 2% from 1 February 1999.

As a result, when the respondent took the "in principle" Agreement back to its members for their decision, they were informed that the Agreement would operate from 1 January 1999.

The respondent held a ballot of its members which closed at 5.00 pm on 15 January 1999. The information upon which the ballot was conducted included the following—

"The date of operation of the Agreement is January 1, 1999 and that on that date employees will receive a 2% pay increase for agreeing to—

- a 38 hour week;
- HDA after 10 days;
- Paying of Travel Allowance on actuals (receipts)."

(See pages 62-63 of Exhibit A(9)(EB)).

That information clearly stated, also, that a 1% "increase would be payable on" 1 February 1999, dependent on all divisions or units working together, to meet the total amount identified in Column C of that information.

The Commission was informed that the respondent's members voted 100% in favour of the "in principle" Agreement.

There was a good deal of going backwards and forwards between the appellant and DOPLR (see page 68(EB)) resulting in changes being required by DOPLR, most relevantly, that salary increases be effective as at the date of registration, rather than 1 January 1999. It was said to be Government policy that industrial agreements have, as their commencement date, the date of their registration and not some earlier date. This commencement date was then adopted for the purposes of the Agreement by the Board of the appellant.

By application filed on 22 February 1999, the respondent complained about the delay in registration of the Agreement and sought the assistance of the Arbitrator (see pages 74-77(AB)).

The Cabinet Sub-Committee for Labour Relations approved the amended Enterprise Bargaining Agreement in April 1999. The Agreement was then registered in this Commission on 30 April 1999 (The Western Australian Tourism Commission Enterprise Bargaining Agreement 79 WAIG 1686).

Significantly, the Agreement, which was registered by consent of the parties, provided—

"This Agreement shall operate from date of registration by the Western Australian Industrial Relations Commission and shall remain in force for a period of two years from its registration." (See Clause 7(1))

I observe that there was thereby an agreement between the parties duly registered whereby the Agreement as a whole and, more particularly, any salary increases (see Clause 23) would date from after the registration of the Agreement.

The proposed January and February salary increases had been deleted by agreement.

Both parties agreed to the registration of the Agreement under the express understanding that the respondent would nevertheless pursue the implementation of what it regarded as the agreement of the appellant to pay the wage increases due on 1 January and 1 February 1999 from those dates, as the Arbitrator found.

The application which was before the Arbitrator at first instance was not filed until 3 June 1999 (see pages 5-7(AB)). That application obviously referred to the matter, which the Commission was told on 30 April 1999 was still outstanding

between the parties, namely "compensation" for breach of its promise to pay administratively the first salary increase of 1% effective from 1 January 1999 and to pay the second salary increase of 2% from 1 February 1999.

FINDINGS

The Arbitrator made a number of findings—

1. The respondent made its claim that it was prepared to reach an agreement, having an operative date of the date of registration while intending to pursue in arbitration the wage increases which the appellant had agreed would operate on 1 January 1999 and 1 February 1999.
Significantly, also, the appellant recognised that that was the respondent's position and it was nevertheless prepared to conclude the Agreement and have it registered.
2. There was, therefore, no impediment to the claim before being pursued merely because the Agreement itself had been registered.
3. This is not a variation of the Agreement and there would be no conflict between the order and any of the terms of the Agreement.
4. The Arbitrator distinguished RRIA v AMWSU (1987) 67 WAIG 723.
5. That undertakings given during negotiations which are then accepted should be observed.
6. It would be unfair to employees who voted to accept an agreement on the understanding that they would receive a wage increase from 1 January 1999, not to receive that wage increase.
7. The Arbitrator did not find that there was any incapacity to pay the claim and, in the context of the industrial agreement which was registered, there were changes in productivity which had occurred.

For those reasons, an order issued in the respondent's favour.

ISSUES AND CONCLUSIONS

The decision was a discretionary decision, but the grounds of appeal go more to straight questions of law concerning the exercise of power rather than any exercise of discretion and its miscarriage, or otherwise.

This Commission does not have power to vary an industrial agreement, that is an agreement registrable by the Commission under the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") as an industrial agreement (see s.7 of the Act). Such an agreement is registered under s.41 of the Act.

The Commission, in particular, has no power to vary an industrial agreement by changing the operative date of an agreement and no power against the rights of one party to backdate part of an industrial agreement to a date before the agreement is entered into (see Director General of the Ministry for Culture and the Arts v CSA & Others (No IAC 6 of 1999) (unreported) delivered 4 February 2000 [2000] WASCA 13 (IAC) per Anderson J at pages 11-14).

This agreement, an industrial agreement, as defined in s.7 of the Act, was properly registered, by consent of the parties to this appeal, by the Commission constituted by the Public Service Arbitrator pursuant to s.41 of the Act.

The order made was said by the respondent to be an order seeking the enforcement of a promise standing apart from the Agreement, as registered, and preserved by express reservation before the Arbitrator, at the time of registration of the Agreement, as a question to be determined.

The appellant, for his part, contends that the order made by the Arbitrator was made without power because the order purported to render retroactive the operative date and to vary the industrial agreement.

The powers of the Commission under s.41 of the Act were recently the subject of reasons for decision of the Industrial Appeal Court in Director General of the Ministry for Culture and the Arts v CSA and Others (IAC)(op cit) per Kennedy PJ and Anderson J. Following those reasons, it should be noted

in relation to s.41 of the Act that the following principles apply—

1. The Commission has no power to vary the terms of an agreement sought to be registered under s.41 of the Act.
2. S.41(3) of the Act is designed to ensure that the common intention of the parties is reflected in their executed agreement prior to registration.
3.
 - (a) There is no power to impose an agreement on the parties.
 - (b) The power exercisable by the Commission is clearly limited to the express purpose of giving clear expression to the true intention of the parties.
 - (c) S.41(3) of the Act assumes that the parties have actually reached agreement.
4. To say that important rights and obligations under an agreement shall start from a certain date is, in substance, to say that the agreement shall commence to operate from that date.
5. There is no power to make an order that purports to give an industrial agreement any operative effect prior to its coming into existence.
6. The whole scheme of the Act in relation to industrial agreements is based upon the notion of consensus and the Commission cannot confer rights which are not contained in that agreement.

What occurred in this case was that the parties entered into an agreement whereby pay increases, as outlined above, would become operative as at 1 January 1999 and 1 February 1999 respectively.

It seems quite clear, and it was not seriously in issue before the Full Bench, that the parties were aware that any agreement reached first required the approval of DOPLR, then a Cabinet Sub-Committee and, one assumes, finally Cabinet. Certainly, there were submissions to the Full Bench that “third parties” should not have been involved because the Act provided for the appellant to deal with its employees. (That point was not raised at first instance and, in any event, the appellant is subject to the Minister in relation to its objects, powers and duties (see s.16 and s.17 of the Western Australian Tourism Commission Act 1983).)

However, the draft agreements reveal that the parties always anticipated that the terms for increase of salary payments of the Agreement would operate from the date of registration. There was always anticipation, it would seem, that the Agreement would not be registered until after 1 January 1999, which was a fair assumption, given that the Agreement was not forwarded for the requisite approvals until 24 December 1998. In the light of that, the appellant offered to administratively implement the increase as and from 1 January 1999.

One obstacle which then arose was that no approval would be given, as a matter of government policy, to the Agreement containing a term which would provide for retroactive salary increases. In other words, the policy was that an agreement would not be approved unless it took effect, in its entirety, from the date of registration. This was communicated to the parties and, in due course, they entered into a consensus which recognised that policy, and resulted in the making of the Agreement.

What, it would seem, the parties could not have anticipated was the inordinate and inexplicable delay in registration which meant that the Agreement was not registered, and there was no ability to effect an agreement to increase salaries, until about four months after the parties had agreed that this should occur.

Indeed, the delay was so great that the respondent, as I have said, filed an application in February 1999 in this Commission complaining about the delay.

As a result, the effect of the initial conditional agreement was lost.

The Arbitrator then, as I have said, ordered to be paid an amount of compensation which was the sum of the wage increases from 1 January and 1 February 1999 for employees that had been a term of the Agreement.

I turn first to the question of whether the order made by the Arbitrator gave retroactive effect to the registered Agreement. The appellant did not promise to pay its employees the salary increases in question, other than pursuant to the Agreement. The Board’s approval was for salary increases corresponding with the commencement date of the industrial agreement and which were inextricably linked to it. The quantum ordered to be paid was equal to the salaries amount payable if the increases contemplated had been finally agreed to. That being so, there was clearly no separate agreement to pay salary increases as at 1 January 1999.

Even given that a collateral agreement can stand alongside an industrial agreement registered under the Act (which remains an open question), there was no collateral contract which was established because, even if there were a statement that the increase in salary would run from 1 January 1999 (which was the case) and was intended to be relied upon, which it was, no statement can take effect as a collateral contract if it is not consistent with the main contract (see Hoyt’s Proprietary Limited v Spencer [1919] 27 CLR 133 and JJ Savage & Sons Pty Ltd v Blakney [1969-1970] 119 CLR 435).

Thus, the statement that the increase in wages would run from 1 January 1999 and 1 February 1999 was contrary to and inconsistent with the agreement entered into and registered. An industrial agreement, as defined in the Act, was registered which was completely contrary to and inconsistent with the promise or statement as to the date from which increased payments were to be made and was registered over two and three months respectively after the “promised” payments were due.

Indeed, as was conceded on behalf of the respondent, the date upon which the salary increases payable under the Agreement were to commence was a matter of negotiation and was eventually agreed by vote of the respondent’s members and included in the Agreement as registered, because the members did not want to suffer the disadvantage of further delay. That was a deliberate decision approving the Agreement to be registered.

By it, the salary increase to apply was a 3% increase effective from the first pay period after the date of registration.

It was also conceded on behalf of the respondent that, once a matter is dealt with in an industrial agreement, a party to that agreement ought not be permitted to agitate the matter in further proceedings whether or not those proceedings were contemplated before entering into the agreement.

Further, it was conceded that the argument as to whether the first pay period under the Agreement ought to have been 1 January 1999 should have been raised and determined prior to its registration. Nonetheless, the respondent also purported to rely on the fact that the question of the “broken promise” was advised to the Commission as being outstanding and not within the Agreement at the time of registration of the Agreement.

Notwithstanding that the claim was expressed as seeking compensation for a broken promise, it was a claim for enforcement of an alleged payment of increased salary for employees for periods from 1 January 1999 and 1 February 1999 to the date of registration of the Agreement.

These were matters which, by concession, should have been resolved before the Agreement was entered into and registered. Indeed, by concession, too, the date upon which the salary increases payable under the Agreement were to commence was a matter which was the subject of negotiation between the parties and was dealt within the Agreement.

What then, was the effect of the order sought at first instance and granted. The order at first instance did, in reality, purport to vary the Agreement, as registered, by changing the date from which the salary increases were to operate. In doing so, too, the order effectively purported to implement a retroactive operating date for the increase and for that portion of the Agreement. Put simply, the Arbitrator effectively ordered that the Agreement operate from a date other than the Agreement, insofar as the rate of salary was concerned, when the parties had not agreed that the Agreement have retrospective effect (see Director General of the Ministry for Culture and the Arts v CSA and Others (IAC)(op cit) at page 14).

Thereby, the Arbitrator conferred rights and imposed obligations not contained in the Agreement and, indeed, inconsistent with those prescribed in the Agreement. There was, thus, a purporting to vary and render in part retrospective the Agreement, as registered. Whether the Arbitrator had power to order the payment of an amount described as compensation in these circumstances was not argued in this case. Grounds 1, 2 and 3 (except for Ground 3.6) are made out for those reasons.

By Ground 5, it was alleged further and in the alternative that the Arbitrator ought not to have made the order when it was clear that the salary increase was in consideration of workplace changes that would only occur upon registration of the Agreement, insofar and to the extent that there was an agreement, that agreement ought not to have been enforced.

The parties, it was submitted for the respondent, had anticipated the possibility of delay (see page 57(EB)). The employees were required to work 37.5 hours per week, not the 38 hours per week which the employees were required to work when the Agreement was registered. However, as was submitted for the appellant, the employees were not entitled, in any event, to the fruits of the Agreement, insofar as the February increase of wages was concerned, until after the achievement of key performance indicators.

Further, the agreement sought to be enforced before the Arbitrator as a broken promise itself was conditional upon the requisite approvals being granted, which is clear from the appellant Board's decision, a copy of which was provided to the respondent. Once the approvals were withheld, the conditions were not fulfilled, so a new and binding agreement had to be reached to comply with policy.

SOME FURTHER OBSERVATIONS

I wish to make some further observations about this matter. The actual Agreement which was sought to be made between the employer and an employee organisation was frustrated by an unexplained and inordinate delay of four months. It was, on the evidence, not frustrated by the employer, but by the inability of third parties to attend to the matter with expedition. In the circumstances, given the delay, the intention of the parties was frustrated.

It is with reluctance that I find that the Arbitrator erred and that a manifest inequity must remain irremediable by this Commission. There is, it would seem, no fault in the employer which seems to have attempted to act in good faith.

For the reasons which I have expressed, it was not open to the Arbitrator to remedy the matter by finding that the rights of the employer exercised harshly, oppressively and unfairly or that there was not an industrial "fair go all round", although, in fact, inequity was visited upon the appellant's members by the frustration of the parties' intentions. Thus, the Arbitrator had no power to make the orders which he did to remedy that situation. Once the Agreement was registered, in different terms to the conditional agreement, that door was bolted. The Arbitrator's powers did not enable him to do what he sought to do in the circumstances of this case.

FINALLY

For those reasons, I would uphold the appeal and quash the order made by the Arbitrator. I would issue a minute to reflect these reasons.

CHIEF COMMISSIONER W S COLEMAN: I have had the advantage of reading the President's draft Reasons for Decision and agree that the appeal should be upheld and the order that issued in the first instance be quashed.

The Arbitrator's order of November 1999 in its form provided compensation, in substance it varied the Industrial Agreement registered by the Commission in April 1999.

This matter shows that the administrative process to which a public sector employer must submit in finalising an Agreement may prejudice the goodwill and trust fundamental to the operation of an Industrial Agreement. Fortunately the private sector does not appear to experience these difficulties.

SENIOR COMMISSIONER G L FIELDING: I have had the advantage of reading in draft form the Reasons for Decision prepared by the President. I agree that the appeal should be upheld and the order made by the Arbitrator quashed.

Not without some oscillation, I have come to the same conclusion as the President that the order, the subject of this appeal, in effect amended the *Western Australian Tourism Commission Enterprise Bargaining Agreement 1998* in a way which is impermissible.

In the present case, the terms of the order made by the Arbitrator are plainly inconsistent with the terms of the Agreement registered some months earlier. The Arbitrator's order provided, in effect, that the increased rates of pay stipulated in the Agreement operate with effect from the 1st January 1999, albeit under the guise of compensation. Indeed, the rationale for the Arbitrator's order or expressed in his reasons for decision was that "it would be unfair to employees who voted to accept an agreement on the understanding that they would receive a wage increase from 1 January not to receive that wage increase."

It is apparent from the decision of the Industrial Appeal Court in *Director General of the Ministry for Culture and the Arts v. The Civil Service Association of Western Australia Incorporated & Ors* [2000] WASC 13, which was handed down after the decision which led to the order now in question, that the fact that an order is made independently of and by a process separate from the proceedings by which the Agreement was registered may, nonetheless, constitute a variation of the Agreement. In short, the governing factor is not so much the form of the order as is the import of the order. For the order in question not to be taken as one varying the Agreement it would as Anderson J. observed in the *Ministry for Culture and the Arts v. The Civil Service Association of Western Australia Incorporated & Ors* (*supra*) need to be seen as establishing "a discrete source of rights and obligations, separate and distinct from and not arising out of the industrial agreement." In reality, I do not consider that can be said of the order now in question. The need for the compensatory payment, the subject of the order, arose only because the Agreement expressly operated from the date of registration and not from the 1st January 1999. Had the Agreement been registered on or before that date or contained a provision making it operative from the 1st January 1999, the need for compensation would not have arisen. Indeed, the fact that during the course of the proceedings leading to the registration of the industrial agreement the Respondent expressly reserved unto itself the right to pursue the proceedings, the subject of the present appeal, is a clear indication that the source of the compensatory order was not, in reality, separate and distinct from the Agreement.

It follows that the order was not authorised by the *Industrial Relations Act 1979*. It is impermissible to amend an industrial agreement other than in accordance with section 43 of the Act. It cannot be said that the arrangement relied upon to make the order, was an agreement between the parties to vary the Agreement because that arrangement was made before the Agreement was registered.

Nonetheless, I have some sympathy with the position in which the Respondent found itself and with the conclusion reached by the Arbitrator. The only body authorised to negotiate with the Respondent regarding the Agreement and with which it duly negotiated, apparently anticipating some bureaucratic delay in the registration of the Agreement, appears to have unequivocally agreed "for administrative purposes" to a 1st January 1999 commencement date. That arrangement does not appear to have been conditional upon Cabinet's agreement to anything but the industrial agreement itself. Indeed, implicit in the arrangement is the fact that the industrial agreement would not have an operative date of the 1st January and thus the need for "administrative" arrangements. In my opinion, no one could cavil with the Arbitrator's observation that "it is important that undertakings given during negotiations which are then accepted be observed." The concept of collective bargaining, which the Act encourages, depends for its success on the negotiators honouring their undertakings. Undertakings which cannot be honoured should not be given. It may be, as counsel for the Appellant observed, that the increased remuneration was to be paid in return for workplace changes, which had not occurred by the 1st January. However, the fact is that, whether as an inducement or otherwise to the Respondent entering into the industrial agreement, the Appellant appears to have undertaken to make the payments contemplated by the Agreement from the 1st January by administrative action.

THE PRESIDENT: For those reasons, the appeal is upheld and the order made by the Arbitrator at first instance quashed.

Order accordingly

APPEARANCES: Mr D J Matthews (of Counsel), by leave, on behalf of the appellant

Ms J van den Herik and with her Mr E P Rea on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Chief Executive of the Western Australian Tourism
Commission

(Appellant)

and

The Civil Service Association of Western Australia
Incorporated

(Respondent)

No FBA 32 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY

CHIEF COMMISSIONER W S COLEMAN

SENIOR COMMISSIONER G L FIELDING

27 March 2000.

Order.

This matter having come on for hearing before the Full Bench on the 25th day of February 2000, and having heard Mr D J Matthews (of Counsel), by leave, on behalf of the appellant and Ms J van den Herik and with her Mr E P Rea on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 27th day of March 2000 wherein it was found that the appeal should be upheld, it is this day, the 27th day of March 2000, ordered and directed—

- (1) THAT the Notice of Application filed on 22 February 1999 in matter No PSA C 9 of 1999 be and is hereby added to the appeal book as pages 74,75, 76 and 77.
- (2) THAT appeal No FBA 32 of 1999 be and is hereby upheld.
- (3) THAT the decision of the Public Service Arbitrator made on the 1st day of December 1999 in matter No PSA CR 9 of 1999 be and is hereby quashed.

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Parveen Kaur Rai

(Appellant)

and

Dogrin Pty Ltd

(Respondent).

No FBA 27 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY

SENIOR COMMISSIONER G L FIELDING

COMMISSIONER J F GREGOR.

7 March 2000.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the whole of the decision (at least it would appear) given by a single

Commissioner on 8 October 1999 in matter No 140 of 1999. By that decision (see pages 16-21 of the appeal book (hereinafter referred to as "AB")), the application made by the abovenamed appellant was dismissed.

GROUND OF APPEAL

That decision is now appealed against on the following grounds, as amended—

- "1. That the learned Commissioner erred in holding that the employer of Parveen Kaur Rai was a natural person named Julie Louise Khan and thereby determined the entire application on a wrong basis.
2. That the learned Commissioner erred in fact and in law by refusing to "pierce the corporate veil" and allow amendment to the named Respondent if, which is denied, the Respondent was wrongly named.
- 2(a) The learned Commissioner erred in fact and law in refusing to allow the name of the Respondent to be amended from Dogrin Pty Ltd to Julie Khan or Julie Khan and Opel Khan when—
 - (a) The evidence and the weight of evidence was that Julie Khan and Opel Khan were at all material times, in either their personal capacities or as directors of Dogrin Pty Ltd; the employer of the Applicant;
 - (b) The said Julie Khan and Opel Khan, in issuing or allowing to be issued to the Applicant, pay advice slips in the name of Dogrin Pty Ltd, jointly or severally held themselves out as acting in their capacity of directors of Dogrin Pty Ltd in their dealings with the Applicant;
 - (c) The said Julie Khan and Opel Khan, issuing a Group Certificate to the Applicant showed the said Julie Khan and Opel Khan to be the employer of the Applicant at the material times; and
 - (d) The naming of Dogrin Pty Ltd as the employer of the Applicant was, on the evidence and on the basis of the reasoning of High Court in *Bridge Shipping Pty Ltd -v- Grand Shipping SA and Others 173 CLR 231* applying the test of Devlin LJ in *Davies -v- Elshy Bros Ltd [1960] 3 All ER 672* merely a misnomer and that a reasonable person receiving the Applicant's application would say to himself "Of course it must mean me, but they have got my name wrong" which the learned Commissioner should have realized and permitted an amendment to be made.
3. That the learned Commissioner erred in law by refusing to hear the substantive matter on the basis of an important but technical point made only partially known to the Applicant on the afternoon of the previous working day, and the details of which were only made known during the hearing.
4. The importance of this appeal in relation to that of public interest, is that the decision of the learned Commissioner presents the opportunity for any employer to deny any responsibility towards their employees.
5. The appellant seeks the decision of the learned Commissioner to be quashed and remitted back to the Commissioner for further hearing and determination or vary it in such manner, as the Full Bench considers appropriate."

The appellant sought and obtained leave to apply out of time for leave to extend time within which to file and serve appeal books and was granted an extension of time within which to file and serve appeal books.

BACKGROUND

The appellant claimed that the respondent had unfairly dismissed her from her employment, and that the respondent failed to pay her benefits due under her contract of employment.

The respondent, as I have observed, did not file an answer but denied that it had any employment relationship with the

appellant. Although advice that this allegation would be used as an answer was given to the appellant's agent late in the piece, no objection was taken on behalf of the appellant and no application was made to adjourn the proceedings. The issue raised by that "answer" was then heard by the Commissioner as a preliminary matter.

Evidence was given by the appellant, Ms Parveen Kaur Rai, and by Mr Opel Khan for the respondent. There were no other witnesses but there was an amount of documentary evidence.

Mr Khan and his wife, Mrs Julie Louise Khan, were, at all material times, including at the date of the hearing and determination of the application at first instance, the directors of the respondent company.

The appellant had been employed by the previous proprietor of a business known as "Haggers Restaurant", situated at 388 Hay Street, Subiaco in the State of Western Australia.

On 6 December 1998, the business was taken over by a new owner, who or which commenced to operate the restaurant business. Ms Rai's evidence is that, on that date, Mr Khan was introduced to her as the new owner, that he spoke to the employees that day, and that, shortly after, he spoke to her of the terms and conditions of employment and she continued to be employed at the restaurant known as "Haggers".

During that time, the appellant received at least three payslips which identified the employer as Dogrin Pty Ltd trading as "Haggers Restaurant", provides an ACN Number which purports to be Dogrin Pty Ltd's, and identifies cheque dates as 21 and 28 July 1999, but indicates cash payments.

The copy Group Certificate issued on 14 July 1999 purports to be issued in the name of "Julie and Opel Khan trading as "Bibendum at the Colonnade"".

Dogrin Pty Ltd, the respondent, was registered as a company on 18 December 1998. That, as the Commissioner observed, was twelve days subsequent to the date when the appellant commenced employment with the new operator of Haggers Restaurant, who was her new employer.

Mr Khan's evidence was that he acted as manager on behalf of his wife, Mrs Julie Louise Khan, who owns the business then known as "Haggers", but subsequently known as "Bibendum at the Colonnade". The premises, at all material times, was owned by Lyrical Holdings Pty Ltd, which, it was said, leased the premises to Mrs Julie Louise Khan, with Mr Opel Khan as guarantor.

The partial copy lease, tendered as exhibit 1 (see pages 117-123(AB)) and probably inadmissible as bearing no evidence that stamp duty was paid on it, contains no reference to the date of execution of the lease and no evidence of the date from which the lease commenced to operate.

There is an extract from the register of business names which evidences that Caffè Latte Pty Ltd was registered as trading with the name "Haggers" and that the registration of that name was due to expire on 19 September 2000 (see page 127(AB)).

On 23 February 1999, Mrs Khan declared to the Director of Liquor Licensing that she was the Manager of the premises. The licence for the premises seems to have issued to Lyrical Holdings Pty Ltd as and from 30 March 1999 with Mrs Kahn named as the Manager in respect of the premises identified as "Bibendum at the Colonnade", The Colonnade, 388 Hay Street, Subiaco (see pages 129-130(AB)).

An extract from the register of business names evidences that the business name "Bibendum at the Colonnade" was registered as and from 5 February 1999, which is about two months after the restaurant premises known as "Haggers" changed hands. The business was said to be carried on by Lyrical Holdings Pty Ltd (see page 135(AB)).

There was clear evidence from the appellant that she had received pay slips in the name of the respondent. Mr Khan gave evidence that the pay slips issued to the appellant were in the name of Dogrin Pty Ltd. However, the drawer of the cheque paid on termination of the appellant's employment was said to be Oko Investments Pty Ltd.

The Commissioner rightly rejected the lease because it had not been executed by the parties and, further, bore no date. There was before the Commission little or no evidence as to the person or persons from whom the appellant took directions or who purported to give directions.

Mr Khan, a director of the respondent, denied in evidence that the respondent was the employer of the appellant during the period when she was employed at the restaurant. Secondly, he said that the reference to the respondent's name on the pay slips was without his knowledge and was wrong. Thirdly, the purpose of the respondent company was to trade in shares.

The Commissioner preferred that evidence to the evidence of the pay slips. The Commissioner also referred to exhibit 7, a letter dated 17 February 1999 from Monaghan & Associates, Barrister & Solicitors (see page 131(AB)). In that letter, the solicitors said that Mrs Khan had been the "approved manager" of the restaurant, apparently for the purposes of the Liquor Licensing Act, since 10 December 1998.

Whilst noting that this evidence was hearsay evidence and recognising that it was evidence only for the purposes of the Liquor Licensing Act, the Commissioner accepted the evidence to indicate that, from the specified date, Mrs Khan had a principal role in the operation of the business and probably was owner of the business and employer of Ms Rai. The Commissioner found that the appellant's employer was Mrs Julie Khan, a natural person, and, therefore, a different legal entity to the respondent, which was a corporation.

After the Commissioner found that the employer was Mrs Khan (see page 62(AB)), Mr Smetana submitted for the respondent that, because there was no employment relationship and there was no industrial matter, the application should be struck out.

Mr Clarke, for the applicant at first instance, then moved, by oral application (see page 62(AB)) to amend the application "to put Julie Louise Khan as employer".

It was submitted by Mr Smetana, on the authority of The Owners of Johnston Court Strata Plan No. 5493 v Dumancic 70 WAIG 1285 (IAC), that this was the case of a wrong party being named, not a misdescription of the party's name. The Commissioner decided that the application was one to substitute a party and dismissed the application to amend.

GROUND—ISSUES AND CONCLUSIONS

The decision to dismiss the application was not a discretionary decision, as that is defined in Norbis v Norbis (1986) 65 ALR 12. The decision was a finding of mixed fact and law. Further, the finding that the application to amend did not have merit because it constituted an application not to correct a misdescription but to substitute a party, was a finding on a question of law.

Ground 1

The first ground of appeal was an allegation that it was an error to find that the employer was a natural person, Julie Louise Khan.

The onus lay on the appellant to establish that the respondent company was the employer of the appellant. Her own evidence was that Mr Khan was introduced to her as her new employer. However, subsequent to that, she received the pay slips bearing the name of the respondent.

The pay slips bear the name of the respondent, but Mr Khan gave evidence that the pay slips were issued by Ms Shelley King in error in the name of Dogrin Pty Ltd, a company which, on the evidence, had no assets. Mr and Mrs Khan were, however, directors of that company.

There was evidence that Mrs Khan traded as "Bibendum at the Colonnade". As I have observed above, there was evidence that she was manager for Lyrical Holdings Pty Ltd which both held the liquor licence for the restaurant premises and was the owner of the premises of which Mrs Khan was said to be the tenant.

Mr Khan, in evidence, denied that the respondent was the employer. He also said that the restaurant was handed over to him and not to Mrs Khan and that he worked under Lyrical Holdings Pty Ltd and his wife (see page 32(AB)).

The Group Certificate, as Mr Clarke submitted, bears the names of Mr Khan and Mrs Khan (see page 134(AB)). In my opinion, once the Commissioner accepted Mr Khan's version of the facts, including the evidence that the pay slips bearing the name Dogrin Pty Ltd were issued erroneously, then there was sufficient evidence to find that Dogrin Pty Ltd was not the employer or had not been established to be. There was no submission consistent with the principle in Devries and

Another v Australian National Railways Commission and Another [1992-1993] 177 CLR 472 (HC) (see, also, State Rail Authority of New South Wales v Earthline Constructions Pty Ltd (in liq) (1999) 73 ALJR 306), that the Commissioner had misused the advantage which he had in seeing the witnesses give evidence.

That being so, there was sufficient evidence to justify the finding being made that the employer was Mrs Julie Louise Khan. It follows that Ground 1 is not made out.

Ground 2

I am not quite certain what Ground 2 means. There was no need to penetrate the corporate veil, if the amendment sought had the effect of naming Mrs Khan, Mr Khan or both of them as the respondents instead of the abovenamed respondent.

If Mr and Mrs Khan or Mrs Khan was the employer, then they were not hiding behind the company. Indeed, the Commissioner found that Mrs Khan was the employer.

Ground 2(a)

As to Ground 2(a), that ground is a concession that Mr and Mrs Khan were the employers of the appellant and that the respondent company was not. I will turn to Grounds 2(a)(d) later in these reasons.

As to Grounds 2(a)(a), (b) and (c), they were not made out, for the reasons which I have expressed above.

Ground 3

As to Ground 3, by that ground, it is alleged that the Commissioner erred in law by refusing to hear the substantive matter on the basis of an important but technical point made only partially known to the appellant on the afternoon of the previous working day, and the details of which were only made known during the hearing.

First, I would observe that the issue disposed of in the proceedings before the Commissioner was not a "technical point". It was a very substantial and important point. The issue was whether there was a contract of employment between the respondent company and the appellant or an employment relationship. If there was no contract of employment, it could not be terminated by dismissal or otherwise and there was no jurisdiction.

In any event, no objection was made to the point being orally raised without an answer being filed or any written notice being given and no application for an adjournment was made. It was in the hands of the appellant to seek to avoid any detriment occasioned by the last minute "notice of answer" and she did not. No application for discovery or particulars was made. There is no merit in that ground, therefore.

Ground 4

Ground 4 is simply irrelevant. The appeal is not against a finding, as that term is defined in s.7 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"). It is an appeal against a decision which finally disposed of the application by its dismissal. Thus, no public interest needs to be established because s.49(2a) of the Act is not applicable. Further, it is and was not necessary for leave to appeal to be obtained because this was not an appeal against a finding.

In addition, the question of whether this appeal relates to a matter of public interest has nothing to do with whether the Commissioner erred in finding that the respondent was not the appellant's employer or his refusal to accede to an application for amendment. That ground fails for those reasons.

Ground 2(a)(d)

I now turn to Ground 2(a)(d). By that ground, it was alleged that the amendment sought should have been permitted to be made. This was submitted to be so on the authority of Bridge Shipping Pty Ltd v Grand Shipping SA and Others 173 CLR 231.

Of course, at the heart of this ground, is the bar upon the referral of a s.29(1)(b)(i) matter by an employee. Such a matter is a claim that the employee has been harshly, oppressively or unfairly dismissed from his/her employment. S.29(2) of the Act provides that a referral by an employee under s.29(1)(b)(i) "cannot be made more than 28 days after the date on which the employee's employment terminated".

The provision must be read in the context of the whole of the statute and, since s.29 of the Act is a remedial provision, the section must be interpreted with some generosity (see Bogunovich v Bayside Western Australia Pty Ltd 79 WAIG 8 (FB)).

By analogy, cases in relation to the Statute of Limitations in the civil courts are of assistance. In the Supreme Courts or in superior courts in England, there are usually rules which permit amendments to enable the real question in controversy between the parties to be determined or to correct any defect or error in any proceeding. (Rule 36 of the Rules of the Supreme Court of Victoria is one such rule.)

In this Commission, s.27(1)(l) and (m) of the Act, which read respectively as follows, provide similar but wider powers—

"(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;"

S.26(2) of the Act, which reads as follows, augments those powers—

"(2) In granting relief or redress under this Act the Commission is not restricted to the specific claim made or to the subject matter of the claim."

S.27(1)(j) of the Act is also relevant. That provision empowers the Commission to—

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

The Full Bench was referred to the leading case of Bridge Shipping Pty Ltd v Grand Shipping SA and Others (op cit). In that case, the High Court considered the effect of Rule 36.01(4) of the Rules of the Supreme Court of Victoria which had the effect to which I have referred above. It was held by Brennan, Deane, Toohey and McHugh JJ (Dawson J dissenting) that the rule covered not only cases of misnomer, clerical error and misdescription, but also those where the plaintiff intending to sue a person, identified by a particular misdescription, was mistaken as to the name of the person who answered that description.

McHugh J made the judgment with which the other members of the majority agreed. McHugh J observed that rule 36.01(4) was a remedial rule and should be given a beneficial wide interpretation, indeed, the widest interpretation which its language will permit.

The rule, His Honour held (at page 261), imposes three limitations on a person's right to amend—

"First, there must be a mistake. Second, the mistake must be "in the name of the party". Third, the court may only make the order where it is satisfied that any other party to the proceedings would not, by reasons of the order, be prejudiced in the conduct of his or her claim or defence in a way that could not be fairly met by an adjournment or award of costs or otherwise."

As the law currently stands, there is a "limitation of action" upon an employee "referring" a claim of unfair dismissal in this Commission.

Whether such "limitation" is absolute is another matter. That is a question which is not before the Full Bench upon this appeal.

Provisions such as s.27(1)(l), (m) and (v) and s.26(1)(a) and s.26(2), as well as s.6(c), were provisions of the Act before s.29(1)(b)(i) was enacted and before s.29(2) was enacted.

S.29(2) of the Act does not purport to prevent expressly or by implication the operation of s.27(1)(l), (m) and (v) as well as s.26(1)(a) and s.26(2) (see my reasons for decision in Old Ferry Company Pty Ltd v Bertelli 79 WAIG 3547 at 3548(FB) and my discussions generally of these matters in those reasons for decision).

Rule 36 of the Rules of the Supreme Court of Victoria, as interpreted in Bridge Shipping Pty Ltd v Grand Shipping SA and Others (op cit), applied by the High Court in "AA" - "JC" Inclusive v Hickey (1996) 70 ALJR 385, was a provision which broadened the ability of the Supreme Court to remedy a misdescription even when the application to remedy the same was made after the expiry of the limitation period (prescribed from the limitations legislation).

In this case, the appellant intended, without doubt, to make a claim that her employer had dismissed her. It was the case that she had made an application against her employer whose name, somewhat understandably, she believed appeared on her pay slips, there being no evidence that she was subsequently told that this was incorrect. The Group Certificate named Mr and Mrs Khan as her employers. The Commissioner accepted that Mrs Khan, but not Mr Khan, was her employer.

There was no assertion that the respondent corporation was not her employer until a day before the hearing of the matter, which was entirely unsatisfactory. Once the Commissioner found that Mrs Khan was her employer, there was an application to amend the application.

First, the effect of s.26(2) of the Act should be considered. That enables a remedy to be ordered other than that applied for and may not, therefore, assist in this case.

Once an "industrial matter" is referred to the Commission, as this was, then it may be dealt with in accordance with s.27 of the Act (see *Old Ferry Company Pty Ltd v Bertelli* (FB)(op cit) at page 3748).

Further, s.27(1)(l) and (m) of the Act should be considered as giving wider powers than Rule 36 of the Rules of the Supreme Court of Victoria (see, also, Rule 21 of the Rules of the Supreme Court of Western Australia, and Order 21.5.3 in particular).

The proper application was for the name to be corrected to provide the name of the employer. As a matter of principle, such an application could not be used to defeat the limitation provisions. However, as a matter of equity, good conscience and the substantial merits of the case, where the application was made against the applicant's employer, then, if it were a misdescription, it should be remedied.

Within the meaning of *Bridge Shipping Pty Ltd v Grand Shipping SA and Others* (op cit), and, as a matter of the equity, good conscience and the substantial merits of the case, having regard to s.27(1)(l) and (m) of the Act, it is clear that the appellant intended to make a claim against her employer whom she thought was *Dogrin Pty Ltd*, whose directors were Mrs Khan who, in fact, was her employer, and Mr Khan who was, in fact, the manager for Mrs Khan and her husband. Even if relief were not available on the more narrow application of *Bridge Shipping Pty Ltd v Grand Shipping SA and Others* (op cit), the equity, good conscience and the substantial merits of the case would require s.27(1)(l) or (m) to be applied in favour of the appellant.

There is no doubt, in any event, that the appellant intended to make a claim against a person identified by a particular description and was mistaken as to the name of the person who answered the description. There was a mistake, a mistake in the name of the party and the other party, the company, could not nor was it submitted that it would be, prejudiced by an order to amend.

Indeed, there was the extraordinary situation of the company which was found not to be the employer purporting to oppose the application to amend.

The order is within power because the Commission is not a court of pleading. S.27(1)(l) and (m) and s.26(1) of the Act provide a wider and stronger base for the use of such a power and, in any event, even if that was wrong, the principle in *Bridge Shipping Pty Ltd v Grand Shipping SA and Others* (op cit) permits it.

For those reasons, the Commissioner erred in not granting the application to amend. There is and was power to substitute for the name "*Dogrin Pty Ltd*" as respondent that of "*Julie Louise Khan*". I would vary the decision at first instance, by substituting therefor orders—

- (a) That the name of the respondent be deleted and that there be substituted therefor the name "*Julie Louise Khan of c/- Bibendum at the Colonnade, 388 Hay Street, Subiaco*".
- (b) That the application be remitted to the Commission at first instance to be listed for hearing and determination according to law and after the service of the amended application upon the respondent.

The matter can now proceed before the Commissioner at first instance. For those reasons, I would uphold the appeal and order accordingly.

SENIOR COMMISSIONER G L FIELDING: The Appellant was for a time employed at the Hagger's Restaurant in Subiaco. After she commenced employment the proprietors of the restaurant apparently fell into financial difficulty with the result that the landlord of the premises took possession of the restaurant. Subsequently, a different person acquired the business of the restaurant and ultimately changed its name. People representing the new proprietors of the business apparently invited the Appellant, with others, to continue to work in the restaurant, which she did. However, she was subsequently dismissed from her employment in circumstances which she alleges were either harsh, oppressive or unfair. In consequence, she instituted proceedings in the Commission, seeking relief by way of compensation.

The proceedings were instituted against *Dogrin Pty Ltd* trading as Hagger's Restaurant. The Directors of that company are Mr and Mrs Khan.

The Respondent did not file a Notice of Answer and Counter Proposal but when the matter came on for hearing objected to the matter proceeding, contending that it was not the employer but rather the employer was Mrs Khan. Mr Khan, but not Mrs Khan, gave evidence that the Respondent company had never owned Hagger's Restaurant or traded as such but rather his wife had. Although he acknowledges that on an almost daily basis he gave instructions to the staff in the restaurant, he says he did so as the manager or agent for his wife. The Appellant gave evidence that she had assumed that the Respondent company was trading as Hagger's Restaurant because from and after the new owners took over the restaurant the weekly pay slips given to her and others indicated that the Respondent company was her employer. In addition, she says that she was introduced to Mr Khan as the new owner of the restaurant at or about the time ownership of the restaurant changed. On termination of her employment she was given a cheque for her accrued entitlements drawn on the account of *Oko Investments Pty Ltd*. Subsequently, it seems, she received a group certificate indicating that she was employed by Mr and Mrs Khan trading as "*Bibendum*", which is apparently the new name given to the restaurant.

The Commissioner accepted the evidence of Mr Khan and consequently found that the Respondent company was not in fact the employer but that it was Mrs Khan who was the employer. He found that it was she and she alone who acquired and carried on the business of Hagger's Restaurant on her own account. He was satisfied that the Respondent company never traded as Hagger's Restaurant. He rejected an application by the Appellant to strike out the name of the Respondent company and substitute Mrs Khan as the Respondent, holding that any complaint against Mrs Khan "lies in a separate action". Consequently, the Commissioner indicated his intention to dismiss the application on the grounds that the person to whom the proceedings were directed was not, and never had been, the employer of the Appellant.

Before the order dismissing the substantive application was perfected, the Appellant made a further interlocutory application, this time to re-open the proceedings on the grounds that the Appellant was confused "as to the correct identity of the Respondent Employer" and that "new evidence has come to light" which advanced the Appellant's cause. Although the interlocutory application did not say so, it emerged that the Appellant sought to join Mr and Mrs Khan as Respondents with the Respondent company. The Commissioner rejected that application although he received in evidence written material upon which the Appellant sought to rely. The Commissioner appears to have taken the view that the new material reinforced his view that Mrs Khan alone was the employer. In any event, he held, as previously, that it was impermissible to change the name of the Respondent in the way the Applicant sought because, in effect, it involved the substitution of a new party and would thereby constitute a new cause of action, which was statute barred by reason of the operation of section 29(2) of the *Industrial Relations Act 1979*. In accordance with his earlier decision, the Commissioner dismissed the substantive application.

From that decision the Appellant now appeals. The grounds of appeal are, to say the least, confusing, if not outright

contradictory. Ground one asserts that the Commissioner erred in holding that the employer of the Appellant was a “natural person named Julie Louise Khan”. Ground two asserts that the Commissioner erred in fact and in law by refusing to “pierce the corporate veil” and allow “amendment to the named Respondent if, which is denied, the Respondent was wrongly named”. An additional ground added at the time the Appeal was heard was that the Commissioner erred in fact and law in refusing to allow the name of the Respondent to be amended from Dogrin Pty Ltd to “Mrs Khan or Mr and Mrs Khan”. It emerged during the course of the Appeal that the real basis of the Appellant’s complaint is that the Commissioner erred in refusing to amend the name of the Respondent to read “Mr and Mrs Khan”. Notwithstanding suggestions to the contrary in Ground two of the grounds of appeal, the Appellant did not pursue the appeal against the finding that the Respondent company was not the employer. Indeed, the Appellant now appears to accept that the Respondent company was not her employer at any material time. Rather, the Appellant appeals against the decision to reject her application to amend the name of the Respondent in the way suggested.

The Appellant complains that if the decision is allowed to stand it would provide a “blueprint” for employers to defeat claims of unfair dismissal in effect, by relying upon the shroud of a “corporate veil”. With great respect to the agent for the Appellant, if the decision is a blueprint for anything, it is a blueprint for inadequate preparation and misuse of misunderstood legal concepts by the Appellant’s advisors. In initially determining that the proceedings should be dismissed, the Commissioner observed that “unfortunately there is a paucity of coherent information before me”. That was by no means an incorrect assessment. If anything, it was a gross understatement. Furthermore, his observation made in the course of refusing the application to re-open and amend the Notice of Application that “there was equivocation regarding what the applicant would have the Commission order should the matter be reopened and should the evidence show that a different conclusion to that reached previously is warranted” was to say the least, an accurate reflection of the situation. It was not until after the Commissioner had made his finding that the Respondent company did not trade as Hagger’s Restaurant, that the Appellant appears to have been concerned enough to search the Register of Business Names to ascertain who, if anyone, at the material time owned the business named “Hagger’s Restaurant”. I would have thought that was one of the first things to be done. That search revealed that the business name was in fact owned by a company unrelated to the Respondent company. Furthermore, despite the constant reference by the agent for the Appellant of the need to “pierce the corporate veil”, that issue, as normally understood, did not arise as the Commissioner rightly pointed out. Rather, it was a simple task, as events turned out, of deciding whether it was the Respondent company or the natural persons who happened to be directors of the company which was, or who were in fact, the employer of the Appellant. At no stage did either Mr or Mrs Khan suggest that it was the corporation and not one or other of them who was the employer.

Despite the conflicting nature of the grounds of appeal and the confused argument advanced by the agent for the Appellant, I am satisfied that the ground of appeal asserting that the Commissioner erred in not amending the name of the Respondent company by substituting either Mrs Khan or Mr and Mrs Khan has been made out. I consider that the Commissioner approached the matter of amendment on a false premise. He seems to have approached the matter on the basis that an amendment to the name of the Respondent company could only be made to correct a misnomer or mis-description which did not amount to the substitution of a new person. There is no doubt, as the Commissioner correctly observed, that a corporation is a different person from the individuals who hold shares in that corporation or who may be its directors. Thus, in a sense, the Appellant’s request does involve the substitution of one person for another. However, in my view the Commission is nonetheless authorised to make an amendment of the kind sought whether or not the effect is to substitute another person as a party, if it is necessary to enable the real matter in dispute to be heard and determined.

The powers of the Commission with respect to procedural matters of this nature are essentially set out in section 27 of

the *Industrial Relations Act 1979*. In particular, section 27(1)(m) empowers the Commission to “correct, amend, or waive any error, defect, or irregularity whether in substance or in form”. The provisions of subsection 27(1)(m) are wide indeed. They are not simply limited to empowering the Commission to amend an error or defect but also empower the Commission to “correct” the same. Furthermore, the subsection empowers the Commission to take such action not only in respect of errors of form but also in respect of errors of “substance”. If it be that the true employer of the Appellant was either or both of Mr and Mrs Khan rather than the Respondent company, it would unquestionably constitute an error and presumably one of “substance”. That the error is one of substance and not merely one of form is not fatal in the circumstances. Whilst it may well be the case, as the Commissioner suggested, that changing the name in the way suggested by the Appellant extends beyond the concept of an amendment, it would surely fall within the concept of “correcting” the error. As was indicated in *Bridge Shipping Pty Limited v. Grand Shipping S.A. & Anor (1991) 173 CLR 231, 261* the right to correct the name of a party extends “to cover not only cases of misnomer, clerical error and misdescription” but also cases where the plaintiff, intending to sue a person he or she identifies by a particular description “was mistaken as to the name of the person who answers that description”.

The concept of correcting a mistake to the name of a party is not confined to an adjustment to the name of an existing party. It may involve the substitution of a new party. The position in this regard was explained by McHugh J in *Bridge Shipping Pty Limited v. Grand Shipping S.A. & Anor (supra) 261*, as follows—

Thus, a plaintiff may make a mistake ‘in the name of a party’ because, although intending to sue a particular person whom the plaintiff knows by sight, the plaintiff is mistaken as to that person’s name. Equally, the plaintiff may make a mistake ‘in the name of a party’ because, although intending to sue a person whom the plaintiff knows by a particular description, e.g. the driver of a certain car, the plaintiff is mistaken as to the name of the person who answers that description. In both cases, the plaintiff knows the person intended to be sued by reference to some property or properties which is or are peculiar to that person but is mistaken as to the name of that person. In the first case, the properties which identify the person are personal characteristics; in the second case, they are the properties which are the essence of the description of that person. But for the purpose of sub-r. (4) that distinction is irrelevant. In both cases, the plaintiff was mistaken only as to name of the person intended to be sued.

Although the decision in that case was made in the context of legislative provisions which differ from those contained in section 27(1)(m), the provisions in section 27 are more liberal than the legislative provisions considered in that case. Indeed, the wide powers given to the Commission in this respect are consistent with the provisions of section 26 of the Act. Section 26(1)(a) enjoins the Commission in the exercise of its jurisdiction to act according to equity, good conscience and the substantial merits of the case without regard to technicalities or legal forms. Consequently I consider that the provisions of section 27(1)(m) empower the Commissioner to correct the name of a party by substituting a different party, if the circumstances warrant the change.

The powers given to the Commission to amend and correct proceedings are subject to any contrary provision in the Act. In my view, there is nothing to the contrary to be found elsewhere in the Act. I do not read the provisions of section 29(2) as providing to the contrary in these circumstances. In my opinion, the purpose of section 29(2) is to require that the reference of an “industrial matter” by a former employee involving an allegation of unfair dismissal be made to the Commission within 28 days of the dismissal. Section 29(2) would operate to prevent the Appellant by way of amendment, creating what, in effect, is a new cause of action relating to an allegation of unfair dismissal later than 28 days of the dismissal but that is not the position here. The Appellant’s application was, and remains, an application in respect of a dismissal which occurred on a date which remains as

indicated in the Notice of Application and in respect of circumstances which have not changed by reason of the proposed amendment. The nature and constitution of the application remains essentially the same, albeit that the name of the person now identified as the employer is to be someone different from that originally stipulated in the Notice of Application. It is essentially the referral of the same industrial matter, which was made within the required time limit.

There can, of course, be no automatic right to make an amendment of the kind sought. Whether or not such an amendment is made is discretionary. The Commission does not have to exercise the powers given to it by section 27(1)(m). I agree with the observations of Cawley C in *Reid v Shark Bay Salt Joint Venture (1998) 78 WAIG 2944* that where the circumstances are such that the applicant ought to have known of the defect, the discretion should be exercised against the applicant. In this case, as previously indicated, the Appellant could have done more to ascertain by whom she was employed, rather than simply rely on the assumptions she apparently made. Furthermore, the Appellant did not make the application to amend after hearing the evidence called by the Respondent company to substantiate its objection to the application (which evidence was called first) but rather adduced evidence in rebuttal to substantiate her contention that the Respondent company was indeed the employer. Instead, the Appellant waited until after the Commissioner had ruled against the Appellant's case. It might be argued that in those circumstances, the Appellant not having at the first opportunity made application to amend, ought not be able to do so subsequently. However, the Commissioner does not seem to have dealt with the matter on that basis, nor was it put to him that he should have done so when the question of amount was raised by the Appellant. Rather, the matter was dealt with on the basis that it was wrong in law to invoke the amendment sought.

In the circumstances, I consider that the appeal should be upheld. The name of the Respondent should be corrected by substituting Mrs Khan for the Respondent company. Such an amendment is consistent with the facts as found by the Commissioner, which finding was not seriously challenged in the course of the Appeal and is in terms of the amendment sought initially by the Appellant. I agree with the orders proposed by the President.

COMMISSIONER J F GREGOR: I have had the benefit of reading the Decisions of both His Honour The President and the Senior Commissioner. I agree with the conclusions reached by them and with the orders proposed by the President. I add the following observations.

The scheme of the *Industrial Relations Act 1979*, as set out in Section 6-Objects creates a tribunal which is commanded by Section 26(1)(a) of the Act to exercise its jurisdiction in accordance with equity, good conscious and substantial merits of the case without regard to technicalities or legal form. Section 27 provides a range of provisions which equip the Commission to deal with matters before it. The tribunal is created essentially to allow lay people to be heard and seek relief on claims relating to matters affecting work places. The procedures of the Commission are not akin to those which apply in the normal courts, for instance, where Magistrates conduct matters in accordance with the rules set out in the Justices Act. The concept of correcting a mistake to a name of a party is explained by McHugh J in *Bridge Shipping Pty Ltd v Grand Shipping SA and Others 1991 73 CLR 261*. However, in my view that decision has to be applied in the context of the provisions in the Act. Those provisions grant wide powers to the Commission to deal with matters before it without regard to technicalities or legal form but always in accordance with equity, good conscious and the substantial merits of the case. Therefore, the Commission is empowered to substitute the name of a different party if the circumstances warrant that and no other section of the Act bars the particular amendment.

The amendment of the name of the respondent in this case should be allowed.

THE PRESIDENT: For those reasons, the appeal is upheld and the application remitted to the Commission at first instance to be listed for hearing and determination according to law.

Order accordingly

Appearances: Mr D Clarke, as agent, and with him, Mr C Fayle, as agent on behalf of the appellant
Mr O Khan on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Parveen Kaur Rai
(Appellant)

and

Dogrin Pty Ltd
(Respondent).

No FBA 27 of 1999.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY
SENIOR COMMISSIONER G L FIELDING
COMMISSIONER J F GREGOR.

7 March 2000.

Order:

This matter having come on for hearing before the Full Bench on the 15th day of February 2000, and having heard Mr D Clarke, as agent, and with him Mr C Fayle, as agent on behalf of the appellant and Mr O Khan, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 7th day of March 2000 wherein it was found that the appeal should be upheld, it is this day, the 7th day of March 2000, ordered and directed as follows—

- (1) THAT the applications herein by the appellant to extend time to file the appeal book out of time be and are hereby granted.
- (2) THAT the appellant be and is hereby granted leave to amend the grounds of appeal by inserting, after the existing ground 2, those grounds numbered 2(a)(a) to 2(a)(d) thereof in accordance with the schedule attached to the Notice of Application filed on 8 February 2000 which is to be added to the Appeal Book as page 2A.
- (3) THAT appeal No FBA 27 1999 be and is hereby upheld.
- (4) THAT the decision of the Commission in matter No 140 of 1999 made on the 8th day of October 1999 be and is hereby varied by substituting therefor orders:—
“THAT the name of the respondent be deleted and that there be substituted therefor the name “Julie Louise Khan of c/- Bibendum at the Colonnade, 388 Hay Street, Subiaco.”
- (5) THAT the application be remitted to the Commission at first instance to be listed for hearing and determination according to law after the service of the amended application upon the respondent.

By the Full Bench

[L.S.]

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Soanes
(Appellant)

and

Chemical Formulators Pty Ltd

(Respondent)

No FBA 12 of 1999.

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

3 April 2000.

Order.

This preliminary application made by the respondent having been due to come on for hearing before the Full Bench on the 3rd day of April 2000, and the parties herein having filed a Minute of Consent Order on 28 March 2000 consenting to the dismissal of the appeal, and further to the dismissal of the application made by the respondent for costs, and the parties hereto having consented to waive the requirements of s.35 of the Industrial Relations Act 1979 (as amended), and the Full Bench having decided that the consent to the dismissal of the appeal and the application for costs constituted special circumstances so as to exempt the parties and each of them from further compliance with Regulation 29 of the Industrial Relations Commission Regulations 1985 and having so exempted them, it is this day, the 3rd day of April 2000 ordered, by consent—

- (1) THAT appeal No FBA 12 of 1999 be and is hereby dismissed.
- (2) THAT the application filed by the respondent for costs of the preliminary application and the appeal be and is hereby dismissed.

By the Full Bench,

(Sgd.) P.J. SHARKEY,

[L.S.]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Solid Concepts Pty Ltd
(Appellant)

and

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

No FBA 23 of 1999.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER P E SCOTT
COMMISSIONER S WOOD.

31 March 2000.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the whole of the decision of the Commission, constituted by a single Commissioner, delivered on 13 October 1999 in application No CR 366 of 1998.

The order, formal parts omitted, reads as follows (see page 20 of the appeal book (hereinafter referred to as "AB"))—

"A. DECLARES THAT—

- (1) the dismissals of Rachel Wells and Jonathon Langan by the respondent were unfair.

- (2) reinstatement(sic) of them in their employment is impracticable.

B. ORDERS THAT—

- (1) Solid Concepts Pty Ltd forthwith pay to Rachel Wells the sum of \$16,431.18 by way of compensation for the dismissal which occurred.
- (2) Solid Concepts Pty Ltd forthwith pay to Jonathon Langan the sum of \$16,007.00 by way of compensation for the dismissal which occurred."

FOUNDINGS OF APPEAL

The appellant appeals against that decision on the following grounds, as amended by leave—

- A. The learned Commissioner erred in law and fact in finding that reinstatement was impracticable without any direct evidence from RACHEL WELLS, JONATHON LANGAN or FRANCOIS PRIMON and only upon indirect and insufficient circumstantial evidence. Subsection 23A(1)(b) imposes an obligation upon the Commission to make full enquiry into the realistic prospects of reinstatement and re-employment as a condition precedent to making an order under subsection 23A(1)(ba) that compensation for unfair dismissal be ordered. There was clear evidence that FORSTAFF LABOUR HIRE would re-employ RACHEL WELLS & JONATHON LANGAN which was not in dispute but which was given no proper consideration pursuant to subsection 23A(1)(b) of the said Act.
- B. The learned Commissioner failed to determine whether the Appellant was engaged in a genuine restructuring and whether RACHEL WELLS & JONATHON LANGAN'S positions with the Appellant had become redundant by virtue of an exercise of managerial prerogative to outsource all casual labour requirements. The learned Commissioner consequently failed to determine whether as a consequence of such redundancy the Appellant was only required to give RACHEL WELLS & JONATHON LANGAN 4 weeks pay in lieu of notice pursuant to an agreed oral term of their conditions of employment.
- D. The learned Commissioner erred in law and fact in failing to find that RACHEL WELLS & JONATHON LANGAN were in breach of their contract of service in refusing to become permanent and accept a commensurate reduction in pay, thus exposing the Appellant to liability at law for annual leave, holiday and sick leave pay, whilst continuing to receive a 20% increment above ordinary rates in compensation for the absence of such benefits.
- E. The learned Commissioner erred in law and in fact in that he failed to find that—
 1. the employment status of the employees by determining whether they were casual or permanent employees at the time of termination;
 2. if casual employees, that the correct test for the quantum of compensation was different and less than that for permanent employees and in all the circumstances the level of compensation awarded was excessive and disproportionate to the actual loss suffered;
 3. the employees failed to mitigate their loss by not accepting the employment in similar terms offered by Forstaff Labour Hire, which was reasonable in all the circumstances; thus reducing the amount of compensation arising from the unfair dismissal;
 4. the considerations in determining the feasibility of reinstatement were different to those applying to the duty to mitigate loss by accepting alternate employment;
 5. in all the circumstances these employees measures of damage for termination was compensation equivalent to 4 week's pay

instead of 26 weeks. Alternatively, these employees failure to mitigate by accepting employment with Forstaff Labour Hire reduces any award of compensation considerably. In any event RACHEL WELLS decision to take up full-time studies effectively removed her from the workforce thus reducing her loss from the 11th December, 1998 to the commencement of her studies in February 1999 approximately 8 weeks, and

6. the amount of any compensation should be reduced by any social security entitlements received by RACHEL WELLS & JONATHON LANGAN as these are considered income pursuant to the Income Tax Assessment Act."

Upon the hearing of the appeal, Mr Stokes, who appeared for the appellant, withdrew Ground C and the Full Bench deleted that ground.

BACKGROUND

The matter which came before the Commission at first instance was an application by the respondent organisation pursuant to s.44 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") for a compulsory conference.

After the conference, the Commission referred the matter for arbitration.

The matter arose this way. Mr Jonathon Langan and Ms Rachel Wells were employed by the appellant as "permanent casual" employees. On or about 8 December 1998, both were advised that their employment had been "transferred" to a labour hire company as from 14 December 1998 as "casual employees". Neither employee agreed with that decision. Their employment with the appellant ceased on Friday, 11 December 1998.

The respondent organisation, which represented employees of the appellant, claimed that the two employees were dismissed because they were, of all of the employees of the appellant, the only two employees who did not sign a workplace agreement. The respondent organisation alleged that their dismissal was unfair and sought an order compensating them for the dismissal which occurred.

The appellant rejected the claim on the following basis—

1. There was a refusal by the two employees to work on a permanent basis because they wanted to keep their casual rate of pay.
2. There was a refusal by the respondent organisation to allow the two employees to work as casual employees.
3. The restructure of the workplace was to allow for work fluctuations following the purchase of new equipment (see page 8(AB)).

Ms Wells had commenced employment as a prototype technician on 9 April 1997, being paid at an hourly rate. Initially, she was told that she would be a casual employee and would be employed on an on-call basis. Later, she was required to work from Monday to Friday on a constant roster and for a constant number of hours. She worked a 37 hour week and worked continuously until the last day of her employment, which was 11 December 1998.

Mr Langan commenced as a console operator in June 1996, also on an on-call basis. His employment then became continuous and he was initially paid an hourly rate of wage and then, after July 1996, at what was termed "a salary". In mid-January 1997, he was given a supervisor role and an increase in salary. In approximately July 1997, he was again paid at an hourly rate of wage and was paid out any accrued leave entitlements.

It was his understanding that, from that point on, he would not be eligible for payments for sick leave, holiday pay or overtime. He worked continuously until the last day of his employment, which was also 11 December 1998.

The employees regarded their employment as casual because they were paid an hourly rate as distinct from being paid a salary. They did not receive a payment for annual leave nor public holidays. It was the view of the appellant employer that Ms Wells and Mr Langan were not casual employees in

the sense of employees who had irregular or intermittent employment.

In approximately July 1998, Mr Primon, the manager (and a person described as the "owner" of the appellant) decided that it would be in the best interests of the appellant that business and employment contracts be in writing rather than merely verbal. He and Mr Watson, who was, at all material times, the owner/director of an employment agency known as Forstaff Labour Hire (hereinafter referred to as "Forstaff"), prepared formal workplace agreement proposals to be given to the employees.

The workplace agreements put to Ms Wells and Mr Langan generally reflected their existing conditions, but there was also inserted a provision that any days off due to a shortage of work would be rotated between staff and that provision, it was agreed, was not a term of their existing contracts of employment. There may have been other and more minor changes proposed to their contracts of employment but Mr Primon was adamant that this provision should form part of their workplace agreements. Both Ms Wells and Mr Langan objected to this provision and Mr Primon's insistence upon the inclusion of this term, made them reluctant to sign the workplace agreements.

Mr Primon's insistence that the employees had to decide whether or not they would sign the workplace agreement then brought the issue to a head. Mr Primon also significantly believed that, if the appellant continued to employ both Ms Wells and Mr Langan on their existing terms and conditions of employment, that is on an hourly rate, then the company would be breaking the law. He believed this because of advice which he said he had received from the Department of Productivity and Labour Relations.

However, Mr Primon gave later evidence that he had received advice to the effect that, if the appellant's casual employees had been employed on a regular basis for more than six months, they were not casual employees as such.

In addition, Mr Primon had also received a report, commissioned by a firm called "Workplace Relations and Management Consultants" (see exhibit 20 (pages 76-83(AB))). The report contained the following paragraph (see page 79(AB))—

"The existing practice of casual employment is technically illegal and to safeguard Solid Concepts must cease. All current employees are permanent and as such must have employment contract(sic) that reflect this provision."

It was agreed by both the respondent and the appellant that Ms Wells' and Mr Langan's employment was award free and thus, their continuing employment could not conflict with any award provision.

After the employees refused to sign the workplace agreement, Mr Primon put in place arrangements to "transfer" their employment to the labour hire company, Forstaff. Recommendations 1 and 8 (see page 81(AB)) in the report referred to above are directed to these actions.

The appellant, as a matter of law, could have continued to employ its own casual staff and, indeed, could have continued to employ Ms Wells and Mr Langan on their existing conditions of employment. Nevertheless, on 8 December 1998, Mr Primon wrote to Ms Wells and Mr Langan formally advising them that "we have arranged to transfer your employment to Forstaff Labour Hire as from Monday 14th December 1998" (see exhibit 9 (page 50(AB)) and exhibit 17 (page 73(AB))).

The appellant had an arrangement with Forstaff so that the appellant would take casual employees only from that agency. The arrangement with the agency was that Ms Wells and Mr Langan would be given the first choice of any work which was available. Mr Primon gave evidence that, as from 14 December 1998, the two employees would be Forstaff's employees and not the appellant's. The employees did not consent to being transferred.

Having found that they were unfairly dismissed, the Commissioner at first instance found that the reinstatement of Ms Wells and Mr Langan was impracticable. As to questions of reinstatement, Mr Langan, subsequent to his dismissal, found alternative employment but Ms Wells remained unemployed as at the time of the hearing of the proceedings at first instance.

The respondent tendered a schedule detailing the losses claimed. Ms Wells was studying but was unable to find alternative employment, although she was still seeking alternative full time employment. Mr Langan applied for approximately eight jobs per fortnight and, indeed, in excess of that until he actually found alternative employment some 21 weeks after his dismissal.

FINDINGS

The Commissioner at first instance made the following findings—

1. It is not illegal, technically or otherwise, to employ a person as a casual employee for any length of time.
2. There is no law which prohibits employees being employed on an hourly rate for an extended period of time.
3. That the respondent organisation and the appellant agreed that the two employees' employment was award free and thus their continuing employment could not conflict with an award provision.
4. The issue for Mr Primon was the "legality" of the situation and he was not prepared to continue with their employment unless they signed the workplace agreements.
5. Upon their refusal to do so, Mr Primon then put in place arrangements to "transfer" their employment to the labour hire company, Forstaff.
6. The appellant could have continued to employ its casual staff.
7. On 8 December 1998, Mr Primon wrote to the employees formally advising them that they had transferred their employment to Forstaff as from Monday, 14 December 1998.
8. Neither Ms Wells nor Mr Langan consented to being transferred.
9. By Mr Primon's action, he dismissed both employees from the appellant's employment and did so by unilaterally purporting to transfer their employment to Forstaff.
10. An employer cannot unilaterally transfer an employee to a third party, as occurred here.
11. Ms Wells and Mr Langan were left in no doubt from Mr Primon that, unless they signed on with Forstaff, there would be no work for them on the following Monday, 14 December 1998.
12. The dismissal was unfair. The dismissal was a consequence of their refusal to sign the offered workplace agreements, and, due to Mr Primon's belief that he could no longer continue to employ them on their current wages and conditions without breaking the law.
13. Even though Mr Primon had some arrangement with Forstaff that it would assign both employees to work at the appellant the next working day, he still dismissed them from the appellant's employment.
14. There was no reason, in substance, why the appellant could not have continued to employ Ms Wells and Mr Langan on the existing employment conditions.
15. There was no reason, on the evidence, why their employment would otherwise have ended.
16. Mr Primon said that Ms Wells was a good employee and that, overall, the performance of Mr Langan was also good.
17. Mr Primon had intended for both of the employees to continue to work at the appellant, but not as its employees.
18. Mr Primon had hoped that, some three to four months later, they both would come to him saying that they were now prepared to sign the workplace agreement and become permanent employees.
19. The dismissals were patently unfair and constituted an abuse on the test in Miles and Others t/as Undercliffe Nursing Home v FMWU 65 WAIG 385 (IAC) of the appellant's right to dismiss them.
20. There was a lack of direct evidence from both the employees and Mr Primon on the question of reinstatement. However, on the evidence, it was open to conclude that the relationship between them had broken down. Mr Primon did not trust the employees because of their reservations about the workplace agreements and he had said to both employees that he did not want them to continue to work in the company any more.
The Commissioner preferred the evidence of Ms Wells, supported by Mr Langan and a note of the conversation to that of Mr Primon on this point.
21. The employees were quite uncertain about Mr Primon's intentions towards them and Mr Langan interpreted one comment of Mr Primon's as a threat against his continuing employment.
22. Mr Primon's conduct seriously damaged the relationship of trust and confidence an employee should have in his or her employer.
23. The Commissioner declined to consider the claim for loss under the heading of annual leave, which the Commission cannot enforce under the Minimum Conditions of Employment Act 1993.
24. Their respective losses include the notional benefit of 7% superannuation and the schedule tendered by the respondent organisation was accepted.
25. If the dismissals had not occurred, Ms Wells and Mr Langan were likely to have been still working at the appellant.
26. It was the evidence of Mr Primon and Mr Watson that, if the employees had been employed by the agency, they would both have worked at the appellant virtually the entire period to the date of hearing.
27. Ms Wells would have continued her employment to the date of the hearing and her loss was continuing, exceeding the limitation of six months' remuneration imposed by s.23A(4) of the Act.
The compensation to be paid to her, therefore, would be cut off at the six month limit and her loss was 26 weeks at a rate of wage plus the annual superannuation loss to her, being a sum of \$16,431.18.
28. In the case of Mr Langan, the Commissioner was satisfied that he attempted to find alternative employment and that he had applied for approximately eight jobs per fortnight and, indeed, in excess of that.
Mr Langan found alternative employment, although at a lower rate of wage some 21 weeks after his dismissal. Given that he, too, would have continued his employment at the appellant to date, his loss was ongoing and would also exceed the limitation of six months' remuneration imposed by s.23A(4) of the Act.
His loss, therefore, was properly assessed as being the loss of his regular wage for the first 31 weeks of his unemployment and the loss to him of the difference between his regular wage and the wage in his new employment for a further five weeks, plus the value of the superannuation loss to him, being a sum of \$16,007.00.
29. The Commissioner held that both had mitigated their loss and were under no duty to accept the arrangements involving Forstaff.

PRELIMINARY ISSUES

Applications to Extend Time

The appellant applied to extend time within which to file appeal books out of time and for leave within which to make the application out of time. Those applications were opposed by the respondent.

The Full Bench, having heard argument, granted the applications because the delay had been occasioned by the fault of the appellant's agent and, whilst the delay was two months, there was no suggestion that real injustice would result to the respondent if the orders were made, whereas some injustice would result to the appellant if the orders were not made.

Further, there was an arguable case, on the face of the grounds of appeal, not denied by counsel for the respondent, in the course of submissions as to these applications.

Application to Amend the Grounds of Appeal

The agent for the appellant moved to amend the grounds of appeal. A document called "Further Amended Grounds of Appeal" appears in the appeal book at page 3(AB), where they should not appear. The original grounds of appeal were directed to the quantum of compensation ordered including questions of mitigation. The amendments sought, in effect, to add grounds of appeal directed to the question of merit.

For the respondent, it was submitted that the amendment was sought as an abuse of process and only after proceedings were instituted by it, pursuant to the Minimum Conditions of Employment Act 1993 in the Industrial Magistrate's Court.

Mr Stokes, on behalf of the appellant, gave an undertaking that no adjournment of those proceedings which were listed for 3 and 4 April 2000 would be sought.

There was a submission that the grounds as to mitigation of damage had not been argued at first instance, but submissions that went to the merits of the grounds did constitute part of the grounds of appeal before which any amendment was sought. True it is that the grounds of appeal were the subject of four drafts including the original grounds. However, that is no basis on which to refuse the amendments. The amendments were thus allowed.

ISSUES AND CONCLUSIONS

The decision at first instance was a discretionary decision, as that term is defined in Norbis v Norbis (1986) 65 ALR 12.

Thus, the Full Bench may not substitute its decision for that of the Commission at first instance unless the appellant establishes that the Commissioner erred, in accordance with the principles laid down in House v The King [1936] 55 CLR 499 (HC) and Gromark Packaging v FMWU 73 WAIG 220 (IAC).

GROUND OF APPEAL

Ground A

By this ground, it was alleged that the Commissioner had erred in fact and in law in finding that reinstatement of the two employees was impracticable. Put shortly, it was said that this finding was made on insufficient evidence.

Further, it was submitted that there was evidence that Forstaff would employ Ms Wells and Mr Langan.

At the heart of this ground was a submission that, under the Act, compensation was not awardable unless it was properly decided that reinstatement was impracticable.

The Commissioner made clear findings that there was evidence from which it was open to conclude that the relationship between the two employees and the employer had broken down.

At page 16(AB), the Commissioner refers to a number of facts which direct him to that finding.

These include Mr Primon's evidence that he did not trust Ms Wells and Mr Langan because of their reservations about the workplace agreements, that he had shouted at them on one occasion, and that he had changed the timing on their access cards. This caused, of course, their exclusion from the premises, locking them out.

The Commissioner found that Mr Primon told both employees that he did not want them to continue to work in the company any more. Indeed, as a matter of his own evidence, he made it clear that that is what he had done. He was, on his own evidence, hurt because he thought that they were accusing him of ripping them off and did not trust him. Further, although Mr Primon denied saying the words, the Commissioner accepted the evidence of Ms Wells, supported by the note of conversation which she made afterwards (exhibit 5 (pages 38-45(AB))) and the evidence of Mr Langan.

The Commissioner also found that the two employees were quite uncertain about Mr Primon's intentions towards them but noted that Mr Langan interpreted one comment of Mr Primon's as a threat to his continuing employment.

The Commissioner went on to find that Mr Primon's conduct seriously damaged the relationship of trust and confidence

between employer and employee. As a matter of fact, the two employees and the employer reached an impasse in relation to the terms of the proposed workplace agreements as a result of which the appellant company, by the actions of Mr Primon, dismissed both employees.

On the evidence, it was clear that such an impasse was reached. Mr Primon, as Managing Director of the appellant, sought to breach the impasse. He did so, as the Commissioner found, and not challenged upon appeal, by purporting to unilaterally transfer the employees without their consent to employment with a third party, the labour hire company, Forstaff. That was found to be an unfair dismissal. That it was unfair was not challenged on appeal. That the two employees were dismissed was conceded by the agent for the appellant, Mr Stokes, in his address.

On all of the evidence, it was open to the Commissioner to find as he did. To reinstate in a situation where the impasse in relation to workplace agreements precipitated a dismissal and the acrimony which resulted was entirely impracticable.

At no time did Mr Primon seek to offer them their positions back nor did he give evidence that that is what he wished to do. (Nor, although it is entirely irrelevant, after their dismissal were they offered any employment by Forstaff.) To submit that Forstaff would re-employ them was quite erroneous because they were never employed by Forstaff. Forstaff had never employed them. No reinstatement was offered, only a confirmation of the dismissal and a purported transfer.

The appellant bore the onus of establishing that reinstatement was impracticable. However, in this case, the evidence was more directed to the discharge of such an onus than to any assertion that reinstatement was impracticable.

The word "impracticable" requires and permits the court to take into account all of the circumstances of the case, relating to both the employer and the employee, (so does s.26(1)(c) of the Act), "and to evaluate the practicability of a reinstatement order in a commonsense way. If a reinstatement order is likely to impose unacceptable problems or embarrassments, or seriously affect productivity, or harmony within the employer's business, it may be "impracticable" to order reinstatement, notwithstanding that the job remains available." (See per Wilcox CJ in Nicolson v Heaven & Earth Gallery Pty Ltd 126 ALR 233 (IRC of Aust) applied in Gilmore and Another v Cecil Bros and Others 76 WAIG 4434 at 4446 (FB)).

In this case, where no wish to reinstate the employees was expressed, where an impasse on terms and conditions of employment was reached generating a degree of heat, where the appellant's chief officer, notwithstanding protests, dismissed the employees by purporting to transfer them to casual employment against their will, where they were partially "locked out" without notice, and where Mr Primon and the two employees were so much at odds and time was lost, it was open to the Commissioner to so find on the evidence and to find that any reinstatement order would create serious disharmony, and cause unacceptable problems within the meaning of the dicta in Gilmore and Another v Cecil Bros and Others (FB) (op cit).

That was the tenor of the evidence, and the Commissioner would have erred in finding otherwise. That ground is not made out.

Ground B

It is difficult to understand this ground. The appellant seems to complain that the relevant employees were being made redundant because all casual labour requirements would henceforth be supplied by persons who purported to be employed by Forstaff. There is no doubt that there was a decision to do that. However, the employees concerned did not become redundant whilst still employed, they were dismissed by a purported transfer of their employment, without their consent, to Forstaff, coupled with their being locked out of their work premises whilst negotiations concerning a workplace agreement continued.

They were not made redundant. Further, to submit that they were redundant and, at the same time, to submit that they could be reinstated, impliedly concedes that there were positions still open to them and that they were not redundant.

The question, therefore, of the employees only being paid four weeks' pay in lieu of notice does not arise. In any event,

even if it were so that they were made redundant, the dismissal was still procedurally and otherwise unfair, including being unfair because an inadequate redundancy payment was made (see *Gilmore and Another v Cecil Bros and Others* (FB)(op cit) and the cases cited therein) and there would be the need to assess compensation in excess of a mere four weeks' notice. That ground is not made out.

Ground D

I must confess that I do not understand this ground. As much as I can understand it, it seems that the appellant complains that there was no express term, but an implied term, in the contracts of employment of Ms Wells and Mr Langan that they were required to enter into a new contract or to agree to variations to their contract, by which new contract or variations, they would become "permanent" and would reduce or perhaps eliminate the liability of the appellant to pay certain entitlements.

No authority was advanced as to the basis upon which such a term could be implied. Such a term, if it existed, would be palpably inconsistent with other terms of the contract of which it was submitted to be an implied term. That alone would prevent the implication of such a term. In any event, such a term was not submitted to be necessary to give business efficacy, nor was it submitted to be the sort of term impliable by its nature in an employment contract. I do not, in any event, see how there could be any merit in such submissions that the contract of employment does now require such a term to be implied (see *Codelfa Construction Pty Ltd v State Rail Authority of NSW* [1981-1982] 149 CLR 337).

There is simply no merit in that ground or, if there is, it is not clear from the submissions made. That ground is not made out.

Ground E

This ground is directed to the quantum of compensation ordered to be paid. It was submitted that the Commissioner erred in not determining whether the employees were permanent or casual as at the time of their employment.

It is simply not relevant to the assessment of quantum of compensation that the employees were casual or permanent and the compensation awarded was not, for that reason, excessive and disproportionate to the actual loss suffered.

Next, the employees gave evidence of their attempts to mitigate their losses. Mr Langan gave uncontradicted evidence that he made over 90 applications for employment before he was successful and he was still suffering loss as at the hearing of this application because he was earning a lesser wage. They were not cross-examined and the Commissioner was entitled to find that they had mitigated their loss. The onus of proof of failure to mitigate loss is on the appellant employer (see *Growers Market Butchers v Backman* 79 WAIG 1313 at 1316 (FB)).

In any event, the matter of a failure to mitigate was not raised at first instance in evidence, although there was a general reference to it in submissions. Accordingly, pursuant to s.49(4) of the Act, it should not have been permitted to have been raised and is not open to consideration by the Full Bench on this appeal.

Next, the appellant should be bound by the conduct of its case at first instance and the ground should be dismissed for those reasons (see, too, *Growers Market Butchers v Backman* (FB)(op cit) at page 1316).

As to the submissions that the employees failed to mitigate by accepting employment with Forstaff, that was not raised at first instance and, secondly, on the authority of *Bamboo Creek Management Pty Limited v C A Fisher* (1990) 70 WAIG 3928 and *Growers Market Butchers v Backman* (FB)(op cit), were not required to act unreasonably in mitigating. To require the employees to accept employment by an employer to whom they were purported to be transferred and which transfer was an integral part of their unfair dismissal, is, ipso facto, unreasonable in any event.

The employees were dismissed because they would not accept the terms which were being offered to them. Therefore, too, to require them to return to work at the appellant's premises for a different employer when they had been unfairly dismissed by the employer, the appellant, would be entirely unreasonable.

As to the submission that Ms Wells' decision to take up full-time studies effectively removed her from the workforce, there was clear evidence that she would have remained in full-time employment had she not been dismissed and, further, that she would take full-time employment were it offered.

Accordingly, for those reasons, there was no failure to mitigate on the part of either of the two employees, even were mitigation a permissible argument on this appeal.

As to Ground E6, the amount of any social security benefits should not, in this case, be taken into account in reduction of the amount awarded (see *Capewell v Cadbury Schweppes Australia Ltd* 78 WAIG 299 (FB)).

In any event, also, the Austudy payments made to Ms Wells are not benefits, but a loan in fact requiring repayment, if they are not, no cogent submission was put to the contrary.

FINALLY

For those reasons, no ground is made out. There was no error established in the exercise of the Commissioner's discretion at first instance. I would dismiss the appeal.

COMMISSIONER P E SCOTT: I have had the benefit of reading the Reasons of Decision of His Honour the President. As to the preliminary issues, I agree that the delay was the responsibility of the Appellant's agent, that no real injustice would result for the Respondent, and that there was an arguable case. Accordingly, the application to extend time was granted. As to the substance to appeal, I agree with His Honour that no ground of appeal is made out, and that the appeal should be dismissed.

COMMISSIONER S WOOD: I have had the advantage of reading in draft form the Reasons for Decision prepared by the President. I agree that the applications for extension of time to file appeal books and to amend the grounds of appeal should be allowed. I agree also that the appeal should be dismissed as, for the reasons expressed, no ground is made out.

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

Order accordingly

APPEARANCES: Mr B Stokes, as agent, on behalf of the appellant

Mr J Rosales-Castaneda (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Solid Concepts Pty Ltd
(Appellant)

and

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

No FBA 23 of 1999.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER P E SCOTT
COMMISSIONER S WOOD.

31 March 2000.

Order.

This matter having come on for hearing before the Full Bench on the 13th day of March 2000, and having heard Mr B Stokes, as agent, on behalf of the appellant and Mr J Rosales-Castaneda (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 31st day of March 2000, it is this day, the 31st day of March 2000, ordered and directed as follows:—

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

- (2) THAT the appellant be and is hereby granted leave to amend the grounds of appeal in accordance with the "Further Amended Notice of Appeal to Full Bench" at pages 1, 2 and 3 of the Appeal Book.
- (3) THAT the appellant be and is hereby granted leave to amend Ground A of the "Further Amended Notice of Appeal to Full Bench" by deleting the word "23B" where it appears and inserting thereof the word "23A".
- (4) THAT the appellant be and is hereby granted leave to withdraw Ground C of the "Further Amended Notice of Appeal to Full Bench".

By the Full Bench

[L.S.]

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Solid Concepts Pty Ltd
(Appellant)

and

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

No FBA 23 of 1999.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER P E SCOTT
COMMISSIONER S WOOD.

31 March 2000.

Order.

This matter having come on for hearing before the Full Bench on the 13th day of March 2000, and having heard Mr B Stokes, as agent, on behalf of the appellant and Mr J Rosales-Castaneda (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 31st day of March 2000 wherein it was found that the appeal should be dismissed, it is this day, the 31st day of March 2000, ordered that appeal No FBA 23 of 1999 be and is hereby dismissed.

By the Full Bench

[L.S.]

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

**AWARDS/AGREEMENTS—
Application for—**

**AIR DRILL ENTERPRISE AGREEMENT 2000.
No. AG 20 of 2000.**

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

Air Drill.

AG 20 of 2000.

Air Drill Enterprise Agreement 2000.

COMMISSIONER S J KENNER.

29 March 2000.

Order.

HAVING heard Mr D Hicks 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—

- (1) THAT the Air Drill Enterprise Agreement 2000 filed in the Commission on 7 February 2000 be and is hereby registered as an industrial agreement.
- (2) THAT Air Drill Enterprise Bargaining Agreement 1994 No AG 199 of 1994, the Air Drill Enterprise Agreement 1997 No AG 22 of 1997 and the Air Drill Enterprise Agreement 1998 No AG 22 of 1998 be and are hereby cancelled.

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

[L.S.]

1.—TITLE

This Agreement shall be known as the Air Drill Enterprise Agreement 2000.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Application and Incidence of Agreement
4. Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Award
7. Objectives
8. Continuous Improvement
9. Training
10. Dispute Settlement Procedure
11. Wages
12. No Extra Claims
13. Income Protection Insurance
14. Workplace Agreements
15. Trade Union Training

Signatories to Agreement

3.—APPLICATION AND INCIDENCE OF
AGREEMENT

This Agreement shall apply at the establishment of Norncott Pty Ltd trading as Air Drill, 27 Jackson Street, Bayswater, Western Australia and the employees of Air Drill to whom the Metal Trades (General) Award No 13 of 1965 applies. Approximately 15 employees are covered by this Agreement.

4.—PARTIES BOUND

- (1) Norncott Pty Ltd trading as Air Drill
27 Jackson Street
Bayswater WA 6053
- (2) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch (AFMEPKIU)
1111 Hay Street
West Perth WA 6005

5.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate from the first pay period to commence on or after 1 January, 2000 and remain in force until 31 December, 2000. Two months prior to its expiry, the parties shall meet to negotiate a new Agreement.

(2) In the event of a replacement Agreement not being negotiated, this Agreement shall remain in force in accordance with the provisions of the Western Australian Industrial Relations Act 1979.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966 No 13 of 1965, provided that where there is any inconsistency between the two documents, this Agreement shall prevail.

7.—OBJECTIVES

(1) The parties agree, with consultation as well as the improved quality of employment and productivity, the competitive position of the Company and its long term growth will be gained.

(2) Short Term Objectives—

- (a) To increase productivity and efficiency.
- (b) A commitment to continuous improvement.

- (c) To increase awareness and responsibility to quality.
 (d) To be responsive to the needs of employees.
- (3) Long Tenn Objectives—
- (a) To enhance the culture and attitudes of all employees, thus creating a sense of 'belonging' to the Company.
 (b) To increase the skill levels of all employees, thereby enabling them to utilise opportunities for career paths.
 (c) To increase competitiveness.
 (d) To improve job satisfaction.

8.—CONTINUOUS IMPROVEMENT

The parties to this Agreement are committed to becoming actively involved in the continuous improvement process.

9.—TRAINING

(1) The parties to this Agreement accept that in order to meet changes in technology, equipment and work patterns, a training policy must be adopted by consultation.

(2) Such a policy could comprise, but not be limited to, courses offered being accredited and conducted during normal working hours, wherever possible.

(3) By mutual agreement with the apprentice concerned, training may occur outside of ordinary hours on one occasion.

(4) It is agreed that rates payable to apprentices shall not be reduced during the term of this Agreement.

10.—DISPUTE SETTLEMENT PROCEDURE

In the event of a question, difficulty or dispute, the matter shall be dealt with in accordance with the provisions of Clause 34.—Avoidance of Industrial Disputes contained in the Metal Trades (General) Award 1966 No 13 of 1965.

11.—WAGES

The following rates shall apply—

(1) Classification	Rate per Hour	Weekly Rate
C 10	\$16.90	\$642.20
C 12	\$14.75	\$560.40
C 13	\$13.96	\$530.36

(2) Service Pay—

In addition to the rates referred to in subclause (1) hereof, employees shall receive the following service pay for all purposes of the Award—

After Service of—	Per Week \$
One year	5.00
Two years	10.00
Three years	15.00
Four years	20.00
Five years	25.00

(3) Attendance Bonus—

(a) An additional \$10.00 per week shall be paid to each employee by way of an attendance bonus.

(b) This allowance will not be paid in any week where an employee has not attended work for two hours or more and shall not be paid to employees while they are on annual leave.

12.—NO EXTRA CLAIMS

Claims for further wage increases shall not be made during the life of this Agreement.

13.—INCOME PROTECTION INSURANCE

The employer will provide employees with income protection insurance, as detailed in Attachment A.

14.—WORKPLACE AGREEMENTS

It is agreed that for the life of this Agreement workplace agreements or individual contracts of any kind shall not be offered to new or existing employees.

15.—TRADE UNION TRAINING

(1) Union shop stewards shall be allowed up to three days of paid leave per annum to attend trade union training courses

conducted or approved by Trade Union Training Australia or the Australian Manufacturing Workers' Union.

(2) In the event that further training time is required by shop stewards, the Company will consider such requests on a case by case basis.

SIGNATORIES TO AGREEMENT

Signed for and on behalf of Norncott
 Pty Ltd trading as Air Drill

(Sgd.) RALPH KING

Date: 18/1/2000

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

(Sgd.) J. SHARP-COLLETT

Date: 31/1/2000

ATTACHMENT A

INCOME PROTECTION INSURANCE

Insured: Norncott Pty Ltd trading as Air Drill

Period of Insurance: To be agreed.

Insured Persons: All Directors, Officers and/or Employees of the Insured.

Covering:

Capital Benefits	\$250,000
Weekly accident Benefits	\$2,000
Weekly illness Benefits	\$2,000

Territorial Limits: Worldwide

Benefit Period: 156 weeks

Excess: First Seven (7) days excluded

Policy Coverage:

- 100% of Income, including shift loading, overtime and allowances.
- Full 24 hours, seven days a week cover.
- Minimum Waiting period of seven (7) days.
- Includes Workers' Compensation Top-Up Cover.
- Work Journey Cover Included.

Special Conditions:

Rehabilitation Costs Included.
 Return to Work Assistance Included.

BRADY'S BUILDING PRODUCTS (ENTERPRISE BARGAINING) AGREEMENT 1999. No. AG 181 of 1999.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Transport Workers' Union of Australia, Industrial Union of
 Workers, Western Australian Branch

and

HB Brady Co Pty Ltd.

No. AG 181 of 1999.

Brady's Building Products (Enterprise Bargaining)
 Agreement 1999.

10 March 2000.

Order.

HAVING heard Mr G. Ferguson on behalf of the applicant and Mr M. Mazzella 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 Brady's Building Products (Enterprise Bargaining) Agreement 1999 as filed in the Commission on the 5th day of November 1999 be registered on and from the 10th day of March 2000.

(Sgd.) A. R. BEECH,
 Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Enterprise Agreement will be known as the Brady's Building Products (Enterprise Bargaining) Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Resolution
7. Extra Claims
8. Relationship With Awards
9. Productivity Initiatives
10. Measuring Productivity Improvements
11. Wage Increase
12. Training Leave, Recognition of Prior Learning
13. Accumulated Sick Leave
14. Clothing and Footwear

3.—AREA AND PARTIES BOUND

This is an agreement between The Transport Workers Union, Industrial Union of Workers, WA Branch (herein after referred to as the "Union") and H.B. Brady Co Pty Ltd (herein after referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Transport Workers (General) Award (the "Award"). There are approximately 2 employees covered by this agreement.

5.—DURATION

This agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31st October 2002.

6.—DISPUTE RESOLUTION

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 outlined in Clause 32.—Dispute Settlement Procedures of the Award with the following modification.

As an adjunct to clause 32, "If the grievance, or other such matter likely to lead to dispute, is not resolved following the procedures outlined in subclause 32.1, it shall be immediately referred to the Consultative Committee". In the event that the matter is not resolved by the consultative committee, the dispute resolution procedure outlined in clause 32 shall be re-commenced at 32.3.

Note: This clause has been modified to allow the Consultative committee to have a place in dispute resolution.

7.—EXTRA CLAIMS

For the duration of this Agreement no claims are to be made to alter the Agreement.

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 Agreement shall apply.

9.—PRODUCTIVITY INITIATIVES

It is a requirement that all employees show a demonstrative and collective commitment to achieving the following productivity initiatives.

9.1 Continuous Improvement. A substantial and demonstrative commitment to quality management and to collectively develop and implement a continuous "Customer Service Programme", designed to improve the level of service we provide to both internal and external customers.

9.2 A substantial and demonstrative commitment to a consultative committee process. The consultative committee will

consist of employee and management representatives and its function shall be to address a broad range of issues aimed at improving safety, productivity, damaged goods, cost reduction, training, quality of products, quality of service, quality of management systems and continuous improvement.

9.3 Multi Skilling/Multi Tasking.

A training committee will be established with the following roles—

- a) To assist in developing a Training Programme to meet the skills needs of the Company, promote multi skilling and provide opportunities for employees to develop new skills and upgrade existing skills as required.
- b) To recommend individual employees for training and to monitor ongoing effectiveness of training.
- c) To acquire new skills and undertake tasks other than those that might be strictly in the job description. This will occasionally involve tasks in other departments apart from Despatch.
- d) To be actively involved and committed to Customer Service initiatives and Product Knowledge Seminars.

This training committee may be the consultative committee or a sub committee determined by the consultative committee.

- 9.4 a) Punctuality. Start and finish times will be adhered to. The responsibility rests with each individual to adhere to these times. Start and finish times are the responsibility of any despatch personnel on duty. Ongoing problems in this area will be dealt with by consultation with the Consultative Committee.
- b) Start/Finish Times. A commitment to vary start and finish times at the discretion of the Despatch Supervisor. Standard start times will be 7.00am, with the flexibility to start employees between the hours of 6.00am and 8.40am.

The Despatch Supervisor should not unreasonably request an employee to vary his/her starting time. The Despatch Supervisor must consider any extenuating circumstances presented by an employee as justification for not being able to comply with such a request. It is expected that extenuating circumstances will only exist in a small percentage of circumstances.

- c) Lunch Times. To be willing to continue to stagger lunch times to maintain adequate Customer Service Levels, and if required during this break, to return to work.

Note: This will be at the discretion of the Despatch Supervisor, or, if help is obviously required, at the employees initiative to help out.

9.5 Administrative instructions. Administrative instructions will be adhered to. Ongoing problems in this area will be dealt with by consultation with the Consultative Committee.

9.6 Housekeeping. A substantial and demonstrative commitment to improved housekeeping and cleanliness. Maintaining high levels of cleanliness and orderliness in the warehouse area. This also includes personal presentation.

9.7 Administration. Commitment to ensure that company paperwork is accurate and a commitment to following company initiated systems. To identify problems in paperwork and systems and to be actively involved in the resolution process of these problems.

9.8 Damage to Equipment and Products. A substantial and demonstrative commitment to minimising damage to equipment, tools, plant and products. To be proactive in identifying and dealing with maintenance issues, and as a group to be involved in the ongoing improvement of this area. Ongoing problems in this area will be dealt with by the OH&S Committee or the Consultative Committee.

9.9 Internal Communication. A substantial and demonstrative commitment to improving communication with internal and external customers and developing effective communication networks.

9.10 Assistant Despatch Supervisor. The role of the Assistant Despatch Supervisor shall be to ensure that despatch

personnel are fully utilised at all times and working towards the agreed Productivity Initiatives.

9.11 Pro-active Approach. To be committed to preparing Daily Task Lists and completing these tasks on time and without direct supervision.

10.—MEASURING PRODUCTIVITY IMPROVEMENTS

The parties to this agreement are committed to improving productivity. This will be achieved through the successful implementation of Clause 9.—Productivity Initiatives.

Regular internal and external customer surveys will form part of this measurement process as part of a commitment to improving customer service.

11.—WAGE INCREASE

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

12.—TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

Training requirements and the involvement of individuals in that training will be determined and prioritised by the Training Committee. This shall also include recognition of prior learning.

The Company shall be liable for course costs and additional expenses associated with an employee's attendance at a course including—

- course fees
- course books and material
- 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. Payment shall be contingent on attendance.

It is agreed employees selected for training will participate in the training.

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

13.—ACCUMULATED SICK LEAVE

At the anniversary of an employee's commencement date with the Company, the employee can request that unused sick leave from the year ended, to a maximum of five days, be paid out providing that a minimum of ten sick days is held in reserve.

In the event the employee makes such a request, the employee's accumulated sick leave credits will be debited by the amount of sick leave days paid out.

This option may only be exercised at the anniversary of an employee's commencement date. If the employee does not wish to avail himself/herself of this payout at that time their unused sick leave will carry over into the next year. Payouts of unused sick leave can not be requested at a later date throughout the year, the option will apply again at the employee's next anniversary of employment.

Unused sick leave can be paid out only and time off in lieu is not an option.

The Company adopts this procedure as an incentive for employees to take genuine sick days only thus reducing unnecessary downtime.

14.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company and will be replaced on a fair wear and tear basis.

- a) One pair of safety boots as soon as reasonably practicable. All efforts will be made by the Company to provide the safety boots within five working days.
- b) Two shirts and two pairs of trousers or shorts, or overalls, as soon as reasonably practicable (normally 2 weeks).

2. The company will also make available to each employee, when appropriate and requested by them, sun screen lotion and sun brims to fit over safety helmets. Safety equipment and wet weather clothing will also be provided as necessary.

3. If an employee resigns or leaves without notice within four weeks of commencing employment 80% of the cost of

the clothing and footwear may be deducted from the employee's final payment.

Signed for and on behalf of—

The Union J. McGiveron
Date: 1/11/1999

The Company—
H.B. Brady Co. Pty Ltd M. Mazzella
Date: 29/10/1999

APPENDIX A—WAGE RATES

INSTALMENT	% INCREASE	DATE
ONE	6	ON SIGNING
TWO	3	1/11/2000
THREE	3	1/11/2001

All increases will be based on the rate as of the 31st October 1999.

DATE	38 Hour Week			
	Current at			
30/10/99	Signing	1/11/2000	1/11/2001	
Employee A	\$563.50	\$597.31	\$614.21	\$631.12
Employee B	\$457.93	\$485.40	\$499.14	\$512.88

Employees are identified by reference to correspondence between the Union and the Company. The intention is to keep confidential any information pertaining to this schedule and individuals' wages.

BROOKTON HEALTH SERVICE ENROLLED NURSES AND NURSING ASSISTANTS ENTERPRISE AGREEMENT 1999. No. AG 35 of 2000.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Brookton Health Service
and

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

No. AG 35 of 2000.

Brookton Health Service Enrolled Nurses and Nursing
Assistants Enterprise Agreement 1999.

20 March 2000.

Order.

HAVING heard Ms L.H. Coleman and Ms M. Kaempf as agents on behalf of the Applicant and Ms S.M. Jackson as agent 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.]

**CURRICULUM COUNCIL ENTERPRISE
AGREEMENT 1999.**

No. PSA AG 4 of 2000.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia
Incorporated

and

Chief Executive Officer Curriculum Council.

No. PSA AG 4 of 2000.

Curriculum Council Enterprise Agreement 1999.

**PUBLIC SERVICE ARBITRATOR
COMMISSIONER P E SCOTT.**

13 March 2000.

Order.

HAVING heard Mr M Finnegan on behalf of the Applicant and Mr D McEvoy 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 Curriculum Council Enterprise Agreement 1999 in the terms of the following schedule be registered on the 2nd day of March 2000.

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

[L.S.]

Schedule.

**CURRICULUM COUNCIL ENTERPRISE
AGREEMENT—1999**

1.—TITLE

This Agreement shall be known as the Curriculum Council Enterprise Agreement 1999.

2.—ARRANGEMENT

Clause Number	Clause
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.	Single Bargaining Unit
10.	Relationship to Parent Award
11.	Availability of Agreement
12.	Dispute Resolution Procedure
13.	Objectives and Principles
14.	Productivity Measurement
15.	Consultation
16.	Salary Increases
17.	Employee Funded Extra Leave
18.	Part-Time Employment
19.	Hours of Duty
20.	Overtime
21.	Leave Loading
22.	Deferred Salary Scheme
23.	Home Based Work
24.	Long Service Leave
25.	Study Leave
26.	Parental Leave
27.	Sick Leave
28.	Child Care Arrangements
29.	Ceremonial/Cultural Leave
30.	Family Leave
31.	Bereavement Leave
32.	Secondment
33.	Payout of Leave
34.	Public Holidays
35.	Signatures of Parties to Agreement

Schedule A: Salaries—38.5 and 40
hours per week
Schedule B Home based Work

3.—SCOPE

This Industrial Agreement shall apply to all Curriculum Council employees including Senior Executive Service employees working in the Curriculum Council 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 Curriculum Council 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 who can be covered by this Agreement is up to 70.

6.—DEFINITIONS

In this Agreement, the following terms shall have the following meanings.

“Agreement” means The Curriculum Council Enterprise Agreement 1999.

“Council” means Curriculum Council (CC)

“Employee” means for the purposes of this Agreement, someone who is referred to at Clause 3 .- Scope.

“Employer” means Chief Executive Officer of the CC.

“Government” means the State Government of Western Australia

“GOSAC” means Government Officers Salaries, Allowances and Conditions Award 1989.

“Minister” means the Minister or the Ministers of the Crown responsible for the administration of Curriculum Council.

“Metropolitan Area” means the area within a radius of fifty (50) kilometres from the Perth City Railway Station.

“SBU” means Single Bargaining Unit.

“Union” means Civil Service Association of Western Australia Inc.

“WAIRC” means The Western Australian Industrial Relations Commission

7.—DATE AND OPERATION OF AGREEMENT

1. This Agreement shall operate from the date of registration in the WAIRC and shall remain in force for/until (24 Months from Date of Registration). The salaries (4%) contained in Schedule A will be payable from date of registration.

2. During the life of the 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.

3. This Agreement has 38.5 hours per week and 40 hours per week options available to staff. When making the choice the following conditions will apply—

(a) After discussion with Director Corporate Services, staff make their choice of 38.5 or 40 hours. If in the opinion of the Director Corporate Services the responsibilities of the position may not suit the choice made by the staff member, a memo setting out the Director Corporate Services reasons, will be signed by both parties and placed on the personal file with a review taking place after six months. If agreement cannot be reached after the time of the review, the issue must be referred to the Public Service Arbitrator.

(b) The option chosen, notwithstanding subclause 3(a) can only be changed by mutual agreement except when ordered by the Public Sector Arbitrator.

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

5. The Agreement will continue in force after the expiry of the term until such time as any of the parties withdraws from

the agreement by notification in writing to the other party and to the WAIRC or replaces this Agreement with a subsequent Agreement.

6. The parties agree to commence negotiations on a new agreement at least 6 months prior to the expiration of this agreement with the intention to complete negotiations two months prior to the expiration of this current agreement.

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 sought or granted except for those provided under the terms of this Agreement.

9.—SINGLE BARGAINING UNIT

1. This Agreement has been negotiated through a SBU.

2. The SBU comprised of the Union party to this Agreement and the employer.

3. The parties will develop an agreed process for the implementation of the initiatives outlined in this Agreement.

4. The parties agree to meet as appropriate to—

- (a) monitor
- (b) review
- (c) have input into the progress of the implementation of the Agreement: and
- (d) actively share information.

5. Through the SBU the parties shall review the implementation of the Home Based Work. The Union shall be entitled to request and receive from the employer information statistics in relation to Home Based Work.

10.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read in conjunction with the Government Officers Salaries Allowances and Conditions Award 1989. In the case of any inconsistencies, this Agreement shall have precedence to the extent of any inconsistencies.

11.—AVAILABILITY OF AGREEMENT

Every employee will be entitled to receive 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

This dispute settlement procedure will apply to any questions, dispute or difficulties that arise under this Agreement—

1. The Union representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a Union representative.
2. If the matter is not resolved within 7 working days following the discussion in accordance with paragraph (1) the matter shall be referred by the Union representative or employee to the employer for resolution.
3. If the matter is not resolved within 7 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.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are—

1. To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services;
2. To achieve the Curriculum Council mission and improve productivity and efficiency in the Curriculum Council through ongoing improvements;
3. To promote the development of trust and motivation and to continue to foster enhanced employee relations;
4. To promote participative decision making processes and practices;
5. To promote increased satisfaction from jobs and secure employment opportunities;
6. To develop and pursue changes on a co-operative basis by using participative practices

14.—PRODUCTIVITY MEASUREMENT

Previous Agreements

The productivity gains arising from changes to work patterns and arrangements in the previous Curriculum Council Enterprise Bargaining Agreement 1998 will continue as part of this agreement.

Current Agreement

Staff of the Curriculum Council agree to continue with the current productivity improvements which have resulted in the progressing of the Implementation of the Curriculum Framework Post-compulsory review and the Implementation of the National Training Framework. To this point, staff will also work at developing further productivity gains with the aim of completing stage 2 of the Post-Compulsory study and phase 1 of the National Training Modules project by 1.7.2000.

15.—CONSULTATION

The parties are committed to working together to improve the business performance and working environment in the Curriculum Council. Whilst it is acknowledged by the parties that decisions will continue to be made by the employer, which is responsible and accountable to Government by statute for the effective and efficient operation of its business, the parties are committed to effective communication and agree, in particular, that—

1. Where the employer proposes to make changes likely to affect existing practises, working conditions or employment prospects of employees, the employees affected shall be notified by the employer as early as possible.
2. Employees will be involved in contributing to the efficiency and effectiveness of their workplace within policies and guidelines.

16.—SALARY INCREASES

The following salary increase, 4.0%, is payable from (date of registration). A second increase of up to 2.5% will be payable on or after October 2000, subject to the completion of the productivity initiatives and 1.5% of the 2.5% being funded by the Curriculum Council, with the remaining 1% to be centrally funded.

17.—EMPLOYEE FUNDED EXTRA LEAVE

1. Upon application, an employee may be entitled to receive between 48 and 51 weeks pay spread over the full 52 weeks of the year, taking between 8 and 5 weeks leave instead of 4 weeks per year. (The employer will consider each application for Employee Funded Extra Leave on its individual merit.) The additional annual leave will not be able to be accrued. In the event that an employee is unable to take such leave, his/her salary will be adjusted at the completion of the twelve month period to take account of the fact that time worked through the year was not included in the salary.

2. The additional leave will not attract leave loading.

3. The employer will ensure that employees are advised of the need to take account of the impact on superannuation and taxation.

18.—PART-TIME EMPLOYMENT

1. This clause will be read in conjunction with clause 9 Part-Time employment in GOSAC and shall replace subclause 1 of clause 9 of GOSAC.

2. Hours

(a) Each permanent part-time arrangement shall be confirmed by the employer in writing and should include the following specifications—

- (i) the agreed period of the arrangement;
- (ii) the hours to be worked daily and weekly by the Officer, including start and finishing times, which shall hereafter be referred to as "ordinary working hours".

(b) The number of hours worked by the part-time employee may be varied with agreement by both parties. (either verbally or in writing)

(c) Any variation will not incur penalties unless the hours so worked qualify for overtime penalties for a full time officer as per the Overtime clause.

19.—HOURS OF DUTY

1. The ordinary hours of work shall be 38.5 hours or 40 hours per week. (Refer also Clause 7(3)).

2. All leave entitlements accrued by employees electing to work a 38.5 or 40 hour week shall be credited at the rate of 7.7 or 8 hours respectively per day for the period worked under those arrangements.

20.—OVERTIME

1. The Employer can require the Employee to work reasonable overtime in order for the organisation to meet its objectives. Where possible the Employer should give at least 24 hours notice. It is accepted however that this notice will not always be practicable. Time-in-lieu or a combination of payment and time in lieu will be negotiated wherever possible. However, where an employee requests, overtime will be paid.

2. Approved overtime worked on weekdays, Friday to Thursday for employees levels 1 to 5 inclusive—

- (a) If overtime is cleared as time in lieu during the same working week it will be cleared as ordinary rates;
- (b) If overtime is not cleared as time in lieu during the same working week in which it was accrued, then it will be paid out or taken at time and one half rates.

3. Approved overtime worked on weekdays, Friday to Thursday, for employees level 6 and above—

- (a) For employees working a 38.5 hour week all time worked in excess of 9 hours in any one day or 43.5 hours in any week—whichever is the greater calculation of overtime. (Friday—Thursday) will be subject to time off in lieu to be calculated at ordinary time (ie no penalty rates).
- (b) For employees working a 40 hour week all time worked in excess of 10 hours in any one day or 45 hours in any week – whichever is the greater calculation of overtime. (Friday – Thursday) will be subject to time off in lieu to be calculated at ordinary time (ie no penalty rates).
- (c) Time in Lieu is to be cleared at a time agreed to by the Employee and the Employer.

4. Employees working a 38.5 or 40 hour week may elect to accumulate 154 or 160 hours overtime to be taken as time in lieu or to be paid out at the end of the financial year, unless otherwise arranged with the employer.

5. All time worked on Saturdays will be paid or cleared as time in lieu at time and one half, as mutually agreed between Employee and Employer.

6. All time worked on Sundays will be paid or cleared as time in lieu at double time, as mutually agreed between Employee and Employer.

7. All time worked on designated Public Holidays will be paid or cleared as time in lieu at the following rates, as mutually agreed between Employee and Employer—

8.

- (i) During prescribed normal hours x time and one half (in addition to the normal days pay)
- (ii) Outside normal hours x double time and one half.

9. For the purpose of this clause, a special allowance or higher duties allowance will only be paid when the overtime is worked on duties for which these allowances are specifically paid.

10. An officer who is required to travel on official business outside of the officer's normal working hours and away from the officer's usual headquarters, shall be granted time off in lieu of such actual time spent in travelling at equivalent or ordinary rates on weekdays and at time and one half rates on Saturdays, Sundays, and public holidays.

11. Time off in lieu will not be granted unless the total hours travelled and worked is greater than 45 hours per week for officers level 6 and above and greater than 40 hours for officers level 1 to 5 inclusive.

21.—LEAVE LOADING

1. subject to Clause 19 (GOSAC) a loading on Annual Leave will be paid as follows—

- (a) From 1998 all Annual Leave Loading, which will have accrued by 31 December will be paid in one lump sum on the first pay period of December of the year in which it was accrued.

22.—DEFERRED SALARY SCHEME

1. With the written agreement of the employer, an employee may elect to receive, over a four year period, 80% of the salary they would otherwise be entitled to receive in accordance with this Agreement.

2. On completion of the fourth year, the employee will be entitled to 12 months leave and will receive an amount equal to 80% of the salary they were entitled to in the fourth year of deferment.

3. Where employees complete four years of deferred salary and are not required to attend duty in the following year, the period of non attendance shall not constitute a break in service and shall count as service on a pro rata basis for all purposes.

4. An employee may withdraw from this scheme prior to completing a four year period by written notice. The employee will receive a lump sum payment of salary forgone to that time but will not be entitled to equivalent absence from duty.

5. Employees must provide written evidence that they have sought professional advice on the superannuation and taxation implications associated with the Deferred Salary Scheme

23.—HOME BASED WORK

The Home Based Work arrangements as shown in Schedule B of this agreement shall apply for the life of this Agreement.

24.—LONG SERVICE LEAVE

Subject to Clause 21 (GOSAC) and to the employer's convenience, an employer may approve an officer's application to take a complete entitlement of long service leave on full pay or half pay, or, provided that all Annual Leave is cleared, may allow an officer to take the leave on a minimum of one weekly lots.

25.—STUDY LEAVE

First degree courses from the University of Notre Dame shall also be considered as approved courses of study.

26.—PARENTAL LEAVE

1. Definitions

“employee” includes full time, part time, permanent and fixed term contract employees.

“replacement employee” is an employee specifically engaged to replace an employee proceeding on parental leave.

2. Eligibility for Parental Leave

(a) An employee is entitled to a period of up to 52 consecutive weeks parental leave in respect of the birth of a child to an employee or an employee's spouse/partner.

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

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

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

(e) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an extra additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

3. Other Leave Entitlements

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

- (b) (i) Subject to all other leave entitlements being exhausted employees shall be entitled to apply for leave without pay following parental leave to extend their leave by up to two years.
- (ii) Upon return to work employees will be entitled to the same position or a position equivalent in pay, conditions and status and commensurate with the employee's skills and abilities as the one held immediately prior to commencement of leave.
- (iii) Any period of leave without pay must be applied for and approved in advance and will be granted on a year to year basis. Where both parents work for an agency the total period of leave without pay following parental leave will not exceed two years.

(c) An employee on parental leave is not entitled to sick leave.

(d) Should the birth or adoption result in other than the arrival of a child, the person concerned shall be entitled to such a period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

(e) Where a pregnant employee not on parental leave suffers illness related to the pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or unpaid leave for a period certified as necessary by a registered medical practitioner.

4. Notice and variation

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

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

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

5. Transfer to a Safe Job

Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position at the same classification level until the commencement of the parental leave.

6. Replacement Employee

Prior to engaging a replacement employee the Council shall inform the person of the temporary nature of employment and the entitlements relating to the return to work of the employee on parental leave.

7. Return to Work.

(a) An employee shall confirm the intention to return to work by notice in writing to the employer not less than four week's prior to the expiration of parental leave.

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

(c) Where the position occupied by the employee no longer exists the employee shall be entitled to a position at the same classification level with duties similar to that of the abolished position.

(d) On application an employee may return on a part time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level in accordance with the part time provisions of the Agreement.

(e) An employee who has return to work on a part time basis may revert to full time work at the same classification level, within two years of the recommencement of work.

8. Effect of Leave on the Employment Contract

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

(b) Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any other purpose under the relevant award or agreement.

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

(d) An employer shall not terminate the employment of an employee on the grounds of the employee's application for parental leave or absence on leave but otherwise the rights of the employer in respect of termination of employment are not affected.

27.—SICK LEAVE

1. The basis for determining the entitlement to leave of absence on the grounds of illness which an officer may be granted shall be ascertained by crediting the officer concerned with the following sick leave credits, which shall be cumulative—

	<i>Number of days on full pay</i>
On date of appointment	6
On completion of six months' continuous service	6.5
On completion of twelve months continuous service and on completion of each further period of twelve months' continuous service	12.5

2. Half pay entitlements held by an employee at the commencement of this agreement will be converted to full pay.

28.—CHILD CARE ARRANGEMENTS

1. The employer recognises the needs of employees with family responsibilities and the right to address those responsibilities without conflict between work and home.

2. The parties are committed to the introduction of conditions of work that assist employees with family responsibilities effectively discharging both responsibilities.

29.—CEREMONIAL/CULTURAL LEAVE

1. An employee covered by this agreement is entitled to time off without loss of pay for tribal/ceremonial/cultural purposes.

2. Leave shall include leave to meet the employees' customs, traditional law and to participate in ceremonial and cultural activities.

3. Ceremonial/cultural leave may be taken as whole or part days off. Each day or part thereof, may be deducted from annual leave entitlements.

4. The employer may request reasonable evidence of the legitimate need for the employee to be allowed time off.

5. With the approval of the Chief Executive Officer time off without pay may be granted for tribal/ceremonial/cultural purposes.

6. Ceremonial/cultural leave shall be available, but not limited to Aboriginal and Torres Strait Islanders.

30.—FAMILY LEAVE

1. For the purpose of this clause, the definition of family shall be 'a person who is related to the employee by blood, marriage, affinity, adoption and includes a person who is wholly or mainly dependant on, or is a member of the household of, the employee'.

2. Staff may take up to 5 days' of sick leave per credit year to care for immediate family members who are sick.

3. An application for family leave exceeding two consecutive working days shall be supported by the certificate of a registered medical practitioner or, when the nature of the illness consists of a dental condition, by the certificate of a registered dentist.

31.—BEREAVEMENT LEAVE

A maximum of 3 days may be approved by the Chief Executive Officer for Bereavement Leave. The maximum will only be granted under special circumstances for example where the responsibility for funeral arrangements falls on the staff member.

1. The entitlement to bereavement leave will be on the death of—

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

2. Bereavement leave is not to be taken during a period of any other kind of leave.

3. An employee who claims to be entitled to paid leave under this clause 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.

It should be noted that Short Leave is not an option under the terms and condition of this Agreement

32.—SECONDMENT

With the approval of the Chief Executive Officer a Curriculum Council employee who is on secondment to another government agency or on a fixed term contract in the private sector, may elect not to clear any outstanding leave.

33.—PAYOUT OF LEAVE

1. An officer may, with the approval of the Chief Executive Officer, exercise an option to receive payments rather than taking periods of *accrued* annual leave or *accrued* long service leave, such applications being subject to the following conditions—

- (a) Availability of funds.
- (b) The applicant must have taken 20 days annual leave in the calendar year for an application for payment in lieu of annual leave to be approved.
- (c) Payment in lieu of leave will not exceed the equivalent of four weeks annual leave and 13 weeks long service leave in any one calendar year. However, applications to have greater amounts of leave paid out will be considered when special circumstances exist.
- (d) The payment will be at the salary rate, which would have applied, had the applicant taken the leave rather than payment in lieu.

(e) Applications received will be considered in order of merit, however special priority will be given to cases of personal hardship. All other applications will be considered after the 31 May, to link with availability of funds, or at a time approved by the Chief Executive Officer.

(f) The employer will ensure that employees are advised of the need to take account of the impact on superannuation and taxation.

34.—PUBLIC HOLIDAYS

1. Public Holidays shall be the days published in Schedule 1 of the Minimum Conditions of Employment Act 1993, that is—

- Australia Day
- Labour Day
- Good Friday
- Easter Monday
- Anzac Day
- Foundation Day (the day appointed by proclamation published in the Gazette under the Public and Bank Holidays Act 1972)

Celebration Day for the anniversary or the birthday of the reigning Sovereign (the day appointed by proclamation published in the Gazette under the Public and Bank Holidays Act 1972)

New Years Day, Christmas Day or Boxing Day

When New Years Day, Christmas Day or Boxing Day falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday.

2. When Boxing Day falls on a Sunday or Monday, the holiday shall be observed on the next succeeding Tuesday.

3. 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.

SIGNATURES OF PARTIES TO THE AGREEMENT

The Commission prefers that this clause is on a separate page on its own.

Signatories
Signed for and on behalf of the
CURRICULUM COUNCIL

..... Date: 21/01/00
Signed
PAUL ALBERT
CHIEF EXECUTIVE OFFICER

Signed for and on behalf of the
THE CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA INCORPORATED

..... Date: 23/02/00
Signed *Common Seal*
DAVE ROBINSON
GENERAL SECRETARY

SCHEDULE A—SALARIES

The annual salaries applicable to officers covered by this Agreement

(NB: * subject to achievement of the productivity initiatives

	38.5 HOURS PER WEEK				40 HOURS PER WEEK			
	Date of Registration 4%		October 2000 Up to 2.5%		Date of Registration 4%		October 2000 Up to 2.5%	
	Annual \$	F/nightly \$						
LEVEL 1								
Under 17 Years	12,526	480.22	12,839	492.23	13,007	498.68	13,332	511.15
17 years	14,639	561.24	15,005	575.27	15,209	583.09	15,589	597.67
18 years	17,076	654.66	17,503	671.03	17,749	680.46	18,192	697.47
19 years	19,765	757.77	20,259	776.72	20,534	787.24	21,047	806.92
20 years	22,196	850.95	22,751	872.23	23,050	883.69	23,626	905.78

	38.5 HOURS PER WEEK				40 HOURS PER WEEK			
	Date of Registration 4%		October 2000 Up to 2.5%		Date of Registration 4%		October 2000 Up to 2.5%	
	Annual \$	F/nightly \$	Annual \$	F/nightly \$	Annual \$	F/nightly \$	Annual \$	F/nightly \$
1st year	24,383	934.81	24,992	958.18	25,342	971.57	25,975	995.86
2nd year	25,134	963.59	25,762	987.68	26,105	1,000.83	26,758	1,025.85
3rd year	25,884	992.34	26,531	1,017.15	26,891	1,030.98	27,564	1,056.75
4th year	26,629	1,020.93	27,295	1,046.45	27,656	1,060.28	28,347	1,086.79
5th year	27,379	1,049.68	28,064	1,075.92	28,442	1,090.43	29,153	1,117.69
6th year	28,129	1,078.42	28,832	1,105.39	29,228	1,120.57	29,959	1,148.58
7th year	28,992	1,111.52	29,717	1,139.31	30,127	1,155.02	30,880	1,183.89
8th year	29,589	1,134.41	30,329	1,162.77	30,734	1,178.30	31,502	1,207.76
9th year	30,471	1,168.22	31,233	1,197.42	31,654	1,213.59	32,446	1,243.93
LEVEL 2								
1st year	31,528	1,208.73	32,316	1,238.95	32,756	1,255.82	33,575	1,287.21
2nd year	32,338	1,239.79	33,146	1,270.78	33,587	1,287.67	34,426	1,319.87
3rd year	33,188	1,272.40	34,018	1,304.21	34,485	1,322.12	35,347	1,355.18
4th year	34,088	1,306.89	34,940	1,339.57	35,407	1,357.45	36,292	1,391.39
5th year	35,029	1,342.98	35,905	1,376.55	36,395	1,395.33	37,305	1,430.21
LEVEL 3								
1st year	36,323	1,392.58	37,231	1,427.39	37,743	1,447.00	38,686	1,483.18
2nd year	37,332	1,431.25	38,265	1,467.04	38,776	1,486.64	39,746	1,523.80
3rd year	38,371	1,471.09	39,330	1,507.86	39,854	1,527.94	40,850	1,566.14
4th year	39,437	1,511.96	40,423	1,549.75	40,978	1,571.05	42,003	1,610.32
LEVEL 4								
1st year	40,900	1,568.06	41,923	1,607.26	42,483	1,628.74	43,545	1,669.46
2nd year	42,042	1,611.84	43,093	1,652.13	43,674	1,674.40	44,766	1,716.26
3rd year	43,227	1,657.25	44,307	1,698.68	44,909	1,721.76	46,032	1,764.81
LEVEL 5								
1st year	45,486	1,743.89	46,624	1,787.49	47,268	1,812.19	48,450	1,857.50
2nd year	47,034	1,803.22	48,210	1,848.30	48,863	1,873.36	50,085	1,920.19
3rd year	48,629	1,864.39	49,845	1,911.00	50,526	1,937.11	51,789	1,985.54
4th year	50,285	1,927.86	51,542	1,976.06	52,234	2,002.58	53,540	2,052.65
LEVEL 6								
1st year	52,947	2,029.94	54,271	2,080.68	55,019	2,109.36	56,395	2,162.10
2nd year	54,757	2,099.31	56,126	2,151.80	56,884	2,180.85	58,306	2,235.37
3rd year	56,630	2,171.12	58,046	2,225.40	58,839	2,255.81	60,310	2,312.21
4th year	58,630	2,247.80	60,096	2,303.99	60,907	2,335.08	62,429	2,393.46
LEVEL 7								
1st year	61,697	2,365.38	63,239	2,424.52	64,096	2,457.37	65,699	2,518.80
2nd year	63,819	2,446.72	65,414	2,507.89	66,298	2,541.78	67,955	2,605.32
3rd year	66,127	2,535.24	67,781	2,598.62	68,701	2,633.92	70,419	2,699.77
LEVEL 8								
1st year	69,880	2,679.10	71,627	2,746.07	72,611	2,783.80	74,426	2,853.40
2nd year	72,567	2,782.13	74,381	2,851.68	75,397	2,890.62	77,282	2,962.88
3rd year	75,900	2,909.92	77,798	2,982.67	78,856	3,023.23	80,827	3,098.81
LEVEL 9								
1st year	80,061	3,069.45	82,063	3,146.18	83,169	3,188.58	85,248	3,268.30
2nd year	82,874	3,177.30	84,946	3,256.73	86,113	3,301.46	88,266	3,384.00
3rd year	86,082	3,300.27	88,234	3,382.77	89,438	3,428.93	91,674	3,514.66

**SCHEDULE B
HOME BASED WORK**

1. Definitions

“Home based site” means a private dwelling agreed between the Council the employee and the relevant Union.
“Home based employee” means an employee at the home based site.
“Home based work” means regular performance of ordinary hours of duty at the home based site.
“Office Based site” means the location where the employee would ordinarily work if there were no home based work arrangement.

2. Terms and Conditions

(a) Terms and conditions contained in this clause will apply to an employee who is approved to perform his/her ordinary hours of duties or part thereof at a home based site.

(b) The employee’s home based site will be deemed to be his/her headquarters for the purposes of payment of allowances and other arrangements.

(c) The status of the home based employee will be identical to that of an office based employee. All relevant awards, agreements, policies and legislation shall apply and be binding.

(d) The employee agrees to maintain an accurate record of hours worked including work carried out at the home based work site. The employee is to be contactable during periods in which home based work is carried out and available for communication with the employer.

(e) The home based work site may be used for overtime provided that separate written agreement is reached prior to the commencement of overtime. Overtime hours of work will be agreed in writing and paid in accordance with the overtime provisions of this agreement. A copy of the written agreement will be held by both the employee and the employer for

the period during which the overtime is carried out at the home based site.

(f) Home based work will be on the basis that the employee spends a designated period of time agreed between the employer and the employee of his/her usual weekly hours of duty at the office based site.

(g) The employer will be responsible for the provision and maintenance of Council equipment in a condition that complies with the Western Australian Occupational Health and Safety Act 1984 and the provision of supplies as set out in subclause 3 provided that the employer and the employee may agree on any alternative arrangements if appropriate. Such alternative arrangements must be recorded.

(h) An employee in a home based work arrangement is prohibited from contracting out his/her work.

(i) The employer shall ensure home based employees have the same opportunities for career development and training as office based employees. In particular—

- (i) a home based employee will carry out such duties as are within the limits of the employee's skill, competence and training and job description; and
- (ii) an employee working at the home based site will be expected to undertake appropriate work-related training, occupational health and safety training and staff development and shall receive notification of career and training opportunities available.

such training may include change to work design, work organisation and technical developments in his/her field of employment; and

such training should occur in work time, at either the office based site or in a recognised training centre.

3. Initiation of and Approval for Home Based Work

(a) A home based working arrangement will only be entered into on a voluntary basis which may be initiated by the employee. An employee may only initiate a proposal for home based work in respect of—

- (i) that employee's substantive position, or
- (ii) a position in which the employee is temporarily performing duties.

(b) Each application for a home based work arrangement is to be considered on a case by case basis.

(c) The parties acknowledge that a home based work arrangement will not be appropriate when and employee is on a return to work program, particularly a graduated return to work program following an injury as a result of work. Should it be considered appropriate to initiate a home based work arrangement in these circumstance the employer and employee must consult the employee's approved rehabilitation provider prior to commencing such an arrangement.

(d) A home based work arrangement is not a substitute for dependant care. The employer has the responsibility to ensure the home based work arrangement is appropriate to the employees domestic circumstances.

(e) The employer agrees to advise the employee that it is his/her responsibility to assess the personal implications of commencing home based work with respect to taxation, insurances, leasing or mortgage arrangements.

4. Requirements for approval

(a) Before approval can be given for a home based work arrangement to commence, the Council and the employee must agree to the following matters—

- (i) The address, telephone number, facsimile number and E-mail address of the home based site.
- (ii) The duties to be performed.
- (iii) The days and hours of duty at the office based site and at the home based site.
- (iv) Duration of the arrangement and agreed period of notice for purposes of terminating the arrangement.
- (v) The specific facilities to be used at the home based site.
- (vi) The method of disseminating Council communication bulletins to the home based employee where access to that information may be reduced.

(vii) Methods of measuring work performance, provided that systems-based automated work measurements will not be used as the sole means for determining or monitoring individual work performance.

(viii) Details of the Council assets and supplies to be used at the home based site, including maintenance arrangements.

(ix) Details of employee's assets and supplies to be used at the home based site for official use, including maintenance and insurance coverage.

(x) Details of work space and facilities to be provided when the employee attends the office based site.

(xi) Any alterations to the workplace and facilities that may be required resulting from Occupation Health and Safety legislation.

(b) All matters listed in subclause 3(I) above and the matters listed hereunder shall be recorded—

- (i) The employee's name.
- (ii) The employee's position indicating whether it is the employee's substantive position.
- (iii) The name and position of the employee's supervisor.
- (iv) The employee's division/branch/Council/area/centre.
- (v) Agreed security measures and Occupational Health and Safety requirements.

5. Job Characteristics Not Considered Appropriate for Home Based Work

(a) Employees performing the duties of a position where the position could be described as having at least one of the following characteristics will not be considered for home based work—

- (i) the position requires a high degree of supervision or close scrutiny;
- (ii) the position requires a direct client face to face contact on a frequent basis without the option of easily rescheduling;
- (iii) the position does not lend itself to objective performance monitoring of outcomes;
- (iv) the position requires the occupant to be a member of a team and that regular direct face to face contact on a daily basis with other team members at the office based site is an integral part of the job's responsibilities; or
- (v) the position has other characteristics which the relevant Union and the employer have agreed are unsuitable for home based work.

6. Access Arrangements

(a) The parties acknowledge that management or management representatives will from time to time need to obtain access to a home based site and that the relevant Union may also wish to visit a member while he or she is working from a home based site. The parties also acknowledge that only management will require urgent access which will only be granted under terms of this clause.

(b) The parties also acknowledge that the consent of the home based employee is required before access can be obtained to a home based work site.

(c) Unless urgent access is required to a home based work site, or the home based work employee agrees otherwise, on a case by case basis work employee must be given at least two clear days notice of any persons' intention to physically enter to the home based work site. Neither management nor Unions will apply pressure to reduce this notice period.

(d) The purposes for which management may require urgent access to a home based work site are—

- (i) maintenance of faulty equipment;
- (ii) occupational health and safety purposes;
- (iii) urgent security and audit purposes; and
- (iv) other purposes agreed between the employer and the relevant Union.

(e) The purpose for which non-urgent access may be sought include but are not limited to—

- (i) routine maintenance of equipment and supplies;
- (ii) assessing and monitoring security arrangements of equipment and documents;

- (iii) routine occupational health and safety assessments;
- (iv) access by Union to member where office based site access would not be adequate; and
- (v) supervision where office based supervision would not be adequate.

7. Termination and Renegotiation

(a) In the event of renegotiation as a result of the commencement of a return to work program the employee's approved rehabilitation provider must be consulted.

(b) A home based working agreement may be—

- (i) altered or discontinued by agreement at the request of the employer or the employee, provided that neither party will unreasonably withhold agreement to alter or discontinue the arrangement;
- (ii) terminated by the employer due to operational requirements after the period of four weeks' notice including where the employee unreasonably withholds consent with respect to access by management or management representative in accordance with subclause (6);
- (iii) terminated by the employer on grounds of inefficiency of the arrangements after four weeks' notice; or
- (iv) terminated by the employer in the event of failure to comply with Occupational health and Safety or security arrangements as outlined in subclause (6).

(c) Where an arrangement is terminated in accordance with this sub-clause the employee will be provided with written reasons at the time when the notice is given. In accordance with the principles of natural justice, the employee shall be given 2 weeks to reply to the written reasons and the employer will give due consideration to any response provided.

FREMANTLE CEMETERY BOARD ENTERPRISE BARGAINING AGREEMENT 2000.

No. PSA AG 3 of 2000.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated

and

Chief Executive Officer/General Manager
Fremantle Cemetery Board.

No. PSA AG 3 of 2000.

Fremantle Cemetery Board Enterprise Bargaining Agreement 2000.

PUBLIC SERVICE ARBITRATOR

COMMISSIONER P E SCOTT.

17 March 2000.

Order.

HAVING heard Ms J van den Herik on behalf of the Applicant and Ms M Kuljis and with her Mr M Holt 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 Fremantle Cemetery Board Enterprise Bargaining Agreement 2000 in the terms of the following schedule be registered on the 29th day of February 2000 and shall replace the Fremantle Cemetery Board Enterprise Bargaining Agreement 1996.

(Sgd.) P.E. SCOTT,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Fremantle Cemetery Board Enterprise Bargaining Agreement 2000 and replaces Fremantle Cemetery Board Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Definitions
 4. Parties to the Agreement
 5. Scope of the Agreement
 6. Relationship to Parent Awards and Agreements
 7. Date and Operation of the Agreement
 8. No further Claims
 9. Single Bargaining Unit
 10. Corporate Direction
 11. Objectives of the Agreement
 12. Implementation of Agreement
 13. Productivity, ongoing workplace reforms
 14. Productivity Improvement
 15. Productivity Measurement
 16. Salaries
 17. Workplace Flexibility
 18. Period of Probation
 19. Fixed Term Employment
 20. Hours
 21. Part Time Employment
 22. Shift Work
 23. Family Support Leave
 24. Sick Leave
 25. Annual Leave
 26. Annual Leave Loading
 27. Long Service Leave
 28. Leave Without Pay
 29. Public Holidays
 30. Dispute Resolution Procedures
- Appendices
1. Salaries Scale
 2. Flexible Working Hours Policy
 3. Performance Improvement Initiatives

3.—DEFINITIONS

'Agreement' The Fremantle Cemetery Board Enterprise Bargaining Agreement 2000.

'CEO/General Manager' The officer appointed as chief executive officer by the Fremantle Cemetery Board.

'Award' Government Officers Salaries, Allowance and Conditions Award 1989

'Board Agency' Fremantle Cemetery Board.

'CSA' The Civil Service Association of Western Australia Inc.

'CTC' Competitive Tendering and Contracting.

'Employee/Officer' For the purpose of this Agreement, someone who is referred to at Clause 5.—Scope of the Agreement.

'Employer' The Fremantle Cemetery Board

'Government' The State Government of Western Australia

'SBU' The Single Bargaining Unit.

'Minister' The Minister of the Crown responsible for the administration of the Fremantle Cemetery Board.

'Union' The union listed in Clause 4—Parties to the Agreement.

'Previous Agreement' Fremantle Cemetery Board Enterprise Bargaining Agreement 1996.

'WAIRC' The Western Australian Industrial Relations Commission.

4.—PARTIES TO THE AGREEMENT

1. The parties to this agreement are the Fremantle Cemetery Board and the Civil Service Association of Western Australia Incorporated.

2. Each party to this Agreement expressly accepts that its terms and conditions bind them for the duration of the Agreement.

3. At the date of registration the approximate number of employees covered by this Agreement is eight (8).

5.—SCOPE OF AGREEMENT

This agreement shall apply to all officers employed by the Fremantle Cemetery Board who are members of or eligible to be members of the Civil Service Association of Western Australia (Inc).

6.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

1. This agreement shall be read in conjunction with the Government Officers Salaries Allowance and Conditions Award 1989 which applies to the parties to this agreement.

2. In the case of any inconsistencies, this agreement shall have precedence to the extent of those inconsistencies where the agreement is silent the award shall apply.

7.—DATE AND OPERATION OF THE AGREEMENT

1. This agreement shall have effect from the first pay period after the date of registration in the Western Australian Industrial Relations Commission and shall operate for a period of two (2) years.

2. The parties to this agreement shall meet not later than six (6) months prior to the expiry of this agreement in order to commence negotiations for the replacement of this agreement.

3. The parties agree to continue this agreement until it is replaced by a further agreement. Changes to the base pay rates arising from this agreement will continue to apply in the absence of any further agreement, providing the broad principles of this agreement continue to be implemented. (except where the Award rate is higher in which case the Award rates shall apply)

4. Subject to Section 41(6) and (7) of the Western Australian Industrial Relations Act 1979 as amended either party can, with the consent of the other party, withdraw from the agreement upon its expiry.

8.—NO FURTHER CLAIMS

1. The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement.

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

9.—SINGLE BARGAINING UNIT

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

2. The SBU comprised representatives from the Fremantle Cemetery Board and the CSA.

10.—CORPORATE DIRECTION

1. Mission

The parties to this agreement are committed to implementing the Fremantle Cemetery Board's Mission.

The Mission of the Fremantle Cemetery Board is—

To provide the community with convenient and socially acceptable burials, cremations and memorial venues and services at a reasonable cost.

In support of this, the Board is committed to the following objectives—

- Ensure that burial, cremation and memorial facilities meet the needs of the community at a moderate cost.
- Ensure that the services provided conform with community expectations of efficiency, sensitivity and tastefulness.
- Increase public awareness and acceptance of the range of facilities and services available.
- Ensure the Board's resources are effectively managed to optimise performance and are in accordance with sound business principles.

2. Values

A statement of Values of The Fremantle Cemetery Board

- To be responsive to change and strive for excellence
- Assist people in a supportive and caring manner
- Courteous, efficient service and continued commitment to quality service

- Accessible, capable and obliging
- Openness and accountability
- Value the input of the community, employees and like industries.

3. These values are the expected behaviour of all Fremantle Cemetery Board staff.

4. Staff will be encouraged to challenge colleagues when these values are overlooked in work interactions.

11.—OBJECTIVES OF THE AGREEMENT

The aim of this agreement is to provide greater flexibility to meet the needs of the Fremantle Cemetery Board's customers and to continue a program of work place reform, which improves the standard of services provided by the Fremantle Cemetery Board.

The agreement represents a bond of trust between employees and the Fremantle Cemetery Board, and acknowledges that we are aiming for quality in customer service.

The specific objects of this agreement are—

- To develop and implement workplace improvements through a process of continuous improvement and performance measurement;
- To increase staff involvement in decision making and control over their work environment;
- To encourage a strong focus on satisfying internal and external customer requirements;
- To promote the development of an organisation culture that values flexibility, cooperation, trust and motivation;
- Gain employee commitment and contribution to specific initiatives to improve the overall flexibility, quality, efficiency and effectiveness of the Fremantle Cemetery Board;
- Improve the quality of working life for Fremantle Cemetery Board employees and provide greater flexibility to balance work and personal responsibilities; and
- Share the benefits of productivity improvements achieved through this agreement between the Fremantle Cemetery Board and its employees.

12.—IMPLEMENTATION OF AGREEMENT

A working party will be established with (or allocated) responsibility for overseeing implementation of this Agreement and to assist in identifying areas of potential productivity improvement. This working party will consist of both management and employee representation.

1. Management, staff and the working party of 4 equal numbers will participate in monitoring the effectiveness of the agreement, and will bring to the attention of the parties any shortcomings in the timing and nature of workplace reforms arising out of the agreement.

13.—PRODUCTIVITY ONGOING WORKPLACE REFORMS

The parties recognise productivity and ongoing work place reforms since January 1998 have occurred. The role of employees assisting to deliver these productivity and ongoing work place reforms is acknowledged. Both parties recognise the current and ongoing value of the commitment to continuous work place reform within the organisation.

14.—PRODUCTIVITY IMPROVEMENT

The parties to this agreement recognise that the principles of best practice should be adopted in the workplace. They agree that best practice is a process of achieving exemplary levels of performance and constantly changing and adapting to new pressures.

They agree to the adoption of a program of work place reforms based on the following—

- Understanding and measuring customer needs
- Benchmarking
- Continuous quality improvement
- Multi-skilled workforce
- Flexible workforce committed to change
- Employee involvement

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

The parties agree to achieve the following performance improvement initiatives outlined in Appendix 3 Performance Improvement Initiatives.

The salary increase of up to 3.5% twelve months from the operative date of this agreement will be contingent on the achievement of the targets in Appendix 3 – Performance Improvement Initiatives.

15.—PRODUCTIVITY MEASUREMENT

1. The parties agree that the measurement and monitoring of productivity improvements is important because it provides critical feedback on the performance of the agency to management, employees and other stakeholders.

2. It is agreed that employees understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

3. During the life of the agreement, performance indicators will be developed and implemented in line with clearly articulated Strategic and Operational plan objectives. These objectives and indicators will be developed through a consultative process and will be subject to regular reviews.

4. Key benchmark indicators shall include, but not be limited to—

- Customer service (internal and external)
- Customer satisfaction (internal and external)
- Wastage and rework
- Workforce participation in productivity improvements
- Financial performance
- Staff absenteeism
- Occupational health and safety
- Increased skills, education and training
- Work organisation and flexibility
- Equipment down time and repair costs
- Assessment against industry standards
- Staff turnover
- Staff satisfaction and
- Performance management

5. Once established, performance indicators will be monitored by work areas. This will allow identification of areas where there is potential for improvement and highlight any deterioration in established standards of performance so that appropriate action may be taken. The use of performance indicators can be taken into a future agreement.

16.—SALARIES

1. It is proposed that there will be two pay increases during the term of this Agreement, these being—

- (a) An initial increase of 3.5% will be paid from the first pay day on or after the registration of this agreement.
- (b) A second pay increase of up to 3.5% will be paid contingent on productivity achievements 12 months from the date of operation of this agreement.

2. The first pay increase is in recognition of—

- Productivity and ongoing workplace reforms since 1st January 1998.

3. The second pay increase will be contingent on —

- Achievement of the combined targets as outlined in Appendix 3 Performance Improvement Initiative are achieved to 100%. Should a proportion of the 100% for the combined targets be met, then an equal proportion of the 3.5% will be paid.

4. The proposed pay rates applicable from the appropriate effective date as per the above conditions are detailed at Appendix 1 Salaries Scale of this Agreement.

17.—WORKPLACE FLEXIBILITY

1. The General Manager may deploy an employee to perform duties within any work area and any work site of the

Fremantle Cemetery Board that are within the limits of the employee's skills.

2. Such deployment of employees will be subject to—

- Operational requirements of the Board
- Competence and training of the employee
- Safety and health requirements

3. Employees will be provided 24 hours notice in writing where practicable and an up front estimate of the length of the temporary move. It will be expected that an employee will return to their substantive position after the temporary placement. Where an employee will not be returned to their substantive position they will be notified immediately this fact becomes known.

4. Employees may be required to be permanently transferred to an alternative position within the Fremantle Cemetery Board to reflect changing business needs and work practices. The transferring of employees will occur with employee consultation and Agreement where a position is no longer required by the Board.

18.—PERIOD OF PROBATION

1. Unless otherwise determined by the CEO/General Manager every new employee other than casual employees appointed to the Fremantle Cemetery Board, unless transferred from another Western Australian public sector agency following at least three months continuous satisfactory service immediately prior to their permanent employment, shall serve a probation for a period not exceeding three (3) months.

2. At any time during the period of probation, the CEO/General Manager may annul the appointment and terminate the service of the employee by the giving of one weeks notice or payment in lieu thereof.

3. Prior to the expiry of the period of probation, the CEO/General Manager shall have a report completed in respect to the employee's level of performance, efficiency and conduct, and—

- a) Annul the appointment, or
- b) Confirm the permanent appointment, or
- c) Extend the period of probation by up to three(3) months, to a maximum period of probation of six (6) months.

4. Where the employer extends the period of probationary employment the contract of employment may be terminated as set out in subclause (2).

5. The employer may summarily dismiss an employee deemed guilty of gross misconduct or neglect of duty and the employee shall not be entitled to any notice or payment in lieu of notice.

19.—FIXED TERM EMPLOYMENT

1. The CEO/General Manager may employ officers for a fixed term of employment. For the purpose of this Agreement, a 'fixed term officer' means an officer who is employed on a full time or part-time basis on a contract of service for a specified duration.

2. Fixed term officers shall not be engaged for continuous periods of employment in excess of fifty two (52) weeks, unless agreed between the Union and the Fremantle Cemetery Board.

3. An officer shall only be engaged on a fixed term contract of employment where the position is of a temporary nature. This may include temporary vacancies created by—

- a) A permanent officer on approved leave (including parental leave) or workers compensation;
- b) Specific project work or a position which the Fremantle Cemetery Board has reason to believe will not be of an ongoing nature and will have a duration of less than twelve (12) months;

4. Fixed term employment will not be used by the Fremantle Cemetery Board as a means of reducing the permanent workforce.

5. Employees appointed for a fixed term shall be advised in writing of the terms of the appointment and such advice shall specify the dates of commencement and termination of employment, hours of work, salary and classification.

20.—HOURS

Hours of work should be flexible to reflect greater customer service, maximum productivity, project and seasonal variances and the needs of the Fremantle Cemetery Board and its employees.

This clause replaces Clause 16.—Hours of the Government Officers Salaries, Allowances and Conditions Award 1989.

1. The standard work hours undertaken by employees will be thirty-eight (38) hours per week, Monday to Friday averaged over a four (4) week period. These hours shall be worked between 6.00 am to 6.00 pm.

2. Employees are eligible, subject to agreement by their supervisor, to work flexible hours as detailed in the Fremantle Cemetery Board Flexible Working Hours Policy in Appendix 2.

3. No additional penalties will be attracted by staff working under the Fremantle Cemetery Board's Flexible Working Hours Policy.

4. The start and finishing times for employees will be flexible and responsive to customer needs and the operational requirements of the Board. The actual span of hours an employee may work is defined in Appendix 2, Flexible Working Hours Policy.

5. The agreement of the union is required where an employee requests to work ordinary hours in accordance with the Flexible Working Hours Policy on either a Saturday or Sunday.

6. A morning tea break of ten minutes duration shall be allowed each day without deduction of pay and shall be arranged at a time and in a manner to suit the convenience of the employer.

7. The ordinary opening hours of the Board will be between 8.00am and 5.00pm, Monday to Friday.

If the Board wishes to vary the opening hours of the Fremantle Cemetery Board, it will give one month's notice in writing, to the department, section, branch or employees to be affected by the change.

8. Flexible Working Hours is not a right but a privilege and the Board must be satisfied that the efficient functioning of the Agency is being enhanced by its operation.

9. The CEO/General Manager may revoke an employees eligibility to work flexible working hours under the following circumstance—

- Where it is considered that such an arrangement is contrary to the ability of the Board to meet its operational requirements; or
- Where flexible working hours have been misused; or
- As part of problem performance management; or
- As part of disciplinary procedures.

10. Where such approval is revoked as outlined in subclause (9) of this clause, the employee will work a standard number of hours per day in order to meet the requirement to work thirty-eight (38) ordinary hours per week. This shall be worked in a manner consistent with the Award, Clause 16 Hours, subclause 7 paragraph (h) whereby the employee works 152 hours over a 19 day working cycle.

11. Where study leave as provided in Clause 25.—Study Leave of the Award has been approved, credits will be given to education commitments provided in that clause and for which leave is necessary to allow for attendance at formal classes.

12. For the purposes of leave, time taken for training, public holidays, public service holiday and workers compensation a day shall be calculated as 7.6 hours.

21.—PART TIME EMPLOYMENT

This clause replaces Clause 9.—Part Time Employment of the Award.

1. Definitions

- a) Permanent part time employment is defined as regular and continuing employment for less than the standard ordinary hours in any week. Any employee engaged on a permanent part time basis must be

engaged for a minimum of four (4) hours at any one time.

2. Part-time Arrangement

- a) Each permanent part-time arrangement shall be confirmed in writing and shall include the agreed period of the arrangement, and the agreed hours of duty in accordance with subclause (3). Hours of Duty of this clause. A copy of this advice shall be provided to the Union.
- b) The conversion of a full-time officer to part-time employment can only be implemented with the written consent or by written request of that officer. No officer may be converted to part-time employment without his/her prior agreement.

3. Hours of Duty

- a) The parameters for the working of permanent part-time employment shall be consistent with the Fremantle Cemetery Board's Flexible Working Hours policy as described in Appendix 2.
- b) Actual hours worked are to be mutually agreed to between the employer and the employee, provided that the employer shall not vary the officer's total weekly hours of duty without the officer's prior written consent.
- c) There may be exceptional reasons for temporary variations to an officer's working hours. Since the usual reasons for seeking part-time employment are because of other commitments, any variations must be agreed to in writing by the part-time officer.
- d) If agreement is reached to vary an officer's ordinary working hours pursuant to this subclause—
- (i) Time worked to 7.6 hours on any day is not to be regarded as overtime but an extension of the contract hours for that day and should be paid at the normal rate of pay.
 - (ii) Additional days worked, up to a total of five days per week, are also regarded as an extension of the contract and should be paid at the normal rate.

4. Overtime

Notwithstanding the provisions of the Fremantle Cemetery Board's Flexible Working Hours Policy, as described in Appendix 2 where a part-time officer is directed to perform overtime, the following shall apply—

- (a) Work performed on a Saturday shall be paid for at the rate of time and a half for first 3 hours and double time thereafter. All work performed after 12 noon on a Saturday shall be paid at the rate of double time.
- (b) Work performed on a Sunday shall be paid for at the rate of double time.
- (c) Work performed on a holiday prescribed in Clause 29 Public Holidays subclause (1) of this agreement shall be paid for at the rate of double time and a half.

5. Salary

- a) An officer who is employed on a part-time basis shall be paid a proportion of the appropriate full-time salary dependent upon time worked. The salary shall be calculated in the following manner—

$$\frac{\text{Hours worked per fortnightly}}{76} \times \frac{\text{full time fortnightly salary}}{1}$$

- b) A part-time officer shall be entitled to annual increments in accordance with the Clause 12 – Annual Increments of the Award.

6. Leave

- a) A part-time officer shall be entitled to the same leave and conditions prescribed in this agreement and in the award for full time officers on a proportional basis.
- b) Payment to an officer proceeding on accrued annual leave and long service leave shall be calculated on a pro rata basis having regard for any variations to the offices ordinary working hours during the accrual period.

- c) Sick leave and any other paid leave shall be paid at the current salary, but only for those hours or days that would normally have been worked had the officer not been on such leave.

7. Holidays

A part-time employee shall be allowed to take prescribed Public Holidays without deduction of pay in respect of each holiday which is observed on a day ordinarily worked by the part-time employee.

8. Right of Reversion of Officers

- a) Where a full-time officer is permitted, at his or her initiative, to work part-time for a period no greater than 12 months in the position he or she occupied on a full-time basis before becoming part-time, that officer has a right (upon written application) to revert to full-time hours in that position or a position of equal classification as soon as is deemed practicable by the employer, but no later than the expiry of the agreed period.
- b) A full-time officer who is permitted at his or her initiative to work part-time for a period greater than 12 months in the position he or she occupied on a full-time basis before becoming part-time, may apply to revert to full-time hours in that position but only as soon as is deemed practicable by the employer.

This should not prevent the transfer of said officer to another full-time position at a salary commensurable on that of his or her previous full-time position.

- c) A part-time officer who was previously a full-time officer within the Board, who occupies a part-time office which was the initiative of the employer and who desires to revert to full-time employment will be required to seek promotion or transfer to full time position by—
- (i) application for advertised vacancies; and/or
 - (ii) by notification in writing to the employer of his or her desire to revert to fulltime employment.
- d) Nothing in subclause (8)(c) of this clause shall prevent the employer, with the written consent of the officer, transferring that officer to a full-time position at a level less than the officer's substantive level.
- e) Prior to effecting the transfer of an officer under subclause (8)(c) of this clause, the employer shall—
- (i) notify the officer of the specific position to which the employer proposes to transfer the officer; and
 - (ii) obtain the written consent of the officer to his or her transfer to that position.

22.—SHIFT WORK

1. In this clause the following expressions shall have the following meaning—

'day shift' shall mean a shift commencing after 6.00am and before 12.00 noon

'afternoon shift' shall mean a shift commencing at or after 12.00 noon and before 6.00pm

'night shift' shall mean a shift commencing at or after 6.00pm and before 6.00am

'public holiday' shall mean a holiday provided in Clause 29.—Public Holidays, of this Agreement

2. The provisions of this clause apply to shift work whether continuous or otherwise.

3. An employer may work all or part of the establishment on shifts, but before doing so shall give notice of the intention to the union and of the intended starting and finishing times or ordinary working hours of the respective shifts.

4. Employees working shift work in accordance with this clause shall not be entitled to work flexible hours as outlined in the Fremantle Cemetery Board's Flexible Working Hours Policy in Appendix 2.

5. a) Where any particular process is carried out on shifts other than day shift, and less than five consecutive afternoon or five consecutive night shifts are worked

on that process, then employees employed on such afternoon or night shifts shall be paid at overtime rates.

- b) Provided that where the ordinary hours of work normally worked in an establishment are worked on less than five days then the provisions of paragraph (a) shall be as if four consecutive shifts were substituted for five consecutive shifts.
- c) The sequence of work shall not be deemed to be broken under the preceding paragraph by reason of the fact that work on the process is not carried out on a Saturday or Sunday or any other day that the employer observes a shut down for the purposes of allowing a thirty-eight (38) hour week or on any holiday.

6. Where a shift commences at or after 11.00 pm on any day, the whole of that shift shall be deemed for the purposes of this agreement, to have been worked on the following day.

7. A shift employee when on afternoon or night shift shall be paid, for such shift fifteen percent more than the employee's ordinary rate prescribed by this agreement.

8. a) All work performed on a rostered shift, when the major portion of such shift falls on a Saturday, Sunday or a holiday, shall be paid for as follows—
- | | |
|-----------|-------------------------------------|
| Saturday: | at the rate of time and one quarter |
| Sunday: | at the rate of time and one half |
| Holidays: | at the rate of double time |

- b) These rates shall be paid in lieu of the shift allowances prescribed in subclause (7) of this clause.

9. A continuous shift employee who is not required to work on a holiday which falls on the employee's rostered day off shall be allowed a day's leave with pay to be added to annual leave or taken at some other time if the employee so agrees.

10. Work performed by an employee in excess of the ordinary hours for the employee's shift or on a rostered day off shall be paid for in accordance with the provisions of Clause 18.—Overtime, of the Award

11. An employee engaged on shifts shall work a seventy-six (76) hours fortnight exclusive of meal intervals, on the basis of not more than ten shifts of seven (7) hours thirty-six (36) minutes duration. Provided that where agreement is reached between the employer and the union, the length and/or number of shifts worked per fortnight may be altered.

Provided that when the agreed length of a shift is extended passed seven (7) hours thirty-six (36) minutes, overtime shall be payable only for time worked in excess of the rostered shift.

12. Meal breaks shall be for a period of at least thirty (30) minutes, but not greater than one hour for each meal.

13. a) Employees may be rostered to work on any of the seven (7) days of the week provided that no employee shall be rostered for more than five (5) consecutive days.

- b) Provided that where agreement is reached between the employer and the union, shift workers may be exempted from this provision.

14. Employees shall be allowed to exchange shifts or days off with other officers provided the approval of the employer has been obtained and provided further that any excess hours worked shall not involve the payment of overtime.

23.—FAMILY SUPPORT LEAVE

1. Employees may utilise up to thirty-eight (38) hours of their accrued annual sick leave entitlement per year to care for a sick family member. Current sick leave entitlements shall not be used to care for sick family members.

2. For the purposes of this clause, a 'sick family member' means a person who is related to the employee by blood, marriage affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the employee (as defined by Equal Opportunity Action (1984) of Western Australia).

3. Leave granted under this clause is subject to the production of satisfactory evidence of illness of the other person in accordance with the Award.

4. Sick leave used for family support leave purposes is not cumulative from year to year, but if unused, continues to be cumulative as personal sick leave. All other award conditions relating to employees' sick leave entitlement shall continue to apply.

24.—SICK LEAVE

This clause replaces Clause 22 Sick Leave subclause (3) and (4) of the Award—

(1) Entitlement

The employer shall credit each permanent employee with the following sick leave credits which shall be cumulative—

on the day of initial appointment	46 hours
on completion of 6 months continuous service	49 hours
on completion of 12 month continuous service	95 hours
on completion of each of 12 months continuous service period	95 hours

(2) An officer employed on a fixed term contract for a period greater than 12 months shall be credited with the same entitlement as a permanent officer. An officer employed on a fixed term contract for a period less than 12 months shall be credited with the same entitlement on a pro-rata basis for the period of the contract.

(3) A part-time officer shall be entitled to the same sick leave credits, on a pro-rata basis according to the number of hours worked each fortnight. Payment for sick leave shall only be made for those hours that would normally have been worked had the officer not been on sick leave.

(4) Notwithstanding provisions of Clause 22 Sick leave subclause (5) and (6) of the award, employees must state the nature of their illness in writing for any application for sick leave which is not supported by the Certificate of a registered medical practitioner or registered dentist.

(5) The provisions of this clause do not apply to casual officers.

25.—ANNUAL LEAVE

Notwithstanding Clause 19—Annual Leave of the Award.

1. Accrued leave is the leave an employee is entitled to from a previous calendar year.
2. Pro-rata leave is the proportion of leave that an employee is entitled to in the current calendar year.

26.—ANNUAL LEAVE LOADING

1. Annual leave loading in accordance with Clause 19.—Annual Leave, subclause (14) of the Award is not payable for annual leave during the life of this agreement.

27.—LONG SERVICE LEAVE

Notwithstanding, Clause 21—Long Service Leave of the Award.

1. Accrued long service leave means a complete entitlement to 13 weeks long service leave after serving a qualifying period of seven (7) years.

2. Pro rata long service leave means an incomplete entitlement to long service leave.

3. Employees who have accrued one entitlement of long service leave or more may apply to—

- a) Be paid money in lieu of taking leave. No more than seven (7) weeks long service leave may be exchanged for money within each entitlement of Long service leave;
- b) clear part or all of one full entitlement on half pay, however no more than one period of long service leave shall be approved at half pay.
- c) clear long service leave entitlement in minimum periods of one (1) week.

4. Payment in Lieu of Entitlement

- a) As outlined in subclause (3)(a) of this clause, an employee may apply to receive payment for accrued long service leave rather than take leave as time off work. In such circumstances, the amount of payment

will be the dollar value of the leave had it been taken at the time payment is received.

- b) Approval for payment will be granted by the CEO/General Manager, based on the financial capacity of the agency to fund the payment.
- c) Application to receive payment for long service leave must be made in writing to the CEO/General Manager, and once made cannot be revoked
- d) Where payment is made in lieu of taking long service leave, that portion of the entitlement paid to the employee shall be treated as if the employee had actually taken long service leave for the purposes of continuous service and calculation of long service leave and other leave entitlements.

5. This clause does not apply to casual employees.

28.—LEAVE WITHOUT PAY

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

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

- a) The work of the organisation is not inconvenienced; and
- b) All other long service leave, annual leave and flexi-time credits of the employee are exhausted.

3. An employee engaged on a fixed term appointment may not be granted leave without pay for any period beyond that employee's approved period of engagement.

4. Any period that exceeds two weeks during which an officer is on leave of absence without pay shall not, for any purpose, be regarded as part of the period of service of that officer, but shall not constitute a break in service.

29.—PUBLIC HOLIDAYS

This clause replaces Clause 20—Public Holidays of the Award

1. The following days or the days observed in lieu shall, subject to this clause and Clause 20 of the Award, be allowed as public holidays without deduction of pay, namely New Years Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day, provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this clause.

2. When any of the days mentioned in subclause (1) of this clause falls on a Saturday, Sunday or any other day in which the employee is not normally required to attend for work, the holiday shall be observed on the next succeeding ordinary work day or days, as the case may be, and in each case the substituted day shall be a holiday without deduction of pay.

- a) Employees required to work on the day following New Year's Day and Easter Tuesday shall be paid at the ordinary rate of pay and shall be granted a day in lieu for working on each such day.
- b) These days in lieu may be taken at a time convenient to the employer and the employee, but must be taken on or prior to 31st December in the calendar year it falls due. Any days in lieu not taken by this date will be forfeited.
- c) It is the responsibility of managers, supervisors and employees to ensure that any days in lieu are taken within the required time frames.

3. This clause does not apply to casual employees

30.—DISPUTE RESOLUTION PROCEDURES

(1) In the event of any questions, disputes or difficulties arising under this agreement the parties will consult one another to reach a settlement

(2) The principle of conciliation and direct negotiation shall be adopted for the purpose of prevention and settlement of any industrial dispute that may arise

(3) In the event of any questions, disputes or difficulties arising under this agreement the following procedure shall apply—

- (a) The CSA representative and/or the employee(s) concerned shall discuss the matter(s) with the immediate supervisor in the first instance. An employee may be accompanied by the CSA representative.
- (b) If the matter is not resolved within five (5) working days following discussion in accordance with paragraph (a) hereof, the matter shall be referred by the employee or CSA representative to the CEO/General Manager or his/her nominee for resolution.
- (c) If the matter is not resolved within five (5) working days of the notification of the dispute to the Board, it may be referred by either party to the Western Australian Industrial Relations Commission.
- (d) The period for resolving any matter under subclause (3) may be extended by agreement between the parties if it proves to be impractical or unreasonable in the circumstances.

Signature of parties to this agreement signed for and on behalf of the parties to this agreement

(signed) Date: 18/2/2000

MR W P TRITTON

CEO/GENERAL MANAGER

FREMANTLE CEMETERY BOARD

(signed) Date: 18/2/2000

MR D ROBINSON

GENERAL SECRETARY

THE CIVIL SERVICE ASSOCIATION OF WA (INC)

APPENDIX 1

FREMANTLE CEMETERY BOARD — SALARIES

Classification	Current Annual Rate	On Registration Increase of 3.5% Annual Rate	2 nd Increase up to 3.5% * Annual Rate
Level 1			
1 st Year	23,655	24,483	25,340
2 nd Year	24,384	25,237	26,120
3 rd Year	25,110	25,989	26,899
4 th Year	25,834	26,738	27,674
5 th Year	26,562	27,492	28,454
6 th Year	27,289	28,244	29,232
7 th Year	28,126	29,110	30,129
8 th Year	28,705	29,710	30,750
9 th Year	29,561	30,596	31,667
Level 2			
2.1	30,585	31,655	32,763
2.2	31,372	32,470	33,606
2.3	32,198	33,325	34,491
2.4	33,070	34,227	35,425
2.5	33,984	35,173	36,404
Level 3			
3.1	35,239	36,472	37,749
3.2	36,217	37,485	38,797
3.3	37,225	38,528	39,876
3.4	38,259	39,598	40,984
Level 4			
4.1	39,679	41,068	42,505
4.2	40,791	42,219	43,697
4.3	41,935	43,403	44,922
Level 5			
5.1	44,139	45,684	47,283
5.2	45,629	47,226	48,879
5.3	47,177	48,828	50,537
5.4	48,783	50,490	52,257
Level 6			
6.1	51,344	53,141	55,001
6.2	53,102	54,960	56,884
6.3	54,895	56,817	58,806
6.4	56,810	58,798	60,856
Level 7			
7.1	59,745	61,836	64,000
7.2	61,777	63,939	66,177
7.3	63,987	66,226	68,544
Level 8			
8.1	67,579	69,944	72,392
8.2	70,152	72,607	75,148
8.3	73,342	75,909	78,566
Level 9			
9.1	77,327	80,033	82,835
9.2	80,019	82,819	85,718
9.3	83,089	85,997	89,007
Class 1	87,732	90,802	93,980
Class 2	92,375	95,608	98,954
Class 3	97,015	100,410	103,924
Class 4	101,658	105,216	108,898

* Contingent on Achievement of Productivity Achievement Targets

APPENDIX 2 FREMANTLE CEMETERY BOARD Flexible Working Hours Policy (38 hour week)

Policy Objective

To enhance the Fremantle Cemetery Board's scope in—

- Providing quality client service;
- Employee preference (allowing greater flexibility to meet personal choice); and
- Meeting the business needs of the agency in an efficient and effective manner.

Definition

Flexible working hours means that employee's have the freedom to choose their hours of work and an increased span of hours during a seven day week. This is subject to fulfilling agreed minimum hours over an agreed settlement period, meeting agreed work commitments and contributing towards the achievement of the agency's objectives. Variations to meet personal preference can be tailored whilst meeting business needs.

Hours of duty and settlement period

Employees shall be required to account for one hundred and fifty-two (152) hours within one settlement period. The settlement period shall be a four-week period and shall commence on the first day of a pay period. Each settlement period shall commence with nil hours worked, plus or minus hours from the previous settlement period.

Ordinary hours may be worked between 6.00am and 6.00pm Monday to Friday, as determined by Fremantle Cemetery Board according to the needs of the agency. However, subject to the convenience of the agency and no disruption to service provided to the public, employees shall have the ability to work, their ordinary hours outside the normal span specified in this clause. Any such arrangement shall be by mutual agreement between the employee and the employer and must ensure the work to be conducted is in accordance with the operational requirements of the agency.

Starting and finishing times will be flexible and responsive to operational requirements as determined by the Fremantle Cemetery Board.

A maximum span of ten (10) ordinary hours may be worked in any day, unless otherwise approved by the CEO/General Manager. An employee shall not work more than five (5) continuous hours without a meal break of at least thirty (30) minutes. However, where necessary to meet a specific work commitment, approval may be granted to work longer than five (5) hours without meal break (without overtime payment).

Work team Roster

Where deemed necessary to meet operational and customer service requirements, a team roster for specific work teams shall be developed in consultation with employees. The work team roster shall be made available to all affected officers no later than three working days prior to its commencement.

The roster shall indicate the following group requirements for the work team—

- Starting and finishing times on a daily, weekly and (if relevant) seasonal basis;
- Any core hour requirements;
- The minimum staffing requirements; and
- Any other requirements in respect to lunch break coverage and leave.

Individual officers within the work team shall have no prescribed hours of duty (other than those that fall between the Ordinary Hours) but the work team as a whole must ensure that the requirements of the roster are met.

Recording Attendance

All officers eligible under the provisions of this policy shall be required to maintain a timesheet with a continuous total for hours worked over the settlement period.

Timesheets are to be audited by the Supervisor/team leader at random intervals and verified regularly.

Officers shall be responsible for recording times accurately. Falsification of timesheets will lead to disciplinary action.

Overtime

Where an officer is directed to work overtime to meet a Fremantle Cemetery Board priority, then overtime rates in accordance with the Award will be paid.

Other than in an emergency, twenty-four (24) hours notice of the requirement to perform overtime will be given.

Hours of overtime worked will not form part of the flexible working hours credit for the purpose of calculating the one hundred and fifty-two (152) hours required to be worked under normal conditions.

Credit for Leave Purposes

For the purpose of leave, public holidays, public service holidays, sick leave and Workers' Compensation, a day shall be credited at seven point six (7.6) hours.

Credit Hours

At the end of any settlement period, credit hours in excess of the 'hours of duty required in any settlement period', to a maximum of thirty-eight (38) hours are permitted. Such credit hours shall be carried forward to the next settlement period.

The maximum credit hours is inclusive of any credit hours carried forward from previous settlement periods. Credit hours in excess of thirty-eight (38) hours at the end of a settlement period shall be lost.

It is the responsibility of supervisors, managers and officers to ensure that credit hours do not exceed the maximum permitted.

Credit Hour 'Cash out'

Notwithstanding the above, an employee may apply to receive payment in lieu of credit hours, up to a maximum-eleven (11) credit hours per settlement period. Approval to convert credit hours to payment is at the discretion of the employer and will be payable at five-point-five (5.5) hours in next two (2) fortnights.

The employee must have sufficient credit hours existing at the time of application to cover the 'cash out' payment. Any credit hours cashed in will be deducted from the employees total existing credit hours.

Debit Hours

Debit hours below the required one hundred and fifty-two (152) hours to a maximum of seven-point-six (7.6) hours are permitted at the end of each settlement period.

Such debit hours shall be carried forward to the next settlement period.

For debit hours in excess of seven-point six (7.6) hours, the employee shall be docked pay for the period necessary to reduce debit hours to the maximum permitted.

Officers having excessive debit hours may be placed on standard working hours in addition to being required to take leave without pay.

Reconciliation of Hours on Termination

In cases involving termination of an employee's services there will be reconciliation

of ordinary hours worked to determine the amount of debit or credit hours having regard to the nominal average number of hours worked to the date of termination.

For the purposes of calculating the nominal average number of for termination, a day shall be calculated at seven-point-six (7.6) hours

In cases involving a credit of hours, the employer will pay to the employee, on termination, an amount equivalent to such credit hours calculated at the ordinary rate of pay.

In cases involving a debit of hours, the employee will have deducted from their termination payment an amount equivalent to such debit hours calculated at the ordinary rate of pay.

APPENDIX 3

PERFORMANCE IMPROVEMENT INITIATIVES

1 Ongoing Workplace Reforms

During the life of the Agreement a commitment is made to

- To develop and implement workplace improvements through a process of continuous improvement and performance measurement;
- To increase staff involvement in decision making and control over their work environment;

- To encourage a strong focus on satisfying internal and external customer requirements;
- Recognition of the workforce flexibility requirements of the Board's operations
- To promote the development of an organisation culture that values flexibility, cooperation, trust and motivation.

The above initiatives have made and will continue to make a significant contribution to the productivity achievements detailed as part of this agreement.

2 Output Target Background – Achievements and their measurement

During the life of the Agreement specific commitment is made to meet the current output, as shown in the historical data trends with respect to—

- (a) Pre need Cremation Certificate Sales
- (b) Pre need, selected and new Lawn Graves
- (c) Pre need, selected and new Monumental Graves
- (d) Memorialisation in the Cemetery
- (e) Funeral Services, Cremation and Burial totals plus (Funerals per FTE)
- (f) Full time equivalent employees – FTE
- (g) Development Landscaping output units

These areas represent the majority of the outputs for the Cemetery.

Therefore in developing a Productivity Measurement for the achievements of specific targets during the life of this Agreement it is proposed that these six output areas be combined to determine productivity achievements during the life of the Agreement.

Specific targets have not been developed for the number of funerals and to corresponding number of funerals per FTE as the Board's employees have no control over the number of funerals per annum.

However, through combining the four output areas of Pre need Cremation Certificate sales; Pre need selected, and new Lawn Graves; Pre need, selected and new Monumental Graves; Memorialisation in the Cemetery if there are 'peaks and lows' in any of the areas of business, this will level out in the combining of the output as one target as all staff are required to perform in their areas.

2(a) PreNeed Cremation Certificate Sales

PreNeed Cremation Certificate sales are an important part of the future funeral services the Fremantle Cemetery Board are guaranteed to receive. The Board have been selling these Certificates since July 1989 which allows a person to prepay for their cremation service at today's costs and save the stress for families during the difficult time following a death of a loved one.

The awareness of the Board's employees to the benefits of future cremation service provided by the sale of these PreNeed Cremation Certificates and their participation in development of systems to increase the number of Preneed Cremation Certificates to meet the established targets will represent a productivity increase for the Board in this area through the activities of all employees.

2(b)(c) PreNeed, Selected and New Lawn and Monumental Graves

The purchase of graves is large part of the development of the Cemetery. They provide immediate income and lawn area deposits which form the future maintenance cost for the twenty-five (25) year tenure on each grave. Graves that are purchased as PreNeed and Selected positions the purchaser pays a premium over the graves sold for immediate use. The twenty-five (25) year tenure of the Grant of Right of Burial on all graves starts from the date the purchase is made.

All the Board's staff benefits from sales in this area of the Board's business and their participation in development of systems to increase the number of graves sold to meet the established targets set will represent a productivity increase for the Board.

2(d) Memorialisation in the Cemetery

Following a cremation service the bereaved families are given the opportunity to place the ashes in the Cemetery as a memorial to their loved one or take the ashes away.

Memorial options offered by the Board include—

- Rose gardens with various types of plaques
- Shrub gardens with various types of plaques
- Niches and memorial walls
- Individual roses, shrubs and trees
- Scattering of ashes to the winds or over gardens with memorial in garden
- Ashes placed in grave and memorial plaque
- Garden seats with memorial plaque

Memorialisation is a value added product for the Board and it represents about 40% of the cremation services that are placed in the Fremantle Cemetery. There is a significant labour contribution to the memorialisation processes as more families are requesting to be in attendance when the ashes are placed.

The Board is determined that there is a productivity gain to be made by the employees having a direct and active role in marketing and managing this service and a target output has been set for this area of the Board's business

2(e) & (f) Funeral Service and FTE

Funeral services the Fremantle Cemetery Board have achieved on average growth of 3.9% increase over the last ten (10) years.

Specific targets have not been developed for the number of funeral services because the staff have no control over the total number of funerals attending the cemetery.

A range of funerals per FTE will be set for the two (2) years of this agreement.

The number of full time equivalent employees at the Fremantle Cemetery at this time is 26 and over the next two (2) years there will be a conscious decision to reduce this number by retirement or resignation to a target set as part of the outputs.

2(g) Landscaping and Development of Memorial Gardens and Lawn Grave Areas

The landscaping and development of the Fremantle Cemetery is an important aspect of the ambience of the Cemetery and attracts the customers and also maintains the level of customer satisfaction with the various services the Fremantle Cemetery offers.

Forty percent (40%) of the Board's staff are deployed in this area of the Cemetery business. As such it was determined that it is important in terms of productivity measurements. As areas of the Cemetery are developed for memorial gardens and lawn graves in the future this increases the areas that need continued landscape maintenance.

A commitment is made in this Agreement to meet pre determined targets with respect to development and landscaping. A productivity measurement process has been determined to assist the Management monitoring of this important output for the Board. The targets set will be dependent on all staff working and being involved in maintaining, enhancing and managing this important output.

A customer/visitor survey was completed in May/June 1997 and the positive output by visitors to the landscaping and the maintenance of the Fremantle Cemetery was very high. The Board will conduct a visitor survey in July 2000 to test the first year of this Agreement.

3 Specific Output targets established for the life of the Agreement

A : Pre need Sales; Graves; Memorialisation—2 (a) (d)

	June 2000	June 2001
Cremation Certificates	265	270
Lawn Graves, Grants of Right of Burial	258	263
Monumental Graves, Grants of Right of Burial	48	49
Memorials, Sales and Placements	569	579
TOTAL	1,140	1,161

These targets have been set from the historical data since June 1994 and are in line with future funeral budget.

4 Specific Output Targets Established for the Life of the Agreement.

B: Funeral Services, Cremation and Burial Totals (Funerals per FTE) 2 (e)

June 2000	78 – 80 funerals per FTE
June 2001	79 – 81 funerals per FTE

C: Full time Equivalent Employees on FTE 2(f)

June 2000	25.5 FTE
June 2001	25 FTE

These targets have been set from historical data since June 1994. Average has been set to allow for changes in funeral numbers.

The Staff FTE will only be achieved by retirement and resignation.

5 Specific Output Targets Established for the Life of the Agreement

Development landscaping output units. 2(g)

Development landscaping (maintained garden lawn grave areas) are a very important output of the Fremantle Cemetery Board. There is 40% of the Board staff involved in this area.

The land area of the Fremantle Cemetery is in two (2) parcels; the Carrington Street area is 36.2448 HA with a road verge area of 1.2246 HA maintained by the Board staff. The other parcel of land is 9.5346 HA and is leased and is not maintained by the Board staff at this time; the land will be required in the future.

The development maintenance landscaping outcome and output have a great impact on the bereaved families and friends and also all visitors to the Fremantle Cemetery. It is a large core business activity of the Fremantle Cemetery Board.

6 Development Maintenance Landscaping Output Units

The table below shows the development maintenance landscaping outputs per FTE increased by 19.56% between June 1994 and June 1998 and 4.04% in the year to June 1999. It is projected to increase 8.15% to June 2000.

The expenditure per development maintenance landscaping output units increase by 11.90% from June 1994 to June 1998. During this period the new Chapels Crematorium Complex was built and completed and all landscaping to these building areas was completed by the Board's own staff. This output decreased by 7.38% in the year to June 1999. The target set for the year to June 2000 is a decreased 5.53%.

Consideration will be given to CPI% in the year 1999/2000 in assessment of % change \$ per DMLOU

Table A

Date	Actual Or Budget	DMLOU Annual Average	DMLOU Per FTE	TOTAL STAFF FTE	% Change DMLOU Per FTE	FCB Operating Expenses	CPI %	Expense Per DMLOU	% Change \$ per DMLOU
June 1994	Actual	10.143	0.414	24.5	—	\$897,809	—	88,515	—
June 1998	Actual	12.382	0.495	25	19.56%	1,226,476	8.8%	99,053	11.90%
June 1999	Actual	13.390	0.515	26	4.04%	1,228,422 Estimate	1.5%	91,742	-7.38%
June 2000	Budget	14.203	0.557	25.5	8.15%	1,230,900 Budget	?	86,665	-5.53%

7 Development Landscaping Productivity: Targets

In June 1998 DMLOU per FTE increased by 4.04% and the target set to the year June 2000 is 8.15% if the same DMLOU was used for the year 2000 a total FTE of 27.60 would be required. This will represent an effective productivity improvement of 8.23% for staff if the 2000 FTE target is met.

Table B

Output Area	First Measurement Date	Base	Second Measurement Date	Target
(a) PreNeed Sales Graves memorialisation	1998/99	1,070	1999/2000	1,140
(b) Funeral Services per FTE	1998/99	79	1999/2000	79
(c) Full Time Equivalent Employees	30 June 1999	26	1999/2000	25.5 FTE
(d) Development maintenance landscaping output unit	July 1994 to June 1998	.081 Increase by 19.56%	1999/2000	.042 Increase by 8.15%
(e) Expenditure per DML Output Unit *	1998/99	Decrease by 7.38%	1999/2000	Decrease by 5.53%

* Item (e) will be adjusted for CPI if required.

Development Maintenance Landscaping Output Unit (DMLOU) productivity achievement will be calculated by taking into account all areas of above. From this calculation an imputed FTE will be calculated and from this increase in productivity will be established.

From each of the Output areas (a) to (e) of Table B above a percentage will be calculated and added together as a total and then divided by 5 to obtain a single percentage over all the outputs.

9. Resulting pay increase 12 months from the operative dates for the Agreement.

If the combined targets percentage of the outputs average 100% in terms of the these targets being met then the second (2nd) pay increase will be 3.5%.

If the combined targets percentage of the output areas average less than 100% in terms of targets being met then the second (2nd) pay increase will be combined average achieved as a percentage of the 3.5%.

The targets for 2000/2001 will be established for Development Maintenance Landscaping Output Unit in July 2000 in line with the Fremantle Cemetery budget for the year.

**FREMANTLE STEEL FABRICATION INDUSTRIAL AGREEMENT.
AG 7 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

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

and

Fremantle Steel Fabrication Co (WA) Pty Ltd.

AG 7 of 2000.

Fremantle Steel Fabrication Industrial Agreement.

COMMISSIONER S J KENNER.

29 March 2000.

Order.

HAVING heard Ms L Dowden on behalf of the applicant and there being no appearance on behalf of the respondent and by

8 Productivity Achievement Calculations**Productivity Targets**

As already noted the productivity achievements targeted for this Agreement in the various output areas are detailed below—

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

- (1) THAT the Fremantle Steel Fabrication Industrial Agreement as filed in the Commission on 20 January 2000 in the terms of the following schedule be and is hereby registered as an industrial agreement.
- (2) THAT the Fremantle Steel Fabrication Co. Industrial Agreement No AG 331 of 1995 and the Fremantle Steel Fabrication Industrial Agreement No AG 268 of 1997 be and are hereby cancelled.

(Sgd.) S.J. KENNER,

[L.S.]

Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Fremantle Steel Fabrication Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship with Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Site Allowance
 12. Industry Standards
 13. Clothing and Footwear
 14. Training Allowance, Training Leave, Recognition of Prior Learning
 15. Seniority
 16. Sick Leave
 17. Pyramid Sub-Contracting
 18. Fares and Travelling
 19. Drug and Alcohol, Safety and Rehabilitation Program
 20. Income Protection
 21. No Extra Claims
- Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program
Appendix C—Site Allowance

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers (hereinafter referred to as the "Union") and Fremantle Steel Fabrication Co (WA) Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the 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 definition of "construction work" is to include work in and around the maintenance workshop located at Cutler Road, Jandakot. There are approximately five (5) employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the 1st September 1999 and shall continue in effect until 31 August 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 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

The company shall increase the contributions on behalf of each employee into the Western Construction Industry Redundancy Fund to the following sums on a weekly basis—

Rate on Signing	\$50
Rate as of 1/05/2001	\$60

2. Superannuation

- (i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, 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.

- (ii) 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.
- (iii) "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.

13.—CLOTHING AND FOOTWEAR

- The following items will be supplied to each employee by the Company, upon the completion of five working days.
 - 1 pair safety boots, 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 will be replaced on a fair wear and tear basis.
- 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

- 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.

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.—PYRAMID SUB-CONTRACTING

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

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

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

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

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

17.—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 site only) of \$6.15 per day per employee using his own vehicle.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

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

19.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties of this agreement.

20.—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.

21.—NO EXTRA CLAIMS

The Union will make no further claims on the Company over conditions set out in this Agreement for the life of the Agreement.

Signed for and on behalf of—

The Unions:

BLPPU

Sgd.

Date: / /

Sgd.

WITNESS

The Company:

.....

SIGNATURE

Date: 20/12/1999

Company Seal

VINCE D'AMATO

PRINT NAME

Sgd.

WITNESS

APPENDIX A—WAGE RATES

	Previous EBA Rate	1 September 1999	1 September 2000
	Hourly Rate	Hourly Rate	Hourly Rate
	\$	\$	\$
Labourer Group 1	17.15	17.75	18.37
Labourer Group 2	16.56	17.14	17.74
Labourer Group 3	16.12	16.68	17.26

In addition to the hourly/weekly rates set out above, all employees will be paid an all purpose allowance of \$1.50 per hour in addition to any site allowance that is otherwise applicable.

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/dismissed the next time he/she is dangerously affected.
- e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- f) A worker having problems with alcohol and or other drugs—
 - Will not be sacked if he/she is willing to get help.
 - Must undertake and continue with the recommended treatment to maintain the protection of this program.
 - Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

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

- 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

<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

<u>Project Contractual Value</u>	<u>Site Allowance</u>
Up to \$520,000	NIL
Above \$520,000 to \$2.17m	\$1.70
Above \$2.1m to \$4.55m	\$1.90
Over \$4.55m	\$2.45

4.2 Projects Located Within West Perth (as defined)

New Work

<u>Project Contractual Value</u>	<u>Site Allowance</u>
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

<u>Project Contractual Value</u>	<u>Site Allowance</u>
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)

<u>Project Contractual Value</u>	<u>Site Allowance</u>
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 in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

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 st year	42%
2 nd year	55%
3 rd year	75%
4 th year	88%

**HOSPITAL SALARIED OFFICERS COLLIE
HEALTH SERVICE ENTERPRISE BARGAINING
AGREEMENT 1999.
No. PSAAG14 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Collie Health Service

and

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

No. PSAAG14 of 2000.

Hospital Salaried Officers Collie Health Service Enterprise Bargaining Agreement 1999.

22 March 2000.

Order.

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Collie Health Service Enterprise Bargaining 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 Hospital Salaried Officers Collie Health Service Enterprise Bargaining Agreement 1997 (PSA AG 76 of 1998) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Collie Health Service Enterprise Bargaining Agreement 1996 (PSA AG 25 of 1996) is hereby cancelled.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Collie Health Service Enterprise Bargaining Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Casual Employees
16. Medical Imaging Technologists
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20. Taking of Annual Leave
21. Family, Bereavement and Personal Leave
22. Parental Leave
23. Award Consolidation
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28. Contract of Service—Probation
29. Travelling Allowance
30. Skills Acquisition, Training and Employee Development
31. Salary Packaging
32. Salaries
33. Review of Services
34. Establishment of Competencies for Levels 1 & 2
35. Review of Sick Leave Management
36. Rural Recruitment and Attraction Issues
37. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Collie Health Service along with allowing the benefits from those improvements to be shared by employees, and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Collie Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Collie Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Collie Health Service and the Collie Health Service (CHS).

(2) The estimated number of employees bound by this Agreement at the time of registration is 35.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreement; PSAAG76/1998.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until its expiry on 1 December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement, provided that neither party may refuse to commence negotiations as early as Enterprise Bargaining negotiations commence for the Metropolitan Health Service Board.

6.—NO EXTRA CLAIMS

(1) Subject to the terms of this agreement, for life of the agreement, the Hospital Salaried Officers Association shall make no further claims on CHS.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

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

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, CHS and its clients and the Government on behalf of the community;
- (b) ensuring that the CHS operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the CHS operates as effectively, efficiently and competitively as possible.

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

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;

- (iv) is outcome rather than simply activity based;
- (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
- (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
- (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans
 - appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter

- (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
- (c) Support and actively contribute to the achievement of ACHS Accreditation.
- (d) Actively contribute to the achievement of health service budgets.
- (e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.
- (f) Co-operate with the development and implementation of strategies to achieve length-of-stay targets.
- (g) Participate in a Multi-disciplinary approach to patient care.
- (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.

(4) In addition, the CHS is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the CHS will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

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

- (c) The agenda should include but not be limited to—
 - (i) changes in work organisation, job design and working patterns and arrangements;
 - (ii) examination of terms and conditions of employment to ensure they are suited to the CHS's operational requirements;
 - (iii) identification and implementation of best practice across all areas of service delivery;
 - (iv) (i), (ii) and (iii) can be achieved by means including but not limited to—
 - (aa) new training and skills development programs as and where required;

- (bb) the optimum use of human and capital resources including new technology;
- (cc) quality assurance and continuous improvement programs;
- (dd) having due regard to operational requirements, allowing sufficient flexibility to enable employees to meet their family responsibilities; and
- (ee) active occupational health and safety risk reduction, training and rehabilitation programs.

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

(a) Productivity Improvements

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

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

(b) Sharing Gains from Productivity Improvement

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

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

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

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the CHS can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements

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

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

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

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

(iii) The employee shall be provided with—

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

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

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

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

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

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

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

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

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

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

(5) All promotional positions and new staff recruited by the CHS from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the CHS.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the CHS shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the CHS is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

(1) 4.0% from 16 November 1999;

(2) 1.5% from 1 January 2000;

(3) 2.0% from 1 July 2000; and

(4) 1.25% from 1 January 2001. The final payment of 1.25% will be subject to—

(a) the CHS identifying productivity in excess of that used to justify the other salary increases; and

(b) approval by government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the "Model for Identifying Productivity Increases" referred to in that clause.

(5) The rates of pay are set out in clause 32. – Salaries of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

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

(2) (a) To assist in meeting these obligations, the CHS will assist by providing appropriate resources having regard to the operational requirements of the CHS and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the CHS who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

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

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

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

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

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

matters notified by the parties within five working days and—

- (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
- (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission. Provided that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

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

13.—HOURS

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

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

- (i) Ordinary hours of work of thirty eight per week;
- (ii) Flexitime roster covering a settlement period of four weeks;
- (iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;
- (iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.
- (v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.
- (vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

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

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

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

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

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

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

(3) Other Working Arrangements

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

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

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

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

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

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

(4) Flexitime Arrangements

(a) Flexitime Roster

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

(b) Hours of Duty

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

(c) Flexitime Periods

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

- 6.00 am to 9.30 am
- 11.00 am to 2.30 pm (Minimum half an hour break)
- 3.30 pm to 6.00 pm

(d) Core Periods

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

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period that shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 152 hours to a maximum of 7 hours 36 minutes 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 7 hours 36 minutes at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and

- (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
- (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or
- (cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.
- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (5) Nine Day Fortnight
- (a) Hours of Duty
- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.
- (b) Lunch Break
- A meal break shall be allowed and taken in accordance with the standard provisions of this clause.
- (c) Special Rostered Day Off
- Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.
- (d) Leave and Public Holidays.
- For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—
- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.
- (e) Overtime
- The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.
- (f) Study Leave
- Credits for Study Leave will be given for educational commitments falling due between an employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

(4) Part-Time Flexibility for Relief

This provision replaces Order No. P.33 of 1998, known as the PMH/KEMH Patient Information Services Part Time Workers Order of 1998

(a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

(g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—CASUAL EMPLOYEES

This Clause replaces Clause 36. – Casual Workers, of the Award.

(1) “Casual Employee” shall mean a worker engaged by the hour for a period of less than four consecutive weeks in any period of engagement.

(2) A casual employee shall be paid one seventysixth (76th) of the ordinary fortnightly rate of salary prescribed by the Agreement for the classification in which the casual employee is employed for each hour so employed, with the addition of twenty per centum.

(3) At the request of the union, the employer shall supply to the union the following information with respect to casual employees employed during the preceding month—

- (a) The name of the casual worker or workers so employed.
- (b) The address of such worker or workers.
- (c) The classification in which such a worker was engaged and the number of hours so engaged.
- (d) The rate of salary paid to such worker or workers.

16.—MEDICAL IMAGING TECHNOLOGISTS

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

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

17.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year’s Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign’s Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

18.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

- (a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until the time of inception of this agreement, accrue long service leave at the ten year rate.
- (b) An employee, in employment with the CHS and covered by the Hospital Salaried Officers Award No. 39 of 1968 at the time of inception of this agreement shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.
- (c) An employee who at the time of inception of this agreement transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the CHS shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) was employed by Collie Health Service at, before or after the 1st April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector or Public Health Industry;

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

(b) An employee who resigns from their employment with Collie Health Service and who;

- (i) was employed by Collie Health Service at, before or after the 1st April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector or Public Health Industry;

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

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

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

(10) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(11) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

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

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

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

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

(14) Subject to the provisions of subclauses (6), (7), (11) and (15) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;
- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
- (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
- (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(16) Portability

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

- The Commonwealth of Australia
- Any other State Government of Australia, or
- Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

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

- (i) the pro rata portion of long service leave to which the employee would have been entitled up to the date

of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and

- (ii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.

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

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

19.—SICK LEAVE

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

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

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

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

20.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.

(ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.

(iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.

(b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.

(e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

21.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

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

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

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

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

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

(2) Bereavement Leave

(a) An employee shall on the death of—

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

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

(b) The 2 days need not be consecutive.

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

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

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

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

(3) Special Personal Leave

(a) Without Pay

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

(b) Use of Annual Leave

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

22.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) “Child” means a child of the employee under the age of one year except for adoption of a child where “child” means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.
- (b) “Parental leave” means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

- (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
- (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

(f) 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.

(g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave —

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.

(d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for

parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any Award, Agreement or other provision to the contrary—

- (a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.
- (b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

23.—AWARD CONSOLIDATION

(1) The parties agree to consolidate the award during the life of this agreement.

(2) The amendments to the award are outlined in Attachment 2—Award Amendments.

24.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

- (a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance

will include the relevant service increments for the position in which he/she is acting;

- (b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the commencement of a new twelve (12) month period for the application of this clause, will—

- (a) continue to be paid the allowance until such time as the acting period ceases;
- (b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

25.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

26.—MOBILITY

(1) This clause will apply to all current and prospective employees of the CHS.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is prepared to be mobile in the sense of being able to work in more than one position and where appropriate able to move on a temporary or permanent basis to a different location and or position.

(3) It is agreed that employee mobility should—

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees; and
- (b) subject to the provisions of this clause, be as far as practicable, voluntary.

(4) Staffing mobility, administered in accordance with the standards and principles contained in this clause, within the Wellington Health Service region will benefit employees through providing—

- (a) access to a greater variety of employment opportunities
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunities in terms of career development; and
- (d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their mobility that meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and employee's needs are to be considered including—

- (a) ensuring that the careers of employees are not disadvantaged;
- (b) consideration of family & career responsibilities;
- (c) availability of transport and its cost;
- (d) reimbursement of the employee for any reasonable costs incurred by the employee as a result of a temporary or permanent move made.
- (e) matching skill level and professional suitability of any temporary job opportunity or permanent new position;
- (f) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.
- (g) consideration of the employee's ability to cope with the temporary or permanent change;
- (h) adequate support to assist the employee with dealing with the change involved in moving to another job on either a temporary or permanent basis.

(7) The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and the union. When considering the reasonableness of any proposed move the level of the employee and the relative cost to the employee of any move will be taken into account. Subject to family and social commitments and the suitability of the position, the higher the classification of the employee, the more the employee can be expected to demonstrate flexibility in regard to mobility.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis—

- (a) Relief.
- (b) It is agreed that all positions, which for operational reasons are required to be relieved, will be relieved.
 - (i) Relief is defined as: "Planned relief" which is relief in positions for which a minimum of four weeks notice can reasonably be given. It is likely that planned relief will usually be for the cover of leave, higher duties and relief for vacancies caused by special projects and the like. "Unplanned relief" which is relief at short notice for unplanned absences such as sick leave, family leave, urgent operational requirements and the like.
 - (ii) Employees may agree to relieve in positions at the request of their supervisor to meet short-term operational requirements.
 - (iii) Where possible, all such relief will be provided on a voluntary basis, and vacancies will be notified and open to all eligible employees and awarded on the basis of merit.
 - (iv) Where no suitable employee has volunteered, and it is not reasonable to recruit from outside the health service, or in exceptional circumstances, following consultation with the employee, an employee may be required to relieve in a position provided that—
 - (aa) the position is suitable;
 - (bb) due consideration is given to the employee's personal commitments;
 - (cc) the employee will not be financially disadvantaged;
 - (v) Where an employee has been directed to relieve in a position on more than two occasions in a calendar month, the employee may seek a review of the decision.
 - (vi) The relieving employee has the right to return to their substantive position at the end of the period of relief, as does the person whose position is being relieved.

- (c) Temporary Transfer. Subject to agreement between the employer and employee, an employee may be transferred to another position within the Wellington Health Service on a temporary basis, provided that—
- (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the period of time is defined;
 - (iii) the transfer is at a comparable classification level; and
 - (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
 - (v) where an employee has agreed to a temporary transfer the employee may not capriciously withdraw their agreement to that transfer.
- (d) Permanent Transfer. Subject to agreement between the parties, an employee may be transferred to another position within the Wellington Health Service on a permanent basis, provided that—
- (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the transfer is at a comparable classification level; and
 - (iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
- (e) Restructure. Where the requirement for mobility arises out of an organisational restructure the relevant provisions of the award together with the relevant legislation applies.

27.—OVERPAYMENTS

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

(2) One-off Overpayments

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

(3) Cumulative Overpayments

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

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

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

28.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8.- Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the CHS shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the CHS may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the CHS and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the CHS. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the CHS shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

29.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (1) and (3), an employee who is required to travel on official business will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

30.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(3) It is agreed that skills acquisition, training and employee development—

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(4) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the CHS health service region will benefit employees through providing—

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;
- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(7) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view—

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis.

(9) Training and Short Courses

(a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.

(b) Attendance at such courses shall be at no expense to the employee.

(c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.

(d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.

(e) Where attendance is paid for by the employer—

- (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
- (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.

(f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(10) Multiskilling

(a) Employees agree that they will assist in the introduction of this policy on the following basis—

(i) Job Rotation

- (aa) Employer and Employee mutually negotiate the decisions.
- (bb) The period of time for any job rotation cycle is defined.
- (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.

(ii) Job Enlargement and Enrichment

- (aa) Decisions are mutually agreed by employee and supervisor.
- (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
- (cc) The period of time is defined, where possible.
- (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
- (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.

(b) Any job specific training required will be provided by the CHS. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.

(c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(11) Staff Development Program

(a) CHS will develop at an organisational level staff development programs.

(b) The staff development program will be directed to meeting the current and future staffing needs of the CHS and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the CHS area.

(c) The staff development program(s)—

- (i) may be focused at the health service or CHS level as appropriate.
- (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
- (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
- (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
- (v) may be based either or both on the job training and formal training.

(d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(12) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(13) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(14) The CHS will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

31.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) CHS shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate agreement with the employer that sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost to the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging by giving a minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions.

32.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from the 16 November 1999 until the expiry of this Agreement.

(1) Minimum salaries as follows—

	Previous EBA Rates	4% From 16.11.99	1.50% From 1/01/00	2% From 1/07/00	1.25% From 1/01/01 (Subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2					
	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443

	Previous EBA Rates	4% From 16.11.99	1.50% From 1/01/00	2% From 1/07/00	1.25% From 1/01/01 (Subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 3					
	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4					
	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5					
	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6					
	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7					
	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8					
	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9					
	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10					
	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11					
	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12					
	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

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

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

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows—

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

	Previous EBA Rates (1997/98) Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 Salary P/Annum (Subject to clause 10(4))
	\$	\$	\$	\$	\$
LEVEL 3/5					
	30,777	32,008	32,488	33,138	33,552
	32,399	33,695	34,200	34,884	35,320
	34,418	35,795	36,332	37,058	37,522
	36,527	37,988	38,558	39,329	39,821
	39,926	41,523	42,146	42,989	43,526
	42,196	43,884	44,542	45,433	46,001

	Previous (1997/98) EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 Salary P/Annum (Subject to clause 10(4))
	\$	\$	\$	\$	\$
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

- (i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

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

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

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

Engineers—

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

For the purposes of this paragraph “experienced engineer” shall mean—

- (a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.
- (b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—

- (i) having graduated in a four or five academic year course at a University or

Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or

- (ii) not having a University degree but possessing a diploma recognised by the employer, has had five year’s experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

33.—REVIEW OF SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the CHS will review the departmental/organisational structures; administrative; and corporate services currently provided. The review process will result in changes to services through a combination of rationalisation, and restructuring of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the CHS during the course of the review process and the implementation of change resulting from the review process.

This clause does not override Clause 40.- Introduction Of Change contained in the Award.

34.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The CHS agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Level 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Metropolitan Health Service Board Enterprise Agreement 1999.

(3) It is agreed, subject to the agreement of the MHSB, the CHS may participate as an observer in the HSOA/MHSB competency review process.

35.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

36.—RURAL RECRUITMENT AND ATTRACTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for the Collie Health Service. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- the appropriateness and flexibility of the current classification system;
- training and professional development opportunities;
- support systems and mentoring;
- career paths;
- accommodation;
- incentive schemes;
- flexible leave arrangements; and
- work practices and arrangements.

(4) To address these issues, the parties agree that the Health Service will participate on the Workforce working party established as part of the South West (Health Forum) Strategic Plan, to make recommendations aimed at improving recruitment, attraction and retention of employees.

(5) The recommendations of the Workforce working party shall be made available to the Hospital Salaried Officers Association. Prior to the adoption of any of the recommendations, the employer shall seek input from employees and the Hospital Salaried Officers Association.

(6) The implementation of Recruitment and Attraction strategies shall be in accordance with Clause 40 – Introduction of Change of the Hospital Salaried Officers Award 1968.

37.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farell

T. Farrell (signed) 25/02/00
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

D. Hill (signed) (COMMON SEAL) 22-02-00
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Collie Health Service is affixed hereto pursuant to a resolution of the Board

C.A. Dowdell (signed)
Signature of Board Member
CATHERINE A. DOWDELL
Printed Name of Signatory

(COMMON SEAL)

J. Foster

Signature of Board Member

JIM FOSTER

Printed Name of Signatory

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of CHS as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output) possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- Structural Matters: Management may need to look at the structures within which the work is done and how they can be improved upon.

- Management Style: Management style and its appropriateness may need to be examined at both an organisational and departmental level.

- Best Practice, Benchmarking, Continuous Improvement and New Opportunities: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.

- Culture and Environment: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

- (1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;
- (2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.
- (3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.
- (4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.

- (3) Holidays and Annual Leave clause to be amended to—
- (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

**HOSPITAL SALARIED OFFICERS DONNYBROOK/
BALINGUP HEALTH SERVICE ENTERPRISE
BARGAINING AGREEMENT 1999.
No. PSAAG12 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Donnybrook/Balingup Health Service
and

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

No. PSAAG12 of 2000.

Hospital Salaried Officers Donnybrook/Balingup Health
Service Enterprise Bargaining Agreement 1999.

22 March 2000.

Order.

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Donnybrook/Balingup Health Service Enterprise Bargaining 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 Hospital Salaried Officers Donnybrook/Balingup Health Service Enterprise Bargaining Agreement 1997 (PSA AG 78 of 1998) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Donnybrook/Balingup Health Service Enterprise Bargaining Agreement 1996 (PSA AG 33 of 1996) is hereby cancelled.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Donnybrook/Balingup Health Service Enterprise Bargaining Agreement 1999.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Purpose of Agreement
 4. Application and Parties Bound
 5. Term of Agreement
 6. No Extra Claims
 7. Objectives, Principles and Commitments
 8. Framework and Principles for Identifying Productivity Improvements and Bargaining
 9. Awards, Agreements and Workplace Agreements
 10. Rates of Pay and their Adjustment
 11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
 12. Dispute Avoidance and Settlement Procedures
 13. Hours
 14. Part-Time Employees
 15. Casual Employees
 16. Medical Imaging Technologists
 17. Public Holidays
 18. Long Service Leave
 19. Sick Leave
 20. Taking of Annual Leave
 21. Family, Bereavement and Personal Leave
 22. Parental Leave
 23. Award Consolidation
 24. Higher Duties
 25. Allowances
 26. Mobility
 27. Overpayments
 28. Contract of Service—Probation
 29. Travelling Allowance
 30. Skills Acquisition, Training and Employee Development
 31. Salary Packaging
 32. Salaries
 33. Review of Services
 34. Establishment of Competencies for Levels 1 & 2
 35. Review of Sick Leave Management
 36. Rural Recruitment and Attraction Issues
 37. Ratification
- ATTACHMENT 1—Model for Identifying Productivity Increases
ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Donnybrook/Balingup Health Service along with allowing the benefits from those improvements to be shared by employees, and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Donnybrook/Balingup Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Donnybrook/Balingup Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Donnybrook/Balingup Health Service and the Donnybrook/Balingup Health Service (DBHS).

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

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreement: PSAAG78/1998.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until its expiry on 1 December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement, provided that neither party may refuse to commence negotiations as early as Enterprise Bargaining negotiations commence for the Metropolitan Health Service Board.

6.—NO EXTRA CLAIMS

(1) Subject to the terms of this agreement, for life of the agreement, the Hospital Salaried Officers Association shall make no further claims on DBHS.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

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

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, DBHS and its clients and the Government on behalf of the community;
- (b) ensuring that the DBHS operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the DBHS operates as effectively, efficiently and competitively as possible.

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

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
- (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans
 - appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter

- (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
- (c) Support and actively contribute to the achievement of ADBHS Accreditation.
- (d) Actively contribute to the achievement of health service budgets.
- (e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.
- (f) Co-operate with the development and implementation of strategies to achieve length-of-stay targets.
- (g) Participate in a Multi-disciplinary approach to patient care.
- (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.

(4) In addition, the DBHS is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the DBHS will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

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

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

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

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

(a) Productivity Improvements

Productivity improvements are changes that increase the efficiency and effectiveness of the DBHS in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer

needs. They may or may not require changes from Award conditions.

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

(b) Sharing Gains from Productivity Improvement

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

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

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

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the DBHS can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements—

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

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

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

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

(iii) The employee shall be provided with—

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

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

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

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

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

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

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

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

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

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

(5) All promotional positions and new staff recruited by the DBHS from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the DBHS.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the DBHS shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the DBHS is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

(1) 4.0% from 16 November 1999;

(2) 1.5% from 1 January 2000;

(3) 2.0% from 1 July 2000; and

(4) 1.25% from 1 January 2001. The final payment of 1.25% will be subject to—

(a) the DBHS identifying productivity in excess of that used to justify the other salary increases; and

(b) approval by government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the "Model for Identifying Productivity Increases" referred to in that clause.

(5) The rates of pay are set out in clause 32. – Salaries of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

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

(2) (a) To assist in meeting these obligations, the DBHS will assist by providing appropriate resources having regard to the operational requirements of the DBHS and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the DBHS who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

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

(d) Any paid time or resources shall be provided in a manner suitable to both parties and to enable negotiations to occur

and to assist in the achievement of improvements and of agreement.

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

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

- (a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;
- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairman of the DBHS (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairman of the DBHS (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairman of the DBHS (or his/her nominee) shall confer on the matters notified by the parties within five working days and—
 - (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
 - (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission. Provided that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

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

13.—HOURS

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

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

- (i) Ordinary hours of work of thirty eight per week;
- (ii) Flexitime roster covering a settlement period of four weeks;
- (iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;
- (iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.
- (v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.
- (vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

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

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

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

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

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

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

(3) Other Working Arrangements

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

- (i) the attendance of employees for duty on a Saturday, Sunday, or Public Holidays.

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

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

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

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

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

(4) Flexitime Arrangements

(a) Flexitime Roster

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

(b) Hours of Duty

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

(c) Flexitime Periods

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

6.00 am to 9.30 am

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

3.30 pm to 6.00 pm

(d) Core Periods

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

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period that shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 152 hours to a maximum of 7 hours 36 minutes 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 7 hours 36 minutes at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and
 - (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
 - (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than

2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or

- (cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.
- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (5) Nine Day Fortnight
- (a) Hours of Duty
- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.
- (b) Lunch Break
- A meal break shall be allowed and taken in accordance with the standard provisions of this clause.
- (c) Special Rostered Day Off
- Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.
- (d) Leave and Public Holidays.
- For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—
- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.
- (e) Overtime
- The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.
- (f) Study Leave
- Credits for Study Leave will be given for educational commitments falling due between an employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

(4) Part-Time Flexibility for Relief

This provision replaces Order No. P.33 of 1998, known as the PMH/KEMH Patient Information Services Part Time Workers Order of 1998

- (a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.
- (ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.
- (iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.
- (b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—
- Brief periods of unplanned absence;
 - Sick leave;
 - Time in lieu;
 - Annual leave;
 - Long service leave.
- (c) This provision applies to part time workers only
- (d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.
- (e) Relief will be provided for absences of both part time and full time employees.
- (f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.
- (g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.
- (ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.
- (iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours

if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

- (iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.
- (v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—CASUAL EMPLOYEES

This Clause replaces Clause 36. – Casual Workers, of the Award.

(1) “Casual Employee” shall mean a worker engaged by the hour for a period of less than four consecutive weeks in any period of engagement.

(2) A casual employee shall be paid one seventysixth (76th) of the ordinary fortnightly rate of salary prescribed by the Agreement for the classification in which the casual employee is employed for each hour so employed, with the addition of twenty per centum.

(3) At the request of the union, the employer shall supply to the union the following information with respect to casual employees employed during the preceding month—

- (a) The name of the casual worker or workers so employed.
- (b) The address of such worker or workers.
- (c) The classification in which such a worker was engaged and the number of hours so engaged.
- (d) The rate of salary paid to such worker or workers.

16.—MEDICAL IMAGING TECHNOLOGISTS

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

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

17.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year’s Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign’s Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

18.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

- (a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until the time of inception of this agreement, accrue long service leave at the ten year rate.
- (b) An employee, in employment with the DBHS and covered by the Hospital Salaried Officers Award No. 39 of 1968 at the time of inception of this agreement shall retain the proportion of long service leave

accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

- (c) An employee who at the time of inception of this agreement transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the DBHS shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) was employed by Donnybrook/Balingup Health Service at, before or after the 1st April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector or Public Health Industry;

may, by agreement with the employer, take pro-rata long service leave provided that the employee has completed at least three years continuous service with the Donnybrook/Balingup Health Service immediately prior to taking this leave.

(b) An employee who resigns from their employment with Donnybrook/Balingup Health Service and who;

- (i) was employed by Donnybrook/Balingup Health Service at, before or after the 1st April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector or Public Health Industry;

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

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

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

(10) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(11) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

- (c) To an employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.
- (d) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.
- (e) To the widow or widower of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

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

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

(14) Subject to the provisions of subclauses (6), (7), (11) and (15) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;
- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
 - (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
 - (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(16) Portability

- (a) Where an employee was, immediately prior to being employed by the DBHS employed in the service of—
 - The Commonwealth of Australia
 - Any other State Government of Australia, or
 - Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

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

- (i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and
 - (ii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.
- (b) Nothing in this clause confers or shall be deemed to confer on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the employee's favour prior to the date on which the employee commenced with the DBHS.

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

19.—SICK LEAVE

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

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

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

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

20.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16. – Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

- (a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.
- (ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.

- (iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.
- (b) An employee, who has accumulated in excess of two years' annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.
- (c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.
- (d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.
- (e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.
- (f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.
- (b) The 2 days need not be consecutive.
- (c) Bereavement leave is not to be taken during any other period of leave.
- (d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—
 - (i) the death that is the subject of the leave sought; and
 - (ii) the relationship of the employee to the deceased person.
- (e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

21.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

- (a) In this subclause "family member" means the employee's spouse, defacto spouse, child, stepchild, parent, step-parent. This entitlement will also apply to another person who lives with the employee as a member of the employee's family.
- (b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.
- (c) Family leave is not cumulative from year to year.
- (d) Medical certificate requirements are as per those for Sick Leave under the Award.
- (e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

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

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

(3) Special Personal Leave

- (a) Without Pay
The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.
- (b) Use of Annual Leave
The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

22.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) "Child" means a child of the employee under the age of one year except for adoption of a child where "child" means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.
- (b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

- (a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- (b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—
 - (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
 - (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

- (a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—
 - (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
 - (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.
- (b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.
- (c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.
- (e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.
- (f) 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.
- (g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave—

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

- (a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

- (c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.

- (d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

- (a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.
- (b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

- (a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.
- (b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

- (a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.
- (b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.
- (c) When such position no longer exists but there are other positions available, which the employee is

qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- (b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any Award, Agreement or other provision to the contrary—

- (a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.
- (b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

23.—AWARD CONSOLIDATION

(1) The parties agree to consolidate the award during the life of this agreement.

(2) The amendments to the award are outlined in Attachment 2 – Award Amendments.

24.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

- (a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;
- (b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the

commencement of a new twelve (12) month period for the application of this clause, will;

- (a) continue to be paid the allowance until such time as the acting period ceases;
- (b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

25.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

26.—MOBILITY

(1) This clause will apply to all current and prospective employees of the DBHS.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is prepared to be mobile in the sense of being able to work in more than one position and where appropriate able to move on a temporary or permanent basis to a different location and or position.

(3) It is agreed that employee mobility should;

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees; and
- (b) subject to the provisions of this clause, be as far as practicable, voluntary.

(4) Staffing mobility, administered in accordance with the standards and principles contained in this clause, within the Wellington Health Service region will benefit employees through providing:

- (a) access to a greater variety of employment opportunities
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunities in terms of career development; and
- (d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their mobility that meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and employee's needs are to be considered including:

- (a) ensuring that the careers of employees are not disadvantaged;
- (b) consideration of family & career responsibilities;
- (c) availability of transport and its cost;
- (d) reimbursement of the employee for any reasonable costs incurred by the employee as a result of a temporary or permanent move made.
- (e) matching skill level and professional suitability of any temporary job opportunity or permanent new position;
- (f) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.
- (g) consideration of the employee's ability to cope with the temporary or permanent change;
- (h) adequate support to assist the employee with dealing with the change involved in moving to another job on either a temporary or permanent basis.

(7) The parties acknowledge the above and any other reasonable considerations can only be properly assessed through

consultation between the employer, employee and the union. When considering the reasonableness of any proposed move the level of the employee and the relative cost to the employee of any move will be taken into account. Subject to family and social commitments and the suitability of the position, the higher the classification of the employee, the more the employee can be expected to demonstrate flexibility in regard to mobility.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis:

- (a) Relief:
- (b) It is agreed that all positions, which for operational reasons are required to be relieved, will be relieved.
 - (i) Relief is defined as: "Planned relief" which is relief in positions for which a minimum of four weeks notice can reasonably be given. It is likely that planned relief will usually be for the cover of leave, higher duties and relief for vacancies caused by special projects and the like. "Unplanned relief" which is relief at short notice for unplanned absences such as sick leave, family leave, urgent operational requirements and the like.
 - (ii) Employees may agree to relieve in positions at the request of their supervisor to meet short-term operational requirements.
 - (iii) Where possible, all such relief will be provided on a voluntary basis, and vacancies will be notified and open to all eligible employees and awarded on the basis of merit.
 - (iv) Where no suitable employee has volunteered, and it is not reasonable to recruit from outside the health service, or in exceptional circumstances, following consultation with the employee, an employee may be required to relieve in a position provided that—
 - (aa) the position is suitable;
 - (bb) due consideration is given to the employees personal commitments;
 - (cc) the employee will not be financially disadvantaged;
 - (v) Where an employee has been directed to relieve in a position on more than two occasions in a calendar month, the employee may seek a review of the decision.
 - (vi) The relieving employee has the right to return to their substantive position at the end of the period of relief, as does the person whose position is being relieved.
- (c) Temporary Transfer. Subject to agreement between the employer and employee, an employee may be transferred to another position within the Wellington Health Service on a temporary basis, provided that:
 - (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the period of time is defined;
 - (iii) the transfer is at a comparable classification level; and
 - (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
 - (v) where an employee has agreed to a temporary transfer the employee may not capriciously withdraw their agreement to that transfer.
- (d) Permanent Transfer. Subject to agreement between the parties, an employee may be transferred to another position within the Wellington Health Service on a permanent basis, provided that:
 - (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the transfer is at a comparable classification level; and

(iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

- (e) Restructure. Where the requirement for mobility arises out of an organisational restructure the relevant provisions of the award together with the relevant legislation applies.

27.—OVERPAYMENTS

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

(2) One-off Overpayments

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

(3) Cumulative Overpayments

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

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

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

28.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8.—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the DBHS shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the DBHS may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the DBHS and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the DBHS. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the DBHS shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

29.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (1) and (3), an employee who is required to travel on official business will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

30.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(3) It is agreed that skills acquisition, training and employee development;

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(4) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the DBHS health service region will benefit employees through providing:

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;

- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(7) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis—

(9) Training and Short Courses

- (a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.
- (b) Attendance at such courses shall be at no expense to the employee.
- (c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.
- (d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.
- (e) Where attendance is paid for by the employer;
 - (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
 - (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.
- (f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(10) Multiskilling

- (a) Employees agree that they will assist in the introduction of this policy on the following basis;
 - (i) Job Rotation
 - (aa) Employer and Employee mutually negotiate the decisions.
 - (bb) The period of time for any job rotation cycle is defined.
 - (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.
 - (ii) Job Enlargement and Enrichment
 - (aa) Decisions are mutually agreed by employee and supervisor.
 - (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
 - (cc) The period of time is defined, where possible.

- (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
- (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.
- (b) Any job specific training required will be provided by the DBHS. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.
- (c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, “unreasonably” is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(11) Staff Development Program

- (a) DBHS will develop at an organisational level staff development programs.
- (b) The staff development program will be directed to meeting the current and future staffing needs of the DBHS and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the DBHS area.
- (c) The staff development program(s);
 - (i) may be focused at the health service or DBHS level as appropriate.
 - (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
 - (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
 - (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
 - (v) may be based either or both on the job training and formal training.
- (d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(12) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(13) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(14) The DBHS will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

31.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) DBHS shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate agreement with the employer that sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost to the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging by giving a minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions.

32.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from the 16 November 1999 until the expiry of this Agreement.

(1) Minimum salaries as follows;

	Previous EBA Rates	4% From 16.11.99	1.50% From 1/01/00	2% From 1/07/00	1.25% From 1/01/01 (Subject to clause 10(4)) Salary P/Annum
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2					
	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3					
	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4					
	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5					
	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6					
	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7					
	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8					
	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9					
	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915

	Previous EBA Rates	4% From 16.11.99	1.50% From 1/01/00	2% From 1/07/00	1.25% From 1/01/01 (Subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 10	64,566 68,214	67,149 70,943	68,156 72,007	69,519 73,447	70,388 74,365
LEVEL 11	71,128 74,091	73,973 77,055	75,083 78,210	76,584 79,775	77,542 80,772
LEVEL 12	78,154 80,899 84,029	81,280 84,135 87,390	82,499 85,397 88,701	84,149 87,105 90,475	85,201 88,194 91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

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

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

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

	Previous EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 Salary P/Annum (Subject to clause 10(4))
	\$	\$	\$	\$	\$
LEVEL 3/5	30,777 32,399 34,418 36,527 39,926 42,196	32,008 33,695 35,795 37,988 41,523 43,884	32,488 34,200 36,332 38,558 42,146 44,542	33,138 34,884 37,058 39,329 42,989 45,433	33,552 35,320 37,522 39,821 43,526 46,001
LEVEL 6	44,414 46,060 48,400	46,191 47,902 50,336	46,883 48,621 51,091	47,821 49,593 52,113	48,419 50,213 52,764
LEVEL 7	49,651 51,237 52,880	51,637 53,286 54,995	52,412 54,086 55,820	53,460 55,167 56,937	54,128 55,857 57,648
LEVEL 8	55,280 57,248	57,491 59,538	58,354 60,431	59,521 61,640	60,265 62,410
LEVEL 9	60,226 62,298	62,635 64,790	63,575 65,762	64,846 67,077	65,657 67,915
LEVEL 10	64,566 68,214	67,149 70,943	68,156 72,007	69,519 73,447	70,388 74,365
LEVEL 11	71,128 74,091	73,973 77,055	75,083 78,210	76,584 79,775	77,542 80,772
LEVEL 12	78,154 80,899 84,029	81,280 84,135 87,390	82,499 85,397 88,701	84,149 87,105 90,475	85,201 88,194 91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

(i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;

(ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;

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

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

(c) The employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

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

Engineers—

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

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

(a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.

(b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—

(i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or

(ii) not having a University degree but possessing a diploma recognised by the employer, has had five year's experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

33.—REVIEW OF SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the DBHS will review the departmental/organisational structures; administrative; and corporate services currently provided. The review process will result in changes to services through a combination of rationalisation, and restructuring of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the DBHS during the course of the review process and the implementation of change resulting from the review process.

This clause does not override Clause 40.—Introduction Of Change contained in the Award.

34.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The DBHS agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Level 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Metropolitan Health Service Board Enterprise Agreement 1999.

(3) It is agreed, subject to the agreement of the MHSB, the DBHS may participate as an observer in the HSOA/MHSB competency review process.

35.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

36.—RURAL RECRUITMENT AND ATTRACTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for the Donnybrook/Balingup Health Service. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- the appropriateness and flexibility of the current classification system;
- training and professional development opportunities;
- support systems and mentoring;
- career paths;
- accommodation;
- incentive schemes;
- flexible leave arrangements; and
- work practices and arrangements.

(4) To address these issues, the parties agree that the Health Service will participate on the Workforce working party established as part of the South West (Health Forum) Strategic Plan, to make recommendations aimed at improving recruitment, attraction and retention of employees.

(5) The recommendations of the Workforce working party shall be made available to the Hospital Salaried Officers Association. Prior to the adoption of any of the recommendations, the employer shall seek input from employees and the Hospital Salaried Officers Association.

(6) The implementation of Recruitment and Attraction strategies shall be in accordance with Clause 40—Introduction of Change of the Hospital Salaried Officers Award 1968.

37.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

T. Farrell (signed) (COMMON SEAL) 25/02/00

(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Dan Hill

D. Hill (signed) (COMMON SEAL) 16-02-00

(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Donnybrook/Balingup Health Service is affixed hereto pursuant to a resolution of the Board

Steve C. Thomas (signed)

Signature of Board Member

Dr Steven C. Thomas BVSc

Printed Name of Signatory

P. R. Kerby (signed)

Signature of Board Member

P.R. KERBY

Printed Name of Signatory

(COMMON SEAL)

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of DBHS as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output) possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- Structural Matters: Management may need to look at the structures within which the work is done and how they can be improved upon.
- Management Style: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- Best Practice, Benchmarking, Continuous Improvement and New Opportunities: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness. Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.
- Culture and Environment: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees

and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

- (1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;
- (2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.
- (3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.
- (4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.
- (3) Holidays and Annual Leave clause to be amended to—
 - (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

HOSPITAL SALARIED OFFICERS HARVEY YARLOOP HEALTH SERVICE ENTERPRISE BARGAINING AGREEMENT 1999. No. PSAAG13 of 2000.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Harvey Yarloop Health Service Board
and

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

No. PSAAG13 of 2000.

Hospital Salaried Officers Harvey Yarloop Health Service Enterprise Bargaining Agreement 1999.

22 March 2000.

Order:

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Harvey Yarloop Health Service Enterprise Bargaining 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 Hospital Salaried Officers Harvey District Hospital Enterprise Bargaining Agreement 1997 (PSA AG 79 of 1998) and the Hospital Salaried Officers Yarloop Health Services Enterprise Bargaining Agreement 1997 (PSA AG 87 of 1998) which are hereby cancelled, and
2. THAT the Hospital Salaried Officers Harvey District Hospital Enterprise Bargaining Agreement 1996 (PSA AG 46 of 1996) and the Hospital Salaried Officers Yarloop Health Service Enterprise Bargaining Agreement 1996 (PSA AG 115 of 1996) are hereby cancelled.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Harvey Yarloop Health Service Enterprise Bargaining Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Casual Employees
16. Medical Imaging Technologists
17. Public Holidays
18. Long Service Leave
19. Sick Leave
20. Taking of Annual Leave
21. Family, Bereavement and Personal Leave

22. Parental Leave
23. Award Consolidation
24. Higher Duties
25. Allowances
26. Mobility
27. Overpayments
28. Contract of Service—Probation
29. Travelling Allowance
30. Skills Acquisition, Training and Employee Development
31. Salary Packaging
32. Salaries
33. Review of Services
34. Establishment of Competencies for Levels 1 & 2
35. Review of Sick Leave Management
36. Rural Recruitment and Attraction Issues
37. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Harvey Yarloop Health Service along with allowing the benefits from those improvements to be shared by employees, and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Harvey Yarloop Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Harvey Yarloop Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Harvey Yarloop Health Service and the Harvey Yarloop Health Service (HYHS).

(2) The estimated number of employees bound by this Agreement at the time of registration is 15.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreements; PSA AG87 of 1998 and PSA AG 79 of 1998.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until its expiry on 1 December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement, provided that neither party may refuse to commence negotiations as early as Enterprise Bargaining negotiations commence for the Metropolitan Health Service Board.

6.—NO EXTRA CLAIMS

(1) Subject to the terms of this agreement, for life of the agreement, the Hospital Salaried Officers Association shall make no further claims on HYHS.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

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

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, HYHS and its clients and the Government on behalf of the community;
- (b) ensuring that the HYHS operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the HYHS operates as effectively, efficiently and competitively as possible.

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

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
 - (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans
 - appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter
 - (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
 - (c) Support and actively contribute to the achievement of AHYHS Accreditation.
 - (d) Actively contribute to the achievement of health service budgets.
 - (e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.
 - (f) Co-operate with the development and implementation of strategies to achieve length-of-stay targets.
 - (g) Participate in a Multi-disciplinary approach to patient care.
 - (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.
- (4) In addition, the HYHS is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the HYHS will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

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

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

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

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

(a) Productivity Improvements

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

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

(b) Sharing Gains from Productivity Improvement

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

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

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

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the HYHS can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements

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

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

- (i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.
- (ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.

(iii) The employee shall be provided with—

- (aa) a copy of an agreed summary of this Agreement; and
- (bb) a copy of a summary of the Workplace Agreement.

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

- (aa) access to a copy of this Agreement and the Workplace Agreement;
- (bb) any other relevant documentation, such as information on salary packaging; and
- (cc) information on where they can obtain further advice and on how to contact the Union.

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

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

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

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

(5) All promotional positions and new staff recruited by the HYHS from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the HYHS.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the HYHS shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the HYHS is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

- (1) 4.0% from 16 November 1999;
- (2) 1.5% from 1 January 2000;
- (3) 2.0% from 1 July 2000; and
- (4) 1.25% from 1 January 2001. The final payment of 1.25% will be subject to—
 - (a) the HYHS identifying productivity in excess of that used to justify the other salary increases; and
 - (b) approval by government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the “Model for Identifying Productivity Increases” referred to in that clause.

(5) The rates of pay are set out in clause 32. – Salaries of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

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

(2) (a) To assist in meeting these obligations, the HYHS will assist by providing appropriate resources having regard to the operational requirements of the HYHS and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the HYHS who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

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

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

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or

difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

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

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

(i) where there is agreement on the matters in dispute the parties shall be advised within two working days;

(ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission. Provided that persons involved in the question, dispute or difficulty shall confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

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

13.—HOURS

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

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

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

entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

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

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

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

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

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

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

(3) Other Working Arrangements

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

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

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

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

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

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

(4) Flexitime Arrangements

(a) Flexitime Roster

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

(b) Hours of Duty

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

(c) Flexitime Periods

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

- 6.00 am to 9.30 am
- 11.00 am to 2.30 pm (Minimum half an hour break)
- 3.30 pm to 6.00 pm

(d) Core Periods

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

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period that shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 152 hours to a maximum of 7 hours 36 minutes 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

- (ii) Credit hours in excess of 7 hours 36 minutes at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and
 - (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
 - (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or
 - (cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.
- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

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

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

(4) Part-Time Flexibility for Relief

This provision replaces Order No. P.33 of 1998, known as the PMH/KEMH Patient Information Services Part Time Workers Order of 1998

- (a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.
- (ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.
- (iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide

adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

(g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—CASUAL EMPLOYEES

This Clause replaces Clause 36. – Casual Workers, of the Award.

(1) “Casual Employee” shall mean a worker engaged by the hour for a period of less than four consecutive weeks in any period of engagement.

(2) A casual employee shall be paid one seventysixth (76th) of the ordinary fortnightly rate of salary prescribed by the Agreement for the classification in which the casual employee is employed for each hour so employed, with the addition of twenty per centum.

(3) At the request of the union, the employer shall supply to the union the following information with respect to casual employees employed during the preceding month—

- (a) The name of the casual worker or workers so employed.
- (b) The address of such worker or workers.
- (c) The classification in which such a worker was engaged and the number of hours so engaged.
- (d) The rate of salary paid to such worker or workers.

16.—MEDICAL IMAGING TECHNOLOGISTS

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

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

17.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year’s Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign’s Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

18.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

(a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until the time of inception of this agreement, accrue long service leave at the ten year rate.

(b) An employee, in employment with the HYHS and covered by the Hospital Salaried Officers Award No. 39 of 1968 at the time of inception of this agreement shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

(c) An employee who at the time of inception of this agreement transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the HYHS shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) (a) An employee who—

- (i) was employed by Harvey Yarloop Health Service at, before or after the 1st April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector or Public Health Industry;

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

(b) An employee who resigns from their employment with Harvey Yarloop Health Service and who;

- (i) was employed by Harvey Yarloop Health Service at, before or after the 1st April 1996, and has completed at least 15 years continuous service within the Western Australian Public Sector or Public Health Industry;

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

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

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

(10) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(11) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

- (c) To an employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.
- (d) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.
- (e) To the widow or widower of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

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

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

(14) Subject to the provisions of subclauses (6), (7), (11) and (15) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer

party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;

- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—

- (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
- (ii) payment pursuant to subclause (8) of this clause has not been made; or

- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(16) Portability

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

- The Commonwealth of Australia
- Any other State Government of Australia, or
- Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

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

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

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

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

19.—SICK LEAVE

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

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

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

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

20.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

- (a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.
- (ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.
- (iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.

(b) An employee, who has accumulated in excess of two years' annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.

(e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

21.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

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

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

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

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

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

(2) Bereavement Leave

(a) An employee shall on the death of—

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

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

(b) The 2 days need not be consecutive.

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

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

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

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

(3) Special Personal Leave

(a) Without Pay

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

(b) Use of Annual Leave

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

22.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) "Child" means a child of the employee under the age of one year except for adoption of a child where "child" means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.
- (b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

- (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
- (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

(f) 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.

(g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave —

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where

through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.

(d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is

capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any Award, Agreement or other provision to the contrary:

(a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.

(b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

23.—AWARD CONSOLIDATION

(1) The parties agree to consolidate the award during the life of this agreement.

(2) The amendments to the award are outlined in Attachment 2 – Award Amendments.

24.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

(a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;

(b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the

commencement of a new twelve (12) month period for the application of this clause, will;

(a) continue to be paid the allowance until such time as the acting period ceases;

(b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

25.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

26.—MOBILITY

(1) This clause will apply to all current and prospective employees of the HYHS.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is prepared to be mobile in the sense of being able to work in more than one position and where appropriate able to move on a temporary or permanent basis to a different location and or position.

(3) It is agreed that employee mobility should;

(a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees; and

(b) subject to the provisions of this clause, be as far as practicable, voluntary.

(4) Staffing mobility, administered in accordance with the standards and principles contained in this clause, within the Harvey Yarloop Health Service region will benefit employees through providing—

(a) access to a greater variety of employment opportunities

(b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

(c) expanded opportunities in terms of career development; and

(d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their mobility that meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and employee's needs are to be considered including:

(a) ensuring that the careers of employees are not disadvantaged;

(b) consideration of family & career responsibilities;

(c) availability of transport and its cost;

(d) reimbursement of the employee for any reasonable costs incurred by the employee as a result of a temporary or permanent move made.

(e) matching skill level and professional suitability of any temporary job opportunity or permanent new position;

(f) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.

(g) consideration of the employee's ability to cope with the temporary or permanent change;

(h) adequate support to assist the employee with dealing with the change involved in moving to another job on either a temporary or permanent basis.

(7) The parties acknowledge the above and any other reasonable considerations can only be properly assessed through

consultation between the employer, employee and the union. When considering the reasonableness of any proposed move the level of the employee and the relative cost to the employee of any move will be taken into account. Subject to family and social commitments and the suitability of the position, the higher the classification of the employee, the more the employee can be expected to demonstrate flexibility in regard to mobility.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis:

(a) Relief:

It is agreed that all positions, which for operational reasons are required to be relieved, will be relieved.

- (i) Relief is defined as: "Planned relief" which is relief in positions for which a minimum of four weeks notice can reasonably be given. It is likely that planned relief will usually be for the cover of leave, higher duties and relief for vacancies caused by special projects and the like. "Unplanned relief" which is relief at short notice for unplanned absences such as sick leave, family leave, urgent operational requirements and the like.
 - (ii) Employees may agree to relieve in positions at the request of their supervisor to meet short-term operational requirements.
 - (iii) Where possible, all such relief will be provided on a voluntary basis, and vacancies will be notified and open to all eligible employees and awarded on the basis of merit.
 - (iv) Where no suitable employee has volunteered, and it is not reasonable to recruit from outside the health service, or in exceptional circumstances, following consultation with the employee, an employee may be required to relieve in a position provided that—
 - (aa) the position is suitable;
 - (bb) due consideration is given to the employees personal commitments;
 - (cc) the employee will not be financially disadvantaged;
 - (v) Where an employee has been directed to relieve in a position on more than two occasions in a calendar month, the employee may seek a review of the decision.
 - (vi) The relieving employee has the right to return to their substantive position at the end of the period of relief, as does the person whose position is being relieved.
- (c) Temporary Transfer. Subject to agreement between the employer and employee, an employee may be transferred to another position within the Harvey Yarloop Health Service on a temporary basis, provided that:
- (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the period of time is defined;
 - (iii) the transfer is at a comparable classification level; and
 - (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
 - (v) where an employee has agreed to a temporary transfer the employee may not capriciously withdraw their agreement to that transfer.
- (d) Permanent Transfer. Subject to agreement between the parties, an employee may be transferred to another position within the Harvey Yarloop Health Service on a permanent basis, provided that:
- (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the transfer is at a comparable classification level; and

(iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

- (e) Restructure. Where the requirement for mobility arises out of an organisational restructure the relevant provisions of the award together with the relevant legislation applies.

27.—OVERPAYMENTS

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

(2) One-off Overpayments

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

(3) Cumulative Overpayments

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

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

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

28.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8.- Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the HYHS shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the HYHS may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the HYHS and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the HYHS. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the HYHS shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

29.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (1) and (3), an employee who is required to travel on official business will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

30.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(3) It is agreed that skills acquisition, training and employee development;

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(4) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the HYHS health service region will benefit employees through providing:

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;

- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(7) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis—

(9) Training and Short Courses

- (a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.
- (b) Attendance at such courses shall be at no expense to the employee.
- (c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.
- (d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.
- (e) Where attendance is paid for by the employer;
 - (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
 - (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.
- (f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(10) Multiskilling

- (a) Employees agree that they will assist in the introduction of this policy on the following basis;
 - (i) Job Rotation
 - (aa) Employer and Employee mutually negotiate the decisions.
 - (bb) The period of time for any job rotation cycle is defined.
 - (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.
 - (ii) Job Enlargement and Enrichment
 - (aa) Decisions are mutually agreed by employee and supervisor.
 - (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
 - (cc) The period of time is defined, where possible.

- (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
- (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.
- (b) Any job specific training required will be provided by the HYHS. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.
- (c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, “unreasonably” is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(11) Staff Development Program

- (a) HYHS will develop at an organisational level staff development programs.
- (b) The staff development program will be directed to meeting the current and future staffing needs of the HYHS and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the HYHS area.
- (c) The staff development program(s);
 - (i) may be focused at the health service or HYHS level as appropriate.
 - (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
 - (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
 - (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
 - (v) may be based either or both on the job training and formal training.
- (d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(12) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(13) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(14) The HYHS will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

31.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

- (1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.
- (2) HYHS shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.
- (3) The salary packaging arrangement entered into shall be by separate agreement with the employer that sets out the terms

and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost to the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging by giving a minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions.

32.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from the 16 November 1999 until the expiry of this Agreement.

(1) Minimum salaries as follows;

	Previous EBA Rates	4% from 16/11/99	1.5% from 1/1/00	2% from 1/7/00	1.25% from 1/1/01 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410

	Previous EBA Rates	4% from 16/11/99	1.5% from 1/1/00	2% from 1/7/00	1.25% from 1/1/01 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 9	60,226 62,298	62,635 64,790	63,575 65,762	64,846 67,077	65,657 67,915
LEVEL 10	64,566 68,214	67,149 70,943	68,156 72,007	69,519 73,447	70,388 74,365
LEVEL 11	71,128 74,091	73,973 77,055	75,083 78,210	76,584 79,775	77,542 80,772
LEVEL 12	78,154 80,899 84,029	81,280 84,135 87,390	82,499 85,397 88,701	84,149 87,105 90,475	85,201 88,194 91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

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

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

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

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

	Previous (1997/98) EBA Rates	4% from 16/11/99	1.5% from 1/1/00	2% from 1/7/00	1.25% from 1/1/01 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 3/5	30,777 32,399 34,418 36,527 39,926 42,196	32,008 33,695 35,795 37,988 41,523 43,884	32,488 34,200 36,332 38,558 42,146 44,542	33,138 34,884 37,058 39,329 42,989 45,433	33,552 35,320 37,522 39,821 43,526 46,001
LEVEL 6	44,414 46,060 48,400	46,191 47,902 50,336	46,883 48,621 51,091	47,821 49,593 52,113	48,419 50,213 52,764
LEVEL 7	49,651 51,237 52,880	51,637 53,286 54,995	52,412 54,086 55,820	53,460 55,167 56,937	54,128 55,857 57,648
LEVEL 8	55,280 57,248	57,491 59,538	58,354 60,431	59,521 61,640	60,265 62,410
LEVEL 9	60,226 62,298	62,635 64,790	63,575 65,762	64,846 67,077	65,657 67,915
LEVEL 10	64,566 68,214	67,149 70,943	68,156 72,007	69,519 73,447	70,388 74,365
LEVEL 11	71,128 74,091	73,973 77,055	75,083 78,210	76,584 79,775	77,542 80,772
LEVEL 12	78,154 80,899 84,029	81,280 84,135 87,390	82,499 85,397 88,701	84,149 87,105 90,475	85,201 88,194 91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

- (b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

- (i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

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

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

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

Engineers—

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

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

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

33.—REVIEW OF SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the HYHS will review the departmental/organisational structures; administrative; and corporate services currently provided. The review process will result in changes to services through a combination of rationalisation, and restructuring of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the HYHS during the course of the review process and the implementation of change resulting from the review process.

This clause does not override Clause 40.—Introduction Of Change contained in the Award.

34.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The HYHS agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Level 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Metropolitan Health Service Board Enterprise Agreement 1999.

(3) It is agreed, subject to the agreement of the MHSB, the HYHS may participate as an observer in the HSOA/MHSB competency review process.

35.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

36.—RURAL RECRUITMENT AND ATTRACTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for the Harvey Yarloop Health Service. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- the appropriateness and flexibility of the current classification system;
- training and professional development opportunities;
- support systems and mentoring;
- career paths;
- accommodation;
- incentive schemes;
- flexible leave arrangements; and
- work practices and arrangements.

(4) To address these issues, the parties agree that the Health Service will participate on the Workforce working party established as part of the South West (Health Forum) Strategic Plan, to make recommendations aimed at improving recruitment, attraction and retention of employees.

(5) The recommendations of the Workforce working party shall be made available to the Hospital Salaried Officers Association. Prior to the adoption of any of the recommendations, the employer shall seek input from employees and the Hospital Salaried Officers Association.

(6) The implementation of Recruitment and Attraction strategies shall be in accordance with Clause 40 – Introduction of Change of the Hospital Salaried Officers Award 1968.

37.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

T. Farrell (signed)

(Signature)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Dan Hill

D. Hill (signed)

(Signature)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Harvey Yarloop Health Service is affixed hereto pursuant to a resolution of the Board

J. Morley (signed)

Signature of Board Member

J.L. MORLEY

Printed Name of Signatory

(COMMON SEAL)

G.R. Cattach (signed)

Signature of Board Member

G.R. CATTACH

Printed Name of Signatory

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of HYHS as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- **Productivity improvements which can be made:** Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output) possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- **Barriers to Productivity Improvements:** Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- **Structural Matters:** Management may need to look at the structures within which the work is done and how they can be improved upon.
- **Management Style:** Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- **Best Practice, Benchmarking, Continuous Improvement and New Opportunities:** Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.

- **Culture and Environment:** Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both

employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

- (1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;
- (2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.
- (3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.
- (4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.
- (3) Holidays and Annual Leave clause to be amended to—
 - (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

HOSPITAL SALARIED OFFICERS MERREDIN HEALTH SERVICE ENTERPRISE AGREEMENT 1999.

No. PSAAG6 of 2000.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Merredin Health Service

and

The Hospital Salaried Officers Association of Western Australia.

(Union of Workers)

No. PSAAG6 of 2000.

Hospital Salaried Officers Merredin Health Service Enterprise Agreement 1999.

22 March 2000.

Order:

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Merredin Health Service Enterprise 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 Hospital Salaried Officers Merredin Health Service Enterprise Bargaining Agreement 1997 (PSA AG 34 of 1997) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Merredin Health Service Enterprise Bargaining Agreement 1996 (PSA AG 66 of 1996) is hereby cancelled.

(Sgd.) G. L. FIELDING,

Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Merredin Health Service Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Taking of Annual Leave
20. Family, Bereavement and Personal Leave
21. Parental Leave
22. Award Consolidation
23. Higher Duties
24. Allowances
25. Overpayments
26. Contract of Service—Probation
27. Travelling Allowance

28. Mobility
29. Skills Acquisition, Training and Employee Development
30. Salary Packaging
31. Salaries
32. Review of Corporate, Support, and Allied Health Services
33. Establishment of Competencies for Levels 1 & 2
34. Review of Sick Leave Management
35. Rural Recruitment and Retention Issues
36. Ratification

ATTACHMENT 1 Model for Identifying Productivity Increases

ATTACHMENT 2 Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Merredin Health Service along with allowing the benefits from those improvements to be shared by employees, the Merredin Health Service and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Merredin Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Merredin Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Merredin Health Service.

(2) The estimated number of employees bound by this Agreement at the time of registration is 5.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreements: PSA AG 34 of 1997.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of registration until 1st December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the Merredin Health Service

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

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

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Merredin Health Service and its clients and the Government on behalf of the community;

- (b) ensuring that the Merredin Health Service operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the Merredin Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the Merredin Health Service, Management and Employees bound by this Agreement are committed to—

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
 - (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans
 - appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter

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

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

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

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

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

(g) Participate in a Multi-disciplinary approach to patient care.

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

(4) In addition, the Merredin Health Service is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the Merredin Health Service will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

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

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

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

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

(a) Productivity Improvements

Productivity improvements are changes which increase the efficiency and effectiveness of the Merredin Health Service in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes from Award conditions. Without limiting any of the above, in practice, the primary focus of Enterprise Bargaining in the workplace is likely to be on best practice, efficiency, effectiveness, competitiveness, cost savings, and quality of employment.

(b) Sharing Gains from Productivity Improvement

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

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

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

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the Merredin Health Service can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements

- (a) The parties accept that Employees will be given an informed and free choice between this Agreement and Workplace Agreements;
- (b) To facilitate the making of an informed and free choice—
 - (i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.
 - (ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.
 - (iii) The employee shall be provided with—
 - (aa) a copy of an agreed summary of this Agreement; and
 - (bb) a copy of a summary of the Workplace Agreement.
 - (iv) At the request of an employee, the employee shall be provided with;
 - (aa) access to a copy of this Agreement and the Workplace Agreement;
 - (bb) any other relevant documentation, such as information on salary packaging; and
 - (cc) information on where they can obtain further advice and on how to contact the Union.

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

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

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

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

(5) All promotional positions and new staff recruited by the Merredin Health Service from outside the Public Sector may be provided with the choice of a Workplace Agreement or this

Agreement, subject to the discretion of the Merredin Health Service.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the Merredin Health Service shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the Merredin Health Service is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases:

- (1) 4.0% from 16 November 1999;
- (2) 1.5% from 1 January 2000;
- (3) 2.0% from 1 July 2000; and
- (4) 1.25% from 1 January 2001.

The final payment of 1.25% will be subject to—

- (a) the Merredin Health Service identifying productivity in excess of that used to justify the other salary increases; and
- (b) approval by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the “Model for Identifying Productivity increases” referred to in that clause.

(5) The rates of pay are set out in clause 31.—Salaries, of this Agreement.

- (6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the Merredin Health Service.

(2) (a) To assist in meeting these obligations, the Merredin Health Service will assist by providing appropriate resources having regard to the operational requirements of the Merredin Health Service and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the Merredin Health Service who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the Merredin Health Service and shall not unreasonably affect the operation of the Merredin Health Service;

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

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

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

- (a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;
- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairperson of the Merredin Health Service (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairperson of the Merredin Health Service (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairperson of the Merredin Health Service (or his/her nominee) shall confer on the matters notified by the parties within five working days and—
 - (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
 - (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

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

13.—HOURS

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

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

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

a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

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

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

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

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

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

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

(3) Other Working Arrangements

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

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

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

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

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

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

(4) Flexitime Arrangements

(a) Flexitime Roster

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

(b) Hours of Duty

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

(c) Flexitime Periods

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

- 6.00 am to 9.30 am
- 11.00 am to 2.30 pm (Minimum half an hour break)
- 3.30 pm to 6.00 pm

(d) Core Periods

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

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period which shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.

- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and
 - (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
 - (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or
 - (cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.
- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

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

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

(4) Part-Time Flexibility for Relief

- (a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.
- (ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.
- (iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide

adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

(g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—MEDICAL IMAGING TECHNOLOGISTS

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

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

16.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

(a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No.

39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until 1 January 1999, accrue long service leave at the ten year rate.

(b) An employee, in employment with the Merredin Health Service and covered by the Hospital salaried Officers Award No. 39 of 1968 at 1 January 1999 shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

(c) An employee who at 1 January 1999 transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the Merredin Health Service shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

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

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

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

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

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

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

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

(7) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

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

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

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

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

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

(11) Subject to the provisions of subclauses (6), (7), (8) and (12) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;
- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
 - (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
 - (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(13) Portability

(a) Where an employee was, immediately prior to being employed by the Merredin Health Service employed in the service of—

- The Commonwealth of Australia
- Any other State Government of Australia, or
- Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

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

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

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

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

18.—SICK LEAVE

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

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

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

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

19.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16. – Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

- (a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.
- (ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.
- (iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.

(b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.

(e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

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

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

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

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

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

(2) Bereavement Leave

(a) An employee shall on the death of—

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

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

(b) The 2 days need not be consecutive.

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

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

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

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

(3) Special Personal Leave

(a) Without Pay

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

(b) Use of Annual Leave

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

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) "Child" means a child of the employee under the age of one year except for adoption of a child where "child" means a person under the age of five years of age 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

child who has previously lived continuously with the employee for a period of six months or more.

- (b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

- (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
- (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the commencement date desired by the employee.

(f) 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.

(g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave—

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant

and the expected date of confinement, or states the date on which the birth took place; and

- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.

(d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to

subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

(a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.

(b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the Merredin Health Service may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2—Award Amendments.

23.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

(a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;

(b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the commencement of a new twelve (12) month period for the application of this clause, will;

- (a) continue to be paid the allowance until such time as the acting period ceases;
- (b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

24.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

25.—OVERPAYMENTS

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

(2) One-off Overpayments

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

(3) Cumulative Overpayments

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

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

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

26.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the Merredin Health Service shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the Merredin Health Service may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the Merredin Health Service and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the Merredin Health Service. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the Merredin

Health Service shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

27.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (3), an employee who is required to travel on official business outside of the Eastern Wheatbelt Health Service district will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

28.—MOBILITY

(1) This clause will apply to all current and prospective employees of the Merredin Health Service.

(2) The parties agree that it is no longer appropriate that staff be appointed exclusively to individual Hospital & Health Services. Pending any moves towards formal integration of Hospital Boards, employees are employed by their respective Board but, subject to this clause, may be mobile across the Merredin Health Service.

(3) The parties also agree that in order for the Merredin Health Service to provide appropriate levels of healthcare to consumers it is necessary to have a workforce which is mobile and that, managed properly, mobility has the potential to improve the employment security, career opportunity and development, and work life of employees.

(4) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and the employee's needs are to be considered including;

- (a) ensuring that the careers of employees are not disadvantaged
- (b) consideration of family & carer responsibilities
- (c) availability of transport
- (d) matching skill level and professional suitability of any temporary job opportunity or permanent new position
- (e) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.
- (f) The classification level and relevant opportunity costs to the employee.

The parties acknowledge that the above considerations can only be properly assessed through consultation. Subject to the particular circumstances of individual employees, a greater degree of mobility may be expected in regard to higher classified employees.

(5) The parties agree that they will assist in the introduction of this initiative on the following basis—

(a) Temporary Transfer

Subject to agreement between the employer and employee, an employee may be transferred to another position within the Merredin Health Service on a temporary basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the period of time is defined

- (iii) the transfer is at a comparable or higher classification level
- (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee or at a higher level and within the competency of the employee.

(b) Permanent Transfer

Subject to agreement between the parties, an employee may be transferred to another position within the Merredin Health Service on a permanent basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the transfer is at a comparable classification level
- (iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

29.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.—Mobility.

(2) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development;

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the Merredin Health Service health service region will benefit employees through providing;

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;
- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis—

(10) Training and Short Courses

- (a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.
- (b) Attendance at such courses shall be at no expense to the employee.
- (c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.
- (d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.
- (e) Where attendance is paid for by the employer;
 - (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
 - (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.
- (f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(11) Multiskilling

(a) Employees agree that they will assist in the introduction of this policy on the following basis;

- (i) Job Rotation
 - (aa) Employer and Employee mutually negotiate the decisions.
 - (bb) The period of time for any job rotation cycle is defined.

- (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.
- (ii) Job Enlargement and Enrichment
 - (aa) Decisions are mutually agreed by employee and supervisor.
 - (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
 - (cc) The period of time is defined, where possible.
 - (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
 - (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.

(b) Any job specific training required will be provided by the Merredin Health Service. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.

(c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

(a) Merredin Health Service will develop at an organisational level staff development programs.

(b) The staff development program will be directed to meeting the current and future staffing needs of the Merredin Health Service and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the Merredin Health Service area.

(c) The staff development program(s);

- (i) may be focused at the health service or Merredin Health Service level as appropriate.
- (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
- (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
- (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
- (v) may be based either or both on the job training and formal training.

(d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The Merredin Health Service will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

30.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

- (1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.
- (2) Merredin Health Service shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.
- (3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.
- (4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.
- (5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.
- (6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.
- (7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.
- (8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.
- (9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.
- (10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions."

31.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3)

LEVELS	1997	1999	2000	2000	2001
	EBA Rates	EBA Rates 4%	EBA Rates 1.5%	EBA Rates 2%	EBA Rates 1.25%
		Increase with effect from	Increase effective from	Increase effective from	Increase effective from
		16/11/99	1/1/2000	1/7/2000	1/01/2001 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	\$12,237	\$12,726	\$12,917	\$13,176	\$13,340
17 years of age	\$14,289	\$14,861	\$15,083	\$15,385	\$15,577
18 years of age	\$16,680	\$17,347	\$17,607	\$17,960	\$18,184
19 years of age	\$19,306	\$20,078	\$20,379	\$20,787	\$21,047
20 years of age	\$21,681	\$22,548	\$22,886	\$23,344	\$23,636
1st year of full-time equivalent adult service	\$23,816	\$24,769	\$25,140	\$25,643	\$25,964
2nd year of full-time equivalent adult service	\$24,551	\$25,533	\$25,916	\$26,434	\$26,765
3rd year of full-time equivalent adult service	\$25,282	\$26,293	\$26,688	\$27,221	\$27,562
4th year of full-time equivalent adult service	\$26,011	\$27,051	\$27,457	\$28,006	\$28,356
LEVEL 2					
	\$26,742	\$27,812	\$28,229	\$28,793	\$29,153
	\$27,475	\$28,574	\$29,003	\$29,583	\$29,952
	\$28,317	\$29,450	\$29,891	\$30,489	\$30,870
	\$28,900	\$30,056	\$30,507	\$31,117	\$31,506
	\$29,760	\$30,950	\$31,415	\$32,043	\$32,443

LEVELS	1997 EBA Rates	1999 EBA Rates 4% Increase with effect from 16/11/99	2000 EBA Rates 1.5% Increase effective from 1/1/2000	2000 EBA Rates 2% Increase effective from 1/7/2000	2001 EBA Rates 1.25% Increase effective from 1/01/2001 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 3	\$30,777	\$32,008	\$32,488	\$33,138	\$33,552
	\$31,567	\$32,830	\$33,322	\$33,989	\$34,413
	\$32,399	\$33,695	\$34,200	\$34,884	\$35,320
	\$33,724	\$35,073	\$35,599	\$36,311	\$36,765
LEVEL 4	\$34,418	\$35,795	\$36,332	\$37,058	\$37,522
	\$35,459	\$36,877	\$37,431	\$38,179	\$38,656
	\$36,527	\$37,988	\$38,558	\$39,329	\$39,821
	\$38,047	\$39,569	\$40,162	\$40,966	\$41,478
LEVEL 5	\$38,838	\$40,392	\$40,997	\$41,817	\$42,340
	\$39,926	\$41,523	\$42,146	\$42,989	\$43,526
	\$41,045	\$42,687	\$43,327	\$44,194	\$44,746
	\$42,196	\$43,884	\$44,542	\$45,433	\$46,001
LEVEL 6	\$44,414	\$46,191	\$46,883	\$47,821	\$48,419
	\$46,060	\$47,902	\$48,621	\$49,593	\$50,213
	\$48,400	\$50,336	\$51,091	\$52,113	\$52,764
LEVEL 7	\$49,651	\$51,637	\$52,412	\$53,460	\$54,128
	\$51,237	\$53,286	\$54,086	\$55,167	\$55,857
	\$52,880	\$54,995	\$55,820	\$56,937	\$57,648
LEVEL 8	\$55,280	\$57,491	\$58,354	\$59,521	\$60,265
	\$57,248	\$59,538	\$60,431	\$61,640	\$62,410
LEVEL 9	\$60,226	\$62,635	\$63,575	\$64,846	\$65,657
	\$62,298	\$64,790	\$65,762	\$67,077	\$67,915
LEVEL 10	\$64,566	\$67,149	\$68,156	\$69,519	\$70,388
	\$68,214	\$70,943	\$72,007	\$73,447	\$74,365
LEVEL 11	\$71,128	\$73,973	\$75,083	\$76,584	\$77,542
	\$74,091	\$77,055	\$78,210	\$79,775	\$80,772
LEVEL 12	\$78,154	\$81,280	\$82,499	\$84,149	\$85,201
	\$80,899	\$84,135	\$85,397	\$87,105	\$88,194
	\$84,029	\$87,390	\$88,701	\$90,475	\$91,606
CLASS 1	\$88,764	\$92,315	\$93,699	\$95,573	\$96,768
CLASS 2	\$93,498	\$97,238	\$98,696	\$100,670	\$101,929
CLASS 3	\$98,231	\$102,160	\$103,693	\$105,766	\$107,089
CLASS 4	\$102,965	\$107,084	\$108,690	\$110,864	\$112,249

LEVELS	1997 EBA Rates	1999 EBA Rates 4% Increase with effect from 16/11/99	2000 EBA Rates 1.5% Increase effective from 1/1/2000	2000 EBA Rates 2% Increase effective from 1/7/2000	2001 EBA Rates 1.25% Increase effective from 1/01/2001 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 6	\$44,414	\$46,191	\$46,883	\$47,821	\$48,419
	\$46,060	\$47,902	\$48,621	\$49,593	\$50,213
	\$48,400	\$50,336	\$51,091	\$52,113	\$52,764
LEVEL 7	\$49,651	\$51,637	\$52,412	\$53,460	\$54,128
	\$51,237	\$53,286	\$54,086	\$55,167	\$55,857
	\$52,880	\$54,995	\$55,820	\$56,937	\$57,648
LEVEL 8	\$55,280	\$57,491	\$58,354	\$59,521	\$60,265
	\$57,248	\$59,538	\$60,431	\$61,640	\$62,410
LEVEL 9	\$60,226	\$62,635	\$63,575	\$64,846	\$65,657
	\$62,298	\$64,790	\$65,762	\$67,077	\$67,915
LEVEL 10	\$64,566	\$67,149	\$68,156	\$69,519	\$70,388
	\$68,214	\$70,943	\$72,007	\$73,447	\$74,365
LEVEL 11	\$71,128	\$73,973	\$75,083	\$76,584	\$77,542
	\$74,091	\$77,055	\$78,210	\$79,775	\$80,772
LEVEL 12	\$78,154	\$81,280	\$82,499	\$84,149	\$85,201
	\$80,899	\$84,135	\$85,397	\$87,105	\$88,194
	\$84,029	\$87,390	\$88,701	\$90,475	\$91,606
CLASS 1	\$88,764	\$92,315	\$93,699	\$95,573	\$96,768
CLASS 2	\$93,498	\$97,238	\$98,696	\$100,670	\$101,929
CLASS 3	\$98,231	\$102,160	\$103,693	\$105,766	\$107,089
CLASS 4	\$102,965	\$107,084	\$108,690	\$110,864	\$112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

- (i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

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

(c) The employer and the HSOA shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

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

Engineers—

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

For the purposes of this paragraph “experienced engineer” shall mean—

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

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

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

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

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

LEVEL 3/5	1997 EBA Rates	1999 EBA Rates 4% Increase with effect from 16/11/99	2000 EBA Rates 1.5% Increase effective from 1/1/2000	2000 EBA Rates 2% Increase effective from 1/7/2000	2001 EBA Rates 1.25% Increase effective from 1/01/2001 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
	\$30,777	\$32,008	\$32,488	\$33,138	\$33,552
	\$32,399	\$33,695	\$34,200	\$34,884	\$35,320
	\$34,418	\$35,795	\$36,332	\$37,058	\$37,522
	\$36,527	\$37,988	\$38,558	\$39,329	\$39,821
	\$39,926	\$41,523	\$42,146	\$42,989	\$43,526
	\$42,196	\$43,884	\$44,542	\$45,433	\$46,001

- acceptable to the employer since becoming a qualified engineer, or
- (ii) not having a University degree but possessing a diploma recognised by the employer, has had five year's experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

32.—REVIEW OF CORPORATE, SUPPORT AND ALLIED HEALTH SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the Merredin Health Service may review the organisational structures, corporate and support services, and allied health services currently provided by individual hospital and health service sites. The review process may result in changes to services through a combination of rationalisation and centralisation of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the Merredin Health Service during the course of the review process and the implementation of any change resulting from the review process.

This clause does not override Clause 40—Introduction of Change contained in the award.

33.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The Merredin Health Service agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Merredin Health Service Enterprise Agreement 1999.

34.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

35.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for Rural Health Services. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- The appropriateness and flexibility of the current classification system
- Training and professional development opportunities
- Support systems and mentoring
- Career paths
- Accommodation
- Incentive schemes
- Flexible leave arrangements
- Work practices and arrangement

(4) To address these issues, the parties agree that the Health Service—

- (i) may participate on an industry working party established to, *inter alia*, make recommendations aimed at improving recruitment and retention of employees, or

- (ii) establish a working party with employer and employee representatives to consider the recommendations of the industry working party and their relevance to the Merredin Health Service, and or
- (iii) establish a working party with employer and employee representatives to make recommendations aimed at improving recruitment and retention of employees .

(5) The recommendations of the industry working party and / or the Merredin Health Service working party shall be made available to the HSOA by 30 September 2000. Prior to the implementation of any of the recommendations, the employer shall consult with employees and the HSOA.

(6) The implementation of Recruitment and Retention strategies shall be in accordance with Clause 40 – Introduction of Change of the Hospital Salaried Officers Award No. 39 of 1968.

36.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

T. Farrell (signed)

(Signature)

11/2/00

(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

D. Hill (signed)

(Signature)

(COMMON SEAL) 11/02/00

(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Pamela C. Gribble (signed)

(Signature)

13 January 2000

(Date)

Board Chairperson, Merredin Health Service.

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of Merredin Health Service as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output, possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- **Structural Matters:** Management may need to look at the structures within which the work is done and how they can be improved upon.

- **Management Style:** Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- **Best Practice, Benchmarking, Continuous Improvement and New Opportunities:** Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.
Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.
- **Culture and Environment:** Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

- (1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;
- (2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.
- (3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.
- (4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes

a provision to permit shifts of up to 12 hours to be worked.

- (3) Holidays and Annual Leave clause to be amended to—
 - (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

**HOSPITAL SALARIED OFFICERS MUKINBUDIN
HEALTH SERVICE ENTERPRISE
AGREEMENT 1999.
No. PSA AG9 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Mukinbudin Health Service

and

The Hospital Salaried Officers Association
of Western Australia
Union of Workers.

No. PSA AG9 of 2000.

Hospital Salaried Officers Mukinbudin Health Service
Enterprise Agreement 1999.

22 March 2000.

Order.

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Mukinbudin Health Service Enterprise 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 Hospital Salaried Officers Mukinbudin Health Service Enterprise Bargaining Agreement 1997 (PSA AG 30 of 1997) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Kununoppin and District Hospital Enterprise Bargaining Agreement 1996 (PSA AG 71 of 1996) is hereby cancelled.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Mukinbudin Health Service Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Taking of Annual Leave
20. Family, Bereavement and Personal Leave
21. Parental Leave
22. Award Consolidation
23. Higher Duties
24. Allowances
25. Overpayments
26. Contract of Service—Probation
27. Travelling Allowance
28. Mobility
29. Skills Acquisition, Training and Employee Development
30. Salary Packaging
31. Salaries
32. Review of Corporate, Support, and Allied Health Services
33. Establishment of Competencies for Levels 1 & 2
34. Review of Sick Leave Management
35. Rural Recruitment and Retention Issues
36. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Mukinbudin Health Service along with allowing the benefits from those improvements to be shared by employees, the Mukinbudin Health Service and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Mukinbudin Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Mukinbudin Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Mukinbudin Health Service.

(2) The estimated number of employees bound by this Agreement at the time of registration is 5.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreements: PSA AG 30 of 1997.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of registration until 1st December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the Mukinbudin Health Service

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

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

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Mukinbudin Health Service and its clients and the Government on behalf of the community;
- (b) ensuring that the Mukinbudin Health Service operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the Mukinbudin Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the Mukinbudin Health Service, Management and Employees bound by this Agreement are committed to—

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
 - (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans
 - appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter

- (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
 - (c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.
 - (d) Actively contribute to the achievement of health service budgets.
 - (e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.
 - (f) Co-operate with the development and implementation of strategies to achieve length of stay targets.
 - (g) Participate in a Multi-disciplinary approach to patient care.
 - (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.
- (4) In addition, the Mukinbudin Health Service is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the Mukinbudin Health Service will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

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

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

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

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

(a) Productivity Improvements

Productivity improvements are changes which increase the efficiency and effectiveness of the Mukinbudin Health Service in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the

quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes from Award conditions.

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

(b) Sharing Gains from Productivity Improvement

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

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

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

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the Mukinbudin Health Service can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements

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

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

- (i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.
- (ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.
- (iii) The employee shall be provided with—
 - (aa) a copy of an agreed summary of this Agreement; and

- (bb) a copy of a summary of the Workplace Agreement.
- (iv) At the request of an employee, the employee shall be provided with—
 - (aa) access to a copy of this Agreement and the Workplace Agreement;
 - (bb) any other relevant documentation, such as information on salary packaging; and
 - (cc) information on where they can obtain further advice and on how to contact the Union.

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

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

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

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

(5) All promotional positions and new staff recruited by the Mukinbudin Health Service from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the Mukinbudin Health Service.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the Mukinbudin Health Service shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the Mukinbudin Health Service is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

- (1) 4.0% from 16 November 1999;
- (2) 1.5% from 1 January 2000;
- (3) 2.0% from 1 July 2000; and
- (4) 1.25% from 1 January 2001.

The final payment of 1.25% will be subject to—

- (a) the Mukinbudin Health Service identifying productivity in excess of that used to justify the other salary increases; and
- (b) approval by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the “Model for Identifying Productivity Increases” referred to in that clause.

(5) The rates of pay are set out in clause 31.—Salaries, of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the Mukinbudin Health Service.

(2) (a) To assist in meeting these obligations, the Mukinbudin Health Service will assist by providing appropriate resources having regard to the operational requirements of the Mukinbudin Health Service and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the Mukinbudin Health Service who are involved in the productivity improvement and the enterprise bargaining processes will be allowed

reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the Mukinbudin Health Service and shall not unreasonably affect the operation of the Mukinbudin Health Service;

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

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

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

- (a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;
- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairperson of the Mukinbudin Health Service (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairperson of the Mukinbudin Health Service (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairperson of the Mukinbudin Health Service (or his/her nominee) shall confer on the matters notified by the parties within five working days and—
 - (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
 - (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

(3) Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved

by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

13.—HOURS

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

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

- (i) Ordinary hours of work of thirty eight per week;
- (ii) Flexitime roster covering a settlement period of four weeks;
- (iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;
- (iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.
- (v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.
- (vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

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

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

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

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

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

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

(3) Other Working Arrangements

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

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

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

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

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

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

(4) Flexitime Arrangements

(a) Flexitime Roster

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

(b) Hours of Duty

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

(c) Flexitime Periods

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

- 6.00 am to 9.30 am
- 11.00 am to 2.30 pm (Minimum half an hour break)
- 3.30 pm to 6.00 pm

(d) Core Periods

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

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period which shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and
 - (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
 - (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or
 - (cc) where that employee has commenced work after 8.30 am and has, at the commencement

of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.

- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

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

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression

onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

(4) Part-Time Flexibility for Relief

(a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

(g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and/or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—MEDICAL IMAGING TECHNOLOGISTS

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

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

16.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

(a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until 1 January 1999, accrue long service leave at the ten year rate.

(b) An employee, in employment with the Mukinbudin Health Service and covered by the Hospital salaried Officers Award No. 39 of 1968 at 1 January 1999 shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

(c) An employee who at 1 January 1999 transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the Mukinbudin Health Service shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

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

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

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

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

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

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

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

(7) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

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

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

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

(11) Subject to the provisions of subclauses (6), (7), (8) and (12) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;
- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
 - (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
 - (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(13) Portability

(a) Where an employee was, immediately prior to being employed by the Mukinbudin Health Service employed in the service of—

- The Commonwealth of Australia
- Any other State Government of Australia, or
- Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

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

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

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

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

18.—SICK LEAVE

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

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

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

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

19.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.

(ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.

(iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.

(b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement

upon demonstrating an extraordinary or special reason to the Employer.

(e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

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

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

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

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

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

(2) Bereavement Leave

(a) An employee shall on the death of—

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

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

(b) The 2 days need not be consecutive.

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

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

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

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

(3) Special Personal Leave

(a) Without Pay

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

(b) Use of Annual Leave

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

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) “Child” means a child of the employee under the age of one year except for adoption of a child where “child” means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.
- (b) “Parental leave” means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

- (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
- (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee

provided that time does not exceed four weeks from the re-commencement date desired by the employee.

(f) 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.

(g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave—

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.

(d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

- (a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.
- (b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the Mukinbudin Health Service may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2—Award Amendments.

23.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of

5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

- (a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;
- (b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the commencement of a new twelve (12) month period for the application of this clause, will—

- (a) continue to be paid the allowance until such time as the acting period ceases;
- (b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

24.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

25.—OVERPAYMENTS

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

(2) One-off Overpayments

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

(3) Cumulative Overpayments

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

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

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

26.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the Mukinbudin Health Service shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the Mukinbudin Health Service may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the Mukinbudin Health Service and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the Mukinbudin Health Service. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the Mukinbudin Health Service shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

27.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (3), an employee who is required to travel on official business outside of the Eastern Wheatbelt Health Service district will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

28.—MOBILITY

(1) This clause will apply to all current and prospective employees of the Mukinbudin Health Service.

(2) The parties agree that it is no longer appropriate that staff be appointed exclusively to individual Hospital & Health Services. Pending any moves towards formal integration of Hospital Boards, employees are employed by their respective Board but, subject to this clause, may be mobile across the Mukinbudin Health Service.

(3) The parties also agree that in order for the Mukinbudin Health Service to provide appropriate levels of healthcare to consumers it is necessary to have a workforce which is mobile and that, managed properly, mobility has the potential to improve the employment security, career opportunity and development, and work life of employees.

(4) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and the employee's needs are to be considered including—

- (a) ensuring that the careers of employees are not disadvantaged

- (b) consideration of family & carer responsibilities
- (c) availability of transport
- (d) matching skill level and professional suitability of any temporary job opportunity or permanent new position
- (e) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.
- (f) The classification level and relevant opportunity costs to the employee.

The parties acknowledge that the above considerations can only be properly assessed through consultation. Subject to the particular circumstances of individual employees, a greater degree of mobility may be expected in regard to higher classified employees.

(5) The parties agree that they will assist in the introduction of this initiative on the following basis—

- (a) Temporary Transfer
Subject to agreement between the employer and employee, an employee may be transferred to another position within the Mukinbudin Health Service on a temporary basis, provided that—
 - (i) the employer and employee mutually agree the decision to transfer
 - (ii) the period of time is defined
 - (iii) the transfer is at a comparable or higher classification level
 - (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee or at a higher level and within the competency of the employee.
- (b) Permanent Transfer
Subject to agreement between the parties, an employee may be transferred to another position within the Mukinbudin Health Service on a permanent basis, provided that—
 - (i) the employer and employee mutually agree the decision to transfer
 - (ii) the transfer is at a comparable classification level
 - (iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

29.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.—Mobility.

(2) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce

is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development—

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the Mukinbudin Health Service health service region will benefit employees through providing—

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and/or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;
- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view—

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis.

(10) Training and Short Courses

(a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.

(b) Attendance at such courses shall be at no expense to the employee.

(c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant

to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.

(d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.

(e) Where attendance is paid for by the employer—

(i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.

(ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.

(f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(11) Multiskilling

(a) Employees agree that they will assist in the introduction of this policy on the following basis—

(i) Job Rotation

(aa) Employer and Employee mutually negotiate the decisions.

(bb) The period of time for any job rotation cycle is defined.

(cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.

(ii) Job Enlargement and Enrichment

(aa) Decisions are mutually agreed by employee and supervisor.

(bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.

(cc) The period of time is defined, where possible.

(dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

(ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.

(b) Any job specific training required will be provided by the Mukinbudin Health Service. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.

(c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

(a) Mukinbudin Health Service will develop at an organisational level staff development programs.

(b) The staff development program will be directed to meeting the current and future staffing needs of the Mukinbudin Health Service and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the Mukinbudin Health Service area.

(c) The staff development program(s);

(i) may be focused at the health service or Mukinbudin Health Service level as appropriate.

(ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.

(iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.

(iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and

(v) may be based either or both on the job training and formal training.

(d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The Mukinbudin Health Service will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

30.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) Mukinbudin Health Service shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions."

31.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set

in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3)

	1997 EBA Rates	1999 EBA Rates	2000 EBA Rates	2000 EBA Rates	2001 EBA Rates
		Increase with effect from 16/11/99 4%	Increase effective from 1/1/2000 1.5%	Increase effective from 1/7/2000 2%	Increase effective from 1/01/2001 (subject to clause 10(4)) 1.25%
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

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

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows—

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

	1997 EBA Rates	1999 EBA Rates	2000 EBA Rates	2000 EBA Rates	2001 EBA Rates
		Increase with effect from 16/11/99 4%	Increase effective from 1/1/2000 1.5%	Increase effective from 1/7/2000 2%	Increase effective from 1/1/2001 (subject to clause 10(4)) 1.25%
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 3/5	30,777	32,008	32,488	33,138	33,552
	32,399	33,695	34,200	34,884	35,320
	34,418	35,795	36,332	37,058	37,522
	36,527	37,988	38,558	39,329	39,821
	39,926	41,523	42,146	42,989	43,526
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

(i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;

(ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;

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

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

(c) The employer and the HSOA shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a

commencing salary above Level 3/5 for a particular calling/s.

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

Engineers—

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

For the purposes of this paragraph “experienced engineer” shall mean—

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

32.—REVIEW OF CORPORATE, SUPPORT AND ALLIED HEALTH SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the Mukinbudin Health Service may review the organisational structures, corporate and support services, and allied health services currently provided by individual hospital and health service sites. The review process may result in changes to services through a combination of rationalisation and centralisation of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the Mukinbudin Health Service during the course of the review process and the implementation of any change resulting from the review process.

This clause does not override Clause 40—Introduction of Change contained in the award.

33.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The Mukinbudin Health Service agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Mukinbudin Health Service Enterprise Agreement 1999.

34.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

35.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for Rural Health Services. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- The appropriateness and flexibility of the current classification system
- Training and professional development opportunities
- Support systems and mentoring
- Career paths
- Accommodation
- Incentive schemes
- Flexible leave arrangements
- Work practices and arrangement

(4) To address these issues, the parties agree that the Health Service—

- (i) may participate on an industry working party established to, *inter alia*, make recommendations aimed at improving recruitment and retention of employees, or
- (ii) establish a working party with employer and employee representatives to consider the recommendations of the industry working party and their relevance to the Mukinbudin Health Service, and or
- (iii) establish a working party with employer and employee representatives to make recommendations aimed at improving recruitment and retention of employees .

(5) The recommendations of the industry working party and / or the Mukinbudin Health Service working party shall be made available to the HSOA by 30 September 2000. Prior to the implementation of any of the recommendations, the employer shall consult with employees and the HSOA.

(6) The implementation of Recruitment and Retention strategies shall be in accordance with Clause 40 – Introduction of Change of the Hospital Salaried Officers Award No. 39 of 1968.

36.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell
T. Farrell (signed) 25/02/00
 (Signature) (Date)
 President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill
D. Hill (signed) (COMMON SEAL) 22-02-00
 (Signature) (Date)
 Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Lancaster (signed) 10-1-00
 (Signature) (Date)
 Board Chairperson, Mukinbudin Health Service.
 (COMMON SEAL)

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of Mukinbudin Health Service as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output, possibilities for multi-skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- Structural Matters: Management may need to look at the structures within which the work is done and how they can be improved upon.
- Management Style: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- Best Practice, Benchmarking, Continuous Improvement and New Opportunities: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.

- Culture and Environment: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

(1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;

(2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.

(3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.

(4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

(1) Definitions to be updated.

(2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.

(3) Holidays and Annual Leave clause to be amended to—

(a) permit leave to be taken in single days; and

(b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.

(4) Parental Leave to be included.

(5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.

(6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

**HOSPITAL SALARIED OFFICERS MURCHISON
HEALTH SERVICE ENTERPRISE
AGREEMENT 1999.
No. PSA AG 18 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Murchison Health Service

and

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

No. PSAAG18 of 2000.

Hospital Salaried Officers Murchison Health Service
Enterprise Agreement 1999.

22 March 2000.

Order

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Murchison Health Service Enterprise 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 Hospital Salaried Officers Murchison Health Service Enterprise Bargaining Agreement 1997 (PSA AG 26 of 1997) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Cue Nursing Post Enterprise Bargaining Agreement (PSA AG 28 of 1996); the Hospital Salaried Officers Meekatharra District Hospital Enterprise Bargaining Agreement 1996 (PSA AG 64 of 1996); the Hospital Salaried Officers Mt Magnet Health Centre Enterprise Bargaining Agreement 1996 (PSA AG 70 of 1996) and the Hospital Salaried Officers Sandstone Nursing Post Enterprise Bargaining Agreement 1996 (PSA AG 95 of 1996) are hereby cancelled.

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

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Murchison Health Service Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Purpose of Agreement
 4. Application and Parties Bound
 5. Term of Agreement
 6. No Extra Claims
 7. Objectives, Principles and Commitments
 8. Framework and Principles for Identifying Productivity Improvements and Bargaining
 9. Awards, Agreements and Workplace Agreements
 10. Rates of Pay and their Adjustment
 11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
 12. Dispute Avoidance and Settlement Procedures
 13. Hours
 14. Part-Time Employees
 15. Casual Employees
 16. Public Holidays
 17. Long Service Leave
 18. Sick Leave
 19. Taking of Annual Leave
 20. Family, Bereavement and Personal Leave
 21. Parental Leave
 22. Allowances
 23. Overpayments
 24. Salary Packaging
 25. Salaries
 26. Award Consolidation
 27. Contract of Service—Probation
 28. Higher Duties
 29. Mobility
 30. Establishment of Level 1 & 2 Competencies
 31. Recruitment and Retention Issues
 32. Skills Acquisition, Training and Employee Development
 33. Ratification
- ATTACHMENT 1 Model for Identifying Productivity Increases
ATTACHMENT 2 Award Amendments

3.—PURPOSE OF AGREEMENT

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

Murchison Health Service along with allowing the benefits from those improvements to be shared by employees, the Murchison Health Service and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Murchison Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Murchison Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Murchison Health Service Board.

(2) The estimated number of employees bound by this Agreement at the time of registration is 15.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the Hospital Salaried Officers Murchison Health Service Enterprise Bargaining Agreement 1997 (PSA AG 26 of 1997).

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until its expiry on 1 December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement, provided that neither party may refuse to commence negotiations as early as Enterprise bargaining negotiations commence for the Metropolitan Health Service Board.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the Murchison Health Service.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

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

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Murchison Health Service and its clients and the Government on behalf of the community;
- (b) ensuring that the Murchison Health Service operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a cooperative basis; and
- (d) ensuring that the Murchison Health Service operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the Murchison Health Service Management and Employees bound by this Agreement are committed to—

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process, which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
 - (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans
 - appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter
- (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
- (c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.
- (d) Actively contribute to the achievement of health service budgets.
- (e) Assist with achieving waiting list priorities and day surgery targets.
- (f) Co-operate with the development and implementation of strategies to achieve length of stay targets.
- (g) Participate in a Multi-disciplinary approach to patient care.
- (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.

(4) In addition, the Murchison Health Service is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5. - Term of Agreement, a representative from the Murchison Health Service will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

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

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

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

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

(a) Productivity Improvements

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

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

(b) Sharing Gains from Productivity Improvement

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

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

The treatment of improved efficiency arising from major capital expenditure is to be agreed by the Murchison Health Service and the HSOA and shall take into account factors such as the cost of capital. Where employees repackage or exchange employment conditions, all or most of the saving or

productivity improvement made by the Murchison Health Service can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements

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

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

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

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

(iii) The employee shall be provided with—

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

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

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

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

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

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

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

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

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

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

(5) All promotional positions and new staff recruited by the Murchison Health Service from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the Murchison Health Service.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the Murchison Health Service shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the Murchison Health Service is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

(1) 4.0% from 16 November 1999;

(2) 1.5% from 1 January 2000;

(3) 2.0% from 1 July 2000; and

(4) 1.25% from 1 January 2001.

The final payment of 1.25% will be subject to—

(a) the Murchison Health Service identifying productivity in excess of that used to justify the other salary increases; and

(b) approval by government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the "Model for Identifying Productivity Increases" referred to in that clause.

(5) The rates of pay are set out in clause 29.—Salaries, of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the Murchison Health Service.

(2) (a) To assist in meeting these obligations, the Murchison Health Service will assist by providing appropriate resources having regard to the operational requirements of the Murchison Health Service and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the Murchison Health Service who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the Murchison Health Service and shall not unreasonably affect the operation of the Murchison Health Service.

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

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

(2) Subject to the Public Sector Management Act 1994, in the event of any question, dispute or difficulty arising under this Agreement, the following procedures shall apply, provided that nothing in these procedures shall prevent the Secretary of

the HSOA (or his/her nominee) from intervening to assist in the process—

- (a) The matter is to be discussed between the HSOA employee representative and the Murchison Health Service representative and an attempt made to resolve the matter;
- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the Murchison Health Service representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairman of the Murchison Health Service (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairman of the Murchison Health Service (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairman of the Murchison Health Service (or his/her nominee) shall confer on the matters notified by the parties within five working days and—
 - (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
 - (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

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

13.—HOURS

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

The purpose of this clause is to provide a framework within which flexible hours arrangements may be worked and workplace reform implemented. Workplace reform has been agreed to so that the health service can meet the needs of its clients in the best possible way, and in conjunction with flexible hours is a method of meeting the needs of the Murchison Health Service and the employee.

(1) Commitment to flexible working hours arrangements.

The parties to this enterprise agreement support the adoption of flexible working hours arrangements with a view to improving the operational efficiency and effectiveness of the Health Service and making the Health service a better and more attractive Murchison Health Service.

(2) Implementation.

(a) Murchison Health Service is committed to implement a review of current roster patterns for all Hospital Salaried Officers employed by the health service with a view to where practicable allowing employees of the health service to work flexible hours. This will complement the workplace reform initiative agreed to as part of the Enterprise Bargaining Agreement.

- (i) It is agreed that the review will be concluded within three months of registration of the Agreement.
- (ii) In those departments or areas that elect to adopt a flexible working arrangement, a mutually agreed hours arrangement will be implemented as soon as practicable following the review period but not later than three months after the end of the review period, provided that hours arrangements may be implemented as early as the date of registration of the

Agreement if that is suitable to the Department or work area.

- (iii) These arrangements for a review of hours will be available to all employees employed from levels 1 to 6 inclusive.

(b) The hours arrangements are to be agreed between the employees concerned and the line manager and are to be structured in such a way that they take into account operational requirements of the Health Service; the family responsibilities of employees; and minimum staffing requirements.

(c) The operation of a flexible working hours system can include, but shall not be limited to, any method or mix of flexible work arrangement available under this agreement including a 9 day fortnight or 19 day month.

(d) Where it is unsuitable or impracticable for one particular hours arrangement to be applied to everyone in a work area or department, arrangements may be made to enable the aspirations of the work area for flexible work arrangements to be met using a variety of hours arrangements rather than a single arrangement.

(3) Hours—General

(a) The ordinary hours of work shall be an average of thirty eight per week which will usually consist of 5 working days of 7 hours and 36 minutes and may be worked by the arrangement provided for in subclause (4) of this clause, or by such other arrangements as are agreed between the Murchison Health Service and employees concerned provided the arrangement is either—

- (i) consistent with the arrangements and parameters for ordinary hours prescribed in this clause; or
- (ii) shall, where the proposed arrangement of hours of work fall outside the parameters set out in this clause, be subject to ratification by the WA Industrial Relations Commission and not be implemented until so ratified.

(b) For employees other than shift workers the spread of ordinary hours shall be worked between 6.00 am and 6.00 pm Monday to Friday inclusive.

(c) Where a definite decision has been made to significantly alter the hours arrangements of employees, the Murchison Health Service shall, in accordance with the Notification of Change Clause of the Award, discuss this with the employees who may be affected and advise the Union.

(d) Definitions

For the purposes of this clause—

- (i) “a month” means a period of 4 consecutive working weeks;
- (ii) “a 19 day month” means a system of work where the ordinary hours of duty of 152 hours a month are worked over nineteen days of the month, with each ordinary day, subject to any flexi time arrangement, consisting of 8 hours.
- (iii) “a 9 day fortnight” means a system of work where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, with each ordinary day, subject to any flexi time arrangement, consisting of 8 hours and 27 minutes.

(4) Standard Ordinary Hours

(a) Standard full time ordinary hours shall be 7 hours 36 minutes per day.

(b) Subject to meal breaks and paragraph (9)(a) of this clause, prescribed hours are to be worked in one continuous period, accordingly, there will be no split shifts.

(5) Shifts of up to 12 Hours

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

(a) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement.

(b) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined.

(c) The rostered hours will be clearly defined.

(d) The arrangement shall allow for a minimum of one clear day off in each 7 days.

(e) The arrangement may allow for additional time off in lieu of penalty rates.

(f) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday.

(6) Flexitime and Flexible Work Arrangements

(a) The arrangement may include a mixture of rostered and flexibly taken time off — the terms “flexitime off” and “flexileave” may be used interchangeably in this clause.

(b) Subject to the constraints of the agreed work arrangement and any associated roster, and the constraints of this agreement in regard to ordinary hours and meal breaks, employees may select their own starting and finishing times with the approval of the line manager.

(c) The arrangements may include core periods when attendance at work is required.

(d) Subject to subclause (5), a maximum of 10 ordinary hours may be worked in any one day.

(e) Settlement Period

(i) The average ordinary hours of duty shall cover a rolling settlement period of four weeks.

(ii) The settlement period shall commence at the beginning of a pay period.

(iii) Subject to the following, a minimum of 144 hours, less rostered and or flexi-time off, and a maximum of 168 ordinary hours may be worked in any flexi period.

(f) Credit Hours

(i) Credit hours, which are hours in excess of the 152 hours per four weeks, up to a maximum of 16 may be accrued and carried forward.

(ii) Credit hours in excess of 16 hours shall be lost, provided that where the Murchison Health Service directs an employee to work additional hours such additional hours will be deemed authorised overtime and paid accordingly.

(iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(iv) Agreement to clear credit hours will not be unreasonably withheld.

(g) Debit Hours

(i) Debit hours, which are hours below the 152 hours per four weeks, to a maximum of 8 hours may be accrued and carried forward.

(ii) Where an employee's debit hours exceed 8 hours, the Murchison Health Service may debit those hours in excess of 8 hours from the employee's pay as if the time was leave without pay; or the employee may be required to work additional hours at ordinary rates in order to reduce the debit to 8 hours.

(iii) Whether or not to allow an employee to accrue more than 8 debit hours during a settlement period is entirely at the discretion of the Murchison Health Service.

(h) Nineteen day month, nine day fortnight and flexitime arrangements

A nineteen day month or a 9 day fortnight arrangement may be worked either separately or in conjunction with a flexible work arrangement.

(7) Taking of Flexi/Rostered Time Off

(a) Where the arrangement includes rostered time off, the roster for such days off shall be prepared in consultation with the employees concerned and will show the days and hours of duty and rostered days off for each employee.

(b) While the rostered day off would usually be taken within each roster cycle, however, alternative arrangements for the taking of rostered days off may be made.

(c) When a Public Holiday falls on an employee's rostered day off the employee shall be granted a day in lieu of the holiday.

(d) Where time off is to be taken as rostered time off the Murchison Health Service may only direct an employee to be rostered for a single day off at a time provided that at the option of the employee and with the agreement of the Murchison Health Service more or less than a single consecutive day may be rostered off.

(e) Where flexi-time off is to be taken employees may request any reasonable increment of time off provided that the Murchison Health Service may not require an employee to take less than half a day nor more than a day off at any one time.

(f) Except in the case of flexible starting and finishing times, reasonable notice may be required in regard to the taking of flexileave, provided that not more than two weeks notice may be required.

(8) Changing Rostered and/or Agreed Time off.

(a) Rostered and/or agreed time off may be changed by agreement at the request of the employee.

(b) Where a rostered day off has been rostered or agreement has been made between the employee and the Murchison Health Service in regard to the taking of flexi-time off, and for pressing operational reasons the Murchison Health Service can no longer agree to the employee taking such time off, the following shall apply—

(i) Where less than three days notice is given the Murchison Health Service will, pay overtime for the day or for the period of agreed time off, as the case may be, unless the employee freely proposes that an alternative arrangement for taking the time be agreed and the Murchison Health Service and employee agree as to when that will be; or

(ii) Where more than three days notice is given, at the option of the Murchison Health Service either overtime will be paid or an alternative arrangement for the taking of the rostered time off, including when the time off will be taken, will be agreed.

(c) In making a decision to change rosters or withdraw agreement to the taking of flexi time off, and in addressing a request for such a change, the Murchison Health Service and employees will give particular consideration to the factors listed in subclause (2)(b) of this clause.

(9) Meal breaks

(a) Meal breaks shall be of not less than 30 minutes nor more than 60 minutes provided that, with the agreement of the Murchison Health Service, flexitime off may be taken in conjunction with a meal break in which case the meal break shall not be more than three hours, provided further that an employee may not be directed to take flexitime off in conjunction with a meal break.

(b) Meal breaks do not count as hours worked.

(c) The lunch break shall be taken between 11.00 am and 2.30 pm.

(d) Employees shall not be required to work more than six hours continuously without a meal break.

(e) Employees required to work night shift will receive an allowance equivalent to one half hour at ordinary salary rates per night shift to ensure continuous availability during each night shift in lieu of the thirty minute break.

(10) Sick leave, public holidays, and annual leave

(a) For the purposes of sick leave a day shall be credited at the rostered or nominated hours for the day of leave taken.

(b) An employee who is sick on a rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(c) An employee who is sick while on flexitime off will be re-credited their flexitime, the day will be treated as a standard day and the employee will be debited a standard days sick leave or part thereof.

(d) For the purpose of public holidays a day shall be credited at the standard hours, or rostered ordinary hours, whichever is greater and treated as a work day for the purpose of accumulating rostered days off.

(e) In the case of—

(i) a 19 day month, a four week annual leave entitlement is equivalent to 152 hours, that is, equivalent

to nineteen rostered working days of 8 hours, and one rostered day off.

- (ii) a 9 day fortnight, a four week annual leave entitlement is equivalent to 152 hours, that is, equivalent to eighteen rostered working days of 8 hours 27 minutes, and two rostered days off.

(e) In the case of a flexitime only work arrangement, for the purpose of leave and Public Holidays, a day shall be credited as 7 hours 36 minutes.

(11) Overtime

Subject to the parameters for ordinary hours set out in this clause, and to the relevant award and agreement provisions for part time employees, the provisions of the relevant overtime clause, shall apply for time worked at the direction of the Murchison Health Service—

- (a) in excess of agreed rostered hours; or,
- (b) where there are no set rostered hours, prior to the agreed and nominated normal starting time or after the agreed and nominated normal finishing time; or,
- (c) where there is no nominated starting or finishing time, in excess of 7 hours 36 minutes on that day or shift, shall be paid as overtime, provided that 8 hours or 8 hours 27 minutes will be substituted for 7 hours 36 minutes where a 19 day month or 9 day fortnight respectively is the basis of any associated rostered day off working system.

(12) Flexi-Days Off in Conjunction With Annual Leave

Employees may be allowed, with the agreement of their manager, access to accrue the time equivalent to two flexi days, which may be taken in conjunction with a period of annual leave of not less than one week, this leave may include a public holiday.

(13) Individual Flexible Work Arrangement

The purpose of this clause is to facilitate an employee who, for reasons of their convenience wish to work on a day when the Murchison Health Service would, but for this sub-clause, be liable to pay shift allowances and so be disinclined to agree to the employee's otherwise reasonable request.

(a) On written advice from the employee, the Murchison Health Service may agree to the employee working ordinary hours without shift allowances at times or on days when such allowances would otherwise apply provided that—

- (i) the minimum, maximum and average number of ordinary hours, the maximum number of days worked in any four week cycle, and meal breaks are consistent with the relevant requirements set out under this clause; and
- (ii) the Murchison Health Service may not make the working of such hours by such arrangement a condition of employment of the employee or of filling the position.

(b) Where the working of such hours is an actual or implied condition of employment an employee may not agree to work such hours without appropriate allowances and/or penalty rates applying.

(14) Study Leave

Credits for Study Leave will be given for educational commitments falling due between and employee's nominated or rostered starting and finishing times for ordinary hours of duty.

(15) Adjustment of termination pay

If at the termination of an employee the employee has flexi-time or rostered days off in credit, the time in credit will be paid out at ordinary time rates; or should the employee have accrued debit hours, the Murchison Health Service may deduct the debit, calculated at ordinary time rates, from the employee's termination pay.

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

15.—CASUAL EMPLOYEES

This provision replaces Clause 36. of the Hospital Salaried Officers Award No. 39 of 1968.

(1) "Casual Worker" shall mean a worker engaged by the hour for a period of up to four consecutive weeks in any period of engagement.

(2) A casual worker shall be paid one seventy sixth of the ordinary fortnightly rate of salary prescribed by this award for the classification in which the casual worker is employed for each hour so employed, with the addition of twenty per centum.

(3) At the request of the union the employer shall supply to the union the following information with respect to casual employees employed during the preceding month—

- (a) The name of the casual worker or workers so employed.
- (b) The address of such worker or workers.
- (c) The classification in which such a worker was engaged and the number of hours so engaged.
- (d) The rate of salary paid to such worker or workers.

16.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

- (a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until 1 January 1999, accrue long service leave at the ten year rate.
- (b) An employee, in employment with the Murchison Health Service and covered by the Hospital salaried Officers Award No. 39 of 1968 at 1 January 1999 shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.
- (c) An employee who at 1 January 1999 transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the Murchison Health Service shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

- (a) To an employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.
- (b) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.
- (c) To the widow or widower of an employee or such other person as may be approved by the Murchison Health Service in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

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

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

(11) Subject to the provisions of subclauses (6), (7), (8) and (12) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if

no such payment has been made, within one working week of the day on which his/her resignation became effective;

- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
 - (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
 - (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(13) Portability

(a) Where an employee was, immediately prior to being employed by the Murchison Health Service employed in the service of—

- The Commonwealth of Australia
- Any other State Government of Australia, or
- Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

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

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

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

(14) At the request of the employee and with the agreement of the Murchison Health Service, an employee may be paid in lieu of taking a portion of long service leave.

18.—SICK LEAVE

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

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

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

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

19.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

- (a)(i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.
- (ii) The scheduling of annual leave should be as a result of consultation between the Murchison Health Service and the employee.
- (iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the Murchison Health Service may roster the employee off for a period of annual leave.

(b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the Murchison Health Service, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the Murchison Health Service, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Murchison Health Service.

(e) Any employee who has accrued an excessive amount of leave (i.e. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the Murchison Health Service and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

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

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

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

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

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

(2) Bereavement Leave

(a) An employee shall on the death of—

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

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

(b) The 2 days need not be consecutive.

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

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

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

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

(3) Special Personal Leave

(a) Without Pay

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

(b) Use of Annual Leave

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

(c) Employees may be granted leave for participating in the following—

- International sporting or cultural events
- Defence force reserves
- State emergency service volunteers

Employees must submit a written request for leave and the Murchison Health Service shall consider the request having regard to patient care and operational requirements.

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) "Child" means a child of the employee under the age of one year except for adoption of a child where "child" means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.
- (b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

- (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
- (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the Murchison Health Service that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the Murchison Health Service with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the Murchison Health Service at least ten weeks in advance of the expected date of confinement—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between Murchison Health Service and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, the Murchison Health Service may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the Murchison Health Service and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

(f) 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 Murchison Health Service which shall not exceed four weeks from the date of notice in writing by the employee to the Murchison Health Service that she desires to resume work.

(g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the Murchison Health Service, at least ten weeks prior to each proposed period of paternity leave—

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant

and the expected date of confinement, or states the date on which the birth took place; and

- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the Murchison Health Service at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The Murchison Health Service may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The Murchison Health Service shall grant an employee who is seeking to adopt a child such unpaid leave 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 Murchison Health Service may require the employee to take such leave in lieu of unpaid leave.

(d) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the Murchison Health Service immediately and the Murchison Health Service will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the Murchison Health Service and employee, an employee may apply to the to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, if the Murchison Health Service 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.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the Murchison Health Service may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the Murchison Health Service agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

- (a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.
- (b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.
- (c) an employee may elect to work on a casual basis during a period of parental leave without affecting the prior status of employment with the Health Service. Any period of casual employment will stand alone and will not accrue towards entitlements under this Agreement.

22.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

23.—OVERPAYMENTS

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

(2) One-off Overpayments

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

(3) Cumulative Overpayments

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

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

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

24.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, the Murchison Health Service and the employee may agree to enter into a salary packaging arrangement.

(2) Murchison Health Service shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the Murchison Health Service which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the Murchison Health Service.

(5) The salary packaging arrangement must comply with relevant taxation laws and the Murchison Health Service will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The Murchison Health Service may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the Murchison Health Service incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the Murchison Health Service cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the Murchison Health Service and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions.”

25.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3);

	Previous EBA Rates	4% from 16/11/99	1.5% from 1/1/00	2% from 1/7/00	1.25% from 1/1/01 (subject to clause 10(4)) Salary P/Annum
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765

	Previous EBA Rates	4% from 16/11/99	1.5% from 1/1/00	2% from 1/7/00	1.25% from 1/1/01 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 4	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

	Previous (1997/98) EBA Rates	4% from 16/11/99	1.5% from 1/1/00	2% from 1/7/00	1.25% from 1/1/01 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
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	80,899	84,135	85,397	87,105	88,194
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CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

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

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.

(a) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

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

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

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

	Previous (1997/98) EBA Rates	4% from 16/11/99	1.5% from 1/1/00	2% from 1/7/00	1.25% from 1/1/01 (subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 3/5	30,777	32,008	32,488	33,138	33,552
	32,399	33,695	34,200	34,884	35,320
	34,418	35,795	36,332	37,058	37,522
	36,527	37,988	38,558	39,329	39,821
	39,926	41,523	42,146	42,989	43,526
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410

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

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

26. —AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the Murchison Health Service may seek the assistance of the Health Department of Western Australia in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(2) The amendments to the Award are outlined in Attachment 2—Award Amendments.

27.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8.—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Every new employee appointed to the employ of the Murchison Health Service shall be on probation for a period of three (3) months.

(2) At any time during the period of probation the Murchison Health Service may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(3) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(4) A lesser period of notice may be agreed, in writing between the Murchison Health Service and the employee.

(5) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the Murchison Health

Service. The provisions of subclause (1), (2) and (3) of this clause still apply during the period of probation.

(6) Where an employee's period of probation has been extended for a further period of three months, the Murchison Health Service shall notify the employee in writing of the extension and provide justification for the extension of probation.

(7) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

28.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment, provided that in order to attract an employee to fill a higher duties position the Murchison Health Service may pay higher duties allowances for the whole of the period of acting.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

(a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;

(b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the commencement of a new twelve (12) month period for the application of this clause, will;

(a) continue to be paid the allowance until such time as the acting period ceases;

(b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

29.—MOBILITY

(1) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is prepared to be mobile in the sense of being able to work in more than one position.

(2) Both the employer and employees agree to give reasonable consideration to any proposal in regard to the employee's mobility.

(3) Any mobility due to temporary deployment, transfer, secondment or redeployment will be undertaken in accordance with the Public Sector Human Resource Standards and the Murchison Health Service's policies; accordingly, these will be given effect in a manner that takes into account both the needs and service requirements of the Health Service and the reasonable needs, responsibilities and expectations of the employees concerned.

(4) The parties acknowledge that the above considerations can only be properly assessed through consultation. Subject to the particular circumstances of individual employees, a greater degree of mobility may be expected in regard to higher classified employees.

30.—ESTABLISHMENT OF LEVEL 1 & 2 COMPETENCIES

(1) The Murchison Health Service agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) The Murchison Health Service agrees that they will review the outcomes of any of the processes undertaken by the Hospital Salaried Officers Association and other health services.

31.—RECRUITMENT AND RETENTION ISSUES

(1) The Murchison Health Service is prepared to investigate and consider any actions to reduce any barriers to the recruitment and retention of suitably qualified and/or experienced employees in areas of identified need.

(2) The Murchison Health Service will make available recommendations of the health service multidisciplinary working party to the HSOA by 30 September 2000.

(3) The implementation of Recruitment and Retention strategies shall be in accordance with Clause 40 – Introduction of Change.

32.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) The purpose of these clauses is to—

(a) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;

(b) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;

(c) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Murchison Health Service;

(d) assist in ensuring that employers are able to attract, develop and retain the best possible staff;

(e) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(2) Skill acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause will benefit employees through providing;

(a) access to a greater variety of employment opportunities;

(b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

(c) expanded opportunity in terms of career development; and

(b) improved employment security.

(3) The Murchison Health Service agrees to give reasonable consideration to any proposal in regard to an employee's skills acquisition, training and development which meets the principles and requirements of this clause.

(4) For the purposes of this clause, an "approved course" or "approved training" is a recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(5) The Murchison Health Service will, in consultation with employees, develop policy and guidelines to guide managers in the application of training, short courses, conferences, formal study, and mandatory training.

(6) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based on financial grounds.

33.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

T. Farrell (signed) 25/2/00
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

D. Hill (signed) (COMMON SEAL) 22/2/00
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Murchison Health Service is affixed hereto pursuant to a resolution of the Board

T. Shackleton (signed) 16/2/00
(Signature) (Date)

Tim Shackleton

General Manager for and on behalf of the Murchison Health Service

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of Murchison Health Service as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output, possibilities for multi-skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management,

physical barriers such as the location of various functions which interact with each other and barriers to communication.

Murchison Health Services, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- Structural Matters: Management may need to look at the structures within which the work is done and how they can be improved upon.
- Management Style: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- Best Practice, Benchmarking, Continuous Improvement and New Opportunities: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness. Where barriers to competitiveness beyond the control of the Murchison Health Service/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.
- Culture and Environment: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Murchison Health Service—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and the Murchison Health Service. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the Murchison Health Service.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

(1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;

(2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.

(3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.

(4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.
- (3) Holidays and Annual Leave clause to be amended to—
 - (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

**HOSPITAL SALARIED OFFICERS NAREMBEEN
HEALTH SERVICES BOARD ENTERPRISE
AGREEMENT 1999.
No. PSAAG5 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Narembeen Health Services Board
and

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

No. PSAAG5 of 2000.

Hospital Salaried Officers Narembeen Health Services
Board Enterprise Agreement 1999.

22 March 2000.

Order.

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Narembeen Health Services Board Enterprise 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 Hospital Salaried Officers Narembeen Health Services Board Enterprise Bargaining Agreement 1997 (PSA AG 33 of 1997) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Narembeen District Memorial Hospital Enterprise Bargaining Agreement 1996 (PSA AG 75 of 1996) is hereby cancelled.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Narembeen Health Services Board Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Purpose of Agreement
 4. Application and Parties Bound
 5. Term of Agreement
 6. No Extra Claims
 7. Objectives, Principles and Commitments
 8. Framework and Principles for Identifying Productivity Improvements and Bargaining
 9. Awards, Agreements and Workplace Agreements
 10. Rates of Pay and their Adjustment
 11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
 12. Dispute Avoidance and Settlement Procedures
 13. Hours
 14. Part-Time Employees
 15. Medical Imaging Technologists
 16. Public Holidays
 17. Long Service Leave
 18. Sick Leave
 19. Taking of Annual Leave
 20. Family, Bereavement and Personal Leave
 21. Parental Leave
 22. Award Consolidation
 23. Higher Duties
 24. Allowances
 25. Overpayments
 26. Contract of Service—Probation
 27. Travelling Allowance
 28. Mobility
 29. Skills Acquisition, Training and Employee Development
 30. Salary Packaging
 31. Salaries
 32. Review of Corporate, Support, and Allied Health Services
 33. Establishment of Competencies for Levels 1 & 2
 34. Review of Sick Leave Management
 35. Rural Recruitment and Retention Issues
 36. Ratification
- ATTACHMENT 1—Model for Identifying Productivity Increases
ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Narembeen Health Services Board along with allowing the benefits from those improvements to be shared by employees, the Narembeen Health Services Board and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Narembeen Health Services Board taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Narembeen Health Services Board.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Narembeen Health Services Board.

(2) The estimated number of employees bound by this Agreement at the time of registration is 5.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreements: PSA AG 33 of 1997.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of registration until 1st December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the Narembeen Health Services Board

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

- (a) improve the productivity and efficiency of the Narembeen Health Services Board;
- (b) facilitate greater flexibility in the management of conditions and work arrangements across the Narembeen Health Services Board;
- (c) ensure high quality patient services in a safe, healthy and equitable work environment;
- (d) ensure high quality of employment and jobs; and
- (e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Narembeen Health Services Board and its clients and the Government on behalf of the community;
- (b) ensuring that the Narembeen Health Services Board operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the Narembeen Health Services Board operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the Narembeen Health Services Board, Management and Employees bound by this Agreement are committed to—

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
- (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation

- leadership
- information analysis
- policies and plans
- appropriate standards
- hospital/health service performance
- cost effectiveness
- working smarter

- (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
- (c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.
- (d) Actively contribute to the achievement of health service budgets.
- (e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.
- (f) Co-operate with the development and implementation of strategies to achieve length of stay targets.
- (g) Participate in a Multi-disciplinary approach to patient care.
- (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.

(4) In addition, the Narembeen Health Services Board is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the Narembeen Health Services Board will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

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

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

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

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

(a) Productivity Improvements

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

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

(b) Sharing Gains from Productivity Improvement

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

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

The treatment of improved efficiency arising from major capital expenditure is to be agreed by the Narembeen Health Services Board and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the Narembeen Health Services Board can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements

- (a) The parties accept that Employees will be given an informed and free choice between this Agreement and Workplace Agreements;
- (b) To facilitate the making of an informed and free choice—
 - (i) Employees who are to be offered a choice between this Agreement and a workplace

agreement may only be required to indicate their choice after the employee has been offered the position.

- (ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.
- (iii) The employee shall be provided with—
 - (aa) a copy of an agreed summary of this Agreement; and
 - (bb) a copy of a summary of the Workplace Agreement.
- (iv) At the request of an employee, the employee shall be provided with;
 - (aa) access to a copy of this Agreement and the Workplace Agreement;
 - (bb) any other relevant documentation, such as information on salary packaging; and
 - (cc) information on where they can obtain further advice and on how to contact the Union.

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

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

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

(4) All staff transferred or redeployed to the Narembeen Health Services Board from within the Public Sector or within the Government Health Industry may be offered the choice of a Workplace Agreement or this Agreement subject to the discretion of the Narembeen Health Services Board.

(5) All promotional positions and new staff recruited by the Narembeen Health Services Board from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the Narembeen Health Services Board.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the Narembeen Health Services Board shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the Narembeen Health Services Board is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

- (1) 4.0% from 16 November 1999;
- (2) 1.5% from 1 January 2000;
- (3) 2.0% from 1 July 2000; and
- (4) 1.25% from 1 January 2001.

The final payment of 1.25% will be subject to—

- (a) the Narembeen Health Services Board identifying productivity in excess of that used to justify the other salary increases; and
- (b) approval by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the "Model for Identifying Productivity increases" referred to in that clause.

- (5) The rates of pay are set out in clause 31.— Salaries, of this Agreement.
- (6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the Narembeen Health Services Board.

(2) (a) To assist in meeting these obligations, the Narembeen Health Services Board will assist by providing appropriate resources having regard to the operational requirements of the Narembeen Health Services Board and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the Narembeen Health Services Board who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the Narembeen Health Services Board and shall not unreasonably affect the operation of the Narembeen Health Services Board;

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

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

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

(a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;

(b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairperson of the Narembeen Health Services Board (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;

(c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;

(d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the

Chairperson of the Narembeen Health Services Board (or his/her nominee) of the existence of a dispute or disagreement;

(e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairperson of the Narembeen Health Services Board (or his/her nominee) shall confer on the matters notified by the parties within five working days and—

(i) where there is agreement on the matters in dispute the parties shall be advised within two working days;

(ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

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

13.—HOURS

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

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

(i) Ordinary hours of work of thirty eight per week;

(ii) Flexitime roster covering a settlement period of four weeks;

(iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;

(iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.

(v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.

(vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

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

(i) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement;

(ii) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined;

(iii) The arrangement shall allow for a minimum of one clear day off in each 7 days;

(iv) The arrangement may allow for additional time off in lieu of penalty rates;

(v) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday;

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

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

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

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

(3) Other Working Arrangements

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

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

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

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

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

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

(4) Flexitime Arrangements

(a) Flexitime Roster

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

(b) Hours of Duty

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

(c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, employees

may select their own starting and finishing times within the following periods—

6.00 am to 9.30 am

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

3.30 pm to 6.00 pm

(d) Core Periods

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

(e) Lunch Break

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

(ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

(i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.

(ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

(i) For recording time worked, there shall be a settlement period which shall consist of four weeks.

(ii) The settlement period shall commence at the beginning of a pay period.

(iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

(i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.

(ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.

(iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

(i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.

(ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.

(iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education

commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

(i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.

(ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and

(aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or

(bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or

(cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.

(iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

(i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.

(ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

(i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.

(ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of

whether it falls on a rostered work day or special rostered day off.

(iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.

(iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

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

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

(4) Part-Time Flexibility for Relief

(a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

- (f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.
- (g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.
- (ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.
- (iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.
- (iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.
- (v) Consistent with the operation of this Agreement there will be no rostered split shifts.
- (c) An employee who at 1 January 1999 transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the Narembeen Health Services Board shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.
- (3) Upon application by an employee, the employer may (subject to subclause (4) of this Agreement), approve of the taking by the employee—
- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.
- (4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employees remaining portion of accrued untaken leave entitlement is less than a week such portion may be taken.
- (5) Any holiday occurring during the period in which an employee is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

15.—MEDICAL IMAGING TECHNOLOGISTS

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

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

16.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

- (a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until 1 January 1999, accrue long service leave at the ten year rate.
- (b) An employee, in employment with the Narembeen Health Services Board and covered by the Hospital salaried Officers Award No. 39 of 1968 at 1 January 1999 shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

(7) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

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

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

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

(11) Subject to the provisions of subclauses (6), (7), (8) and (12) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and

commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;

- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
- (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
 - (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(13) Portability

- (a) Where an employee was, immediately prior to being employed by the Narembeen Health Services Board employed in the service of—
- The Commonwealth of Australia
 - Any other State Government of Australia, or
 - Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

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

- (i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and
 - (ii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.
- (b) Nothing in this clause confers or shall be deemed to confer on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the employee’s favour prior to the date on which the employee commenced with the Narembeen Health Services Board.

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

18.—SICK LEAVE

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

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

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

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

19.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16. – Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

- (a)
 - (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.
 - (ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.
 - (iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.
- (b) An employee, who has accumulated in excess of two year’s annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.
- (c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.
- (d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.
- (e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.
- (f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

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

- (b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.
- (c) Family leave is not cumulative from year to year.
- (d) Medical certificate requirements are as per those for Sick Leave under the Award.
- (e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

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

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

- (b) The 2 days need not be consecutive.
- (c) Bereavement leave is not to be taken during any other period of leave.
- (d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—
 - (i) the death that is the subject of the leave sought; and
 - (ii) the relationship of the employee to the deceased person.
- (e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

(a) Without Pay

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

(b) Use of Annual Leave

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

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) "Child" means a child of the employee under the age of one year except for adoption of a child where "child" means a person under the age of five years of age 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

child who has previously lived continuously with the employee for a period of six months or more.

- (b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

- (a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- (b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—
 - (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
 - (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

- (a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—
 - (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
 - (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.
- (b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.
- (c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.
- (e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.
- (f) 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.
- (g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave—

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

- (a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.
- (d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

- (a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.
- (b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

- (a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an

employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

- (b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

- (a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.
- (b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.
- (c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- (b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

- (a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.
- (b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the Narembeen Health Services Board may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2—Award Amendments.

23.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

- (a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;
- (b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the commencement of a new twelve (12) month period for the application of this clause, will;

- (a) continue to be paid the allowance until such time as the acting period ceases;
- (b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

24.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

25.—OVERPAYMENTS

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

(2) One-off Overpayments

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

(3) Cumulative Overpayments

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

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

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

26.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the Narembeen Health Services Board shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the Narembeen Health Services Board may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the Narembeen Health Services Board and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the Narembeen Health Services Board. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the Narembeen Health Services Board shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

27.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (3), an employee who is required to travel on official business outside of the Eastern Wheatbelt Health Service district will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

28.—MOBILITY

(1) This clause will apply to all current and prospective employees of the Narembeen Health Services Board.

(2) The parties agree that it is no longer appropriate that staff be appointed exclusively to individual Hospital & Health Services. Pending any moves towards formal integration of Hospital Boards, employees are employed by their respective Board but, subject to this clause, may be mobile across the Narembeen Health Services Board.

(3) The parties also agree that in order for the Narembeen Health Services Board to provide appropriate levels of healthcare to consumers it is necessary to have a workforce which is mobile and that, managed properly, mobility has the potential to improve the employment security, career opportunity and development, and work life of employees.

(4) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and the employee's needs are to be considered including;

- (a) ensuring that the careers of employees are not disadvantaged
- (b) consideration of family & carer responsibilities
- (c) availability of transport

- (d) matching skill level and professional suitability of any temporary job opportunity or permanent new position
- (e) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.
- (f) The classification level and relevant opportunity costs to the employee.

The parties acknowledge that the above considerations can only be properly assessed through consultation. Subject to the particular circumstances of individual employees, a greater degree of mobility may be expected in regard to higher classified employees.

(5) The parties agree that they will assist in the introduction of this initiative on the following basis—

(a) Temporary Transfer

Subject to agreement between the employer and employee, an employee may be transferred to another position within the Narembeen Health Services Board on a temporary basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the period of time is defined
- (iii) the transfer is at a comparable or higher classification level
- (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee or at a higher level and within the competency of the employee.

(b) Permanent Transfer

Subject to agreement between the parties, an employee may be transferred to another position within the Narembeen Health Services Board on a permanent basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the transfer is at a comparable classification level
- (iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

29.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.—Mobility.

(2) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career

development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development;

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the Narembeen Health Services Board health service region will benefit employees through providing;

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;
- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis—

(10) Training and Short Courses

- (a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.
- (b) Attendance at such courses shall be at no expense to the employee.
- (c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging

business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.

- (d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.
- (e) Where attendance is paid for by the employer;
- (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
 - (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.
- (f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.
- (11) Multiskilling
- (a) Employees agree that they will assist in the introduction of this policy on the following basis;
- (i) Job Rotation
 - (aa) Employer and Employee mutually negotiate the decisions.
 - (bb) The period of time for any job rotation cycle is defined.
 - (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.
 - (ii) Job Enlargement and Enrichment
 - (aa) Decisions are mutually agreed by employee and supervisor.
 - (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
 - (cc) The period of time is defined, where possible.
 - (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
 - (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.
- (b) Any job specific training required will be provided by the Narembeen Health Services Board. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.
- (c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

- (a) Narembeen Health Services Board will develop at an organisational level staff development programs.

- (b) The staff development program will be directed to meeting the current and future staffing needs of the Narembeen Health Services Board and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the Narembeen Health Services Board area.
- (c) The staff development program(s);
- (i) may be focused at the health service or Narembeen Health Services Board level as appropriate.
 - (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
 - (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
 - (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
 - (v) may be based either or both on the job training and formal training.
- (d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The Narembeen Health Services Board will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

30.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) Narembeen Health Services Board shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions.”

31.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3)

Levels	1997 EBA Rates Salary P/Annum	1999 EBA Rates 4% Increase with effect from 16/11/99 Salary P/Annum	2000 EBA Rates 1.5% Increase effective from 1/1/2000 Salary P/Annum	2000 EBA Rates 2% Increase effective from 1/7/2000 Salary P/Annum	2001 EBA Rates 1.25% Increase effective from 1/1/2001 (subject to clause 10(4)) Salary P/Annum
	\$	\$	\$	\$	\$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2					
26,742	27,812	28,229	28,793	29,153	
27,475	28,574	29,003	29,583	29,952	
28,317	29,450	29,891	30,489	30,870	
28,900	30,056	30,507	31,117	31,506	
29,760	30,950	31,415	32,043	32,443	
LEVEL 3					
30,777	32,008	32,488	33,138	33,552	
31,567	32,830	33,322	33,989	34,413	
32,399	33,695	34,200	34,884	35,320	
33,724	35,073	35,599	36,311	36,765	
LEVEL 4					
34,418	35,795	36,332	37,058	37,522	
35,459	36,877	37,431	38,179	38,656	
36,527	37,988	38,558	39,329	39,821	
38,047	39,569	40,162	40,966	41,478	
LEVEL 5					
38,838	40,392	40,997	41,817	42,340	
39,926	41,523	42,146	42,989	43,526	
41,045	42,687	43,327	44,194	44,746	
42,196	43,884	44,542	45,433	46,001	
LEVEL 6					
44,414	46,191	46,883	47,821	48,419	
46,060	47,902	48,621	49,593	50,213	
48,400	50,336	51,091	52,113	52,764	
LEVEL 7					
49,651	51,637	52,412	53,460	54,128	
51,237	53,286	54,086	55,167	55,857	
52,880	54,995	55,820	56,937	57,648	
LEVEL 8					
55,280	57,491	58,354	59,521	60,265	
57,248	59,538	60,431	61,640	62,410	
LEVEL 9					
60,226	62,635	63,575	64,846	65,657	
62,298	64,790	65,762	67,077	67,915	
LEVEL 10					
64,566	67,149	68,156	69,519	70,388	
68,214	70,943	72,007	73,447	74,365	
LEVEL 11					
71,128	73,973	75,083	76,584	77,542	
74,091	77,055	78,210	79,775	80,772	
LEVEL 12					
78,154	81,280	82,499	84,149	85,201	
80,899	84,135	85,397	87,105	88,194	
84,029	87,390	88,701	90,475	91,606	
CLASS 1					
88,764	92,315	93,699	95,573	96,768	
CLASS 2					
93,498	97,238	98,696	100,670	101,929	
CLASS 3					
98,231	102,160	103,693	105,766	107,089	
CLASS 4					
102,965	107,084	108,690	110,864	112,249	

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

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

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

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

Levels	1997 EBA Rates Salary P/Annum	1999 EBA Rates 4% Increase with effect from 16/11/99 Salary P/Annum	2000 EBA Rates 1.5% Increase effective from 1/1/2000 Salary P/Annum	2000 EBA Rates 2% Increase effective from 1/7/2000 Salary P/Annum	2001 EBA Rates 1.25% Increase effective from 1/1/2001 (subject to clause 10(4)) Salary P/Annum
	\$	\$	\$	\$	\$
LEVEL 3/5	\$30,777	\$32,008	\$32,488	\$33,138	\$33,552
	\$32,399	\$33,695	\$34,200	\$34,884	\$35,320
	\$34,418	\$35,795	\$36,332	\$37,058	\$37,522
	\$36,527	\$37,988	\$38,558	\$39,329	\$39,821
	\$39,926	\$41,523	\$42,146	\$42,989	\$43,526
	\$42,196	\$43,884	\$44,542	\$45,433	\$46,001
LEVEL 6	\$44,414	\$46,191	\$46,883	\$47,821	\$48,419
	\$46,060	\$47,902	\$48,621	\$49,593	\$50,213
	\$48,400	\$50,336	\$51,091	\$52,113	\$52,764
LEVEL 7	\$49,651	\$51,637	\$52,412	\$53,460	\$54,128
	\$51,237	\$53,286	\$54,086	\$55,167	\$55,857
	\$52,880	\$54,995	\$55,820	\$56,937	\$57,648
LEVEL 8	\$55,280	\$57,491	\$58,354	\$59,521	\$60,265
	\$57,248	\$59,538	\$60,431	\$61,640	\$62,410
LEVEL 9	\$60,226	\$62,635	\$63,575	\$64,846	\$65,657
	\$62,298	\$64,790	\$65,762	\$67,077	\$67,915
LEVEL 10	\$64,566	\$67,149	\$68,156	\$69,519	\$70,388
	\$68,214	\$70,943	\$72,007	\$73,447	\$74,365
LEVEL 11	\$71,128	\$73,973	\$75,083	\$76,584	\$77,542
	\$74,091	\$77,055	\$78,210	\$79,775	\$80,772
LEVEL 12	\$78,154	\$81,280	\$82,499	\$84,149	\$85,201
	\$80,899	\$84,135	\$85,397	\$87,105	\$88,194
	\$84,029	\$87,390	\$88,701	\$90,475	\$91,606
CLASS 1	\$88,764	\$92,315	\$93,699	\$95,573	\$96,768
CLASS 2	\$93,498	\$97,238	\$98,696	\$100,670	\$101,929
CLASS 3	\$98,231	\$102,160	\$103,693	\$105,766	\$107,089
CLASS 4	\$102,965	\$107,084	\$108,690	\$110,864	\$112,249

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

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

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

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

Engineers—

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

For the purposes of this paragraph “experienced engineer” shall mean—

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

32.—REVIEW OF CORPORATE, SUPPORT AND ALLIED HEALTH SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the Narembeen Health Services Board may review the organisational structures, corporate and support services, and allied health services currently provided by individual hospital and health service sites. The review process may result in changes to services through a combination of rationalisation and centralisation of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the Narembeen Health Services Board during the course of the review process and the implementation of any change resulting from the review process.

This clause does not override Clause 40—Introduction of Change contained in the award.

33.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The Narembeen Health Services Board agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Narembeen Health Services Board Enterprise Agreement 1999.

34.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide

improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

35.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for Rural Health Services. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- The appropriateness and flexibility of the current classification system
- Training and professional development opportunities
- Support systems and mentoring
- Career paths
- Accommodation
- Incentive schemes
- Flexible leave arrangements
- Work practices and arrangement

(4) To address these issues, the parties agree that the Health Service—

- (i) may participate on an industry working party established to, *inter alia*, make recommendations aimed at improving recruitment and retention of employees, or
- (ii) establish a working party with employer and employee representatives to consider the recommendations of the industry working party and their relevance to the Narembeen Health Services Board, and or
- (iii) establish a working party with employer and employee representatives to make recommendations aimed at improving recruitment and retention of employees .

(5) The recommendations of the industry working party and / or the Narembeen Health Services Board working party shall be made available to the HSOA by 30 September 2000. Prior to the implementation of any of the recommendations, the employer shall consult with employees and the HSOA.

(6) The implementation of Recruitment and Retention strategies shall be in accordance with Clause 40 – Introduction of Change of the Hospital Salaried Officers Award No. 39 of 1968.

36.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

T. Farrell (signed)

(Signature)

11/2/00

(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

D. Hill (signed)

(Signature)

(COMMON SEAL)

11/02/00

(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

(Undecipherable)

(Signature)

(COMMON SEAL)

5-1-00

(Date)

Board Chairperson, Narembeen Health Services Board.

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of Narembeen Health Services Board as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- **Productivity improvements which can be made:** Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output, possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- **Barriers to Productivity Improvements:** Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- **Structural Matters:** Management may need to look at the structures within which the work is done and how they can be improved upon.
- **Management Style:** Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- **Best Practice, Benchmarking, Continuous Improvement and New Opportunities:** Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.

Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.

- **Culture and Environment:** Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.

- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

- (1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;
- (2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.
- (3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.
- (4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.
- (3) Holidays and Annual Leave clause to be amended to—
 - (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

**HOSPITAL SALARIED OFFICERS SOUTHERN
CROSS DISTRICT HEALTH SERVICE BOARD
ENTERPRISE AGREEMENT 1999.
No. PSAAG11 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Southern Cross District Health Service Board

and

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

No. PSAAG11 of 2000.

Hospital Salaried Officers Southern Cross District Health
Service Board Enterprise Agreement 1999.

22 March 2000.

Order.

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Southern Cross District Health Service Board Enterprise 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 Hospital Salaried Officers Southern Cross Districts Hospital Enterprise Bargaining Agreement 1997 (PSA AG 35 of 1997) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Southern Cross District Hospital Enterprise Bargaining Agreement 1996 (PSA AG 97 of 1996) is hereby cancelled.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Southern Cross District Health Service Board Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Taking of Annual Leave
20. Family, Bereavement and Personal Leave
21. Parental Leave
22. Award Consolidation
23. Higher Duties
24. Allowances
25. Overpayments

26. Contract of Service—Probation
 27. Travelling Allowance
 28. Mobility
 29. Skills Acquisition, Training and Employee Development
 30. Salary Packaging
 31. Salaries
 32. Review of Corporate, Support, and Allied Health Services
 33. Establishment of Competencies for Levels 1 & 2
 34. Review of Sick Leave Management
 35. Rural Recruitment and Retention Issues
 36. Ratification
- ATTACHMENT 1—Model for Identifying Productivity Increases
ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Southern Cross District Health Service Board along with allowing the benefits from those improvements to be shared by employees, the Southern Cross District Health Service Board and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Southern Cross District Health Service Board taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Southern Cross District Health Service Board.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Southern Cross District Health Service Board.

(2) The estimated number of employees bound by this Agreement at the time of registration is 5.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreements: PSA AG 35 of 1997.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of registration until 1st December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the Southern Cross District Health Service Board

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

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

- (a) improve the productivity and efficiency of the Southern Cross District Health Service Board;
- (b) facilitate greater flexibility in the management of conditions and work arrangements across the Southern Cross District Health Service Board;
- (c) ensure high quality patient services in a safe, healthy and equitable work environment;
- (d) ensure high quality of employment and jobs; and
- (e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Southern Cross District Health Service Board and its clients and the Government on behalf of the community;

- (b) ensuring that the Southern Cross District Health Service Board operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the Southern Cross District Health Service Board operates as effectively, efficiently and competitively as possible.
- (3) The Hospital Salaried Officers Association and the Southern Cross District Health Service Board, Management and Employees bound by this Agreement are committed to—
- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
- (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
 - (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans
 - appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter
- (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
- (c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.
- (d) Actively contribute to the achievement of health service budgets.
- (e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.
- (f) Co-operate with the development and implementation of strategies to achieve length of stay targets.
- (g) Participate in a Multi-disciplinary approach to patient care.
- (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.
- (4) In addition, the Southern Cross District Health Service Board is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5.—Term of Agreement, a representative from the Southern Cross District Health Service Board will meet with a representative

from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

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

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

(b) The negotiations should occur on the basis of a broad agenda of initiatives designed to improve efficiency, effectiveness, productivity, patient care and flexibility within the Southern Cross District Health Service Board.

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

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

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

(a) Productivity Improvements

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

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

(b) Sharing Gains from Productivity Improvement

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

Any agreement reached should not rely primarily on improvements which are merely the result of new technology or financial reforms or other such

initiatives. For example; in the case of capital investment (technology), changes arising from capital expenditure for which the Southern Cross District Health Service Board takes the risk and which require a reasonable return on the funds invested, do not necessarily count as a productivity improvement.

The treatment of improved efficiency arising from major capital expenditure is to be agreed by the Southern Cross District Health Service Board and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the Southern Cross District Health Service Board can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship between Agreements and Awards

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

(2) Choice between this Agreement and Workplace Agreements

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

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

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

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

(iii) The employee shall be provided with—

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

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

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

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

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

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

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

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

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

(4) All staff transferred or redeployed to the Southern Cross District Health Service Board from within the Public Sector or within the Government Health Industry may be offered the choice of a Workplace Agreement or this Agreement subject

to the discretion of the Southern Cross District Health Service Board.

(5) All promotional positions and new staff recruited by the Southern Cross District Health Service Board from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the Southern Cross District Health Service Board.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the Southern Cross District Health Service Board shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the Southern Cross District Health Service Board is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

(1) 4.0% from 16 November 1999;

(2) 1.5% from 1 January 2000;

(3) 2.0% from 1 July 2000; and

(4) 1.25% from 1 January 2001.

The final payment of 1.25% will be subject to—

(a) the Southern Cross District Health Service Board identifying productivity in excess of that used to justify the other salary increases; and

(b) approval by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the "Model for Identifying Productivity increases" referred to in that clause.

(5) The rates of pay are set out in clause 31.—Salaries, of this Agreement.

(6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the Southern Cross District Health Service Board.

(2) (a) To assist in meeting these obligations, the Southern Cross District Health Service Board will assist by providing appropriate resources having regard to the operational requirements of the Southern Cross District Health Service Board and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the Southern Cross District Health Service Board who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the Southern Cross District Health Service Board and shall not unreasonably affect the operation of the Southern Cross District Health Service Board;

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

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

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

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

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

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

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

- (a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;
- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairperson of the Southern Cross District Health Service Board (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairperson of the Southern Cross District Health Service Board (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairperson of the Southern Cross District Health Service Board (or his/her nominee) shall confer on the matters notified by the parties within five working days and—
 - (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
 - (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

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

13.—HOURS

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

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

- (i) Ordinary hours of work of thirty eight per week;
- (ii) Flexitime roster covering a settlement period of four weeks;
- (iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;
- (iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.

(v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.

(vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

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

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

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

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

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

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

(3) Other Working Arrangements

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

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

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

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

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being

satisfied that the efficient functioning of the hospital/health service is being enhanced by its operation.

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

(4) Flexitime Arrangements

(a) Flexitime Roster

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

(b) Hours of Duty

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

(c) Flexitime Periods

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

- 6.00 am to 9.30 am
- 11.00 am to 2.30 pm (Minimum half an hour break)
- 3.30 pm to 6.00 pm

(d) Core Periods

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

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period which shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and
 - (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
 - (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or
 - (cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.
- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00

am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

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

14.—PART-TIME EMPLOYEES

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

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

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

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

(4) Part-Time Flexibility for Relief

(a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the

need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

(g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—MEDICAL IMAGING TECHNOLOGISTS

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

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

16.—PUBLIC HOLIDAYS

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

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

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

(2) Notwithstanding subclause (1)—

- (a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the

proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until 1 January 1999, accrue long service leave at the ten year rate.

- (b) An employee, in employment with the Southern Cross District Health Service Board and covered by the Hospital Salaried Officers Award No. 39 of 1968 at 1 January 1999 shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.
- (c) An employee who at 1 January 1999 transfers or is redeployed from employment with an employer covered by the Hospital Salaried Officers Award to employment with the Southern Cross District Health Service Board shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

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

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

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

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

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

(7) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

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

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

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

(11) Subject to the provisions of subclauses (6), (7), (8) and (12) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;
- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
- (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
- (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

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

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

(13) Portability

(a) Where an employee was, immediately prior to being employed by the Southern Cross District Health Service Board employed in the service of—

- The Commonwealth of Australia
- Any other State Government of Australia, or
- Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

and the period between the date when the employee ceased previous employment and the date of commencing employment by the Southern Cross District Health Service Board does not exceed one week, that employee shall be entitled to long service leave determined in the following manner—

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

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

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

18.—SICK LEAVE

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

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

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

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

19.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.

(ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.

(iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.

(b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.

(c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.

(d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.

(e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.

(f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

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

(1) Family Leave

(a) In this subclause "family member" means the employee's spouse, defacto spouse, child, stepchild, parent,

step-parent. This entitlement will also apply to another person who lives with the employee as a member of the employee's family.

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

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

(d) Medical certificate requirements are as per those for Sick Leave under the Award.

(e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

(a) An employee shall on the death of—

(i) the spouse of the employee;

(ii) the child or step-child of the employee;

(iii) the parent or step-parent of the employee;

(iv) the brother, sister, step brother or step sister; or

(v) any other person, who immediately before that person's death, lived with the employee as a member of the employee's family,

be eligible for up to two (2) days bereavement leave, provided that at the request of an employee the employer may exercise a discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

(b) The 2 days need not be consecutive.

(c) Bereavement leave is not to be taken during any other period of leave.

(d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—

(i) the death that is the subject of the leave sought; and

(ii) the relationship of the employee to the deceased person.

(e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

(a) Without Pay

The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.

(b) Use of Annual Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

(a) "Child" means a child of the employee under the age of one year except for adoption of a child where "child" means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.

- (b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

- (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
- (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the commencement date desired by the employee.

(f) 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.

(g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave—

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.

(d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

- (a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.
- (b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(1) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the

case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

(a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.

(b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the Southern Cross District Health Service Board may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2—Award Amendments.

23.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

(a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;

(b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the commencement of a new twelve (12) month period for the application of this clause, will—

(a) continue to be paid the allowance until such time as the acting period ceases;

(b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

24.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

25.—OVERPAYMENTS

(1) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee.

(2) One-off Overpayments

Subject to subclauses (4) and (5), one-off overpayments may be recovered by the employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

(3) Cumulative Overpayments

Subject to subclauses (4) and (5), cumulative overpayments may be recovered by the employer at a rate agreed between the employer and the employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or \$50 per week, depending on which is the lesser amount per pay period.

(4) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the employer and the employee.

(5) The employer is required to notify the employee of their intention to recoup overpayment and to consult with the employee as to the appropriate recovery rate.

26.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the Southern Cross District Health Service Board shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the Southern Cross District Health Service Board may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the Southern Cross District Health Service Board and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period

of three months at the discretion of the Southern Cross District Health Service Board. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the Southern Cross District Health Service Board shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

27.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (3), an employee who is required to travel on official business outside of the Eastern Wheatbelt Health Service district will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

28.—MOBILITY

(1) This clause will apply to all current and prospective employees of the Southern Cross District Health Service Board.

(2) The parties agree that it is no longer appropriate that staff be appointed exclusively to individual Hospital & Health Services. Pending any moves towards formal integration of Hospital Boards, employees are employed by their respective Board but, subject to this clause, may be mobile across the Southern Cross District Health Service Board.

(3) The parties also agree that in order for the Southern Cross District Health Service Board to provide appropriate levels of healthcare to consumers it is necessary to have a workforce which is mobile and that, managed properly, mobility has the potential to improve the employment security, career opportunity and development, and work life of employees.

(4) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and the employee's needs are to be considered including—

- (a) ensuring that the careers of employees are not disadvantaged
- (b) consideration of family & carer responsibilities
- (c) availability of transport
- (d) matching skill level and professional suitability of any temporary job opportunity or permanent new position
- (e) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.
- (f) The classification level and relevant opportunity costs to the employee.

The parties acknowledge that the above considerations can only be properly assessed through consultation. Subject to the particular circumstances of individual employees, a greater degree of mobility may be expected in regard to higher classified employees.

(5) The parties agree that they will assist in the introduction of this initiative on the following basis—

(a) Temporary Transfer

Subject to agreement between the employer and employee, an employee may be transferred to another position within the Southern Cross District Health Service Board on a temporary basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the period of time is defined
- (iii) the transfer is at a comparable or higher classification level
- (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee or at a higher level and within the competency of the employee.

(b) Permanent Transfer

Subject to agreement between the parties, an employee may be transferred to another position within the Southern Cross District Health Service Board on a permanent basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the transfer is at a comparable classification level
- (iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

29.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.—Mobility.

(2) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development—

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the Southern Cross District

Health Service Board health service region will benefit employees through providing—

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;
- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view—

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis—

(10) Training and Short Courses

(a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.

(b) Attendance at such courses shall be at no expense to the employee.

(c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.

(d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.

(e) Where attendance is paid for by the employer—

- (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
- (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.

(f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(11) Multiskilling

(a) Employees agree that they will assist in the introduction of this policy on the following basis—

(i) Job Rotation

- (aa) Employer and Employee mutually negotiate the decisions.
- (bb) The period of time for any job rotation cycle is defined.
- (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.

(ii) Job Enlargement and Enrichment

- (aa) Decisions are mutually agreed by employee and supervisor.
- (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
- (cc) The period of time is defined, where possible.
- (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
- (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.

(b) Any job specific training required will be provided by the Southern Cross District Health Service Board. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.

(c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

(a) Southern Cross District Health Service Board will develop at an organisational level staff development programs.

(b) The staff development program will be directed to meeting the current and future staffing needs of the Southern Cross District Health Service Board and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the Southern Cross District Health Service Board area.

(c) The staff development program(s)—

- (i) may be focused at the health service or Southern Cross District Health Service Board level as appropriate.
- (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
- (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
- (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
- (v) may be based either or both on the job training and formal training.

(d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will,

subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The Southern Cross District Health Service Board will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

30.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) Southern Cross District Health Service Board shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions.

31.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3)

	Previous EBA Rates	4% From 16.11.99	1.50% From 1/01/00	2% From 1/07/00	1.25% From 1/01/01 (Subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636

	Previous EBA Rates	4% From 16.11.99	1.50% From 1/01/00	2% From 1/07/00	1.25% From 1/01/01 (Subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

For the purposes of this subclause 'Medical Typist' and 'Medical Secretary' shall mean those workers classified on a classification equivalent to Level 1,2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows—

(a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the HSOA and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist, Physicist, Pharmacist, Clinical Psychologist, Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Orthotist, Certified Clinical Perfusionist, or any other professional calling as

agreed between the HSOA and employers, shall be entitled to Annual Salaries as follows—

	Previous (1997/98) EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 Salary P/Annum (Subject to clause 10(4))
	\$	\$	\$	\$	\$
LEVEL 3/5	30,777	32,008	32,488	33,138	33,552
	32,399	33,695	34,200	34,884	35,320
	34,418	35,795	36,332	37,058	37,522
	36,527	37,988	38,558	39,329	39,821
	39,926	41,523	42,146	42,989	43,526
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

- (i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(c) The employer and the HSOA shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to employees in the callings detailed below—

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an “experienced engineer” as defined.

For the purposes of this paragraph “experienced engineer” shall mean—

- (a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.
- (b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable

to the employer on the recommendation of the Institution of Engineers, Australia, and who—

- (i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or
- (ii) not having a University degree but possessing a diploma recognised by the employer, has had five year’s experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

32.—REVIEW OF CORPORATE, SUPPORT AND ALLIED HEALTH SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the Southern Cross District Health Service Board may review the organisational structures, corporate and support services, and allied health services currently provided by individual hospital and health service sites. The review process may result in changes to services through a combination of rationalisation and centralisation of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the Southern Cross District Health Service Board during the course of the review process and the implementation of any change resulting from the review process.

This clause does not override Clause 40—Introduction of Change contained in the award.

33.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The Southern Cross District Health Service Board agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Southern Cross District Health Service Board Enterprise Agreement 1999.

34.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

35.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for Rural Health Services. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- The appropriateness and flexibility of the current classification system
- Training and professional development opportunities
- Support systems and mentoring
- Career paths
- Accommodation
- Incentive schemes
- Flexible leave arrangements
- Work practices and arrangement

(4) To address these issues, the parties agree that the Health Service—

- (i) may participate on an industry working party established to, *inter alia*, make recommendations aimed at improving recruitment and retention of employees, or
- (ii) establish a working party with employer and employee representatives to consider the recommendations of the industry working party and their relevance to the Southern Cross District Health Service Board, and or
- (iii) establish a working party with employer and employee representatives to make recommendations aimed at improving recruitment and retention of employees.

(5) The recommendations of the industry working party and / or the Southern Cross District Health Service Board working party shall be made available to the HSOA by 30 September 2000. Prior to the implementation of any of the recommendations, the employer shall consult with employees and the HSOA.

(6) The implementation of Recruitment and Retention strategies shall be in accordance with Clause 40 – Introduction of Change of the Hospital Salaried Officers Award No. 39 of 1968.

36.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

T. Farrell (signed)

25/02/00

(Signature)

(Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

D. Hill (signed) (COMMON SEAL) 22-02-00

(Signature)

(Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

(Undecipherable) (COMMON SEAL) 5.1.2000

(Signature)

(Date)

Board Chairperson, Southern Cross District Health Service Board.

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of Southern Cross District Health Service Board as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (ie. whether a particular task can be performed less often and still achieve a satisfactory output, possibilities for multi- skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality,

opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- Structural Matters: Management may need to look at the structures within which the work is done and how they can be improved upon.
- Management Style: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- Best Practice, Benchmarking, Continuous Improvement and New Opportunities: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness. Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.
- Culture and Environment: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, acknowledgment, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

- (1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;
- (2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.
- (3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.
- (4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures

provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.
- (3) Holidays and Annual Leave clause to be amended to—
 - (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

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**HOSPITAL SALARIED OFFICERS UPPER GREAT
SOUTHERN HEALTH SERVICE ENTERPRISE
AGREEMENT 1999.
No. PSAAG19 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Upper Great Southern Health Service
and

The Hospital Salaried Officers Association
of Western Australia
(Union of Workers).

No. PSAAG19 of 2000.

Hospital Salaried Officers Upper Great Southern Health
Service Enterprise Agreement 1999.

22 March 2000.

Order.

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Upper Great Southern Health Service Enterprise Agreement 1999 be registered in the terms of the following Schedule as an industrial agreement in replacement of the Hospital Salaried Officers Boddington District Hospital Enterprise Bargaining Agreement 1997 (PSA AG 17 of 1998); the Hospital Salaried Officers Narrogin Regional Hospital Enterprise Bargaining Agreement 1997 (PSA AG 44 of 1998); the Hospital Salaried Officers Williams Medical Centre Enterprise Bargaining Agreement 1997 (PSA AG 48 of 1998); the Hospital Salaried Officers Wickepin Health Service Enterprise Bargaining

Agreement 1997 (PSA AG 47 of 1998); the Hospital Salaried Officers Wagin Health Service Enterprise Bargaining Agreement 1997 (PSA AG 46 of 1998); the Hospital Salaried Officers Pingelly District Hospital Enterprise Bargaining Agreement 1997 (PSA AG 45 of 1998); the Hospital Salaried Officers Brookton Health Service Enterprise Bargaining Agreement 1997 (PSA AG 39 of 1998); the Hospital Salaried Officers Dumbleyung District Memorial Hospital Enterprise Bargaining Agreement 1997 (PSA AG 40 of 1998); the Hospital Salaried Officers Kondinin District Hospital Enterprise Bargaining Agreement 1997 (PSA AG 41 of 1998); the Hospital Salaried Officers Kukerin Nursing Post Enterprise Bargaining Agreement 1997 (PSA AG 42 of 1998) and the Hospital Salaried Officers Lake Grace and Districts Health Service Enterprise Bargaining Agreement 1997 (PSA AG 43 of 1998) which are hereby cancelled, and

2. THAT the Hospital Salaried Officers Dumbleyung District Memorial Hospital Enterprise Bargaining Agreement 1996 (PSA AG 34 of 1996); the Hospital Salaried Officers Kondinin District Hospital Enterprise Bargaining Agreement 1996 (PSA AG 56 of 1996); the Hospital Salaried Officers Kukerin Nursing Post Enterprise Bargaining Agreement 1996 (PSA AG 55 of 1996); the Hospital Salaried Officers Lake Grace and Districts Health Service Enterprise Bargaining Agreement 1996 (PSA AG 59 of 1996); the Hospital Salaried Officers Narrogin Regional Hospital Enterprise Bargaining Agreement 1996 (PSA AG 76 of 1996); the Hospital Salaried Officers Pingelly District Hospital Enterprise Bargaining Agreement 1996 (PSA AG 87 of 1996); the Hospital Salaried Officers Wagin Health Service Enterprise Bargaining Agreement 1996 (PSA AG 102 of 1996); the Hospital Salaried Officers Wickepin Nursing Post Enterprise Bargaining Agreement 1996 (PSA AG 107 of 1996) and the Hospital Salaried Officers Williams Medical Centre Enterprise Bargaining Agreement 1996 (PSA AG 107 of 1996) are hereby cancelled.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

—————

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Upper Great Southern Health Service Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Taking of Annual Leave
20. Family, Bereavement and Personal Leave
21. Parental Leave
22. Allowances
23. Overpayments

24. Mobility
 25. Skills Acquisition, Training and Employee Development
 26. Salary Packaging
 27. Establishment of Level 1 & 2 Competencies
 28. Rural Recruitment and Retention Issues
 29. Salaries
 30. Award Consolidation
 31. Contract of Service—Probation
 32. Travelling Allowance
 33. Ratification
- ATTACHMENT 1—Model for Identifying Productivity Increases
ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Upper Great Southern Health Service along with allowing the benefits from those improvements to be shared by employees, the UGSHS and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Upper Great Southern Health Service taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Upper Great Southern Health Service.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Upper Great Southern Health Service, and the Upper Great Southern Health Service (UGSHS).

(2) The estimated number of employees bound by this Agreement at the time of registration is 57.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreements—

Hospital Salaried Officers Boddington District Hospital Enterprise Bargaining Agreement (PSA AG 17 of 1998);
Hospital Salaried Officers Narrogin Regional Hospital Enterprise Bargaining Agreement 1997 (PSA AG 44 of 1998);

Hospital Salaried Officers Williams Medical Centre Enterprise Bargaining Agreement 1997 (PSA AG 48 of 1998);

Hospital Salaried Officers Wickpin Health Service Enterprise Bargaining Agreement 1997 (PSA AG 47 of 1998);

Hospital Salaried Officers Wagin Health Service Enterprise Bargaining Agreement 1997 (PSA AG 46 of 1998);
Hospital Salaried Officers Pingelly District Hospital Enterprise Bargaining Agreement 1997 (PSA AG 45 of 1998);

Hospital Salaried Officers Brookton Health Service Enterprise Bargaining Agreement 1997 (PSA AG 39 of 1998);

Hospital Salaried Officers Dumbleyung District Memorial Hospital Enterprise Bargaining Agreement 1997 (PSA AG 40 of 1998);

Hospital Salaried Officers Kondinin District Hospital Enterprise Bargaining Agreement 1997 (PSA AG 41 of 1998);

Hospital Salaried Officers Kukerin Nursing Post Enterprise Bargaining Agreement 1997 (PSA AG 42 of 1998), and

Hospital Salaried Officers Lake Grace and Districts Health Service Enterprise Bargaining Agreement 1997 (PSA AG 43 of 1998).

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of Registration until its expiry on 1 December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement, provided that neither party may refuse to commence negotiations as early as Enterprise bargaining negotiations commence for the Metropolitan Health Service Board.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the UGSHS.

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

(1) The parties agree that the objectives of this Agreement are to—

- (a) improve the productivity and efficiency of the UGSHS;
- (b) facilitate greater flexibility in the management of conditions and work arrangements across the UGSHS;
- (c) ensure high quality patient services in a safe, healthy and equitable work environment;
- (d) ensure high quality of employment and jobs; and UGSHS
- (e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, UGSHS and its clients and the Government on behalf of the community;
- (b) ensuring that the UGSHS operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the UGSHS operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the UGSHS, Management and Employees bound by this Agreement are committed to—

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process, which involves constantly changing, adapting and integrating related approaches to health service issues;
- (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
- (iv) is outcome rather than simply activity based;
- (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
- (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills which are necessary to effectively develop, implement and evaluate the change process; and
- (vii) are to be based on the following principles—
 - customer/patient focus
 - management commitment
 - employee participation
 - leadership
 - information analysis
 - policies and plans

- appropriate standards
 - hospital/health service performance
 - cost effectiveness
 - working smarter
- (b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.
- (c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.
- (d) Actively contribute to the achievement of health service budgets.
- (e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.
- (f) Co-operate with the development and implementation of strategies to achieve length of stay targets.
- (g) Participate in a Multi-disciplinary approach to patient care.
- (h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.
- (4) In addition, the UGSHS is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5. - Term of Agreement, a representative from the UGSHS will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

These discussions should include process issues such as what sort of bargaining mechanism will be established, what consultative process can be used or needs to be put in place, possible initiatives to be considered and the time frame.

Negotiations will be conducted in a manner and time frame agreed by the parties to this Agreement.

(b) The negotiations should occur on the basis of a broad agenda of initiatives designed to improve efficiency, effectiveness, productivity, patient care and flexibility within the UGSHS.

(c) The agenda should include but not be limited to—

- (i) changes in work organisation, job design and working patterns and arrangements;
- (ii) examination of terms and conditions of employment to ensure they are suited to the UGSHS's operational requirements;
- (iii) identification and implementation of best practice across all areas of service delivery;
- (iv) (i), (ii) and (iii) can be achieved by means including but not limited to—
 - (aa) new training and skills development programs as and where required;
 - (bb) the optimum use of human and capital resources including new technology;
 - (cc) quality assurance and continuous improvement programs;
 - (dd) having due regard to operational requirements, allowing sufficient flexibility to enable employees to meet their family responsibilities; and
 - (ee) active occupational health and safety risk reduction, training and rehabilitation programs.

(2) In negotiating further salary increases in return for productivity improvements, the parties should ensure that the following issues have been addressed and/or applied—

(a) Productivity Improvements

Productivity improvements are changes which increase the efficiency and effectiveness of the UGSHS in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be

related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes from Award conditions.

Without limiting any of the above, in practice, the primary focus of Enterprise Bargaining in the workplace is likely to be on best practice, efficiency, effectiveness, competitiveness, cost savings, and quality of employment.

(b) Sharing Gains from Productivity Improvement

The parties accept that there is no precise formula for the sharing of gains from productivity improvements, but in any agreement, in addition to employee benefits, there must be a clear and specific return to the UGSHS and/or the Government. Productivity improvements may be related to work practices or arrangements, subject to acceptance that where capital expenditure requires changes in work methods and/or the number of employees and the changes are of a nature that enhances the investment, it shall qualify as a productivity improvement, provided that there is a net quantifiable benefit to the UGSHS.

Any agreement reached should not rely primarily on improvements which are merely the result of new technology or financial reforms or other such initiatives. For example; in the case of capital investment (technology), changes arising from capital expenditure for which the UGSHS takes the risk and which require a reasonable return on the funds invested, do not necessarily count as a productivity improvement.

The treatment of improved efficiency arising from major capital expenditure is to be agreed by the UGSHS and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the UGSHS can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship Between Agreements and Awards

Consistent with the Industrial Relations Act 1979 and the State Wage Principles, this Agreement shall provide the whole of the employees' wage increases for the life of the Agreement.

(2) Choice between this Agreement and Workplace Agreements

(a) The parties accept that Employees will be given an informed and free choice between this Agreement and Workplace Agreements;

(b) To facilitate the making of an informed and free choice—

- (i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.
- (ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.
- (iii) The employee shall be provided with—
 - (aa) a copy of an agreed summary of this Agreement; and

- (bb) a copy of a summary of the Workplace Agreement.
- (iv) At the request of an employee, the employee shall be provided with—
 - (aa) access to a copy of this Agreement and the Workplace Agreement;
 - (bb) any other relevant documentation, such as information on salary packaging; and
 - (cc) information on where they can obtain further advice and on how to contact the Union.

For its part, the Union undertakes to advise all employees on the matter of choice whether or not they are members of the Union.

- (c) If agreement on any aspect of this clause is not able to be reached the dispute settlement procedure set out in Clause 12 of this Agreement is to be followed.

(3) By agreement between the employer and the employee, an employee who has signed a Workplace Agreement prior to the registration of this S.41 Industrial Agreement can revisit the Workplace Agreement in light of this Agreement.

(4) All staff transferred or redeployed to the UGSHS from within the Public Sector or within the Government Health Industry may be offered the choice of a Workplace Agreement or this Agreement subject to the discretion of the UGSHS.

(5) All promotional positions and new staff recruited by the UGSHS from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the UGSHS.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the UGSHS shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the UGSHS is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

- (1) 4.0% from 16 November 1999;
- (2) 1.5% from 1 January 2000;
- (3) 2.0% from 1 July 2000; and
- (4) 1.25% from 1 January 2001. The final payment of 1.25% will be subject to—
 - (a) the UGSHS identifying productivity in excess of that used to justify the other salary increases, and
 - (b) approved by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the “Model for Identifying Productivity Increases” referred to in that clause.

- (5) The rates of pay are set out in clause 29.—Salaries, of this Agreement.
- (6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the UGSHS.

(2) (a) To assist in meeting these obligations, the UGSHS will assist by providing appropriate resources having regard to the operational requirements of the UGSHS and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the UGSHS who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the UGSHS and shall not unreasonably affect the operation of the UGSHS;

(d) Any paid time or resources shall be provided in a manner suitable to both parties and to enable negotiations to occur

and to assist in the achievement of improvements and of agreement.

(e) The parties accept that the process of bargaining in good faith includes disclosing relevant information, as appropriate for the purposes of the negotiations and confidentiality and privacy in the negotiation process will be respected at all times.

(f) The parties accept that on occasions the nature of certain information may prejudice a party’s position or not assist in the resolution of the matter. Subject to the rights of the parties to invoke Clause 12.—Dispute Avoidance and Settlement Procedures of this Agreement, a decision on whether or not to exchange or divulge information will be a matter for the relevant party to decide, provided that information shall not be unreasonably withheld;

(g) Where information of a commercial or sensitive nature is exchanged, the parties agree not to use or divulge that information outside of the negotiating forums.

(3) No officer or employee will be discriminated against as a result of activities conducted in accordance with this clause.

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

(2) Subject to the Public Sector Management Act 1994, in the event of any question, dispute or difficulty arising under this Agreement, the following procedures shall apply, provided that nothing in these procedures shall prevent the Secretary of the HSOA (or his/her nominee) from intervening to assist in the process—

- (a) The matter is to be discussed between the HSOA employee representative and the employer representative and an attempt made to resolve the matter;
- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairman of the UGSHS (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairman of the UGSHS (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairman of the UGSHS (or his/her nominee) shall confer on the matters notified by the parties within five working days and—
 - (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
 - (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

(3) Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

13.—HOURS

This clause replaces Clause 13.—Hours of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) The ordinary hours of work shall be an average of thirty eight per week and shall be worked by one of the following arrangements—

- (i) Ordinary hours of work of thirty eight per week;
- (ii) Flexitime roster covering a settlement period of four weeks;
- (iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;
- (iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.
- (v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.
- (vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

(b) Subject to the following, where the employer and an employee or group of employees agree in writing, shifts of up to 12 hours may be worked provided the average normal hours worked in a shift cycle or settlement period does not exceed 76 per fortnight.

- (i) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement;
- (ii) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined;
- (iii) The arrangement shall allow for a minimum of one clear day off in each 7 days;
- (iv) The arrangement may allow for additional time off in lieu of penalty rates;
- (v) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday;

(c) Where the employer has made a definite decision to introduce changes to shift rosters or employees' ordinary hours, the employer shall notify the employees who may be affected by the proposed changes and the Union as soon as the decision has been made and before the changes are to be introduced. Discussion with the employees and union shall occur consistent with the Introduction of Change clause of the Hospital Salaried Officers Award No. 39 of 1968.

(d) The operation of working arrangements prescribed in paragraph (a) above shall be consistent with the working arrangements prescribed in this clause.

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

Subject to the Award clauses other than those expressly replaced by this Agreement, the spread of ordinary hours will be from 6.00am to 6.00pm Monday to Friday inclusive with a meal break of not less than 30 minutes nor more than 60 minutes to be taken between 12.00noon and 2.00pm, provided that an employee may with prior approval of their supervisor be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes.

(3) Other Working Arrangements

(a) The ordinary hours of duty observed may be varied in accordance with subclause (1)(a)(iv) so as to make provisions for—

- (i) the attendance of employees for duty on a Saturday, Sunday, or Public Holidays.

- (ii) the performance of shift work including work on Saturdays, Sundays or Public Holidays; and
- (iii) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their office.

provided that where the hours of duty are so varied an employee shall not be required to work more than five hours continuously without a break unless agreed in writing between the employee and the employer.

(b) Notwithstanding the above, where it is considered necessary to provide a more economic operation, the employer may authorise the operation of alternative working arrangements in the hospital/health service, or any branch or section thereof.

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being satisfied that the efficient functioning of the hospital/health service is being enhanced by its operation.

Such alternative working arrangements shall be in accordance with subclause (1)(a) and (d).

(4) Flexitime Arrangements

(a) Flexitime Roster

- (i) The authorisation of a flexitime roster shall be the responsibility of the employer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexileave.
- (ii) The roster shall cover a settlement period of four weeks and shall be made available to all affected employees no later than three days prior to the settlement period commencing.
- (iii) The roster shall be prepared in consultation with the affected employees, subject to the employer retaining the right to determine arrangements to suit the operational needs of the department.
- (iv) Subject to four weeks notice being given to affected employees, the employer may withdraw authorisation of a flexitime roster.

(b) Hours of Duty

- (i) The ordinary hours of duty may be an average of 7 hours 36 minutes per day which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each four week settlement period shall be 152 hours.
- (ii) For the purpose of leave and Public Holidays, a day shall be credited as 7 hours 36 minutes.

(c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, employees may select their own starting and finishing times within the following periods—

- 6.00 am to 9.30 am
- 11.00 am to 2.30 pm (Minimum half an hour break)
- 3.30 pm to 6.00 pm

(d) Core Periods

Core periods may be set by agreement between the employer and the employee.

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.

- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.
- (g) Settlement Period
- (i) For recording time worked, there shall be a settlement period which shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.
- (h) Credit Hours
- (i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.
- (i) Debit Hours
- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess of the debit hours permitted at the end of each settlement period.
- (j) Maximum Daily Working Hours
- Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.
- (k) Study Leave
- Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.
- (l) Overtime
- (i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.
- (ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and
- (aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or
- (bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or
- (cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.
- (iii) Where an employee is required to work overtime at the beginning of a day with less than one day's

notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

- (i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.
- (ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

- (i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.
- (ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the period of leave irrespective of whether it falls on a rostered work day or special rostered day off.
- (iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.
- (iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

Credits for Study Leave will be given for educational commitments falling due between and employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

To be read in conjunction with Clause 34.—Part-time Employees of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Part-time employees shall be paid at a rate pro-rata to the rate prescribed for the class of work for which they are engaged in the proportion to which their fortnightly hours bear to 76 hours per fortnight.

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

(3) Provided that relevant prior service and experience shall be taken into account when determining at what increment within a specified salary level a part-time employee is appointed.

(4) Part-Time Flexibility for Relief

This provision replaces Order No. P.33 of 1998, known as the PMH/KEMH Patient Information Services Part Time Workers Order of 1998

(a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) –below.

(g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.

(ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.

(iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.

(iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.

(v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—MEDICAL IMAGING TECHNOLOGISTS

This provision replaces Clause 12. of the Hospital Salaried Officers Award No. 39 of 1968.

Notwithstanding anything contained elsewhere in this Agreement or in the Hospital Salaried Officers Award No. 39 of 1968, Medical Imaging Technologists who were prior to this Agreement employed on a thirty-five hour and four week annual leave basis shall as a result of the registration of this Agreement, be employed on a thirty-five and a half (35.5) hour week and four week annual leave basis.

16.—PUBLIC HOLIDAYS

This provision replaces subclause 16(1)(a) of the Hospital Salaried Officers Award No. 39 of 1968.

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays

without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) An employee shall be entitled to thirteen weeks paid long service leave on the completion of ten years of continuous service and an additional thirteen weeks paid long service leave for each subsequent period of seven years of continuous service completed by the employee.

(2) Notwithstanding subclause (1), an employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the time of the inception of this agreement shall retain the proportion of long service leave accrued at the rate provided by the Award or relevant agreement, as the case may be, at that time, and shall accrue the balance in accordance with sub clause (1) of this clause.

(3) Upon application by an employee, the employer may (subject to subclause (4) of this Agreement, approve of the taking by the employee—

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay;
- (d) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employees remaining portion of accrued untaken leave entitlement is less than a week such portion may be taken.

(5) Any holiday occurring during the period in which an employee is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(6) Long service leave shall be taken as it falls due at the convenience of the employer but within three years next after becoming entitled thereto: Provided that the employer may approve the accumulation of long service leave not exceeding twenty six weeks.

(7) (a) An employee who—

- (i) at or before the certification of this agreement was employed by the UGSHS, and has completed at least 15 years continuous service within the Western Australian Public Sector; or
- (ii) commenced employment with the UGSHS after the certification of this agreement and has completed at least 15 years continuous service within the Western Australian Public Sector Health Industry;

may, by agreement with the employer, take pro-rata long service leave provided that the employee has completed at least three years continuous service with the UGSHS immediately prior to taking this leave.

(8) For the purposes of subclause (7), the Western Australian Public Sector Health Industry shall mean the Minister for Health, the Commissioner of Health and all Public Sector Hospitals, Health Services and Agencies constituted under the Hospitals and Health Services Act 1927.

(9) Where an Employee has been redeployed at the direction of a Western Australian Public Sector Employer, three years continuous service for the purposes of subclauses (7) of this Clause shall be calculated including the service with such previous employer or employers.

(10) An employee who resigns having not qualified to be paid pro-rata long service leave in accordance with subclause (8) shall, subject to subclause (12), be entitled to payment for accrued long service leave only.

(11) An employee who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of the offence for which the employee is dismissed provided that an employee who is dismissed through no fault of his/her own and who having completed at least 15 years continuous service, calculated in accordance with the provisions of this Clause, and having completed at least three years continuous service, calculated in accordance with the provisions of this Clause, with the UGSHS immediately prior to dismissal shall, in addition to any accrued long service leave be paid pro-rata long service leave.

(12) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

- (a) To an employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.
- (b) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.
- (c) To the widow or widower of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

(13) A calculation of the amount due for long service leave accrued and for pro-rata long service leave shall be made at the rate of salary of an employee at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(14) Long service leave accrued prior to the issue of the Hospital Salaried Officers Award No. 39 of 1968 shall remain to the credit of each employee.

(15) Subject to the provisions of subclauses (6), (10), (11), (12) and (16) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective; or
- (b) by any absence approved by the employer as leave whether with or without pay.

(16) The expression "continuous service" in this clause includes any period during which an employee is absent on full pay or part pay, from his/her duties with any employer party to the Award, but does not include—

- (a) any cumulative period exceeding two weeks in any one anniversary year during which the employee is absent on leave without pay;
- (b) Any service of the employee who resigns or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which the employee is dismissed when such prior service has actually entitled the employee to long service leave, including pro-rata long service leave, under this clause.

(17) Portability

(a) Where an employee was, immediately prior to being employed by the UGSHS, employed in the service of: The Commonwealth of Australia, or any other State Government of Australia, or any Western Australian State public sector or state government employer, and the period between the date when the employee ceased previous employment and the date of commencing employment by a respondent to this Agreement does not exceed one week, that employee shall be entitled to long service leave determined in the following manner—

- (i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and
- (ii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.

(b) Nothing in this clause confers or shall be deemed to confer on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the employee's favour prior to the date on which the employee commenced with the UGSHS. At the request of the employee and with the agreement of the employer, an employee may be paid in lieu of taking a portion of long service leave.

(18) At the request of the employee and with the agreement of the employer, an employee may be paid in lieu of taking a portion of long service leave.

18.—SICK LEAVE

(1) This provision replaces subclause (7) of Clause 18.—Sick Leave of the Hospital Salaried Officers Award No. 39 of 1968.

The basis for the cumulative accrual of sick leave shall be—

	Leave On Full Pay Working Days
(a) On date of employment of the employee	5
(b) On completion by the employee of six months' service	5
(c) On completion by the employee of twelve months' service	10
(d) On completion of each additional twelve months' service by the employee	10

Provided that where an employee has accrued sick leave on half days pay prior to the date upon which this Agreement comes into effect those accrued half days shall be converted to the equivalent of full days sick leave and shall remain to the employee's credit until such time as they may be taken.

19.—TAKING OF ANNUAL LEAVE

This clause modifies the provisions of Clause 16—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968, in the manner and to the extent described in the provisions below—

- (1) This subclause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.
 - (a) (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due and the employer will accommodate employees to take their leave in that year (c2).
 - (ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.
 - (iii) If the employee refuses to enter into discussions in relation to the taking of

annual leave the employer may roster the employee off for a period of annual leave providing at least four weeks notice is given.

- (b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.
- (c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.
- (d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.
- (e) Any employee who has accrued an excessive amount of leave (i.e. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.
- (f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.
- (g) For the duration of this agreement annual leave will not be accessible until a minimum of 4 weeks annual leave entitlement has accrued, provided that at the request of the employee, an employee may take annual leave in periods of less than four weeks, provided that annual leave will not be taken in periods of less than one day.

(2) The loading on annual leave prescribed by subclause (13) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968 will not be paid to employees for leave accrued during the period of this enterprise agreement instead the loading will be converted to three and one half days leave per annum.

(a) For the purpose of this clause one day shall equal 7.6 hours.

(b) Any leave loading outstanding from past credits will be paid out at the commencement of this agreement, provided that, subject to the leave not having been taken, an employee may elect to take the loading due on the four weeks of leave that fell due to be taken in their current anniversary year of employment as additional leave.

(c) The three and one half days leave in lieu of leave loading must be taken during the anniversary year in which it falls due, provided that—

- (i) if such leave is not taken during the anniversary year in which it falls due, it will, at the option of the employer, be paid out automatically at the conclusion of that year;
- (ii) the employer shall not refuse an employee any reasonable request to take such leave; and
- (iii) at the option of the employee, such leave may be taken either separately or in conjunction with a period of annual leave.

(d) There will be no pro rata payments of leave in lieu of loading for partially completed years of service

(e) An employee may apply, in writing, to have the additional three and one half days leave paid out in lieu of taking such leave.

(f) The ordinary rate of salary for a shift worker on annual leave includes the shift and weekend penalties the worker would have received had they not proceeded on annual leave. Where it is not possible to calculate the shift and weekend penalties the employee would have received the employee shall be paid at the rate of the average of such payments made each week over the four weeks prior to taking leave.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

This clause replaces Clause 17.—Short Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Family Leave

(a) In this subclause "family member" means the employee's spouse, defacto spouse, child, stepchild, parent, step-parent. This entitlement will also apply to another person who lives with the employee as a member of the employee's family.

(b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.

(c) Family leave is not cumulative from year to year.

(d) Medical certificate requirements are as per those for Sick Leave under the Award.

(e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

(a) An employee shall on the death of—

- (i) the spouse of the employee;
- (ii) the child or step-child of the employee;
- (iii) the parent or step-parent of the employee;
- (iv) the brother, sister, step brother or step sister; or
- (v) any other person, who immediately before that person's death, lived with the employee as a member of the employee's family,

be eligible for up to two (2) days bereavement leave, provided that at the request of an employee the employer may exercise a discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

(b) The 2 days need not be consecutive.

(c) Bereavement leave is not to be taken during any other period of leave.

(d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—

- (i) the death that is the subject of the leave sought; and
- (ii) the relationship of the employee to the deceased person.

(e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employee's immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

(a) Without Pay

The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.

(b) Use of Annual Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

(c) Use of Sick Leave

The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of sick leave for pressing personal emergencies, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year

(d) Employees may be granted leave for the following—

- International sporting events
- Defence force reserves
- State emergency service volunteers

Employees must submit a written request for leave and the Employer shall consider the request having regard to patient care and operational requirements.

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) “Child” means a child of the employee under the age of one year except for adoption of a child where “child” means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.
- (b) “Parental leave” means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

(a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—

- (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
- (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

(c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

(a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—

- (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
- (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.

(b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity

leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.

(e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

(f) 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.

(g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave —

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

(a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.

(d) Where the placement of a child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee’s return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

(a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.

(b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

(a) Where an employee is pregnant, and has a doctor's certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.

(c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

(a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

(a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.

(b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

23.—OVERPAYMENTS

(1) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee.

(2) One-off Overpayments

Subject to subclauses (4) and (5), one-off overpayments may be recovered by the employer in the pay period immediately

following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

(3) Cumulative Overpayments

Subject to subclauses (4) and (5), cumulative overpayments may be recovered by the employer at a rate agreed between the employer and the employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or \$50 per week, depending on which is the lesser amount per pay period.

(4) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the employer and the employee.

(5) The employer is required to notify the employee of their intention to recoup overpayment and to consult with the employee as to the appropriate recovery rate.

24.—MOBILITY

(1) This clause will apply to all current and prospective employees of the UGSHS.

(2) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is prepared to be mobile in the sense of being able to work in more than one position and where appropriate able to move on a temporary or permanent basis to a different location and or position.

(3) It is agreed that employee mobility should—

(a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees; and

(b) subject to the provisions of this clause, be as far as practicable, voluntary.

(4) Staffing mobility, administered in accordance with the standards and principles contained in this clause, within the Upper Great Southern Health Service region will benefit employees through providing—

(a) access to a greater variety of employment opportunities

(b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;

(c) expanded opportunities in terms of career development; and

(d) improved employment security.

(5) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their mobility which meets the principles and requirements of this clause.

(6) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and employee's needs are to be considered including—

(a) ensuring that the careers of employees are not disadvantaged;

(b) consideration of family & career responsibilities;

(c) availability of transport and its cost;

(d) reimbursement of the employee for any reasonable costs incurred by the employee as a result of a temporary or permanent move made.

(e) matching skill level and professional suitability of any temporary job opportunity or permanent new position;

(f) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.

(g) consideration of the employee's ability to cope with the temporary or permanent change;

(h) adequate support to assist the employee with dealing with the change involved in moving to another job on either a temporary or permanent basis.

(7) The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and the union. When considering the reasonableness of any proposed move the level of the employee and the relative cost to the employee of any move will be taken into account. Subject to family and

social commitments and the suitability of the position, the higher the classification of the employee, the more the employee can be expected to demonstrate flexibility in regard to mobility.

(8) The parties agree that they will assist in the introduction of this initiative on the following basis—

(a) Relief—

It is agreed that all positions, which for operational reasons are required to be relieved, will be relieved.

- (i) Relief is defined as: “Planned relief” which is relief in positions for which a minimum of four weeks notice can reasonably be given. It is likely that planned relief will usually be for the cover of leave, higher duties and relief for vacancies caused by special projects and the like. “Unplanned relief” which is relief at short notice for unplanned absences such as sick leave, family leave, urgent operational requirements and the like.
 - (ii) Employees may agree to relieve in positions at the request of their supervisor to meet short-term operational requirements.
 - (iii) Where possible, all such relief will be provided on a voluntary basis, and vacancies will be notified and open to all eligible employees and awarded on the basis of merit.
 - (iv) Where no suitable employee has volunteered, and it is not reasonable to recruit from outside the health service, or in exceptional circumstances, following consultation with the employee, an employee may be required to relieve in a position provided that—
 - (aa) the position is suitable;
 - (bb) due consideration is given to the employees personal commitments;
 - (cc) the employee will not be financially disadvantaged;
 - (v) Where an employee has been directed to relieve in a position on more than two occasions in a calendar month, the employee may seek a review of the decision.
 - (vi) The relieving employee has the right to return to their substantive position at the end of the period of relief, as does the person whose position is being relieved.
- (b) Temporary Transfer. Subject to agreement between the employer and employee, an employee may be transferred to another position within the Upper Great Southern Health Service on a temporary basis, provided that—
- (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the period of time is defined;
 - (iii) the transfer is at a comparable classification level; and
 - (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
 - (v) where an employee has agreed to a temporary transfer the employee may not capriciously withdraw their agreement to that transfer.
- (c) Permanent Transfer. Subject to agreement between the parties, an employee may be transferred to another position within the Upper Great Southern Health Service on a permanent basis, provided that—
- (i) the employer and employee mutually agree the decision to transfer;
 - (ii) the transfer is at a comparable classification level; and
 - (iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
- (d) Restructure. Where the requirement for mobility arises out of an organisational restructure the

relevant provisions of the award together with the relevant legislation applies.

25.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.—Mobility.

(2) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development—

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the UGSHS health service region will benefit employees through providing—

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation’s and employee’s needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;

- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view—

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or
- (c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis.

(10) Training and Short Courses—

- (a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.
- (b) Attendance at such courses shall be at no expense to the employee.
- (c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.
- (d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.
- (e) Where attendance is paid for by the employer—
 - (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
 - (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.
- (f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(11) Multiskilling

(a) Employees agree that they will assist in the introduction of this policy on the following basis—

- (i) Job Rotation
 - (aa) Employer and Employee mutually negotiate the decisions.
 - (bb) The period of time for any job rotation cycle is defined.
 - (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.
- (ii) Job Enlargement and Enrichment
 - (aa) Decisions are mutually agreed by employee and supervisor.
 - (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
 - (cc) The period of time is defined, where possible.
 - (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

- (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.

(b) Any job specific training required will be provided by the UGSHS. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.

(c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

(a) UGSHS will develop at an organisational level staff development programs.

(b) The staff development program will be directed to meeting the current and future staffing needs of the UGSHS and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the UGSHS area.

(c) The staff development program(s)—

- (i) may be focused at the health service or UGSHS level as appropriate.
- (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
- (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
- (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
- (v) may be based either or both on the job training and formal training.

(d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The UGSHS will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

26.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) UGSHS shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions."

27.—ESTABLISHMENT OF LEVEL 1 & 2 COMPETENCIES

(1) The UGSHS agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Metropolitan Health Service Board Enterprise Agreement 1999.

(3) It is agreed, subject to the agreement of the MHSB, the UGSHS may participate as an observer in the HSOA/MHSB competency review process.

28.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) (Recruitment and retention of suitably qualified and/or experienced employees, particularly Allied Health professionals, is a significant issue for Country Health Services including Upper Great Southern Health Service. These issues have significant cost, quality, efficiency, effectiveness, flexibility, service, and patient care implications, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and retention of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- (a) appropriateness and flexibility of the current classification system;
- (b) training and professional development opportunities;
- (c) support systems and mentoring;
- (d) career paths;
- (e) incentive schemes;
- (f) flexible leave arrangements; and
- (g) work practices and arrangements.

(4) To address these issues, the parties agree that the Health Service will establish a working party to make recommendations aimed at improving recruitment and retention of employees. The working party will report back to the Health Service and Hospital Salaried Officers Association by no later than 31 September 2000. Terms of reference for the working party will be established jointly by the Health Service and the Hospital Salaried Officers Association.

(5) The parties agree to consider the report of the Working Party by 28 February 2001 with a view to reaching agreement on the implementation of a package of recruitment and retention strategies.

29.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 17 July 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3)—

	Previous EBA Rates	4% From 16.11.99	1.50% From 1/01/00	2% From 1/07/00	1.25% From 1/01/01 (Subject to clause 10(4))
	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$	Salary P/Annum \$
LEVEL 1					
under 17 years of age	12,237	12,726	12,917	13,176	13,340
17 years of age	14,289	14,861	15,083	15,385	15,577
18 years of age	16,680	17,347	17,607	17,960	18,184
19 years of age	19,306	20,078	20,379	20,787	21,047
20 years of age	21,681	22,548	22,886	23,344	23,636
1st year of full-time equivalent adult service	23,816	24,769	25,140	25,643	25,964
2nd year of full-time equivalent adult service	24,551	25,533	25,916	26,434	26,765
3rd year of full-time equivalent adult service	25,282	26,293	26,688	27,221	27,562
4th year of full-time equivalent adult service	26,011	27,051	27,457	28,006	28,356
LEVEL 2	26,742	27,812	28,229	28,793	29,153
	27,475	28,574	29,003	29,583	29,952
	28,317	29,450	29,891	30,489	30,870
	28,900	30,056	30,507	31,117	31,506
	29,760	30,950	31,415	32,043	32,443
LEVEL 3	30,777	32,008	32,488	33,138	33,552
	31,567	32,830	33,322	33,989	34,413
	32,399	33,695	34,200	34,884	35,320
	33,724	35,073	35,599	36,311	36,765
LEVEL 4	34,418	35,795	36,332	37,058	37,522
	35,459	36,877	37,431	38,179	38,656
	36,527	37,988	38,558	39,329	39,821
	38,047	39,569	40,162	40,966	41,478
LEVEL 5	38,838	40,392	40,997	41,817	42,340
	39,926	41,523	42,146	42,989	43,526
	41,045	42,687	43,327	44,194	44,746
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

- (a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.
- (b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

For the purposes of this subclause 'Medical Typist' and 'Medical Secretary' shall mean those workers classified on a classification equivalent to Level 1,2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(1) Minimum salaries for Specified Callings and Other Professionals are detailed as follows—

- (a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the HSOA and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist, Physicist, Pharmacist, Clinical Psychologist,

Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Orthotist, Certified Clinical Perfusionist, or any other professional calling as agreed between the HSOA and employers, shall be entitled to Annual Salaries as follows—

	Previous (1997/98) EBA Rates Salary P/Annum	4% From 16.11.99 Salary P/Annum	1.50% From 1/01/00 Salary P/Annum	2% From 1/07/00 Salary P/Annum	1.25% From 1/01/01 Salary P/Annum (Subject to clause 10(4))
	\$	\$	\$	\$	\$
LEVEL 3/5	30,777	32,008	32,488	33,138	33,552
	32,399	33,695	34,200	34,884	35,320
	34,418	35,795	36,332	37,058	37,522
	36,527	37,988	38,558	39,329	39,821
	39,926	41,523	42,146	42,989	43,526
	42,196	43,884	44,542	45,433	46,001
LEVEL 6	44,414	46,191	46,883	47,821	48,419
	46,060	47,902	48,621	49,593	50,213
	48,400	50,336	51,091	52,113	52,764
LEVEL 7	49,651	51,637	52,412	53,460	54,128
	51,237	53,286	54,086	55,167	55,857
	52,880	54,995	55,820	56,937	57,648
LEVEL 8	55,280	57,491	58,354	59,521	60,265
	57,248	59,538	60,431	61,640	62,410
LEVEL 9	60,226	62,635	63,575	64,846	65,657
	62,298	64,790	65,762	67,077	67,915
LEVEL 10	64,566	67,149	68,156	69,519	70,388
	68,214	70,943	72,007	73,447	74,365
LEVEL 11	71,128	73,973	75,083	76,584	77,542
	74,091	77,055	78,210	79,775	80,772
LEVEL 12	78,154	81,280	82,499	84,149	85,201
	80,899	84,135	85,397	87,105	88,194
	84,029	87,390	88,701	90,475	91,606
CLASS 1	88,764	92,315	93,699	95,573	96,768
CLASS 2	93,498	97,238	98,696	100,670	101,929
CLASS 3	98,231	102,160	103,693	105,766	107,089
CLASS 4	102,965	107,084	108,690	110,864	112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

- (i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

- (c) The employer and the HSOA shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.
- (d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

(2) The following conditions shall apply to employees in the callings detailed below—

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an “experienced engineer” as defined.

For the purposes of this paragraph “experienced engineer” shall mean—

- (a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.
- (b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—
 - (i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or
 - (ii) not having a University degree but possessing a diploma recognised by the employer, has had five year’s experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

30.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the UGSHS may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2—Award Amendments.

31.—CONTRACT OF SERVICE—PROBATION

This Clause replaces subclauses (1) of Clause 8.- Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the UGSHS shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the UGSHS may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the UGSHS and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the UGSHS. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee’s period of probation has been extended for a further period of three months, the UGSHS shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

32.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (1) and (3), an employee who is required to travel on official business will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are

not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award

(3) At the request of the employee required to travel in the course of his or her duties, the employer shall provide the employee with sufficient funds to cover reasonably expected out of pocket expenses prior to the employee travelling.

(4) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

33.—RATIFICATION

The signatories that follow testify to the fact that this Agreement shall come into effect as of the date of registration.

Toni Farrell

T. Farrell (signed) 18/02/00
(Signature) (Date)

President, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

Daniel P Hill

D. Hill (signed) (COMMON SEAL) 18-02-00
(Signature) (Date)

Secretary, for and on behalf of the Hospital Salaried Officers Association of Western Australia (Union of Workers)

The Common Seal of the Upper Great Southern Health Service is affixed hereto pursuant to a resolution of the Board (COMMON SEAL)

Baxter (signed) 10-02-2000
(Signature) (Date)

TITLE OF OFFICE BEARER SIGNING for and on behalf of the Upper Great Southern Health Service

(Undecipherable) 16/2/00
(Signature) (Date)

TITLE OF OFFICE BEARER SIGNING for and on behalf of the Upper Great Southern Health Service

ATTACHMENT 1—MODEL FOR IDENTIFYING PRODUCTIVITY INCREASES

The following model is to be used as a guide only and it is expected that it will be modified to meet the needs of UGSHS as required.

A Model for Identifying Productivity Increases

The primary focus of Enterprise Bargaining in the workplace will be on best practice, efficiency, effectiveness, competitiveness and cost saving.

Employees to focus on the following areas—

- Productivity improvements which can be made: Identification of all possibilities for improving productivity through looking at possible changes in what work is done, who does the work, who could better do the work, when the work is done, whether the work should be done (i.e. whether a particular task can be performed less often and still achieve a satisfactory output) possibilities for multi-skilling and opportunities to reduce costs (including financial costs) and reduce waste.
- Barriers to Productivity Improvements: Identification of any significant barriers to improving productivity, such as, need for training, need for equipment, problems with computer programs, demarcation problems and arguments about who should do what, award constraints, information or guidelines problems, problems in regard to supervision, whether too much or not enough, or of poor quality, opportunities and barriers to self management, physical barriers such as the location of various functions which interact with each other and barriers to communication.

Employers, in consultation with their Employees, to focus on all of the above plus macro issues impacting on productivity—

- Structural Matters: Management may need to look at the structures within which the work is done and how they can be improved upon.
- Management Style: Management style and its appropriateness may need to be examined at both an organisational and departmental level.
- Best Practice, Benchmarking, Continuous Improvement and New Opportunities: Initiatives in these areas will in general need to be initiated by management. This is an important area given that one of its outcomes should be improved competitiveness.
- Where barriers to competitiveness beyond the control of the employer/health service are identified, these should be drawn to the attention of the Health Department so that they can be addressed on an industry basis.
- Culture and Environment: Management culture and organisational culture may need to be examined in light of the overall direction of health management and where appropriate programs and training be introduced to address any identified problems.

Quality of Employment—Issues to be Examined by Both Employees and Employers—

This area does not necessarily impact on productivity, as such, but may have a positive impact financially and/or an improvement in the non-wage rewards of employment and is therefore a very valuable, win-win, area for both employees and employers. Matters to be examined under this heading include, but are not confined to—

- Occupational Health and Safety
- Unplanned Absences
- Health and Welfare of the Workforce
- Family needs and other demands on workers: better ways to accommodate and acknowledge that these without losing focus on the main objectives in regard to responsibility for service to the employer.
- Use of Leave
- Equal Opportunity
- Career paths, including access to special project work, providing opportunities for development and recognition
- Employee Recognition, through feedback, support, knowledge, enablement, empowerment, consultation and non-financial rewards
- Training and Development
- Equity Issues

ATTACHMENT 2—AWARD AMENDMENTS

only to be included if consolidation clause is included.

1. Consolidation of the Hospital Salaried Officers Award No. 39 of 1968 to be completed during the life of this agreement.

- (1) The consolidation is to consolidate into the award a number of conditions and arrangements currently being provided in accordance with Administrative Instructions and / or Operational Instructions of the Health Department;
- (2) The conditions and arrangements it is agreed to introduce are to be introduced on a no-win/no-loss basis.
- (3) The consolidation includes the removal of gender biased and inconsistent language, the removal of inconsistencies, the updating of provisions to reflect current practice and usage, the removal of redundant provisions, updating of allowances as expressed in the Award and the modernisation of provisions.
- (4) The clarification of provisions to improve administration and interpretation of the Award and to bring it into line with the new health service structures provided that the area of coverage and scope of the Award will not be amended by the consolidation.

2. In addition to and/or in association with the consolidation a number of amendments including the following are to be made to the Hospital Salaried Officers Award No. 39 of 1968—

- (1) Definitions to be updated.
- (2) Hours clause to be updated and clarified so that it adopts the Enterprise Bargaining clause and includes a provision to permit shifts of up to 12 hours to be worked.
- (3) Holidays and Annual Leave clause to be amended to—
 - (a) permit leave to be taken in single days; and
 - (b) include simplified formulas for accrual of annual leave and calculation of leave on termination and pro rata leave.
- (4) Parental Leave to be included.
- (5) Long service leave clause to be amended to include calculation of entitlement on the basis of 13 weeks rather than 3 months, and to be taken in multiples of a week, the clause to be similar to that to be included in the S41 Agreements but to retain the right to 13 weeks leave after 7 years of service but with no pro rata leave except as currently specified in the Award clause.
- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

**HOSPITAL SALARIED OFFICERS
WYALKATCHEM-KOORDA AND DISTRICTS
HOSPITAL BOARD ENTERPRISE AGREEMENT
1999.**

No. PSAAG10 of 2000.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Wyalkatchem-Koorda and Districts Hospital Board
and

The Hospital Salaried Officers Association
of Western Australia
(Union of Workers).

No. PSAAG10 of 2000.

Hospital Salaried Officers Wyalkatchem-Koorda and
Districts Hospital Board Enterprise Agreement 1999.

22 March 2000.

Order.

HAVING heard Mr J.P. Hetman on behalf of the Applicant and Mr C.D. Panizza 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 agreement made between the parties lodged in the Commission on the 29th day of February 2000 entitled Hospital Salaried Officers Wyalkatchem-Koorda and Districts Hospital Board Enterprise 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 Hospital Salaried Officers Wyalkatchem-Koorda and Districts Hospital Enterprise Bargaining Agreement 1997 (PSA AG 36 of 1997) which is hereby cancelled, and
2. THAT the Hospital Salaried Officers Wyalkatchem-Koorda and District Hospital Enterprise Bargaining

Agreement 1996 (PSA AG 112 of 1996) is hereby cancelled.

[L.S.]

(Sgd.) G.L. FIELDING,
Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be titled the Hospital Salaried Officers Wyalkatchem-Koorda and Districts Hospital Board Enterprise Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Purpose of Agreement
4. Application and Parties Bound
5. Term of Agreement
6. No Extra Claims
7. Objectives, Principles and Commitments
8. Framework and Principles for Identifying Productivity Improvements and Bargaining
9. Awards, Agreements and Workplace Agreements
10. Rates of Pay and their Adjustment
11. Resources for Ongoing Productivity Improvement and Further Enterprise Bargaining Negotiations
12. Dispute Avoidance and Settlement Procedures
13. Hours
14. Part-Time Employees
15. Medical Imaging Technologists
16. Public Holidays
17. Long Service Leave
18. Sick Leave
19. Taking of Annual Leave
20. Family, Bereavement and Personal Leave
21. Parental Leave
22. Award Consolidation
23. Higher Duties
24. Allowances
25. Overpayments
26. Contract of Service—Probation
27. Travelling Allowance
28. Mobility
29. Skills Acquisition, Training and Employee Development
30. Salary Packaging
31. Salaries
32. Review of Corporate, Support, and Allied Health Services
33. Establishment of Competencies for Levels 1 & 2
34. Review of Sick Leave Management
35. Rural Recruitment and Retention Issues
36. Ratification

ATTACHMENT 1—Model for Identifying Productivity Increases

ATTACHMENT 2—Award Amendments

3.—PURPOSE OF AGREEMENT

(1) This Agreement aims to achieve improvements in productivity and efficiency and the enhanced performance of the Wyalkatchem-Koorda and Districts Hospital Board along with allowing the benefits from those improvements to be shared by employees, the Wyalkatchem-Koorda and Districts Hospital Board and the Government on behalf of the Community.

(2) This Agreement places priority on the parties at Wyalkatchem-Koorda and Districts Hospital Board taking responsibility for their own human resource and labour relations affairs and reaching agreement on issues appropriate to the Wyalkatchem-Koorda and Districts Hospital Board.

4.—APPLICATION AND PARTIES BOUND

(1) This agreement applies to the Hospital Salaried Officers Association of Western Australia (Union of Workers) (HSOA), the Employees covered by the Hospital Salaried Officer's Award No. 39 of 1968 and employed by the Wyalkatchem-Koorda and Districts Hospital Board.

(2) The estimated number of employees bound by this Agreement at the time of registration is 5.

(3) This Agreement shall be read in conjunction with the Hospital Salaried Officers Award No. 39 of 1968 (hereafter sometimes referred to as the Award) and shall replace the provisions of that Award where expressly stated herein. Wherever there is an inconsistency between the Agreement and the Award, the Agreement shall take precedence.

(4) This Agreement cancels and replaces the following agreements: PSA AG 36 of 1997.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of registration until 1st December 2001.

(2) The parties to this Agreement agree to re-open negotiations at least no later than six months prior to the expiry of this Agreement.

6.—NO EXTRA CLAIMS

Subject to the terms of this agreement, for life of the agreement, the HSOA shall make no further claims on the Wyalkatchem-Koorda and Districts Hospital Board

7.—OBJECTIVES, PRINCIPLES AND COMMITMENTS

(1) The parties agree that the objectives of this Agreement are to—

- (a) improve the productivity and efficiency of the Wyalkatchem-Koorda and Districts Hospital Board;
- (b) facilitate greater flexibility in the management of conditions and work arrangements across the Wyalkatchem-Koorda and Districts Hospital Board;
- (c) ensure high quality patient services in a safe, healthy and equitable work environment;
- (d) ensure high quality of employment and jobs; and
- (e) provide a pathway to providing a wage increase to employees based upon the achievement of improved productivity and efficiency.

(2) By—

- (a) ensuring that gains achieved through agreed improved productivity and changes in workplace culture are shared by employees, Wyalkatchem-Koorda and Districts Hospital Board and its clients and the Government on behalf of the community;
- (b) ensuring that the Wyalkatchem-Koorda and Districts Hospital Board operates in a manner consistent with the principles outlined in Section 7 of the Public Sector Management Act;
- (c) developing and pursuing changes on a co-operative basis; and
- (d) ensuring that the Wyalkatchem-Koorda and Districts Hospital Board operates as effectively, efficiently and competitively as possible.

(3) The Hospital Salaried Officers Association and the Wyalkatchem-Koorda and Districts Hospital Board, Management and Employees bound by this Agreement are committed to—

- (a) Support and actively contribute to health service continuous quality improvement, including best practice, where best practice—
 - (i) is simply the best way of doing things;
 - (ii) is a continuous improvement process which involves constantly changing, adapting and integrating related approaches to health service issues;
 - (iii) practices are not fixed and not restricted to an examination of costs, but also include quality and delivery issues;
 - (iv) is outcome rather than simply activity based;
 - (v) provides the processes, structures, rights and obligations that are essential to ensure that the full capacity for innovation of employees is fully and effectively used;
 - (vi) depends on effective training, empowerment and participation of both management and employees to acquire and utilise the skills

which are necessary to effectively develop, implement and evaluate the change process; and

(vii) are to be based on the following principles—

- customer/patient focus
- management commitment
- employee participation
- leadership
- information analysis
- policies and plans
- appropriate standards
- hospital/health service performance
- cost effectiveness
- working smarter

(b) Support the clinical, teaching, research and organisational goals of the health service and contribute to the achievement of those goals as active members of the health service community.

(c) Support and actively contribute to the achievement and/or maintenance of ACHS Accreditation.

(d) Actively contribute to the achievement of health service budgets.

(e) Assist with achieving Health Department defined waiting list priorities and day surgery targets.

(f) Co-operate with the development and implementation of strategies to achieve length of stay targets.

(g) Participate in a Multi-disciplinary approach to patient care.

(h) The principles of public sector administration; in particular to the principles contained in Sections 7, 8 and 9 of the Public Sector Management Act 1994.

(4) In addition, the Wyalkatchem-Koorda and Districts Hospital Board is committed to facilitating and encouraging the participation and commitment of employees.

8.—FRAMEWORK AND PRINCIPLES FOR IDENTIFYING PRODUCTIVITY IMPROVEMENTS AND BARGAINING

(1) (a) Following the receipt of a request from the HSOA to negotiate a new Agreement, in accordance with Clause 5. - Term of Agreement, a representative from the Wyalkatchem-Koorda and Districts Hospital Board will meet with a representative from the HSOA to discuss the request as soon as practicable but in any event within five working days of the receipt of the request.

These discussions should include process issues such as what sort of bargaining mechanism will be established, what consultative process can be used or needs to be put in place, possible initiatives to be considered and the time frame.

Negotiations will be conducted in a manner and time frame agreed by the parties to this Agreement.

(b) The negotiations should occur on the basis of a broad agenda of initiatives designed to improve efficiency, effectiveness, productivity, patient care and flexibility within the Wyalkatchem-Koorda and Districts Hospital Board.

(c) The agenda should include but not be limited to—

- (i) changes in work organisation, job design and working patterns and arrangements;
- (ii) examination of terms and conditions of employment to ensure they are suited to the Wyalkatchem-Koorda and Districts Hospital Board's operational requirements;
- (iii) identification and implementation of best practice across all areas of service delivery;
- (iv) (i), (ii) and (iii) can be achieved by means including but not limited to—
 - (aa) new training and skills development programs as and where required;
 - (bb) the optimum use of human and capital resources including new technology;
 - (cc) quality assurance and continuous improvement programs;

- (dd) having due regard to operational requirements, allowing sufficient flexibility to enable employees to meet their family responsibilities; and
 - (ee) active occupational health and safety risk reduction, training and rehabilitation programs.
- (2) In negotiating further salary increases in return for productivity improvements, the parties should ensure that the following issues have been addressed and/or applied—

(a) Productivity Improvements

Productivity improvements are changes which increase the efficiency and effectiveness of the Wyalkatchem-Koorda and Districts Hospital Board in meeting its agreed and contracted service programs and outcomes. Productivity improvements may be related to work practices or arrangements. They may be things which go to minimise the cost of what is done, to the way things are done, to when they are done, to the quality of what is done or to improve the ability of the provider to meet patient and customer needs. They may or may not require changes from Award conditions.

Without limiting any of the above, in practice, the primary focus of Enterprise Bargaining in the workplace is likely to be on best practice, efficiency, effectiveness, competitiveness, cost savings, and quality of employment.

(b) Sharing Gains from Productivity Improvement

The parties accept that there is no precise formula for the sharing of gains from productivity improvements, but in any agreement, in addition to employee benefits, there must be a clear and specific return to the Wyalkatchem-Koorda and Districts Hospital Board and/or the Government. Productivity improvements may be related to work practices or arrangements, subject to acceptance that where capital expenditure requires changes in work methods and/or the number of employees and the changes are of a nature that enhances the investment, it shall qualify as a productivity improvement, provided that there is a net quantifiable benefit to the Wyalkatchem-Koorda and Districts Hospital Board.

Any agreement reached should not rely primarily on improvements which are merely the result of new technology or financial reforms or other such initiatives. For example; in the case of capital investment (technology), changes arising from capital expenditure for which the Wyalkatchem-Koorda and Districts Hospital Board takes the risk and which require a reasonable return on the funds invested, do not necessarily count as a productivity improvement.

The treatment of improved efficiency arising from major capital expenditure is to be agreed by the Wyalkatchem-Koorda and Districts Hospital Board and the HSOA and shall take into account factors such as the cost of capital.

Where employees repackage or exchange employment conditions, all or most of the saving or productivity improvement made by the Wyalkatchem-Koorda and Districts Hospital Board can be returned to the employees.

(c) Identifying Productivity Increases

To assist in identifying and negotiating productivity improvements during the life of this agreement and in negotiating the next agreement a model for identifying productivity increases is contained in Attachment 1.

9.—AWARDS, AGREEMENTS AND WORKPLACE AGREEMENTS

(1) Relationship between Agreements and Awards

Consistent with the Industrial Relations Act 1979 and the State Wage Principles, this Agreement shall provide the whole

of the employees' wage increases for the life of the Agreement.

(2) Choice between this Agreement and Workplace Agreements

- (a) The parties accept that Employees will be given an informed and free choice between this Agreement and Workplace Agreements;
- (b) To facilitate the making of an informed and free choice—
 - (i) Employees who are to be offered a choice between this Agreement and a workplace agreement may only be required to indicate their choice after the employee has been offered the position.
 - (ii) Where an employee has been offered a choice the employee shall have a minimum of seven days in which to decide which alternative to take, provided that where it is necessary to fill a position within a period of less than seven days or where an employer agrees to an employee commencing within a period of less than seven days, the employee shall have up to the date of formal acceptance.
 - (iii) The employee shall be provided with—
 - (aa) a copy of an agreed summary of this Agreement; and
 - (bb) a copy of a summary of the Workplace Agreement.
 - (iv) At the request of an employee, the employee shall be provided with;
 - (aa) access to a copy of this Agreement and the Workplace Agreement;
 - (bb) any other relevant documentation, such as information on salary packaging; and
 - (cc) information on where they can obtain further advice and on how to contact the Union.

For its part, the Union undertakes to advise all employees on the matter of choice whether or not they are members of the Union.

- (c) If agreement on any aspect of this clause is not able to be reached the dispute settlement procedure set out in Clause 12 of this Agreement is to be followed.

(3) By agreement between the employer and the employee, an employee who has signed a Workplace Agreement prior to the registration of this S.41 Industrial Agreement can revisit the Workplace Agreement in light of this Agreement.

(4) All staff transferred or redeployed to the Wyalkatchem-Koorda and Districts Hospital Board from within the Public Sector or within the Government Health Industry may be offered the choice of a Workplace Agreement or this Agreement subject to the discretion of the Wyalkatchem-Koorda and Districts Hospital Board.

(5) All promotional positions and new staff recruited by the Wyalkatchem-Koorda and Districts Hospital Board from outside the Public Sector may be provided with the choice of a Workplace Agreement or this Agreement, subject to the discretion of the Wyalkatchem-Koorda and Districts Hospital Board.

(6) In the exercising of the discretion to only offer a Workplace Agreement under subclauses (4) and (5) of this clause, the Wyalkatchem-Koorda and Districts Hospital Board shall ensure that the decision to only offer a Workplace Agreement is made for legitimate operational reasons. In exercising their discretion to only offer a Workplace Agreement, the Wyalkatchem-Koorda and Districts Hospital Board is to liaise with the HSOA to ensure it is not done to circumvent the option of choice.

10.—RATES OF PAY AND THEIR ADJUSTMENT

This Agreement provides for the following salary increases—

- (1) 4.0% from 16 November 1999;
- (2) 1.5% from 1 January 2000;

- (3) 2.0% from 1 July 2000; and
- (4) 1.25% from 1 January 2001.

The final payment of 1.25% will be subject to—

- (a) the Wyalkatchem-Koorda and Districts Hospital Board identifying productivity in excess of that used to justify the other salary increases; and
- (b) approval by Government.

Productivity is to be identified in accordance with the definitions contained in Clause 8 of this Agreement and the “Model for Identifying Productivity Increases” referred to in that clause.

- (5) The rates of pay are set out in clause 31.—Salaries, of this Agreement.
- (6) All increases are compounded.

11.—RESOURCES FOR ONGOING PRODUCTIVITY IMPROVEMENT AND FURTHER ENTERPRISE BARGAINING NEGOTIATIONS

(1) It is recognised that enterprise bargaining places considerable obligations upon the parties at the Wyalkatchem-Koorda and Districts Hospital Board.

(2) (a) To assist in meeting these obligations, the Wyalkatchem-Koorda and Districts Hospital Board will assist by providing appropriate resources having regard to the operational requirements of the Wyalkatchem-Koorda and Districts Hospital Board and resource requirements associated with developing productivity improvements under this Agreement and with negotiating a new agreement;

(b) It is accepted that employees of the Wyalkatchem-Koorda and Districts Hospital Board who are involved in the productivity improvement and the enterprise bargaining processes will be allowed reasonable paid time to fulfil their responsibilities in this process;

(c) Access to resources shall be negotiated with the Wyalkatchem-Koorda and Districts Hospital Board and shall not unreasonably affect the operation of the Wyalkatchem-Koorda and Districts Hospital Board;

(d) Any paid time or resources shall be provided in a manner suitable to both parties and to enable negotiations to occur and to assist in the achievement of improvements and of agreement.

(e) The parties accept that the process of bargaining in good faith includes disclosing relevant information, as appropriate for the purposes of the negotiations and confidentiality and privacy in the negotiation process will be respected at all times.

(f) The parties accept that on occasions the nature of certain information may prejudice a party’s position or not assist in the resolution of the matter. Subject to the rights of the parties to invoke Clause 12.—Dispute Avoidance and Settlement Procedures of this Agreement, a decision on whether or not to exchange or divulge information will be a matter for the relevant party to decide, provided that information shall not be unreasonably withheld;

(g) Where information of a commercial or sensitive nature is exchanged, the parties agree not to use or divulge that information outside of the negotiating forums.

(3) No officer or employee will be discriminated against as a result of activities conducted in accordance with this clause.

12.—DISPUTE AVOIDANCE AND SETTLEMENT PROCEDURES

(1) This clause is to be read in conjunction with Clause 27 of the Award. The objective of this Clause is to provide a set of procedures for dealing with any question, dispute or difficulty arising under this Agreement and for dealing with any question, dispute or difficulty between the parties during negotiations for amendments to this Agreement.

(2) Subject to the Public Sector Management Act 1994, in the event of any question, dispute or difficulty arising under this Agreement, the following procedures shall apply, provided that nothing in these procedures shall prevent the Secretary of the HSOA (or his/her nominee) from intervening to assist in the process—

- (a) The matter is to be discussed between the HSOA employee representative and the employer rep-

resentative and an attempt made to resolve the matter;

- (b) If the matter is unable to be resolved through discussions between the HSOA employee representative and the employer representative, the matter is to be discussed between the employee representative and a representative nominated by the Chairperson of the Wyalkatchem-Koorda and Districts Hospital Board (or his/her nominee), as soon as practicable but within five working days. Notification of any question, dispute or difficulty may be made verbally and/or in writing;
- (c) The parties may individually or collectively seek advice from any appropriate organisation or person in an attempt to resolve the matter;
- (d) If the matter is not resolved within five working days of the date of notification in (b) hereof, either party may notify the Secretary of the HSOA (or his/her nominee), or a representative nominated by the Chairperson of the Wyalkatchem-Koorda and Districts Hospital Board (or his/her nominee) of the existence of a dispute or disagreement;
- (e) The Secretary of the HSOA (or his/her nominee) a representative nominated by the Chairperson of the Wyalkatchem-Koorda and Districts Hospital Board (or his/her nominee) shall confer on the matters notified by the parties within five working days and—
 - (i) where there is agreement on the matters in dispute the parties shall be advised within two working days;
 - (ii) where there is disagreement on any matter it may be submitted to the Western Australian Industrial Relation Commission.

(3) Where any matter is referred to the Western Australian Industrial Relations Commission and the matter is not resolved by conciliation, then the matter remaining in dispute may be resolved by arbitration in accordance with the provisions of the Industrial Relations Act 1979 and the State Wage Principles.

13.—HOURS

This clause replaces Clause 13.—Hours of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) The ordinary hours of work shall be an average of thirty eight per week and shall be worked by one of the following arrangements—

- (i) Ordinary hours of work of thirty eight per week;
- (ii) Flexitime roster covering a settlement period of four weeks;
- (iii) Actual hours of seventy six over nine days with the tenth day to be taken as a paid rostered day off;
- (iv) Such other arrangements as are agreed between the employer and employee. Provided that proposed hours of duty where set outside the terms of this Agreement shall be subject to ratification of the WA Industrial Relations Commission.
- (v) In addition to the above arrangements, where the employees concerned, the employer and the Union agree in writing, shifts of up to but not more than 12 hours may be worked.
- (vi) Subject to meal breaks, prescribed hours are to be worked in one continuous period provided that where a hospital or health service and employee have entered into an alternative arrangement involving discontinuous shifts prior to 1 December 1998, that arrangement may continue under this Agreement.

(b) Subject to the following, where the employer and an employee or group of employees agree in writing, shifts of up to 12 hours may be worked provided the average normal hours worked in a shift cycle or settlement period does not exceed 76 per fortnight.

- (i) While recognising that in the course of an averaging process there may be some individual variances, the terms and conditions of the shift agreement shall on balance be no less favourable than those prescribed by this Agreement;

- (ii) The period of the shift cycle or settlement period over which the arrangement may extend shall be clearly defined;
- (iii) The arrangement shall allow for a minimum of one clear day off in each 7 days;
- (iv) The arrangement may allow for additional time off in lieu of penalty rates;
- (v) The arrangement may allow for salary averaging of regular penalties and allowances including penalties for working on a public holiday;

(c) Where the employer has made a definite decision to introduce changes to shift rosters or employees' ordinary hours, the employer shall notify the employees who may be affected by the proposed changes and the Union as soon as the decision has been made and before the changes are to be introduced. Discussion with the employees and union shall occur consistent with the Introduction of Change clause of the Hospital Salaried Officers Award No. 39 of 1968.

(d) The operation of working arrangements prescribed in paragraph (a) above shall be consistent with the working arrangements prescribed in this clause.

(e) Any arrangement of hours of work which fall outside the parameters set out in this clause shall be subject to ratification by the WA Industrial Relations Commission.

(2) Ordinary Hours

Subject to the Award clauses other than those expressly replaced by this Agreement, the spread of ordinary hours will be from 6.00am to 6.00pm Monday to Friday inclusive with a meal break of not less than 30 minutes nor more than 60 minutes to be taken between 12.00noon and 2.00pm, provided that an employee may with prior approval of their supervisor be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes.

(3) Other Working Arrangements

(a) The ordinary hours of duty observed may be varied in accordance with subclause (1)(a)(iv) so as to make provisions for—

- (i) the attendance of employees for duty on a Saturday, Sunday, or Public Holidays.
- (ii) the performance of shift work including work on Saturdays, Sundays or Public Holidays; and
- (iii) the nature of the duties of an employee or class of employees in fulfilling the responsibilities of their office.

provided that where the hours of duty are so varied an employee shall not be required to work more than five hours continuously without a break unless agreed in writing between the employee and the employer.

(b) Notwithstanding the above, where it is considered necessary to provide a more economic operation, the employer may authorise the operation of alternative working arrangements in the hospital/health service, or any branch or section thereof.

The continuing operation of any alternative working arrangements, so approved, will depend on the employer being satisfied that the efficient functioning of the hospital/health service is being enhanced by its operation.

Such alternative working arrangements shall be in accordance with subclause (1)(a) and (d).

(4) Flexitime Arrangements

(a) Flexitime Roster

- (i) The authorisation of a flexitime roster shall be the responsibility of the employer. The roster will indicate the minimum staffing and any other requirements in respect to starting and finishing times, lunch break coverage and flexileave.
- (ii) The roster shall cover a settlement period of four weeks and shall be made available to all affected employees no later than three days prior to the settlement period commencing.
- (iii) The roster shall be prepared in consultation with the affected employees, subject to the employer retaining the right to determine arrangements to suit the operational needs of the department.

- (iv) Subject to four weeks notice being given to affected employees, the employer may withdraw authorisation of a flexitime roster.

(b) Hours of Duty

- (i) The ordinary hours of duty may be an average of 7 hours 36 minutes per day which may be worked with flexible commencement and finishing times in accordance with the provisions of this subclause, provided that the required hours of duty for each four week settlement period shall be 152 hours.
- (ii) For the purpose of leave and Public Holidays, a day shall be credited as 7 hours 36 minutes.

(c) Flexitime Periods

Within the constraints of the prepared roster and subject to the concurrence of the supervisor, employees may select their own starting and finishing times within the following periods—

- 6.00 am to 9.30 am
- 11.00 am to 2.30 pm (Minimum half an hour break)
- 3.30 pm to 6.00 pm

(d) Core Periods

Core periods may be set by agreement between the employer and the employee.

(e) Lunch Break

- (i) An employee shall be allowed to extend the meal break between 11 am and 2.30 pm of not less than 30 minutes but not exceeding 60 minutes except as provided below.
- (ii) An employee may be allowed to extend the meal break beyond 60 minutes to a maximum of 90 minutes. Such an extension is subject to prior approval of the employee's supervisor.

(f) Flexileave

- (i) Within the constraints of the prepared roster and subject to the prior approval of the supervisor, an employee may be allowed a maximum of two full days or any combination of half days and full days that does not in total exceed two days in any one settlement period.
- (ii) Approval to take flexileave is subject to the employee having accrued sufficient credit hours to cover the absence prior to taking the leave. In exceptional circumstances and with the approval of the employer, flexileave may be taken before accrual subject to such conditions as the employer may impose.

(g) Settlement Period

- (i) For recording time worked, there shall be a settlement period which shall consist of four weeks.
- (ii) The settlement period shall commence at the beginning of a pay period.
- (iii) The required hours of duty for a settlement period shall be 152 hours.

(h) Credit Hours

- (i) Credit hours in excess of the required 152 hours to a maximum of 8 hours are permitted at the end of each settlement period. Such credit hours shall be carried forward to the next settlement period.
- (ii) Credit hours in excess of 8 hours at the end of a settlement period shall be lost.
- (iii) Credit hours at any point within the settlement period shall not exceed 20 hours.

(i) Debit Hours

- (i) Debit hours below the required 152 hours to a maximum of 4 hours are permitted at the end of each settlement period. Such debit hours shall be carried forward to the next settlement period.
- (ii) Where an employee's debit hours exceed 4 hours, the employer may treat the time as if the employee had taken leave without pay for the period necessary to reduce debit hours to four hours.
- (iii) Employees having excessive debit hours may be required to work standard working hours in addition to not being paid for the number of hours in excess

of the debit hours permitted at the end of each settlement period.

(j) Maximum Daily Working Hours

Subject to subclause (1)(b), a maximum of 10 hours may be worked in any one day.

(k) Study Leave

Where study leave has been approved by the employer, credits will be given for education commitments falling within the ordinary hours of duty and for which "time off" is necessary to allow for attendance at formal classes.

(l) Overtime

(i) Employees receiving at least one day's prior notice of overtime shall be required to work the ordinary hours of duty determined by the employer under subclause (1) of this clause.

(ii) Where an employee is required to work overtime at the conclusion of a day with less than one day's notice, and

(aa) where the employee has at the commencement of that day 2 hours or more flexitime credits, the employee shall be paid overtime after 5 hours work on that day, or for time worked after 3.30 pm, whichever is the later, or

(bb) where that employee has commenced duty prior to 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime, for time worked after the completion of ordinary hours of duty or after working 7 hours 36 minutes on that day, whichever is the earlier, or

(cc) where that employee has commenced work after 8.30 am and has, at the commencement of that day, less than 2 hours flexitime credits, the employee shall be paid overtime for time worked after 5.30 pm or after working 7 hours 36 minutes, on that day whichever is the earlier.

(iii) Where an employee is required to work overtime at the beginning of a day with less than one day's notice, that employee shall be paid overtime for any time worked prior to the commencing time for ordinary hours of duty determined by the employer under subclause (1) of this clause.

(5) Nine Day Fortnight

(a) Hours of Duty

(i) The employer may authorise the operation of a nine day fortnight where the ordinary hours of duty of 76 hours a fortnight are worked over nine days of the fortnight, exclusive of work performed on Saturday, Sunday and the special rostered day off, with each day consisting of 8 hours and 27 minutes.

(ii) The employer shall determine employees' commencing and finishing times between the spread of 6.00 am and 6.00 pm, in order to ensure that departmental requirements are met on each day.

(b) Lunch Break

A meal break shall be allowed and taken in accordance with the standard provisions of this clause.

(c) Special Rostered Day Off

Each employee shall be allowed one special rostered day off each fortnight in accordance with a roster prepared by management showing days and hours of duty and special rostered days off for each employee.

(d) Leave and Public Holidays.

For the purposes of leave and Public Holidays, a day shall be credited as 8 hours 27 minutes notwithstanding the following—

(i) When a Public Holiday falls on an employee's special rostered day off the employee shall be granted a day in lieu of the holiday prior to the conclusion of the current fortnight.

(ii) For a Public Holiday occurring during a period of annual leave, an additional day will be added to the

period of leave irrespective of whether it falls on a rostered work day or special rostered day off.

(iii) A four week annual leave entitlement is equivalent to 152 hours, the equivalent to eighteen rostered working days of 8 hours 27 minutes, and two special rostered days off.

(iv) An employee who is sick on a special rostered day off will not be granted sick leave for that day, and will not be credited with an additional day off in lieu.

(e) Overtime

The provisions of the relevant overtime clause, shall apply for work performed prior to an employee's nominated starting time and after an employee's nominated ceasing time in accordance with subparagraph (a)(ii) and on an employee's special rostered day off.

(f) Study Leave

Credits for Study Leave will be given for educational commitments falling due between and employee's nominated starting and finishing times.

14.—PART-TIME EMPLOYEES

To be read in conjunction with Clause 34.—Part-time Employees of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Part-time employees shall be paid at a rate pro-rata to the rate prescribed for the class of work for which they are engaged in the proportion to which their fortnightly hours bear to 76 hours per fortnight.

(2) When a part-time employee classified above the 20 years of age rate as defined by the Hospital Salaried Officers Award No. 39 of 1968, commences employment on or after the 1 July 1996, he/she shall accrue service towards progression onto subsequent salary increments within a salary level, on a pro-rata basis of the number of hours worked to full time hours.

(3) Provided that relevant prior service and experience shall be taken into account when determining at what increment within a specified salary level a part-time employee is appointed.

(4) Part-Time Flexibility for Relief

(a) (i) The purpose of this provision is to provide those part time employees who wish to access it with the opportunity to work additional hours by covering short-term relief requirements of the employer.

(ii) While relief for vacancies will normally be provided from full time relief staff, where that is not possible, opportunities for relieving vacancies will be offered on an equitable basis to available, suitably qualified part time staff.

(iii) Where the numbers of suitably qualified and available part time staff warrant it, they shall form a relief pool for the purposes of this subclause.

(b) The purpose of the relief pool is to identify a pool of available and appropriately trained employees to provide staffing relief for absences of other workers while reducing the need for employers to resort to the use of casuals to provide adequate relief cover. It is envisaged relief under this subclause will be required for absences occasioned by matter such as—

- Brief periods of unplanned absence;
- Sick leave;
- Time in lieu;
- Annual leave;
- Long service leave.

(c) This provision applies to part time workers only

(d) For the purposes of this subclause, as applicable, a pool or pools of staff qualified for the work to be relieved, will be formed.

(e) Relief will be provided for absences of both part time and full time employees.

(f) The pool will consist of only those employees who indicate their willingness to participate in the pool

and to accept the modified terms and conditions applying to its operation those terms being set out in paragraph (g) below.

- (g) (i) Notwithstanding the provision of Subclause (1) (b) of Clause 34 Part-time Employees, of the Award, and subject to subclauses (b), (c), (d) of this clause where a part-time employee has previously indicated in writing a willingness to work extra hours and or extra shifts such employee may work up to 76 hours per fortnight at ordinary rates of pay without receiving prior notice.
- (ii) The indication given by an employee of their willingness to work extra hours may be withdrawn at any time.
- (iii) An indication by an employee of his/her willingness to work additional hours does not oblige the employee to work additional hours if they are offered by the employer, accordingly, the employee may refuse to work any additional hours offered to them and may not be required to give any reasons for so refusing. Any such refusal is without prejudice to the employee.
- (iv) The employer may not make it a Condition of Employment that an employee agree to make themselves available to work additional hours.
- (v) Consistent with the operation of this Agreement there will be no rostered split shifts.

15.—MEDICAL IMAGING TECHNOLOGISTS

This provision replaces Clause 12. of the Hospital Salaried Officers Award No. 39 of 1968.

Notwithstanding anything contained elsewhere in this Agreement or in the Hospital Salaried Officers Award No. 39 of 1968, Medical Imaging Technologists who were prior to this Agreement employed on a thirty-five hour and four week annual leave basis shall as a result of the registration of this Agreement, be employed on a thirty-five and a half (35.5) hour week and four week annual leave basis.

16.—PUBLIC HOLIDAYS

This provision replaces subclause 16(1)(a) of the Hospital Salaried Officers Award No. 39 of 1968.

The following days or the days observed in lieu thereof shall subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

17.—LONG SERVICE LEAVE

This clause replaces Clause 19. Long Service Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) An employee shall be entitled to thirteen weeks paid long service leave on the completion of ten years of continuous service and an additional thirteen weeks paid long service leave for each subsequent period of seven years of continuous service completed by the employee.

(2) Notwithstanding subclause (1)—

- (a) An employee in employment with an employer respondent to the Hospital Salaried Officers Award No. 39 of 1968 at the 1st of April 1996, shall retain the proportion of long service leave accrued at the rate provided by the Award at that time and during the period from 1 April 1996 up until 1 January 1999, accrue long service leave at the ten year rate.
- (b) An employee, in employment with the Wyalkatchem-Koorda and Districts Hospital Board and covered by the Hospital Salaried Officers Award No. 39 of 1968 at 1 January 1999 shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.
- (c) An employee who at 1 January 1999 transfers or is redeployed from employment with an employer

covered by the Hospital Salaried Officers Award to employment with the Wyalkatchem-Koorda and Districts Hospital Board shall retain the proportion of long service leave accrued up to that time and shall accrue the balance in accordance with subclause (1) of this clause.

(3) Upon application by an employee, the employer may (subject to subclause (4) of this Agreement), approve of the taking by the employee—

- (a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or
- (b) of half the period of long service leave on double pay, in lieu of the period of long service leave entitlement on full pay; or
- (c) of any portion of his/her long service leave entitlement on full pay or double such period on half pay; or half such period on double pay
- (d) a full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

(4) Long service leave may be taken in weekly multiples on full, half or compacted pay provided that where an employees remaining portion of accrued untaken leave entitlement is less than a week such portion may be taken.

(5) Any holiday occurring during the period in which an employee is on long service leave will be treated as part of the long service leave, and extra days in lieu thereof shall not be granted.

(6) Long service leave shall be taken as it falls due at the convenience of the employer but within three years next after becoming entitled thereto: Provided that the employer may approve the accumulation of long service leave not exceeding twenty six weeks.

(7) An employee who resigns or who is dismissed, shall not be entitled to long service leave or payment for long service leave other than leave that had accrued to the employee prior to the date of resignation or the date of the offence for which the employee is dismissed.

(8) A lump sum payment for long service leave accrued in accordance with this clause and for pro-rata long service leave shall be made in the following cases—

- (a) To an employee who retires at or over the age of fifty-five years or who has retired on the grounds of ill health, provided that no payment shall be made for pro-rata long service leave unless the employee has completed not less than twelve months' continuous service.
- (b) To an employee who has retired for any other cause: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than three years' continuous service before the date of his/her retirement.
- (c) To the widow or widower of an employee or such other person as may be approved by the employer in the event of the death of an employee: Provided that no payment shall be made for pro-rata long service leave unless the employee had completed not less than twelve months' continuous service prior to the date of his/her death.

(9) A calculation of the amount due for long service leave accrued and for pro-rata long service leave shall be made at the rate of salary of an employee at the date of retirement, resignation or death, whichever applies and no such payment shall exceed the equivalent of twelve months' salary.

(10) Long service leave accrued prior to the issue of the Hospital Salaried Officers Award No. 39 of 1968 shall remain to the credit of each employee.

(11) Subject to the provisions of subclauses (6), (7), (8) and (12) of this clause, the service of an employee shall not be deemed to have been broken—

- (a) by resignation, where he/she resigned from the employment of an employer a party to the Award and

commenced with another employer a party to the Award within one working week of the expiration of any period for which payment in lieu of annual leave or holidays has been made by an employer party to the Award from whom he/she resigned or, if no such payment has been made, within one working week of the day on which his/her resignation became effective;

- (b) if his/her employment was ended by his/her employer who is party to the Award, for any reason other than misconduct or unsatisfactory service but only if—
- (i) the employee resumed employment with an employer party to the Award not later than six months from the day on which his/her employment ended; and
 - (ii) payment pursuant to subclause (8) of this clause has not been made; or
- (c) by any absence approved by the employer as leave whether with or without pay.

(12) The expression “continuous service” in this clause includes any period during which an employee is absent on full pay or part pay, from his/her duties with any employer party to the Award, but does not include—

- (a) any cumulative period exceeding two weeks in any one anniversary year during which the employee is absent on leave without pay;
- (b) Any service of the employee who resigns or is dismissed, other than service prior to such resignation or to the date of any offence in respect of which the employee is dismissed when such prior service has actually entitled the employee to long service leave, including pro-rata long service leave, under this clause.

(13) Portability

- (a) Where an employee was, immediately prior to being employed by the Wyalkatchem-Koorda and Districts Hospital Board employed in the service of—
- The Commonwealth of Australia
 - Any other State Government of Australia, or
 - Any Western Australian state public sector or state government employer including an employer covered by the Hospital Salaried Officers Award no 39 of 1968,

and the period between the date when the employee ceased previous employment and the date of commencing employment by the Wyalkatchem-Koorda and Districts Hospital Board does not exceed one week, that employee shall be entitled to long service leave determined in the following manner—

- (i) the pro rata portion of long service leave to which the employee would have been entitled up to the date of appointment under the Public Sector Management Act, shall be calculated in accordance with the provisions that applied to the previous employment referred to, but in calculating that period of pro rata long service leave, any long service leave taken or any benefit granted in lieu of any such long service leave during that employment shall be deducted from any long service leave to which the employee may become entitled under this clause; and
 - (ii) the balance of the long service leave entitlement of the employee shall be calculated upon appointment by a respondent to this Agreement in accordance with the provisions of this clause.
- (b) Nothing in this clause confers or shall be deemed to confer on any employee previously employed by the Commonwealth or by any other State of Australia any entitlement to a complete period of long service leave that accrued in the employee's favour prior to the date on which the employee commenced with the Wyalkatchem-Koorda and Districts Hospital Board.

(14) At the request of the employee and with the agreement of the employer, an employee may be paid in lieu of taking a portion of long service leave.

18.—SICK LEAVE

(1) This provision replaces subclause (7) of Clause 18.—Sick Leave of the Hospital Salaried Officers Award No. 39 of 1968.

The basis for the cumulative accrual of sick leave shall be—

	Leave On Full Pay Working Days
(a) On date of employment of the employee	5
(b) On completion by the employee of six months' service	5
(c) On completion by the employee of twelve months' service	10
(d) On completion of each additional twelve months' service by the employee	10

Provided that where an employee has accrued sick leave on half days pay prior to the date upon which this Agreement comes into effect those accrued half days shall be converted to the equivalent of full days sick leave and shall remain to the employee's credit until such time as they may be taken.

19.—TAKING OF ANNUAL LEAVE

This clause shall be read as if it were subclause (4A) of Clause 16.—Holidays and Annual Leave of the Hospital Salaried Officers Award No. 39 of 1968.

- (a)
 - (i) An employee is expected to take annual leave in the year immediately following the anniversary date upon which the leave became due.
 - (ii) The scheduling of annual leave should be as a result of consultation between the employer and the employee.
 - (iii) If the employee refuses to enter into discussions in relation to the taking of annual leave the employer may roster the employee off for a period of annual leave.
- (b) An employee, who has accumulated in excess of two year's annual leave entitlement and who has been advised accordingly by the employer, may be required to take sufficient leave prior to the next entitlement becoming due to ensure that their entitlement does not exceed two years entitlement.
- (c) An employee who fails to take the leave as specified in paragraph (b) of this subclause may have any entitlements in excess of two years paid out at the current rate of pay provided that the employee shall be required to take at least two weeks leave in any anniversary year of employment.
- (d) At the request of an employee and with the written agreement of the employer, an employee may be allowed to accumulate in excess of two years annual leave entitlement upon demonstrating an extraordinary or special reason to the Employer.
- (e) Any employee who has accrued an excessive amount of leave (ie. in excess of two years entitlement) may be required to clear any excessive accrued leave by taking double their entitlement of accrued leave in any one year until such time as their entitlement is less than two years entitlement.
- (f) Where the employer and employee agree, an employee who has an entitlement in excess of two years may be paid out their annual leave at their current rate of pay, rather than proceeding on annual leave, provided that the employee has proceeded on two weeks leave in that anniversary year of employment.

20.—FAMILY, BEREAVEMENT AND PERSONAL LEAVE

This clause replaces Clause 17.—Short Leave of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Family Leave

- (a) In this subclause “family member” means the employee's spouse, defacto spouse, child, stepchild,

parent, step-parent. This entitlement will also apply to another person who lives with the employee as a member of the employee's family.

- (b) The employee is entitled to use up to 38 hours of his/her personal accrued sick leave to care for an ill family member each year, providing the employee must maintain a minimum of 10 days of sick leave available for personal use in each year. Subject to subclause (e), all family leave taken is deducted from the employee's sick leave entitlement.
- (c) Family leave is not cumulative from year to year.
- (d) Medical certificate requirements are as per those for Sick Leave under the Award.
- (e) Where an employee has insufficient accrued sick leave, by mutual agreement, up to five days of annual leave may be used for the purpose of family leave.

(2) Bereavement Leave

- (a) An employee shall on the death of—
 - (i) the spouse of the employee;
 - (ii) the child or step-child of the employee;
 - (iii) the parent or step-parent of the employee;
 - (iv) the brother, sister, step brother or step sister; or
 - (v) any other person, who immediately before that person's death, lived with the employee as a member of the employee's family,

be eligible for up to two (2) days bereavement leave, provided that at the request of an employee the employer may exercise a discretion to grant bereavement leave to an employee in respect of some other person with whom the employee has a special relationship.

- (b) The 2 days need not be consecutive.
- (c) Bereavement leave is not to be taken during any other period of leave.
- (d) An employee who claims to be entitled to paid leave under paragraph (a) of this subclause is to provide to the employer, if so requested, evidence that would satisfy a reasonable person as to—
 - (i) the death that is the subject of the leave sought; and
 - (ii) the relationship of the employee to the deceased person.
- (e) An employee requiring more than two days bereavement leave in order to travel overseas in the event of the death overseas of a member of the employees immediate family may, upon providing adequate proof, in addition to any bereavement leave to which the employee is eligible, have immediate access to annual leave and/or accrued long service leave in weekly multiples and/or leave without pay provided all accrued leave is exhausted.

(3) Special Personal Leave

- (a) Without Pay
The employer may upon the request of an employee, grant that employee special leave without pay for any special or personal reason.
- (b) Use of Annual Leave
The employer may, upon the request of an employee and with sufficient cause being shown, which may in the circumstances be with little notice, grant that employee single days of annual leave for pressing personal emergencies.

21.—PARENTAL LEAVE

This clause replaces the Clause 18A.—Maternity Leave of the Hospital Salaried Officers Award No. 39 of 1968. Subject to the terms of this clause employees are entitled to parental leave and / or to work part-time in connection with the birth or adoption of a child.

(1) Definitions

For the purpose of this clause—

- (a) "Child" means a child of the employee under the age of one year except for adoption of a child where

"child" means a person under the age of five years of age 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 child who has previously lived continuously with the employee for a period of six months or more.

- (b) "Parental leave" means maternity, paternity or adoption leave taken in accordance with this clause.

(2) Basic entitlement

- (a) Employees whose contract of service is by the month are entitled to 52 weeks unpaid parental leave in relation to the birth or adoption of their child. For females maternity leave may be taken and for males paternity leave may be taken. Adoption leave may be taken in the case of adoption.
- (b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances—
 - (i) for maternity leave and paternity leave, an unbroken period of one week at the time of the birth of the child—
 - (ii) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.
- (c) In order to demonstrate to the employer that, subject to paragraph (b), only one parent will be off on Parental leave at a time an employee shall, when applying for parental leave, provide the employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her spouse.

(3) Maternity leave

- (a) An employee will provide to the employer at least ten weeks in advance of the expected date of confinement—
 - (i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement; and
 - (ii) written notification of the date on which she proposes to commence maternity leave, and the period of leave to be taken.
- (b) Subject to subclause (c) and unless agreed otherwise between employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.
- (c) Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.
- (d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced maternity leave, the employee may take unpaid leave (to be known as special maternity leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special maternity leave.
- (e) Where leave is granted under subclause (3)(d), during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.
- (f) 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.

- (g) Where an employee 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 twelve months.

(4) Paternity leave

An employee will provide to the employer, at least ten weeks prior to each proposed period of paternity leave—

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and
- (b) written notification of the date on which he proposes to start and finish the period of paternity leave.

(5) Adoption leave

- (a) The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- (b) The employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- (c) The employer shall grant an employee who is seeking to adopt a child such unpaid leave 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 unpaid leave.
- (d) Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from the date of notification for the employee's return to work.

(6) Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival of the child. Such variation does not count as a variation for the purposes of subclause (7) of this clause.

(7) Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change shall be notified at least four weeks prior to the commencement of the changed arrangements.

(8) Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave and long service leave, subject to the total amount of leave not exceeding 52 weeks.

(9) Transfer to a safe job

- (a) Where an employee is pregnant and, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee will, 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.
- (b) If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee, to commence parental leave.

(10) Entitlement to Part-Time employment

- (a) Where an employee is pregnant, and has a doctors certificate advising that it would be preferable for the employee to work part-time, or where an employee is eligible for parental leave, and the employer agrees, the employee may work part-time, the terms of which are to be agreed in writing, in one or more periods at any time until the child's second birthday or until the second anniversary of the placement of the child.
- (b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

(11) Returning to work after a period of parental leave or part time work.

- (a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.
- (b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to subclause (8), the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with subclause (10) will be entitled to return to his or her former position.
- (c) When such position no longer exists but there are other positions available, which the employee is qualified for and is capable of performing, the employee will be entitled to a position as nearly comparable in status and pay to that of their former position.

(12) Replacement employees

- (a) A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.
- (b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

(13) Notwithstanding any award, agreement or other provision to the contrary—

- (a) absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award or this Agreement.
- (b) commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

22.—AWARD CONSOLIDATION

(1) The parties agree to the consolidation of the award during the life of this agreement.

(2) In order to facilitate the consolidation process, the Wyalkatchem-Koorda and Districts Hospital Board may seek the assistance of the HDWA in negotiating the consolidation, or to work through the Health Department of Western Australia, as its agent.

(3) The amendments to the Award are outlined in Attachment 2 – Award Amendments.

23.—HIGHER DUTIES

(1) This clause replaces Clause 11 of the Award for all employees except those employees classified at Level 1 or 2.

(2) Employees who undertake acting in positions which are classified higher than their substantive positions will be paid a higher duties allowance in accordance with this clause.

(3) An employee becomes eligible to be paid higher duties allowance upon having worked ten (10) days (cumulative) in blocks of 5 consecutive working days or more acting in any position classified higher than their substantive position in their current anniversary year of employment.

(4) Subject to subclause (3) higher duties allowance is payable for periods of acting in a higher position for a period of 5 consecutive working days or more, provided that where additional days of higher duties are worked continuously with the qualifying period, the higher duties allowance will be paid for all such additional days so worked.

(5) The higher duties allowance payable—

- (a) to employees performing the full duties of the higher position is equal to the difference between the employees salary for their substantive position and the position being acted in, provided that, where the cumulative period of acting in a position or positions of a particular level or higher exceeds 12 months in any 18 month period, the employee's allowance will include the relevant service increments for the position in which he/she is acting;
- (b) to employees performing only a proportion of the higher duties is calculated by taking the allowance payable in accordance with paragraph (a) paid in the same proportion as the proportion of higher duties paid by the employee;

provided that no allowance is payable for the qualifying 10 days of acting in each anniversary year.

(6) Each period of five (5) consecutive days acting on higher duties, whether paid or not, will be recorded in personal records and recognised as experience.

(7) An employee, who is receiving a higher duties allowance at the time of registration of this agreement, will continue to receive that allowance. However, when the acting period ceases, if the employee has not completed ten days of higher duties in their current anniversary year, the employee will be required to complete the ten days without being paid the allowance for the additional days required to make up the qualifying period.

(8) An employee who qualifies for the period of ten (10) working days in consecutive days which extend over the commencement of a new twelve (12) month period for the application of this clause, will;

- (a) continue to be paid the allowance until such time as the acting period ceases;
- (b) upon completion of the acting period, commence to serve the ten (10) day qualifying period before a higher duties allowance can be paid.

(9) An employee who has been paid a higher duties allowance for a continuous period of twelve (12) months or more, will be entitled to be paid at that rate for up to four (4) weeks of annual recreational leave or up to four (4) weeks of any other approved leave of absence.

24.—ALLOWANCES

Where an employee subject to this Agreement is paid an allowance as provided under the Hospital Salaried Officers Award No. 39 of 1968, which is calculated as a percentage of a salary rate prescribed by that Award, the allowance shall for the life of this Agreement, now be calculated using the salary rates as prescribed at Clause 31.—Salaries of this Agreement.

25.—OVERPAYMENTS

(1) Where an employee is paid for work not subsequently performed or is overpaid in any other manner, the employer is entitled to make adjustment to the subsequent wages or salaries of the employee.

(2) One-off Overpayments

Subject to subclauses (4) and (5), one-off overpayments may be recovered by the employer in the pay period immediately following the pay period in which the overpayment was made, or in the period immediately following the pay period in which it was discovered that overpayment has occurred.

(3) Cumulative Overpayments

Subject to subclauses (4) and (5), cumulative overpayments may be recovered by the employer at a rate agreed between the employer and the employee, provided that the rate at which the overpayment is recovered is not at a lesser rate than the rate at which it was overpaid or \$50 per week, depending on which is the lesser amount per pay period.

(4) In exceptional circumstances, other arrangements for the recovery of overpayments may be agreed between the employer and the employee.

(5) The employer is required to notify the employee of their intention to recoup overpayment and to consult with the employee as to the appropriate recovery rate.

26.—CONTRACT OF SERVICE – PROBATION

This Clause replaces subclauses (1) of Clause 8—Contract of Service, of the Hospital Salaried Officers Award No. 39 of 1968.

(1) (a) Every new employee appointed to the employ of the Wyalkatchem-Koorda and Districts Hospital Board shall be on probation for a period of three (3) months.

(b) At any time during the period of probation the Wyalkatchem-Koorda and Districts Hospital Board may annul the appointment and terminate the service of the employee by the giving of two weeks notice.

(c) At any time during the period of probation the employee may resign by giving two (2) weeks notice.

(d) A lesser period of notice may be agreed, in writing between the Wyalkatchem-Koorda and Districts Hospital Board and the employee.

(e) On the completion of three months employment the period of probation may be extended for a further and final period of three months at the discretion of the Wyalkatchem-Koorda and Districts Hospital Board. The provisions of subclause (b), (c) and (d) of this clause still apply during the period of probation.

(f) Where an employee's period of probation has been extended for a further period of three months, the Wyalkatchem-Koorda and Districts Hospital Board shall notify the employee in writing of the extension and provide justification for the extension of probation.

(g) An employee shall not be deemed to be employed by the month until he/she has completed his/her probationary period or extended probationary period of employment as the case may be.

27.—TRAVELLING ALLOWANCE

(1) At the option of the employer, which option shall be notified in writing to the employee before it is exercised and before the employee has made the travel arrangements for which the allowance is to be claimed, this clause may replace Clause 21.—Travelling to the Hospital Salaried Officers Award No. 39 of 1968

(2) Subject to clauses (3), an employee who is required to travel on official business outside of the Eastern Wheatbelt Health Service district will be reimbursed for reasonable accommodation, meals and incidental expenses based on actual reasonable costs incurred as demonstrated by the production of receipts, provided that reasonable payment will be made for incidental expenses for which receipts are not available and that the maximum amount payable will not be greater than the amounts allowed for accommodation, incidental expenses and meal allowances, as the case may be, in the relevant area as set out in Clause 24A of the Award.

(3) The provisions of this clause do not apply to an employee who is relieving or who has been temporarily transferred to a position for a period exceeding five (5) working days.

28.—MOBILITY

(1) This clause will apply to all current and prospective employees of the Wyalkatchem-Koorda and Districts Hospital Board.

(2) The parties agree that it is no longer appropriate that staff be appointed exclusively to individual Hospital & Health Services. Pending any moves towards formal integration of Hospital Boards, employees are employed by their respective Board but, subject to this clause, may be mobile across the Wyalkatchem-Koorda and Districts Hospital Board.

(3) The parties also agree that in order for the Wyalkatchem-Koorda and Districts Hospital Board to provide appropriate levels of healthcare to consumers it is necessary to have a workforce which is mobile and that, managed properly, mobility has the potential to improve the employment security, career opportunity and development, and work life of employees.

(4) The parties agree that in giving effect to the mobility provisions of this clause, both the organisation's and the employee's needs are to be considered including;

- (a) ensuring that the careers of employees are not disadvantaged
- (b) consideration of family & carer responsibilities
- (c) availability of transport
- (d) matching skill level and professional suitability of any temporary job opportunity or permanent new position
- (e) availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position.
- (f) The classification level and relevant opportunity costs to the employee.

The parties acknowledge that the above considerations can only be properly assessed through consultation. Subject to the particular circumstances of individual employees, a greater degree of mobility may be expected in regard to higher classified employees.

(5) The parties agree that they will assist in the introduction of this initiative on the following basis—

(a) Temporary Transfer

Subject to agreement between the employer and employee, an employee may be transferred to another position within the Wyalkatchem-Koorda and Districts Hospital Board on a temporary basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the period of time is defined
- (iii) the transfer is at a comparable or higher classification level
- (iv) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee or at a higher level and within the competency of the employee.

(b) Permanent Transfer

Subject to agreement between the parties, an employee may be transferred to another position within the Wyalkatchem-Koorda and Districts Hospital Board on a permanent basis, provided that—

- (i) the employer and employee mutually agree the decision to transfer
- (ii) the transfer is at a comparable classification level
- (iii) the employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.

29.—SKILLS ACQUISITION, TRAINING AND EMPLOYEE DEVELOPMENT

(1) This clause is to be read in conjunction with Clause 28.—Mobility.

(2) The purpose of these clauses is to—

- (a) recognise that change is a constant factor within the work environment, that the workplace of tomorrow will not be the same workplace today, and that employees can be expected to work in several different types of job during their working life;
- (b) recognise that both employees and employers share obligations to ensure that the organisation and the employees are able to adapt to continuous change;
- (c) facilitate the creation of a mobile, skilled, efficient, effective and adaptable workforce;
- (d) facilitate the training and development of staff so that they are best able to meet the present and future needs of the Government Health Industry;
- (e) assist in ensuring that employers are able to attract, develop and retain the best possible staff;
- (f) facilitate the deployment of employees within the operations of the employer to best effect; while at

the same time respecting the individual needs, security, expectations and reasonable requirements of employees, and not imposing, either directly or indirectly, unnecessary or unreasonable costs on them.

(3) The parties agree that the provision of appropriate levels of health care is better able to be facilitated where the workforce is appropriately trained and skilled both for present needs and for reasonably expected future requirements including career development and opportunities within the Government Health Industry.

(4) It is agreed that skills acquisition, training and employee development;

- (a) not impose unreasonable difficulties, out of pocket expenses, or otherwise impact adversely on employees;
- (b) subject to the provisions of this clause, be as far as practicable, voluntary;

(5) Skills acquisition, training and employee development, administered in accordance with the standards and principles contained in this clause, within the Wyalkatchem-Koorda and Districts Hospital Board health service region will benefit employees through providing;

- (a) access to a greater variety of employment opportunities;
- (b) the opportunity to develop and acquire a wide range of skills, competencies and work experience;
- (c) expanded opportunity in terms of career development; and
- (d) improved employment security.

(6) Employees agree to be prepared to give reasonable consideration to any proposal in regard to their skills acquisition, training and development which meets the principles and requirements of this clause.

(7) The parties agree that in giving effect to the provisions of this clause, both the organisation's and employee's needs and reasonable expectations are to be considered including—

- (a) ensuring that the careers of employees are enhanced and that they are not disadvantaged;
- (b) consideration of the possible impact of any course study requirements, training, training schedule, employee development and or succession plan on family and carer responsibilities;
- (c) reimbursement of the employee for any reasonable costs incurred by the employee as a result of attendance at or participation in any training, course of study or development activities at the direction of the employer;
- (d) the skill level, aptitude, aspirations and suitability of the employee for the proposed skills acquisition, training or development program;
- (e) the relevance of any proposed skills acquisition, training or development program to the needs of the employer, and
- (f) that attendance by the employee does not unduly affect or inconvenience the operations of the employer.

The parties acknowledge the above and any other reasonable considerations can only be properly assessed through consultation between the employer, employee and, where appropriate, the union.

(8) For the purposes of this clause, an "approved course" or "approved training" is an accredited or industry recognised course of study, conference or workshop undertaken by the employee which in the employer's view;

- (a) is relevant to the business outcomes to be achieved by the employee
- (b) is relevant to the current and emerging business needs of the employer; and/or

(c) enhances the career development of the employee.

(9) The parties agree that they will assist in the introduction of this initiative on the following basis—

(10) Training and Short Courses

- (a) An employee may be required to attend a training course or short course directly related to their work during ordinary working hours.
- (b) Attendance at such courses shall be at no expense to the employee.
- (c) An employee shall not unreasonably refuse to participate in any course of study where the subject matter is relevant to the current or emerging business needs of the employer, provided the course of study is conducted in ordinary working hours and is paid in accordance with the terms of the Agreement.
- (d) The employer may grant leave with pay to participate in an approved short course or training course. The amount of leave may be up to 38 hours within a 12 month period.
- (e) Where attendance is paid for by the employer;
 - (i) The employee may be required to provide evidence to the employer of attendance and satisfactory progress with studies.
 - (ii) The employee may be required to report to other employees on the course or training or to impart the knowledge gained to other employees.
- (f) The employer may, where the short course or training is not an approved course or training, grant an employee leave to attend the short course or training during the employee's hours of duty and may require the employee to make up the hours or the employer may grant unpaid leave for such purpose.

(11) Multiskilling

- (a) Employees agree that they will assist in the introduction of this policy on the following basis;
 - (i) Job Rotation
 - (aa) Employer and Employee mutually negotiate the decisions.
 - (bb) The period of time for any job rotation cycle is defined.
 - (cc) Prior to commencement of a job rotation arrangement, agreement is reached regarding the employee's continuity of service, tenure of employment in their substantive position or placement, at the completion of the rotation.
 - (ii) Job Enlargement and Enrichment
 - (aa) Decisions are mutually agreed by employee and supervisor.
 - (bb) The purpose, progression and outcomes from the enlargement/enrichment process are clearly defined.
 - (cc) The period of time is defined, where possible.
 - (dd) The employee is formally notified of the agreed duties and these are commensurate with the substantive classification of the employee.
 - (ee) The employee is provided with adequate support and mentoring to ensure they have an adequate opportunity to learn and become expert in the new duties and responsibilities.
- (b) Any job specific training required will be provided by the Wyalkatchem-Koorda and Districts Hospital Board. A training programme will be developed to allow employees to gain a high level of understanding of the new position and will take into account the continuity of customer service and the career development of the employee.
- (c) While as far as practicable, participation in multi-skilling will be voluntary, where, subject to the considerations set out in this clause, the employee

unreasonably refuses a multi-skilling opportunity, the employer may direct the employee to undertake the placement.

For the purposes of this paragraph, "unreasonably" is defined as an employee who can be seen to be damaging their own employment by refusing to multi-skill, and/or the employer can demonstrate significant operational need for the employee to be multi-skilled.

(12) Staff Development Program

- (a) Wyalkatchem-Koorda and Districts Hospital Board will develop at an organisational level staff development programs.
- (b) The staff development program will be directed to meeting the current and future staffing needs of the Wyalkatchem-Koorda and Districts Hospital Board and will be based on the identified staffing needs and succession plans of the hospitals, health services, and health units, which make up the Wyalkatchem-Koorda and Districts Hospital Board area.
- (c) The staff development program(s);
 - (i) may be focused at the health service or Wyalkatchem-Koorda and Districts Hospital Board level as appropriate.
 - (ii) will involve staff who either nominate or are nominated to participate in the scheme, but whose participation shall be voluntary.
 - (iii) where, due to the number of nominations a quota is necessary selection for participation will be on merit.
 - (iv) will be focused on meeting the current and future staffing needs of the Health Service and Government Health Industry; and
 - (v) may be based either or both on the job training and formal training.
- (d) All reasonable expenses incurred by an employee arising out of participation in a staff development program will, subject to the presentation of adequate proof, be reimbursed by the employer.

(13) Formal Part-time or Full-time Post Secondary Study

The provisions of this clause shall not diminish the rights of employees who undertake formal post secondary study in an approved course.

(14) Notwithstanding, any provisions contained above in this clause, the employer can limit access to training and development courses based upon financial grounds.

(15) The Wyalkatchem-Koorda and Districts Hospital Board will review the application of skills acquisition, training and employee development programs during the life of this agreement. The parties agree to review the application of this clause as a result of that review.

30.—SALARY PACKAGING

This clause is an agreement entered into in accordance with Clause 44 Salary Packaging of the Award and shall be read in conjunction with that clause.

(1) At the request of an employee, an employer and employee may agree to enter into a salary packaging arrangement.

(2) Wyalkatchem-Koorda and Districts Hospital Board shall not require an employee to enter into a salary packaging arrangement, provided that this clause will not impinge on any additional employer provided benefits.

(3) The salary packaging arrangement entered into shall be by separate written agreement with the employer which sets out the terms and conditions of the arrangement provided that the terms of such agreement shall comply with the terms of this clause.

(4) Such agreement shall be formulated on the basis that, on balance, there shall be no material disadvantage of the employee concerned, and shall be cost neutral in relation to the total employment cost the employer.

(5) The salary packaging arrangement must comply with relevant taxation laws and the employer will not be liable for additional tax, penalties or other costs payable or which may become payable by the employee.

(6) An employee may elect to cancel any salary packaging arrangement by giving a minimum of four weeks notice.

(7) The employer may elect to cancel any salary packaging arrangement by giving minimum of four weeks notice if the employer incurs a liability to pay fringe benefits tax or any other tax in respect of the non-cash benefits provided, provided that the employer cannot retrospectively cancel any salary packaging arrangement.

(8) Notwithstanding subclauses (6) and (7) the employer and the employee may agree to forgo the notice period.

(9) The cancellation of salary packaging will not cancel or otherwise effect the operation of this Agreement.

(10) Any dispute arising from the operations of this clause will be dealt with in accordance with the relevant dispute settlement provisions."

31.—SALARIES

This clause replaces Schedule A—Minimum Salaries of the Hospital Salaried Officers Award No. 39 of 1968.

(1) Subject to the provision of Clause 9.—Salaries of the Award and to the provisions of this Clause the minimum annual salaries for employees bound by this Agreement are set in this Clause and shall apply from 16 November 1999 until the expiry of this Agreement.

(2) Minimum salaries as follows; for all callings other than those specified in subclause (3)

Levels	1997 EBA Rates	1999 EBA Rates 4% Increase with effect from 16/11/99	2000 EBA Rates 1.5% Increase effective from 1/1/2000	2000 EBA Rates 2% Increase effective from 1/7/2000	2001 EBA Rates 1.25% Increase effective from 1/1/2001 (subject to clause 10(4))
	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum
	\$	\$	\$	\$	\$
LEVEL 1					
under 17 years of age	\$12,237	\$12,726	\$12,917	\$13,176	\$13,340
17 years of age	\$14,289	\$14,861	\$15,083	\$15,385	\$15,577
18 years of age	\$16,680	\$17,347	\$17,607	\$17,960	\$18,184
19 years of age	\$19,306	\$20,078	\$20,379	\$20,787	\$21,047
20 years of age	\$21,681	\$22,548	\$22,886	\$23,344	\$23,636
1st year of full-time equivalent adult service	\$23,816	\$24,769	\$25,140	\$25,643	\$25,964
2nd year of full-time equivalent adult service	\$24,551	\$25,533	\$25,916	\$26,434	\$26,765
3rd year of full-time equivalent adult service	\$25,282	\$26,293	\$26,688	\$27,221	\$27,562
4th year of full-time equivalent adult service	\$26,011	\$27,051	\$27,457	\$28,006	\$28,356
LEVEL 2	\$26,742	\$27,812	\$28,229	\$28,793	\$29,153
	\$27,475	\$28,574	\$29,003	\$29,583	\$29,952
	\$28,317	\$29,450	\$29,891	\$30,489	\$30,870
	\$28,900	\$30,056	\$30,507	\$31,117	\$31,506
	\$29,760	\$30,950	\$31,415	\$32,043	\$32,443
LEVEL 3	\$30,777	\$32,008	\$32,488	\$33,138	\$33,552
	\$31,567	\$32,830	\$33,322	\$33,989	\$34,413
	\$32,399	\$33,695	\$34,200	\$34,884	\$35,320
	\$33,724	\$35,073	\$35,599	\$36,311	\$36,765
LEVEL 4	\$34,418	\$35,795	\$36,332	\$37,058	\$37,522
	\$35,459	\$36,877	\$37,431	\$38,179	\$38,656
	\$36,527	\$37,988	\$38,558	\$39,329	\$39,821
	\$38,047	\$39,569	\$40,162	\$40,966	\$41,478
LEVEL 5	\$38,838	\$40,392	\$40,997	\$41,817	\$42,340
	\$39,926	\$41,523	\$42,146	\$42,989	\$43,526
	\$41,045	\$42,687	\$43,327	\$44,194	\$44,746
	\$42,196	\$43,884	\$44,542	\$45,433	\$46,001
LEVEL 6	\$44,414	\$46,191	\$46,883	\$47,821	\$48,419
	\$46,060	\$47,902	\$48,621	\$49,593	\$50,213
	\$48,400	\$50,336	\$51,091	\$52,113	\$52,764
LEVEL 7	\$49,651	\$51,637	\$52,412	\$53,460	\$54,128
	\$51,237	\$53,286	\$54,086	\$55,167	\$55,857
	\$52,880	\$54,995	\$55,820	\$56,937	\$57,648
LEVEL 8	\$55,280	\$57,491	\$58,354	\$59,521	\$60,265
	\$57,248	\$59,538	\$60,431	\$61,640	\$62,410
LEVEL 9	\$60,226	\$62,635	\$63,575	\$64,846	\$65,657
	\$62,298	\$64,790	\$65,762	\$67,077	\$67,915
LEVEL 10	\$64,566	\$67,149	\$68,156	\$69,519	\$70,388
	\$68,214	\$70,943	\$72,007	\$73,447	\$74,365
LEVEL 11	\$71,128	\$73,973	\$75,083	\$76,584	\$77,542
	\$74,091	\$77,055	\$78,210	\$79,775	\$80,772
LEVEL 12	\$78,154	\$81,280	\$82,499	\$84,149	\$85,201
	\$80,899	\$84,135	\$85,397	\$87,105	\$88,194
	\$84,029	\$87,390	\$88,701	\$90,475	\$91,606
CLASS 1	\$88,764	\$92,315	\$93,699	\$95,573	\$96,768
CLASS 2	\$93,498	\$97,238	\$98,696	\$100,670	\$101,929
CLASS 3	\$98,231	\$102,160	\$103,693	\$105,766	\$107,089
CLASS 4	\$102,965	\$107,084	\$108,690	\$110,864	\$112,249

Levels	1997 EBA Rates	1999 EBA Rates 4% Increase with effect from 16/11/99	2000 EBA Rates 1.5% Increase effective from 1/1/2000	2000 EBA Rates 2% Increase effective from 1/7/2000	2001 EBA Rates 1.25% Increase effective from 1/1/2001 (subject to clause 10(4))
	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum
	\$	\$	\$	\$	\$
LEVEL 12	\$78,154	\$81,280	\$82,499	\$84,149	\$85,201
	\$80,899	\$84,135	\$85,397	\$87,105	\$88,194
	\$84,029	\$87,390	\$88,701	\$90,475	\$91,606
CLASS 1	\$88,764	\$92,315	\$93,699	\$95,573	\$96,768
CLASS 2	\$93,498	\$97,238	\$98,696	\$100,670	\$101,929
CLASS 3	\$98,231	\$102,160	\$103,693	\$105,766	\$107,089
CLASS 4	\$102,965	\$107,084	\$108,690	\$110,864	\$112,249

- (a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.
- (b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

For the purposes of this subclause 'Medical Typist' and 'Medical Secretary' shall mean those workers classified on a classification equivalent to Level 1, 2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(3) Minimum salaries for Specified Callings and Other Professionals are detailed as follows;

- (a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the HSOA and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist, Physicist, Pharmacist, Clinical Psychologist, Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, Orthotist, Certified Clinical Perfusionist, or any other professional calling as agreed between the HSOA and employers, shall be entitled to Annual Salaries as follows—

Levels	1997 EBA Rates	1999 EBA Rates 4% Increase with effect from 16/11/99	2000 EBA Rates 1.5% Increase effective from 1/1/2000	2000 EBA Rates 2% Increase effective from 1/7/2000	2001 EBA Rates 1.25% Increase effective from 1/1/2001 (subject to clause 10(4))
	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum	Salary P/Annum
	\$	\$	\$	\$	\$
LEVEL 3/5	\$30,777	\$32,008	\$32,488	\$33,138	\$33,552
	\$32,399	\$33,695	\$34,200	\$34,884	\$35,320
	\$34,418	\$35,795	\$36,332	\$37,058	\$37,522
	\$36,527	\$37,988	\$38,558	\$39,329	\$39,821
	\$39,926	\$41,523	\$42,146	\$42,989	\$43,526
	\$42,196	\$43,884	\$44,542	\$45,433	\$46,001
LEVEL 6	\$44,414	\$46,191	\$46,883	\$47,821	\$48,419
	\$46,060	\$47,902	\$48,621	\$49,593	\$50,213
	\$48,400	\$50,336	\$51,091	\$52,113	\$52,764
LEVEL 7	\$49,651	\$51,637	\$52,412	\$53,460	\$54,128
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CLASS 2	\$93,498	\$97,238	\$98,696	\$100,670	\$101,929
CLASS 3	\$98,231	\$102,160	\$103,693	\$105,766	\$107,089
CLASS 4	\$102,965	\$107,084	\$108,690	\$110,864	\$112,249

(b) Subject to paragraph (d) of this sub clause, on appointment or promotion to the Level 3/5 under this sub clause—

- (i) Employees, who have completed an approved three-year academic tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four-year academic tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (iii) Employees, who have completed an approved Masters or PhD Degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

(c) The employer and the HSOA shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this sub clause and shall maintain a manual setting out such qualifications.

(d) The employer in allocating levels pursuant to paragraph (b) of this sub clause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to employees in the callings detailed below—

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an “experienced engineer” as defined.

For the purposes of this paragraph “experienced engineer” shall mean—

- (a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of The Institution of Engineers, Australia, or who attains that status during service.
- (b) An engineer appointed to perform professional duties who is not a Corporate Member of the Institution of Engineers, Australia but who possesses a degree or diploma from a University, College, or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—
 - (i) having graduated in a four or five academic year course at a University or Institution recognised by the employer, has had four years experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or
 - (ii) not having a University degree but possessing a diploma recognised by the employer, has had five year’s experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

32.—REVIEW OF CORPORATE, SUPPORT AND ALLIED HEALTH SERVICES

The Hospital Salaried Officers Association acknowledges that during the life of this agreement the Wyalkatchem-Koorda and Districts Hospital Board may review the organisational structures, corporate and support services, and allied health services currently provided by individual hospital and health service sites. The review process may result in changes to services through a combination of rationalisation and centralisation of certain functions.

The Hospital Salaried Officers Association agrees to work constructively with the Wyalkatchem-Koorda and Districts Hospital Board during the course of the review process and the implementation of any change resulting from the review process.

This clause does not override Clause 40—Introduction of Change contained in the award.

33.—ESTABLISHMENT OF COMPETENCIES FOR LEVELS 1 & 2

(1) The Wyalkatchem-Koorda and Districts Hospital Board agrees to investigate the potential for the progressive introduction and implementation of competency based job descriptions for Levels 1 and 2 employees.

(2) As a first step, the parties agree that they will review the outcomes of the processes set out under clause 33 of the Hospital Salaried Officers Wyalkatchem-Koorda and Districts Hospital Board Enterprise Agreement 1999.

34.—REVIEW OF SICK LEAVE MANAGEMENT

The parties agree to review and report on alternative approaches to the management of sick leave. In conducting the review, the parties will identify the options for the introduction of sick leave management system/s which provide improved sick leave payment protection for employees who are genuinely ill whilst also targeting instances of sick leave abuse. Any alternative system introduced must be cost neutral to the employer, and must not diminish the overall sick leave entitlement.

35.—RURAL RECRUITMENT AND RETENTION ISSUES

(1) Recruitment and attraction of suitably qualified and/or experienced employees, particularly Allied Health professionals, is an issue for Rural Health Services. This issue has a significant impact on service cost; quality; efficiency; effectiveness; flexibility; and patient care, as does their resolution.

(2) The parties agree to investigate ways of removing obstacles to the recruitment and attraction of suitably qualified and/or experienced employees.

(3) As a first step to addressing these matters the parties agree to consider—

- The appropriateness and flexibility of the current classification system
- Training and professional development opportunities
- Support systems and mentoring
- Career paths
- Accommodation
- Incentive schemes
- Flexible leave arrangements
- Work practices and arrangement

(4) To address these issues, the parties agree that the Health Service—

- (i) may participate on an industry working party established to, *inter alia*, make recommendations aimed at improving recruitment and retention of employees, or
- (ii) establish a working party with employer and employee representatives to consider the recommendations of the industry working party and their relevance to the Wyalkatchem-Koorda and Districts Hospital Board, and or
- (iii) establish a working party with employer and employee representatives to make recommendations aimed at improving recruitment and retention of employees .

(5) The recommendations of the industry working party and / or the Wyalkatchem-Koorda and Districts Hospital Board working party shall be made available to the HSOA by 30 September 2000. Prior to the implementation of any of the recommendations, the employer shall consult with employees and the HSOA.

(6) The implementation of Recruitment and Retention strategies shall be in accordance with Clause 40 – Introduction of Change of the Hospital Salaried Officers Award No. 39 of 1968.

rata leave except as currently specified in the Award clause.

- (6) There will be additional changes as the details of the consolidation are finalised.

3. The agreement for Consolidation and Amendment of the Hospital Salaried Officers Award No.39 of 1968 is a package agreement.

—————

**PROK GROUP ENTERPRISE BARGAINING
INDUSTRIAL AGREEMENT 1999.
No. AG 221 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

Prok Group Ltd.

AG 221 of 1999.

Prok Group Enterprise Bargaining
Industrial Agreement 1999.

COMMISSIONER S J KENNER.

29 March 2000.

Order.

Having heard Mr D Hicks on behalf of the applicant and Mr P Robertson 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 Prok Group Enterprise Bargaining Industrial Agreement 1999 filed in the Commission on 9 December 1999 be and is hereby registered as an industrial agreement.
- (2) THAT Prok Group Enterprise Bargaining Industrial Agreement 1998 No AG 40 of 1998 be and is hereby cancelled.

(Sgd.) S. J. KENNER,
Commissioner.

[L.S.]

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TITLE

This Agreement shall be known as the PROK GROUP ENTERPRISE BARGAINING INDUSTRIAL AGREEMENT 1999 replacing the PROK Group Enterprise Bargaining Industrial Agreement 1998 AG 40 of 1998.

ARRANGEMENT

Title and Arrangement
Area and Parties Bound
Application
Term
Parent Award
Background
Work Teams
Maintenance
Quality
Occupational Health and Safety
Flexibility
Reclassification
Remuneration
Gain-sharing
Casual and Contract Labour
Redundancies
Register of Terminated Employees
Income Protection
Contractual Entitlements
Consultative Mechanism
Employee Relations
Review of Agreement
Signature of Parties

AREA AND PARTIES BOUND

(a) This Agreement shall apply to the operation of PROK Group Limited at its Bayswater manufacturing facility located at 285 Collier Road Bayswater Western Australia 6053.

(b) The Parties to this Agreement shall be—

- (i) PROK Group Limited (the company);
- (ii) Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers' (WA Branch) (the Union).

APPLICATION

The terms of this Agreement shall be binding upon the company, the union and the employees (totalling approximately ninety-eight (98) as at the end of the September 1999), of the company whose terms of employment are covered by the parent award.

TERM

The term of this Agreement shall be for a period of twelve (12) months from 1st October 1999 to 30th September 2000.

The subsequent Agreement will be negotiated between the parties for a further term maturing 30th June 2001.

PARENT AWARD

(a) The parent award to this Agreement shall be the Metal Trades (General) Award Number 13 of 1966.

(b) Where there is any inconsistency between the parent award and this Agreement, the provisions of this Agreement shall prevail to that inconsistency. All matters relating to award interpretation refer to the award as it stands at 1st November 1999

BACKGROUND

Due to the nature of the business and market the company operates in, it is essential that the company is able to maintain and improve market share by being able to be in a position of absolute low cost manufacture. To meet this objective, a series of Key Performance Indicators (KPI's) have been identified to help drive the business in the right direction.

The two (2) cornerstones of the Agreement are—

1. For the company to become the most cost effective manufacturing facility within Australia through the continuous achievement of—
 - i. Standard versus paid productivity rates in excess of 85%;
 - ii. An on-time delivery accuracy target of 85%;
 - iii. Manufacturing cycle times of three (3) weeks or less;
 - iv. Raw material waste of less than 5%.
2. For the company to become the safest benchmarked manufacturing facility within Australia. The emphasis on this program is to ensure that the quality of life is improved and all employees at the company contribute towards the process.

WORK TEAMS

The parties are fully committed to the continued implementation of cellular workteams in all sections of the manufacturing facility. This commitment will be reflected in the following work ethics—

- The adoption of a formalised agenda, established goals and objectives and an acceptable code of conduct at all work-team meetings;
- All employees to be more actively involved in problem-solving and decision making in relation to daily work;
- Weekly work-team meetings to provide the forum for the exchange of ideas, information and the enhancement of co-operation within the work-team and with other work-teams;
- Work-teams actively develop and implement visual performance measures, based on the KPI's outlined in this document;
- An agreed document "PROK Manufacturing Team Structure" has been developed, and is to be implemented, without prejudice on signature of agreement;

- To take staggered tea and meal breaks as required to enable continuous production.

MAINTENANCE

The company and employees commit to the ongoing development, and participation of preventative maintenance practices, culture and system of work aimed primarily at increased machine availability. The measures that have been identified to achieve this are—

- Maintenance analysis and measurement.
- Benchmarking of other similar plants.
- Development of a maintenance management system.
- Implementation of a preventative maintenance system.
- Identify and manage areas of process viability.
- Ensure planning, communication and information sharing in regards to maintenance activities.
- Ensure more preventative maintenance focus in daily production meetings.
- Link maintenance with KPI'S.
- Manufacturing personnel to carry out and participate in, inspection, lubrication and greasing of machinery to support the maintenance focus.

To attain the desired objectives, it is recognised that involvement and input is imperative from the teams and employees when carrying out not only planned maintenance but also reactive maintenance.

QUALITY

To remain a viable and low cost manufacturer it is also essential not to lose focus on the quality of the process and product that is manufactured at Prok. The following issues have been identified as critical in maintaining current quality standards and establishing a mechanism for continuous improvements in this area—

- Compliance to the procedure established in the management system which is covered within the Certification of Company to ISO 9001.
- Continuous feedback on customer issues.
- Reports on quality issues at daily production meetings.
- Review of plant layouts and work designs with a view to eliminate error and waste.
- Improved utilisation of quality tools such as Statistical Process Control techniques and other problem solving techniques including Pareto Charts, Fishbone Charts, Team Brainstorming and other techniques which are found to be appropriate.
- All employees commit to the development, establishment and implementation and improvement of standard operating procedures in all areas of the process and plant.

OCCUPATIONAL HEALTH AND SAFETY

The parties are totally committed towards achieving the successful implementation of all phases of the Worksafe WA Safety Program initiative, culminating with accreditation to Silver Status.

The Health and Safety Committee will continue to develop strategies and implement agreed initiatives that will achieve the desired Key Performance Indicators (KPI's) that are set out below—

- LTI severity rates below 69 (number of hours lost per million hours worked).
- LTI frequency rates below 29 (number of lost time incidents per million man hours worked).
- Absenteeism rates below 2% (number of hours absent/total of hours worked).
- Working towards the successful implementation of Worksafe WA.
- Successful programme of risk analysis of machinery within PROK plant.
- Hazard close-out rate of 90% within four (4) weeks;

- During the course of this Agreement the parties agree and commit to the full establishment of non-smoking premises. The company commits to assist any employee who wishes to participate in a Quit Program. The cost of nicotine patches will be reimbursed to employees who successfully quit smoking during the term of this agreement.
- All employees commit to the involvement and participation of a vigorous house-keeping program, endorsed by the OHS Committee, with the aim being to have a plant, which all employees can be proud of.

FLEXIBILITY

It is recognised that certain machines and process areas of the plant are critical to productivity and improved output and that continued production is required to support the aim of the organisation to maximise output and improve productivity. It is also recognised that both the fork-lift and overhead crane are a part of the normal duties of all employees at PROK, and to permit flexibility, will be used by all employees.

Work performance assessments will also be undertaken with employee's during the course of the agreement which will include quality and quantity of output, preparedness to change and work flexibility, communication and teamwork with other employees, general conduct, attendance and punctuality.

RECLASSIFICATION

It is recognised that during the course of continued employment, employees enhance their skill levels. To complement career prospects at PROK, employees will be given access to a Reclassification exercise.

The reclassification will be governed by the parameters set out in the Metal Trades General Award, Clause 5(3). The reassessment and reclassification of the employee/s' skill levels must be unanimously agreed upon and approved by all the following—

- the Manufacturing Manager
- the related Coach
- a Union delegate
- a related Tradesperson

In the absence of agreement on the reclassification in a particular instance, the parties agree to consult an independent Workplace Assessor whose decision will be final.

REMUNERATION

A 2% base rate increase will be applied to all PROK employees in the first pay period commencing 3rd January 2000.

GAIN-SHARING

Identification Key Performance Indicators (KPI's) are continuing and will be discussed and developed further with the Consultative Committee.

Issues being pursued include a percentage of over-absorption.

Upon agreement, the KPI's will be implemented during the term of this agreement.

CASUAL AND CONTRACT LABOUR

The parties to this agreement confirm their commitment to permanent employment.

Casual and/or contract labour will only be engaged if existing employees do not have the appropriate skills for a particular task or to get through a production peak, where it is not possible to overcome the production peak or bottleneck by rotating or utilising existing employees from other production areas of the factory.

Casual/Contract employees will be engaged for an initial period not exceeding twelve consecutive weeks. After this twelve-week period, if the employee is still required, he or she will be engaged for a further twelve-week period under the same terms and conditions. In the event the particular individual is still required beyond the twenty four week period, arrangements will be made to employ the individual on a permanent basis.

It is further agreed that in the event the ratio of Casual/Contract employees to permanent employees is to exceed twenty

(20) percent, such increase will not be implemented without prior consultation with the Consultative Committee.

REDUNDANCIES

Both parties agree that at least one week's notice will be provided for any impending redundancies.

In addition to the redundancy provisions as contained in the parent award, the following will be awarded.

A maximum of Eight (8) week's sick leave entitlement or unused sick leave entitlement, whichever is the lesser.

Such provisions will apply to employees with a minimum of one (1) completed year's service only.

Any redundancies that are to be implemented during the period of this agreement will be by section basis, in order to maximise productivity of retained employees. The Company will initially call for Voluntary Redundancies, however it is under no obligation to accept each or any of the nominee/s who advise they are willing to take a voluntary redundancy. The Company will provide employees concerned and the union with written information concerning the proposed redundancies, including the reasons for the redundancy, number of and section of employee's affected, future base employee size in that section and the period of time over which the redundancies will take place.

Both parties agree to explore and discuss alternatives to redundancy, such as, but not restricted to—

- Taking extended unpaid leave
- Using accrued annual leave
- Transfer to another position in another section of the factory, on a permanent basis, if available, at the appropriate ordinary shop rate.

NB all entitlements prior to the change in position will remain at the applicable rate prior to the change in position.

- Job sharing

Fair and objective selection criteria will be used on deciding which employees will be redundant from a section. These will include a match of knowledge, skills and ability to current and future jobs, versatility and flexibility of skills, potential to acquire future skills and length of service.

REGISTER OF TERMINATED EMPLOYEES

All employees terminated as a result of redundancies, will be placed on a register. This register will be referred to in the event of future vacancies occurring, and the individuals with the relevant skills will be offered the position, should they be available.

INCOME PROTECTION

The Company will continue to subscribe to an approved Income Protection Insurance scheme on the basis of current arrangements for all employees governed by this agreement.

Any savings derived in the variance in premiums for similar cover between the existing scheme (previously administered by ACTU Insurance Broking Pty Ltd and now by Heathbroking Company) and the intended insurer, will be contributed to each employee's superannuation fund.

Such contribution will continue, but limited to the variance, for as long as there exists a variance between the premiums in the aforementioned covers.

CONTRACTUAL ENTITLEMENTS

The Company gives an undertaking to guarantee payment of all employee-related contractual benefits. The Company will also comply with legislative changes, as and when they occur, requiring a third party to administer employee-related contractual benefits.

CONSULTATIVE MECHANISM

The Consultative Mechanism is vested with the Joint Consultative Committee. All issues, initiatives, agreed positions and general matters pertaining to the Terms and Conditions of this Enterprise Bargaining Agreement will be negotiated and monitored by the Joint Consultative Committee in office.

The Committee will comprise of one (1) individual from each section.

EMPLOYEE RELATIONS PRACTICE

(a) Principles

- i. The parties accept and acknowledge each others structures and responsibilities which exist with the company.
- ii. Parties commit to creating a safer and more competitive company in an international market place.
- iii. The parties will promote the development of trust and motivation within the company.
- iv. Honesty, mutual respect and a business-like behaviour will prevail at all times. Issues are to be resolved through consultation and communication.
- v. Every employee will be treated fairly and equitably in an environment that fosters communication, involvement and teamwork.
- vi. Counselling and discipline procedures will be followed by both parties, as outlined below.

(b) 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 another employee, Shop Steward or Union official.

i. First Warning

Informal verbal discussion will occur between the employee and the immediate Supervisor/Coach. The Supervisor/Coach may keep a personal diary note.

ii. Second Warning

If the employee's behaviour or performance does not improve, then further counselling and a formal verbal warning will be given.

iii. Third Warning

- iv. If the employee's behaviour or performance still remains unacceptable, his or her manager will counsel the employee and a formal written warning will be issued to the employee.

The written warning will clearly state the unacceptable conduct and define what is required by the employee to remedy the problem.

v. Fourth Warning

If the employee's performance/behaviour is still unacceptable, the employee will be counselled further and issued with a final written warning.

The written warning will state clearly that if the employee's performance/behaviour and conduct does not improve, then demotion or termination may occur.

- vi. Warnings will remain in force for a six month duration.

vii. Dismissal

For continued unacceptable performance/behaviour, the employee will be terminated or demoted.

viii. Resignation/Termination

Nothing in this procedure precludes an employee from resigning in preference to termination of employment or demotion.

ix. Company Discretion

This procedure does not affect the employer's right to terminate an employee's services without notice for conduct that justifies instant dismissal, including malingering, inefficiency, neglect of duty or theft.

- x. Nothing in this procedure precludes the implementation of the Disputes Settlement Procedure (Clause 34 Metal Trades (General) Award).

(c) Dispute Settlement Procedure

- i. The parties agree that open communication is fundamental to sound employee relations. The disputes procedure has been agreed by the parties to enable potential disputes to be resolved amicably, without loss of wages or production. It is the desire of the parties to make strikes unnecessary and to limit stop work meetings.

In the interest of sound employee relations, the most effective way to resolve problems including questions, disputes or difficulties arising under this agreement, is to communicate and seek solutions at the level at which problems occur.

- ii. It is agreed that no industrial action will occur until the following procedure has been followed in all stages—

The status quo will be maintained whilst the procedure is being followed—

- iii. Stage 1

Employee/s will discuss the question, dispute or difficulties with their supervisor who will attempt to resolve the issue/s expeditiously and within a mutually agreed time frame.

Stage 2

If the matter is not resolved, the supervisor or employee/s will refer it to their manager who will endeavour to resolve the matter expeditiously in an agreed time frame.

Stage 3

If the matter still remains unresolved then either party will refer the matter to the Managing Director who will endeavour to resolve the issue expeditiously and in an agreed time frame.

Stage 4

At the conclusion of Stage 3, if the matter still remains unresolved, then either party may refer the matter to the Western Australian Industrial Relations Commission for resolution or determination.

At any or all stages of the above procedure, the employee/s may request the assistance of a fellow employee, Shop Steward or full time Union Official to represent them.

REVIEW OF AGREEMENT

The parties will review the contents of this Agreement three (3) months prior to the cessation of this Agreement. Such a review is expected to result in a renegotiation, renewal or replacement of this Agreement.

It is further agreed between the Parties that no additional claims will be made during the term of this Agreement.

SIGNATURE OF THE PARTIES

Signed for and on behalf of

PROK GROUP LIMITED

Signature—

ASKO KANKAANPAA

Name

MANAGING DIRECTOR

Position

Signed for and on behalf of Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers' (Western Australia Branch) (the union).

Seal of the Union

JOHN SHARP-COLLETT

Name

STATE SECRETARY

Position

**R.A.C. (WA) REDUNDANCY AGREEMENT.
No. AG 164 of 1999.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers
Western Australian Branch

and

Royal Automobile Club of WA (Incorporated).

No. AG 164 of 1999.

R.A.C. (WA) Redundancy Agreement.

COMMISSIONER J F GREGOR.

20 March 2000.

Order.

HAVING heard Mr G Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch and Mr K Chilvers on behalf of the Royal Automobile Club of WA (Incorporated), and by consent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT the R.A.C. (WA) Redundancy Agreement be registered in terms of the following schedule as an industrial agreement and replace the RAC (WA) Redundancy Agreement AG 263 of 1997 which is hereby cancelled.

(Sgd.) J. F. GREGOR,

Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the R.A.C. (WA) Redundancy Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties Bound
4. Term of Agreement
5. Definitions
6. Avoiding Retrenchment/Alternative Employment
7. Notice of Redundancy/Retrenchment
8. Severance Payments
9. Selection Criteria
10. Counselling
11. Employee Leaving During Notice
12. Time Off During Notice Period
13. Notice to Employment Agencies Signatories to Agreement

3.—PARTIES BOUND

This Agreement shall be binding upon—

The Royal Automobile Club of W.A (Incorporated) (RAC)

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch ("AMWU") and an estimated 200 employees of the Company who are engaged in mechanical, technical or ancillary services at the R.A.C. of W.A. (Inc.) who are, or eligible to be, members of the Union party to this Agreement.

4.—TERM OF AGREEMENT

This Agreement shall operate from the date of its registration in the Western Australian Industrial Relations Commission until 31st December, 2000 and continue in operation after that time until replaced or either party withdraws from the Agreement. The dispute settlement procedure shall be that contained in Clause 20 Avoidance of Industrial Disputes in the R.A.C. Road Service Employee and Mechanical Services Award 1993.

5.—DEFINITIONS

- (1) "Redundancy" means an employment situation arising—
- (a) Where the work available for an employee is expected to cease as a consequence of—
- (i) the application of technological change;
 - (ii) rationalisation of the R.A.C.'s existing operations;
 - (iii) re-organisation, restructuring or merger of the R.A.C.;
 - (iv) the requirement by the R.A.C. for employees to carry out work of a particular kind having ceased;
 - (v) the R.A.C. ceasing, modifying or intending to cease or modify any of its business.

OR

- (aa) Due to other circumstances where the R.A.C. decides to dispense with an employee's services other than in the normal course of business, with the exception of—
- (bb) not including a situation where, as a consequence of a transfer of business by the R.A.C. of WA (Inc.) to another company, an employee has accepted a contract of employment on substantially the same terms as the existing contract providing continuity of service for determination of future entitlements.

(2) "Retrenchment" means the termination of employment by the R.A.C. of an employee whose services have become redundant.

(3) "Weekly Earnings" means the base rate of pay arising out of enterprise agreements, together with such regular allowances that have been paid to particular employees.

(4) The "employer" means the R.A.C. of W.A (Incorporated) (RAC).

6.—AVOIDING RETRENCHMENT/ALTERNATIVE EMPLOYMENT

(1) The R.A.C. recognises that retrenchment of an employee is the last resort after all alternative avenues of employment have been exhausted.

(2) The R.A.C. will use its best endeavours to find suitable alternative employment within the R.A.C. for an employee whose job has become redundant.

(3) An employee whose job has become redundant may be offered alternative employment in employment utilising the employee's existing skills and at the employee's current level of remuneration, and agree to undergo a two month trial to determine suitability for the position.

(4) Should there be any dispute in relation to the new position the matter shall be dealt with in accordance with the dispute settling procedures in the relevant Award or registered Agreement that may be applicable during the term of this Agreement.

(5) Nothing in this Agreement shall be construed to mean that the R.A.C. may not terminate a person's employment in the normal course of business, or for misconduct, neglect of duty, inefficiency or malingering without being required to pay the employee as set out in this Agreement.

7.—NOTICE OF REDUNDANCY/RETRENCHMENT

(1) As soon as a decision is made in regard to redundancies, the R.A.C. shall advise affected employees and the Union party to this Agreement the anticipated date on which formal notice of redundancy is to be given.

(2) Period of Notice—

An employee shall be given eight weeks' notice of termination, or payment or part payment in lieu of such notice.

8.—SEVERANCE PAYMENTS

Retrenched employees shall receive severance payments as follows.

- (1) Redundancy Payments—
Three weeks, wages based on weekly earnings, per completed year of service, plus pro rata payment for each part year of service.
- (2) Long Service Leave—
Payment of pro rata long service leave to be made after five years of service.
- (3) R.D.O's—
Payment shall be made for any accumulated Rostered Days Off and any outstanding entitlements.
- (4) The maximum payment received for items (1) and (2) above and any payment in lieu of notice under clause (7) shall not exceed 75 weeks.

9.—SELECTION CRITERIA

(1) The R.A.C. shall determine in accordance with paragraph (2) of this clause which positions are to become redundant, based on circumstances applying at the time.

(2) The R.A.C. shall consult through the Joint Consultative Committee the criteria to apply to determine which positions are to become redundant.

(3) Should any employee consider he/she has been unfairly treated in the selection process, such employee may use the dispute resolution procedure to resolve the matter.

10.—COUNSELLING

The R.A.C. shall provide, without cost to employees, suitable outplacement counselling to those wishing to avail themselves of such services.

11.—EMPLOYEE LEAVING DURING NOTICE

(1) An employee whose employment is to be terminated for reasons set out herein may by agreement terminate his/her employment during the period of notice and in such a case shall be entitled to the same benefits and payments as if he/she remained with the R.A.C. until expiry of the notice.

(2) In circumstances outlined in subclause (1) hereof, the employee shall not be entitled to payment in lieu of notice.

12.—TIME OFF DURING NOTICE PERIOD

(1) During the period of notice of termination the employee concerned shall, for the purpose of seeking other employment, be entitled to be absent from work during each week of notice, to a maximum of eight ordinary hours, without deduction of pay.

(2) (a) If an employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, he/she shall, at the request of R.A.C., be required to provide proof of attendance at an interview or the employee shall not receive payment for time absent.

(b) For the purposes of paragraph (a) hereof, a statutory declaration will be sufficient.

13.—NOTICE TO COMMONWEALTH EMPLOYMENT SERVICE OR OTHER RELEVANT GOVERNMENT NOMINATED AGENCY

When a decision has been made for redundancies to occur, the R.A.C. shall, as soon as possible, provide the relevant authority with all necessary information, including the number and categories of employees who will be affected and the period during which the terminations are to be carried out.

SIGNATORIES

For and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Signed

John Sharp-Collett *Common Seal*

Date: 28/09/99

For and on behalf of the Royal Automobile Club of W.A. (Incorporated)

Mr K Chilvers

Date: 21st Sept 1999

**TAMBELLUP HOSPITAL BOARD ENROLLED
NURSES AND NURSING ASSISTANTS ENTERPRISE
AGREEMENT 1999.
No. AG 73 of 2000.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tambellup Hospital Board

and

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Western Australian Branch.

No. AG 73 of 2000.

Tambellup Hospital Board Enrolled Nurses and Nursing
Assistants Enterprise Agreement 1999.

20 March 2000.

Order.

HAVING heard Ms L.H. Coleman and Ms M. Kaempf as
agents on behalf of the Applicant and Ms S.M. Jackson as
agent on behalf of the Respondent, the Commission, pursuant
to the powers conferred on it under the Industrial Relations
Act, 1979, hereby orders—

THAT the application be and is hereby dismissed.

[L.S.] (Sgd.) G.L. FIELDING,
Senior Commissioner.

**TROY DEVELOPMENT CORPORATION PTY LTD T/
A MASTERFLOORS/BLPPU AND THE CMETU
COLLECTIVE AGREEMENT 1999.
AG 225 of 1999.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters
and Plasterers Union of Workers & Other

and

Troy Development Corporation Pty Ltd
t/a Masterfloors.

AG 225 of 1999.

Troy Development Corporation Pty Ltd t/a Masterfloors/
BLPPU and the CMETU Collective Agreement 1999

COMMISSIONER S.J. KENNER.

29 March 2000.

Order.

HAVING heard Ms L Dowden 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—

(1) THAT the Troy Development Corporation Pty Ltd t/
a Masterfloors/BLPPU and the CMETU Collective
Agreement 1999 filed in the Commission on 14
December 1999 be and is hereby registered as an
industrial agreement.

(2) THAT the Masterfloors Industrial Agreement No AG
125 of 1998 be and is hereby cancelled.

[L.S.] (Sgd.) S.J. KENNER,
Commissioner.

1.—TITLE

This agreement shall be known as the *Troy Development
Corporation Pty Ltd trading as Masterfloors/BLPPU and the
CMETU Collective Agreement 1999.*

2.—ARRANGEMENT

	CLAUSE NO.
Title	1
Arrangement	2
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Drug & Alcohol, Safety & Rehabilitation Program	20
Clothing & Safety Footwear	21
Income Protection	22
Accident Pay	23
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Signatories to the Agreement	26
Appendix A – Drug & Alcohol, Safety and Rehabilitation	
Appendix B – Site Allowance	

3.—PARTIES AND PERSONS BOUND

This agreement shall be binding on *Troy Development
Corporation Pty Ltd trading as Masterfloors* (hereinafter re-
ferred to as “the company”), the Western Australian Builders’
Labourers, Painters and Plasterers Union of Workers and the
Construction Mining Energy Timberyards Sawmills and
Woodworkers Union of Australia – WA Branch (hereinafter
referred to as “the unions”) and all employees of the company
eligible to be members of the unions.

4.—APPLICATION

This agreement shall apply to all employees of the com-
pany engaged on work in or in connection with construction,
alteration, maintenance, repair or demolition work.

This agreement shall apply in Western Australia only. There
are approximately ten (10) employees covered by this agree-
ment.

5.—RELATIONSHIP TO PARENT AWARD

1. This agreement is supplementary to, and shall be read
and interpreted wholly in conjunction with, the Building Trades
(Construction) Award 1987, Award No. R14 of 1978 (herein-
after referred to as “the award”).

2. In the event of any inconsistency between the award and
an express provision of this agreement, the terms of this agree-
ment shall prevail to the extent of such inconsistency, unless
the express provision of the agreement provides otherwise.

6.—PERIOD OF OPERATION

This agreement shall come into force from the first pay pe-
riod commencing on or after November 1st 1999 and shall
remain in force until the 1st of November, 2002.

7.—CLASSIFICATION STRUCTURE & RATES OF PAY

1. All employees working under this agreement shall be paid
according to the wage rates set out below.

2. Wage Rates (per hour at ordinary time)				
	Previous EBA Rate	1 November 1999	1 November 2000	1 November 2001
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
	\$	\$	\$	\$
Labourer Group 1	17.15	18.01	18.91	19.86
Labourer Group 2	16.56	17.39	18.26	19.17
Labourer Group 3	16.12	16.93	17.78	18.67
Plaster, Fixer	17.82	18.71	19.65	20.63
Painter, Glazier	17.42	18.29	19.20	20.16
Signwriter	17.80	18.69	19.62	20.63
Carpenter/Roofers	17.93	18.85	19.79	20.78
Bricklayer	17.75	18.63	19.61	20.59
Refractory Bricklayer	20.38	21.40	22.47	25.59
Stonemason	17.93	18.82	19.76	20.75
Rooftiler	17.62	18.50	19.43	20.40
Marker/Setter Out	18.46	19.38	20.35	21.37
Special Class T	18.69	19.62	20.61	21.64

APPRENTICE RATES

	Previous EBA Rate	1 November 1999	1 November 2000	1 November 2001
	Hourly Rate	Hourly Rate	Hourly Rate	Hourly Rate
	\$	\$	\$	\$
Plasterer, Fixer				
Year 1	7.48	7.86	8.25	8.66
Year 2 (1/3)	9.81	10.29	10.81	11.35
Year 3 (2/3)	13.37	14.03	14.74	15.47
Year 4 (3/3)	15.69	16.46	17.29	18.15
Painter, Glazier				
Year 1 (.5/3.5)	7.32	7.68	8.06	8.47
Year 2 (1/3), (1.5/3.5)	9.58	10.06	10.56	11.09
Year 3 (2/3), (2.5/3.5)	13.06	13.72	14.40	15.12
Year 4 (3/3), (3.5/3.5)	15.33	16.10	16.90	17.74
Signwriter				
Year 1 (.5/3.5)	7.48	7.85	8.24	8.66
Year 2 (1/3, 1.5/3.5)	9.78	10.28	10.79	11.35
Year 3 (2/3, 2.5/3.5)	13.35	14.02	14.72	15.47
Year 4 (3/3, 3.5/3.5)	15.66	16.45	17.27	18.15
Carpenter/Roofers				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Bricklayer				
Year 1	7.46	7.82	8.24	8.65
Year 2 (1/3)	9.76	10.25	10.79	11.32
Year 3 (2/3)	13.31	13.97	14.71	15.44
Year 4 (3/3)	15.62	16.39	17.26	18.12
Stonemason				
Year 1	7.54	7.92	8.31	8.73
Year 2 (1/3)	9.86	10.37	10.88	11.43
Year 3 (2/3)	13.45	14.14	14.84	15.59
Year 4 (3/3)	15.78	16.59	17.42	18.29
Rooftiler				
6 months	10.04	10.54	11.07	11.62
2nd 6 months	11.04	11.59	12.17	12.78
Year 2	12.90	13.55	14.23	14.94
Year 3	15.14	15.90	16.70	17.54

3. All expense related allowances not specifically mentioned in this agreement will be paid as per the award as varied from time to time.

4. Site allowances relating to particular sites shall be paid in accordance with Appendix B of this Agreement.

5. An additional payment will be made to compensate for the impact of the Goods and Services Tax on the Consumer Price Index. In the circumstance that the CPI limit below is exceeded the appropriate additional payment will be made to the wage rates. The CPI figure for the applicable dates will be the official figure released by the ABS for the preceding year.

Date	CPI Limit	Additional Payment
June 2001	5%	1% (paid 1/9/2001)
June 2001	6%	2% (paid 1/9/2001)
June 2002	5%	1% (paid 1/9/2002)
June 2002	6%	2% (paid 1/9/2002)

8.—INDUSTRY STANDARDS

Redundancy

In addition to the current payment, the company shall increase the contributions on behalf of each employee into the Western Australian Construction Industry Redundancy Fund by the following sums on a weekly basis—

Rate on signing	\$50
Rate as of 1/05/2001	\$60

Superannuation

(i) The Company will make a payment of \$60 per week per employee or the percentage rate that is prescribed under the Superannuation Guarantee Charge, 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.

9.—SICK LEAVE

For sick leave accrued after the date of signing this agreement the following will apply—

- The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination
- 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.
- Where the Company has signed a previous Agreement with the Union that also allowed for the conversion to cash payment on termination for accrued sick leave, that accrued sick leave will be treated as if is accrued under this agreement.
- Sick leave shall accrue, for the purposes of this clause, at the rate of one day at the beginning of each of the first ten calendar months of each year.

10.—NEGOTIATION OF A SUBSEQUENT AGREEMENT

The parties agree to commence negotiations for a new collective agreement to succeed this agreement at least 3 months before the nominal expiry date. The parties intend to

conclude these negotiations prior to the nominal expiry date. These negotiations shall be conducted on a collective basis between all of the parties with the negotiated outcome being subject to approval of a vote of the employees collectively.

11.—APPLICATION OF PROJECT AGREEMENTS

1. This agreement shall apply to all persons employed in the employer's business and every part thereof throughout Western Australia until **1st November 2002** except where the company commences work on a project where a site agreement to which the union is a party exists that provides for higher rates of pay and conditions.

2. The conditions contained in any such site agreement will take precedence over this agreement for the duration of the project.

12.—FARES AND TRAVELLING ALLOWANCE

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.

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 Company 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 16—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.—ALL IN PAYMENTS

1. All-in payments to employees will not be made. All-in payments are defined as an hourly rate or piece work rate which is meant to cover wages and all allowances, such as annual leave, sick leave, etc., on which tax is being paid using the Prescribed Payments System.

2. It is agreed that where a breach of this clause is discovered, the employer shall continue paying the "all-in" rate as the employees hourly rate, but shall pay all award and other entitlements on top of this amount, back-dated to the commencement of the all-in rate arrangement. The company shall not be entitled to offset any amount in excess of the ordinary hourly rate against any other entitlement in this agreement.

3. This clause shall not be applied to prevent the employer subletting specialised work outside of the normal scope of work which the employer performs. The union shall be notified when specialist sub-contractors are to be engaged.

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.—DISPUTE SETTLEMENT PROCEDURE

1. Disputes over any work related or industrial matter should be dealt with as close to its source as possible.

2. An employee or the union delegate should initially submit any work related grievance and/or industrial matter to the site foreperson, supervisor or other appropriate site representative of the company.

3. If the matter remains unresolved the union delegate may then submit the matter to the appropriate senior management person.

4. If still not resolved the delegate shall refer the matter to an appropriate official of the union, who shall discuss the matter with the nominated representative of the employer.

5. Whilst the above procedures are being followed work should continue as normal.

6. This procedure is to be followed in good faith and without unreasonable delay by any party.

7. Should the matter remain unresolved it shall be dealt with in one of the following ways as agreed to between the parties—

- referred to the Western Australian Industrial Relations Commission for conciliation and if required arbitration. The Commission's decision will be accepted by all parties subject to legal rights of appeal; or
- referred to a disputes board for determination; or
- referred to a private arbitrator agreed to between the parties, for determination.

8. This dispute settlement procedure does not apply to health and safety issues.

17.—SAFETY DISPUTE RESOLUTION

1. The parties to this agreement are committed to the safe operation of plant and equipment, to the observance of safe working practices, and the provision by the employer and correct use of all personal protective equipment. The company recognises its responsibilities to provide a safe and healthy workplace.

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 safety officer or workers' safety representative to be dealt with in accordance with the following procedures—

- (i) Where any employee becomes aware of an unsafe situation, that employee will immediately notify the company safety officer or the workers' safety representative.
- (ii) The company safety officer and the workers' safety representative will take immediate action to have the unsafe situation rectified.
- (iii) Should the company safety officer consider that no safety precautions are necessary, he/she will notify the workers' safety representative accordingly as soon as possible.
- (iv) While there is disagreement on the ruling of the company safety officer, the company safety officer will arrange for the immediate transfer of all employees from the disputed area.
- (v) Should the company safety officer be of the opinion that no action is necessary and the worker's safety representative disagrees, an appropriate inspector from Worksafe/Workcover will be requested to undertake an inspection of the disputed area for the purpose of resolving any such matter.
- (vi) If disagreement still exists the chief inspector or his/her nominee will be called in to assist in the resolution of the dispute.

- (vii) If no agreement can be reached between the parties the matter will be dealt with in accordance with the dispute resolution procedure of this agreement.
- (viii) 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.
- (ix) 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.

18.—AMENITIES

1. The parties agree that it is the responsibility of the company to ensure that the amenities prescribed by the Award are provided as a minimum. Where, however, that standard is not maintained due to an action or event beyond the control of the company, the union agrees that the company should be allowed reasonable time in which to rectify the problem. If the company acts promptly to rectify the problem, there should be no interruption to work from industrial stoppages, bans and limitations.

2. In all instances, the following procedure shall be observed—

3. A uniformly high standard of amenities and facilities such as ablution blocks, change rooms, crib sheds, etc. shall be provided.

4. All Sheds shall be weatherproof and soundly constructed to an approved standard with sufficient windows and doors, adequate ventilation and lighting. They must have a floor above ground level and be lined on ceilings and walls.

5. Mess Shed/s fitted with fly screens are provided for exclusive use of workers and not for the storage of employers' equipment, tools and materials.

6. Shed/s shall provide not less than 0.75 square metres of floor space per person employed at any one time, provided that the area be not less than 4.65 square metres. Fixtures, other than tables and chairs, shall not be included when calculating floor space.

7. Where 5 or more persons are employed at one time, the floor area shall not be less than 9 square metres.

8. Adequate facilities are to be provided for warmth and for drying clothes eg. strip heaters.

9. Provided that 20 or more persons are employed on the site at any one time, the employer shall provide a separate shed or sheds for messing, which shall be of such dimension as to provide not less than 0.75 square metres of floor space per person.

10. Where less than 20 persons are employed on site, Regulation 3.20 – Workplace Facilities of the Occupational Safety and Health Regulations 1996 shall apply to provisions of messing and changing facilities.

11. In the changing facilities, separate clothes-hanging facilities for each person employed are to be provided (coat hooks only to be used).

12. In the changing facilities, sufficient seating accommodation for the changing of work apparel is to be provided.

13. In the messing facilities, sufficient tables with fixed washable laminated or vinyl surface, and seating for the taking of meals, are to be provided.

14. Food warming facilities to be supplied, together with a supply of cool, clean water conveniently accessible, as well as boiling water at meal/rest breaks.

15. Receptacle for garbage with bin liner and rat and fly proof is to be supplied in mess area, and emptied regularly.

16. A washable vinyl floor surface in all facilities is to be provided.

17. Shelving is to be supplied in the mess shed for storage (cups, lunch bags, etc).

18. All facilities are to be cleaned and disinfected on a regular basis.

19. All mess sheds shall be supplied with reverse cycle air-conditioning.

20. Toilet blocks shall be soundly constructed and roofed with weatherproof material. The floor of each toilet shall be

well-drained and constructed of concrete, bricks and cement, or other approved materials which shall be impervious to water. Every toilet shall be well lighted by natural or artificial light and shall be ventilated. Each toilet shall have a hinged door, capable of being fastened on the inside, lift seats/flaps and toilet paper.

21. Where practicable, toilets to be connected to sewerage before commencement of the job.

22. Toilet/urinal location to be conveniently accessible to employees, but not so close as to cause a nuisance to those persons.

23. Where necessary, portable water seal toilets of an approved standard are to be provided and regularly serviced.

24. Conveniently accessible toilets and urinals are to be distributed every 5th floor on multi-storey constructions.

25. Toilets and urinals are to be washed daily with disinfectant and kept in clean, hygienic condition.

26. Adequate washing facilities, suitably drained, and was basins/troughs are to be supplied with running water.

27. Soap and towels are to be supplied.

28. The following toilet/urinal ratio shall be applied in respect to all employees—

Employees	Toilets	Urinals
1-5	1	Nil
6-10	1	1
11-20	2	2
21-35	3	4
36-50	4	6
51-75	5	7
76-100	6	8

NB. For each additional 20 persons or part thereof up to 200 persons or part thereof up to 200 persons, one additional urinal and one additional toilet is required. For each additional 35 persons or part thereof in excess of 200 persons, one additional urinal and one additional toilet is required. If a slab urinal is provided, each 600mm shall be regarded as one urinal.

19.—TRAINING AND RELATED MATTERS

1. A training allowance of \$13.00 per week per worker shall be paid by the employer to the Union Education and Training Fund. This shall increase to \$14.00 per week on 1 November 2000 and a further increase to \$15.00 per week on 1 November 2001.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than 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.

20.—DRUG & ALCOHOL, SAFETY & 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.—CLOTHING AND SAFETY 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.

22.—INCOME PROTECTION

The Company agrees to insure employees covered by this Agreement for injury and sickness. The scheme is to be negotiated between the parties.

23.—ACCIDENT PAY

- 1. The Company agrees to pay each employee accident pay where the employee receives an injury for which weekly payments or compensation are payable by or on behalf of the Company pursuant to the provisions of the Workers' Compensation and Rehabilitation Act 1981, as amended.
- 2. "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the Workers Compensation and Rehabilitation Act and the employee's ordinary wage under this Agreement.
- 3. The Company shall pay accident pay during the incapacity of the employee arising from any one injury for a total of 39 weeks whether the incapacity is in one continuous period or not.

24.—UNION MEMBERSHIP

The employer will encourage, as far as possible, all employees covered by the agreement, to be financial members of the Unions.

25.—Y2K

On the following key dates the Company will issue written records of accrued entitlements to each employee. The accrued entitlements will include annual leave, sick leave, any accruing productivity bonuses, redundancy payments and Superannuation payments and also on each employees anniversary date—

- 31 December 1999
- 28 February 2000
- 31 December 2000
- 28 February 2001

26.—SIGNATORIES

BLPPU

(Sgd.).....
Date: 7/12/99.

CMETU

(Sgd.).....
Date: 7/12/99.

The Company:

(Sgd.).....
Signature
Date: 7/12/99.
IAN BARKER
Print Name
Company Seal

APPENDIX A—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

- a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.
- c) There will be no payment of lost time to a person unable to work in a safe manner.
- d) If this happens 3 times the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.
- e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- f) A worker having problems with alcohol and or other drugs—
 - Will not be sacked if he/she is willing to get help.
 - Must undertake and continue with the recommended treatment to maintain the protection of this program.
 - Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX B—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		Site Allowance
Project	Contractual Value	
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 Procedures
- First Aid Provisions and On-Site Amenities

and the union 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 honored 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 in excess of \$10 million, or such other sum as agreed. The productivity allowance may be accumulated and paid at the end of the project.

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 canteen accommodation shall be provided where a project exceeds \$35 million in values 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

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

TYCO WATER PTY LTD, CAN 087 415 745 STEEL PIPELINE SYSTEMS, KWINANA MANUFACTURING JOINT ENTERPRISE DEVELOPMENT AGREEMENT—JULY 1999 TO JUNE 2001.
AG 224 of 1999.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tyco Water Pty Ltd, ACN 087 415 745

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

AG 224 of 1999.

Tyco Water Pty Ltd, CAN 087 415 745 Steel Pipeline Systems, Kwinana Manufacturing Joint Enterprise Development Agreement—July 1999 to June 2001.

COMMISSIONER S J KENNER.

29 March 2000.

Order.

Having heard Mr I Oakley as agent on behalf of the applicant and Mr J Fiala 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 Tyco Water Pty Ltd, ACN 087 415 745 Steel Pipeline Systems, Kwinana Manufacturing Joint Enterprise Development Agreement—July 1999 to June 2001 filed in the Commission on 13 December 1999 be and is hereby registered as an industrial agreement.
- (2) THAT the Tubemakers Water, Steel Pipeline Systems, Kwinana Manufacturing Joint Enterprise Development Agreement No AG 145 of 1997 be and is hereby cancelled.

(Sgd.) S. J. KENNER,
Commissioner.

[L.S.]

1.—TITLE

Tyco Water Pty Ltd, ACN 087 415 745 Steel Pipeline Systems, Kwinana Manufacturing Joint Enterprise Development Agreement—July 1999 to June 2001.

2.—ARRANGEMENT

This Agreement shall be arranged as follows—

1. Title
2. Arrangement
3. Parties Bound
4. Market Forces
5. Joint Development Concept
6. Mission
7. Vision
8. Function & Role of Teams
9. Objectives
10. Key Performance Indicators
11. Commitment to Agreement
12. Award Re-classification
13. Long Service Leave
14. Learning Program
15. Duration of Agreement
16. Remuneration
17. Agreement for Alternative Remuneration Arrangement (Salary Sacrifice)
18. Redundancy
19. Dispute Settlement Procedure
20. Fixed Term Contract
21. Relationship with Parent Award
22. Union Delegate Training
23. Continuity of Service and Entitlements
24. Signatories

3.—PARTIES BOUND

3.1 The parties to this agreement shall be Tyco Water Pty Ltd, ACN 087 415 745 (The Company) Steel Pipeline Systems, Kwinana Manufacturing (The Business), Communications, Electrical, Electronic Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, “the Union”, and the employee’s of the Business, “the Employees”.

3.2 This agreement applies to approximately thirty five (35) employees employed by the Business.

4.—MARKET FORCES

4.1 The Business manufactures steel pipelines for the Australian water and waste water market and services the major Water Authorities in Australia.

4.2 The Business has recently been awarded a major contract to supply steel pipelines for the Water Corporation of Western Australia—Southern Trunk Main (STM) extension. This contract was won against international competition and necessitated the business to fully review all facets of its operation to be internationally competitive. Although successful in this instance, this contract has opened the local market to overseas competition and will necessitate ongoing efforts to ensure international competitiveness.

4.3 The Company is also subject to increasing competition from other pipeline materials such as PVC, PE and GRP.

5.—JOINT DEVELOPMENT CONCEPT

5.1 The Company has committed capital to upgrade the production capability of the Business to ensure its success in tendering for the STM Project. This upgrade will position the Business towards its long term viability. It will require the efforts of all parties to work together to ensure the plant is commissioned successfully and achieves World Class operating performance. The upgraded plant will improve the Business’s competitive edge and continued input from all parties will ensure successful completion of this major contract and improved customer satisfaction.

5.2 The parties are bound to work together to remove any barriers which inhibit progress on these themes, thus giving the Business the ability to respond faster than its competitors to the customers valid requirements.

5.3 The parties agree that by working together to continually improve the Business, joint benefits will result and the viability of the Business will be maintained.

6.—MISSION

6.1 The Company’s aim is to be the leading Australian supplier of water and waste water steel pipelines systems to best international standards, satisfying its customers needs, through the optimum use of its resources.

7.—VISION

7.1 The vision for the Business is to be one team, comprising two work area teams and one support team which dynamically interact. These teams made up of highly skilled employees who continually interact with each other, assuming the responsibility for and continual improvement of the processes within their work areas, so as to achieve the business mission.

7.2 When and where identified by the support team, focus groups shall be formed to concentrate on specific improvement opportunities, to assess, measure and initiate improvements.

8.—FUNCTION & ROLE OF TEAMS

WORK AREA TEAMS

8.1 Work Area Teams (WAT) are comprised of those employees that are typically associated with a natural work group together with appointed members of the Support team. (Maintenance tradespeople, and Co-ordinators) ie. Shell, Treatment.

8.2 These teams shall meet weekly to assess problems associated with their area and develop/review action plans.

8.3 Members are to be actively involved in the development and implementation of area improvements.

8.4 Support Team

The Support team is a ‘resource pool’ comprised of maintenance personnel, Co-ordinators, accounts and management

staff. Its main objective is to aid the WAT's and Focus groups to achieve team goals and work towards the continuous improvement of production processes. Where practical, the support team shall ensure the implementation of WAT and Focus group recommendations.

This team shall continue to identify and action improvements as required.

The Consultative team shall form part of this 'team'.

Typical services and resources that the Support Team can provide are—

- business management expertise
- proper communication of external customers valid requirements to work areas
- production planning expertise
- technical expertise
- human resources
- administration services
- process improvement analysis
- monitoring of WAT performance through the Consultative Team

The flexibility of the Support Team between functional areas is also paramount to the concept of a small highly skilled leadership team.

8.5 Focus Group

When a specific area for improvement is identified by the Support team or WAT, a Focus group shall be established. It shall be comprised of individuals that are directly involved in, or impacted by the given improvement area.

These groups should include relevant maintenance/support team members.

They will be supplied with a task guideline and deadline for recommendations.

The recommendations shall be reviewed by the Consultative team prior to disbandment of group.

9.—OBJECTIVES

9.1 The objectives of this agreement are to—

- (a) maintain and improve, where possible, upon the Enterprise Agreement of 9th July 1997 contained in the Business's Development Plan.
- (b) improve the current performance of the Company.
- (c) unite all employees in a common commitment to—
 - achieve competitive advantage through continuously improving plant uptime, skill levels, product quality and flexibility to meet customer requirements.
 - foster the building of team work and responsibility for area processes. foster an obsession for elimination of waste and error.
 - develop pride in the workplace.
 - foster a commitment to focus on and improve plant KPI'S.

10.—KEY PERFORMANCE INDICATORS

10.1 The key performance indicators (KPI's) are a measure of the progress toward achieving the objectives set out in Clause 9.

10.2 Key Performance Indicators have been in use for a number of years and form an integral part of the way we manage our business.

10.3 The Management team, through consultation with the Consultative team, shall provide direction on the development and monitoring of KPI'S. These KPI'S shall be regularly reviewed to monitor site progress.

10.4 The aim being to continuously improve so as to bridge the gap between current performance and that of Best Practice.

10.5 Best practice targets shall be listed along side site targets. Best practice targets are set by comparing our operation to that of comparable operations within Australia and overseas.

10.6 The Business's aim is to provide customer satisfaction, by providing a high quality production, safely, whilst ensuring suitable returns to the business owners.

Each WAT therefore needs to focus on—

- improved safety performance
- improving production rates
- eliminating breakdowns
- reducing changeover time
- better use of resources
- reduction in waste

10.7 Improvements in these areas are directly reflected in chosen KPI'S.

10.8 Whatever is hindering the process should be investigated and action taken to eliminate the root cause.

10.9 Factors which the Work Area's can influence are—

- Safety performance and housekeeping.
- The workforce flexibility.
- Flexibility associated with changeovers and minor maintenance within the work area.
- Focus on downstream customers.
- Teams working on breakdown causes, within their control, competency and, skill and as long as is safe and legal.
- Changeover times.
- Product quality and rework.
- Continuing to improve conditions in working environment.

10.10 These agreed KPI's will be formally reviewed by the Consultative Team on a monthly basis (or more often if required) and necessary corrective actions implemented to ensure continuing improvement. Communication of all KPI's will be to all employees on a monthly basis.

11.—COMMITMENT TO AGREEMENT

11.1 The parties bound remain committed to the previous Enterprise Agreement and have agreed a further list of specific items aimed at improving productivity and flexibility as part of this Agreement.

11.2 This list is an integral part of this Agreement and is detailed in the Business's, Development Plan.

11.3 The parties bound also agree that they will do all possible to ensure the people they represent are committed to the spirit of this Agreement. To this end, it is intended that all employees receive a copy of this agreement.

12.—AWARD CLASSIFICATION

The following classifications and rates of pay apply in lieu of those specified in the Steel Fabrication Industry Order as of July 1, 1999.

Wage Group—C8

Engineering Tradesperson Special Class Level 1
(Relativity to C10—110%)

Base Rate—\$710.85

Wage Group—C9

Engineering Tradesperson Level 11 or equivalent
(Relativity to C10—105%)

Base Rate—\$678.54

Wage Group—C10

Engineering Tradesperson Level 1 or equivalent

Base Rate—\$646.23

Wage Group—C11

Production Employee Level IV
(Relativity to C10—92.4%)

Base Rate—\$597.11

Wage Group—C12

Production Employee Level III
(Relativity to C10—87.4%)

Base Rate—\$564.80

Wage Group—C13

Production Employee Level 11
(Relativity to C10—82%)

Base Rate—\$529.91

13.—LONG SERVICE LEAVE

1.1 It is agreed that long service leave entitlements shall be in accordance with Clause (7) Period of Leave in the Steel Fabrication Industry Order. Notwithstanding this provision,

a pro rata payment for long service leave on termination of employment, of employees with between 5 and 7 years continuous service, 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 but only after consultation and counselling by the Company.
- termination of employment by the employee for reasons of ill health or death.

14.—LEARNING PROGRAM

14.1 It is recognised by all parties that, for the Business to function as outlined in the Vision, there must be a structured in-house learning program.

14.2 It is further agreed that there will be a sharing of learned skills among all individuals. This transfer of knowledge is seen as a key activity in achieving the flexibility described in the Objectives.

14.3 The Support team, through consultation with the Consultative team shall identify the external training requirements to ensure appropriate skills are met and developed.

14.4 Modular training detailed in the Business', Kwinana Development Plan is provided as a guide to those individuals who wish to pursue a formal Engineering Production Classification. These modules have been selected as those which best compliment the Tubemakers production and environment.

14.5 Modular training recommended for tradespeople as per the Metal Trades (General) Award, considered to be directly relevant to the Business's work environment and skills development of qualified tradespeople.

14.6 In-house training shall be in accordance with, and to a level of, that detailed in the Business', Kwinana Development Plan to enable the Kwinana group to function as outlined in the Vision.

14.7 Where necessary, competency based assessment shall be developed through the Consultative Team and used to re-assess and re-classify individuals who are not covered, or exceed, the categories 'detailed' in the classification structure.

14.8 The skills identified have been linked to the career path classification of the Metal Trades (General) Award.

15.—DURATION OF AGREEMENT

15.1 This Agreement shall apply until 30th June 2001.

15.2 Renegotiation of the following Agreement shall commence 3 months prior to this date, with a genuine commitment from both parties to work together in good faith to have this Agreement in place by 1 July 2001.

16.—REMUNERATION

16.1 Remuneration increases are as follows—

DATE	AMOUNT OF INCREASE
1 January 2000	3% or \$20/wk*
1 Sept 2000	3% or \$20/wk*
Total	6%

*Whichever is the greater.

The pay rates shall be as follows for the effective ruling date.

	After 1 st Jan. 2000	After 1 st Sept. 2000
C8	\$732.18	\$754.15
C9	\$698.90	\$719.86
C10	\$666.23	\$686.23
C11	\$617.11	\$637.11
C12	\$584.80	\$604.80
C13	\$549.91	\$569.91

16.2 The first increase is available in the first full pay period after the 1 Jan 2000 on obtaining commitment, via the signatures of the parties, a further increase will be available the first full pay period after 1 Sept 2000.

16.3 The increases in 16.1 from 1 January 2000 shall apply to the rates expressed in Clause 12 of this agreement. The

rates expressed in Clause 12 are the ruling rates applicable as of 1 July 1999.

16.4 There shall be no further increases over those nominated in Clause 16.1 for the life of this Agreement.

16.5 All parties recognise the significance of the STM Project and the need to provide a quality product to meet our customers pipe laying milestones. As such a performance incentive payment scheme shall be developed by Management in consultation with the Consultative Committee to recognise the efforts of all employees in achieving the STM milestone's. This incentive payment is a once off scheme specifically for the STM Project. The incentive scheme shall be linked to the achievement of certain KPI's both current and STM Project specific.

17.—AGREEMENT FOR ALTERNATIVE REMUNERATION ARRANGEMENT (SALARY SACRIFICE)

17.1 Despite any other provision of the Award, for the purpose only of calculating ordinary time earnings, the rate of pay per week prescribed in clause 12.0 of this Agreement shall be reduced by the amount which an employee elects by notice in writing to the Company to sacrifice in order to enable the Company to make a superannuation contribution for the benefit of the Employee.

17.2 For an Employee's election to be valid, the Employee must complete the election form provided by the Company.

17.3 The reduced rate of pay and the superannuation contributions provided for in this sub-clause shall apply for periods of annual leave, long service and other periods of paid leave.

17.4 All other Award payments, including termination payments, calculated by reference to the Employee's rate of pay shall be calculated by reference to the rate of pay per week specified for the Employee in clause 12.0 of this Agreement.

17.5 Unless otherwise agreed by the Company, an employee may only revoke or vary his election once in each twelve months. Not less than one month's written notice shall be given by an Employee of revocation or variation of the Employee's election.

17.6 If at any time while an Employee's election is in force, there are changes in taxation or superannuation laws, practice or rulings, that materially alter the benefit to the Employee or the cost to the employer of acting in accordance with the election, either the Employee or the Company may, upon one month's notice in writing to the other, terminate the election.

17.7 The Company shall not use any superannuation contribution made in accordance with an Employee's election to meet its minimum employer obligation under the Superannuation Guarantee Administration Act or any legislation which succeeds or replaces it.

18.—REDUNDANCY

18.1 Sustained security of employment can only be based on long term business success. Management will discuss the process to be followed should work force reductions be considered necessary by the Business. These discussions shall take place with the union representative and may include means of seeking suitable volunteers, redeployment opportunities etc.

18.2 In the event of a down turn in business resulting in employees being made redundant, the following package will apply—

- An employee must have completed six (6) months continuous service to qualify.
- Payment of ten (10) weeks plus four (4) weeks in lieu of notice of termination of employment as per the Work Place Relations Act Clause 6 Contract of Service.
- Two and a half (2 ½) weeks payment for every completed years service.

18.3 If any employee has not completed six (6) months service, payment will be in accordance with the Metal Trades (General) Award.

18.4 The provisions of this Clause shall not only apply to any employee engaged as a casual employee, apprentice or where engaged for a specific time or for a specific task or tasks.

19.—DISPUTE SETTLEMENT PROCEDURE

19.1 In the event of a question, dispute or difficulty arising out of this agreement that may effect one or more employees, the following procedure shall apply—

- Discussions to take place between the Shop Steward Co-ordinator and the Manufacturing Manager.
- All facts of the dispute to be documented and given to the Company.
- In order to allow for resolution of disputes there shall be an avoidance of work stoppages whilst the dispute is being resolved, and agreed procedures being followed.
- If necessary the Consultative Team will meet as soon as practicably possible to resolve the dispute.
- The Union Organiser will be involved if required.
- If the matter cannot be resolved through the above discussions, it shall be referred to the Western Australian Industrial Relations Commission for conciliation and if necessary arbitration.
- Prior to referral to the WAIRC genuine attempts must be made to resolve the dispute.

20.—FIXED TERM CONTRACT

20.1 During this agreement, if additional labour is required the term of service will be contract based. If this service exceeds six (6) months, the consultative team will review the length of contract, contract service not to exceed twelve (12) months.

21.—RELATIONSHIP WITH PARENT AWARD AND ORDER

21.1 Consistent with the purpose of the Agreement and the commitment of the parties and employees, it is not intended to erode current conditions of employment as described in the Metal Trades (General) Award and the Steel Fabrication Industry Order. However where there is any inconsistency between the provisions of this agreement and the provisions of the parent award or order, the provisions of this agreement shall apply to the extent of the inconsistency.

21.2 Any variations to the Award during the life of this agreement shall not apply to this agreement.

22.—UNION DELEGATE TRAINING

22.1 The Company will co-operate with Unions to facilitate release and pay ordinary wages to delegates attending mutually agreed courses where there is prior consultation with the Company about course content and the ability to release particular employees from the job.

23.—CONTINUITY OF SERVICE & ENTITLEMENTS

23.1 Employees who are bound by this agreement with prior service with Tubemakers of Australia Limited will have the following recognised by the Company—

- **Entitlements:** All annual leave, long service leave and sick leave accrued with Tubemakers of Australia Limited shall be preserved and transferred over to the Company as of 1st July 1999.
- **Length of Service:** Prior service with Tubemakers of Australia Limited and its predecessors shall be deemed as service with the Company for the purposes of calculating entitlements such as annual, long service and sick leave and redundancy.

24.—SIGNATORIES

Joe Fiala (Organiser)

Communications, Electrical, Electronic Energy, Information, Postal, Plumbing & Allied Workers Union of Australia, Engineering & Electrical Division, Western Australian Branch.

Date 21/10/99

Reg Williamson *Common Seal*
(Pipe Plant Manager)

Tyco Water

Date 21/10/99

Steel Pipeline Systems
Kwinana Manufacturing

Gary Rea
(Shop Steward)

Date 21/10/99

Darren Crowe
(Deputy Shop Steward)

Date 21/10/99

**WAMMCO INTERNATIONAL (LINLEY VALLEY)
AMIEU PROCESSING AGREEMENT (1999).
No. AG 179 of 1999.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian meat Marketing
Co-operative Limited

and

Australasian Meat Industry Employees'
Union, Industrial Union of Workers,
Western Australian branch

No. AG 179 of 1999.

WAMMCO International (Linley Valley)
AMIEU Processing Agreement (1999).

COMMISSIONER J F GREGOR.

20 March 2000.

Order.

HAVING heard Mr M J Darcy on behalf of the applicant and Mr D Hopperton 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 3 November 1999, entitled WAMMCO International (Linley Valley) AMIEU Processing Agreement (1999) to be registered in the terms of the following schedule as an Industrial Agreement.

(Sgd.) J.F. GREGOR,

[L.S.] Commissioner.

1.—THE AGREEMENT

1.1 TITLE

This Agreement will be known as the WAMMCO INTERNATIONAL (Linley Valley) AMIEU Processing Agreement (1999)

1.2 APPLICATION OF AGREEMENT

1.2.1 This Agreement has been negotiated between the Western Australian Meat Marketing Co-operative Ltd (the employer) and the Australasian Meat Industry Employees Union, WA Branch, (the Union) representing all employees engaged in the processing of meat and associated products and activities by the Company at its Linley Valley plant.

1.2.2 This Agreement is binding on the Union and will apply to its officers and members and the employer and the employees of the employer employed at Linley Valley who are members, or eligible to be members, of the Union.

1.2.3 The number of employees bound by this Agreement total approximately two hundred and fifty (250).

1.2.4 This Agreement shall apply in relation to any employment to which it is applicable to the exclusion of any other Award or Agreement.

1.2.5 All matters relating to employment under this Agreement including engagement, retrenchment, training and promotion will be based upon a number of criteria including competency, merit, work performance, attitude and all else being, equal length of service.

1.2.6 Any reference to “the employer” in this Agreement will include reference to the successor, assignee or transferee of such employer or part thereof within the meaning of the relevant provisions of the Industrial Relations Act and will include reference to such employer or part thereof notwithstanding any change in its name or status.

1.3 PERIOD OF OPERATION

1.3.1 This Agreement will come into operation from the beginning of the first pay period commencing on or after 27 November 1999 and will continue in force until 30 June 2002.

1.3.2 The parties to this Agreement agree that negotiations to discuss replacing this Agreement will commence three (3) months prior to the expiration of the Agreement.

1.3.3 Should negotiations not achieve agreement the wages and conditions of employment will continue as at the date of expiration.

1.4 WAGE INCREASES/NO EXTRA CLAIMS

1.4.1 Subject to sub-clause 1.4.2 the payments made in sub clause 3.1 of this Agreement (excluding allowances) will be increased by the amount of any future Safety Net, National Wage Case increase granted by the Commission in relation to the State Meat Award during the life of this Agreement. Payment of such increases when granted shall be backdated to the first pay period commencing on or after the date the application for the increase was lodged in the Commission.

1.4.2 Any “flow on” increase included in the State Meat Award in respect to any Safety Net, National Wage Case in respect to an application that had been lodged with the Australian Industrial Relations Commission prior to the commencement of this Agreement shall be excluded.

1.4.3 It is a condition of this Agreement that the Union, its members and persons eligible to be members, bound by this Agreement and the Employer undertake not to pursue any extra claims, other than those provided for in sub-clause 1.4.1 of this Agreement.

1.5 OBJECTIVES

1.5.1 The parties to this Agreement are committed to—

- continuing a harmonious industrial relations environment through a commitment to consultation and recognition of the role of the Union and its joint consultative committee organisation in all aspects of this Agreement.
- increasing the efficiency and productivity of the company to assist its international and domestic competitiveness, and
- working together to increase job security, job satisfaction, training opportunities and access to higher paid jobs and career paths for employees.

1.5.2 In meeting these objectives the parties have agreed to consider a broad agenda through the consultative processes established by this Agreement. This agenda will include—

- continuous review of work and management practices affecting efficiency and job satisfaction at a plant level.
- measures designed to improve plant utilisation and ensure continuity of employment.
- training issues including a review of all skill requirements, incentives for training, implementation of training programmes and multi-skilling,
- occupational health and safety issues with a view to reducing the number of injuries and illnesses suffered by employees including the provision of appropriate safety equipment, apparel and the development of rehabilitation programmes.

1.5.3 Matters relating to significant changes in technology including structure of operations or other exceptional circumstances will be considered by the parties by way of consultation. If, as a result of this consultation, a change to this Agreement is necessary the parties will co-operate to implement those changes. Should the parties fail to reach agreement, the matter will be resolved by applying the disputes settling procedure provided in this Agreement.

1.6 POSTING OF AGREEMENT

The employer will post this Agreement on notice boards accessible to all employees and copies will be made available on request to all employees.

1.7 SINGLE BARGAINING UNIT

1.7.1 This Agreement has been negotiated directly between the parties through a consultative process involving officers of the Union, delegates and the employees at the Linley Valley operation. Senior and site based management directly involved with the processing operations have represented the employer in the consultative process.

1.7.2 This Agreement will be a complete document representing the position at the Linley Valley plant and there will be no reference to any other Agreement, registered or unregistered. The employer and the Union will discuss any matter not covered in the Agreement and, if necessary, referred to the Joint Consultative Committee established pursuant to Clause 9 of this Agreement.

1.8 DEFINITIONS

1.8.1 Commission

Shall mean the Western Australian Industrial Relations Commission.

1.8.2 Company or Employer

Shall mean The Western Australian Meat Marketing Co-operative Ltd.

1.8.3 Day

Shall mean a period of twenty four consecutive hours unless specified otherwise.

1.8.4 Ordinary Rate/s or Ordinary Pay

Shall mean the hourly base rate of pay for the appropriate level in which the employee is employed in accordance with sub-clause 3.1 of this Agreement unless otherwise specified.

1.8.5 Ordinary Time Earnings or Actual Ordinary Earnings

Shall mean all earnings earned within the ordinary hours of work unless specified otherwise.

1.8.6 Redundant

Shall mean being no longer required by the employer to continue doing a job because, for a reason that is not a usual reason for change in the employer’s work-force, the employer has decided that the job will not be done by any person.

1.8.7 Shed Delegate

Shall mean the recognised Union representative for the plant as a whole.

1.8.8 Shift Work

Shall mean where the ordinary hours of work, or any part thereof, occur outside the hours 6.00 am to 6.00 pm Monday to Friday.

1.8.9 Union

Shall mean The Australasian Meat Industry Employees’ Union (AMIEU).

1.8.10 Union Delegate

Shall mean the recognised Union representative for a department or section of the plant.

1.8.11 Week

Week shall mean seven consecutive days.

1.9 INCENTIVE SCHEME

1.9.1 In addition to the earnings provided for in this Agreement the employer will implement an incentive payment scheme as set out in Appendix 1 to this Agreement.

1.9.2 Once implemented the incentive scheme may only be modified by agreement between the majority of employees covered by the scheme or between the employer and Union.

1.9.3 Should any disagreement arise in respect to the amendment or operation of the scheme it shall be resolved by applying the dispute settling procedure provided for in this Agreement.

2.—CONDITIONS OF EMPLOYMENT

2.1 CONTRACT OF EMPLOYMENT

2.1.1 Engagement

Employees shall be employed on either a full time or casual basis in accordance with the terms of this Agreement and shall

be informed of their employment status at the time of engagement.

2.1.2 Transfer to or from Casual Employment.

The employer may, with one weeks notice, transfer any employee from full time employment to casual employment (or vice versa) to suit production requirements and to take account of livestock supply.

2.1.3 Casual Employees—Special Provisions

Casual employees will be used to cover absent full time employees or to do work that is not done regularly or if done regularly is done for less than a full day or week.

2.1.3.1 Casual employees shall be employed by the hour and will be paid on the basis of one fortieth (1/40th) of their of the weekly rate for the level in which they are employed for each ordinary hour plus a twenty five percent (25%) loading.

2.1.3.2 The twenty five percent (25%) loading is paid in full compensation for the nature of casual employment and in lieu of all paid leave and public holidays. The casual employee shall not be entitled to the benefit of sub-clauses 2.5 Redundancy, 5.1 Annual Leave, 5.2 Sick Leave, 5.4 Bereavement Leave, 5.5 Public Holidays and 5.6 Special Leave

2.1.4 Probationary Period

Employees may, at the employer's discretion, be engaged for an initial probationary period of up to sixty (60) working days or shifts to assess suitability for the position. The time spent as a probationary employee will count as time worked for the purposes of accruing any entitlement under this Agreement and during the probationary period the contract of employment may be terminated by giving notice in accordance with this Agreement.

2.1.5 Traineeships

2.1.5.1 Application

(i) Subject to paragraph (ii) hereof, this clause shall apply to persons—

- (a) who are undertaking a Traineeship, and
- (b) who are employed;
- (c) whose employment is covered by this Agreement.

(ii) At the conclusion of the Traineeship, this clause shall cease to apply to the employment of the Trainee and this Agreement shall apply to the former Trainee whilst their employment continues.

2.1.5.2 Objective

The objective of this clause is to assist in the establishment of a system of training for Trainees which provides approved training in conjunction with employment.

The Traineeship system aims to assist the future employment prospects of Trainees particularly young people and the long term unemployed and is designed to allow Trainees to achieve a credential which is complementary to the National Certificate in Food Processing.

2.1.5.3 Definitions

“Agreement” means this Agreement.

“Competency Based Training” is a way of approaching vocational education and training that placed primary emphasis on what a person can actually do as a result of training (the outcome) and as such represents a shift away from an emphasis on the processes and time involved in training (the inputs).

“Parties to a Traineeship Scheme” means the Employer and the Trainee.

“Recognition of Prior Learning (RPL)” is a process which recognises that knowledge and skills gained through life experience, work experience, including informal and formal training can equal some or all of the minimum training requirements specified within the course of instruction.

“Trainee” means an employee who is bound by a Traineeship Agreement made in accordance with this Clause.

“Traineeship Agreement” means an agreement made subject to the terms of this Clause between the Employer and the Trainee for a Traineeship and which is registered with the West Australian Training Council or under the provisions of the West Australian Vocational Education Training and Employment Act 1991. A Traineeship Agreement shall be made in accordance with the relevant approved Traineeship Scheme and shall not operate unless this condition is met.

“Traineeship Scheme” means an approved Traineeship applicable to a group or class of employees or to an industry or sector of an industry or an enterprise. A Traineeship Scheme shall include a standard format which may be used for a Traineeship Agreement by the West Australian Training Council.

2.1.5.4 Training Conditions

(i) The Trainee shall attend an approved training course or training program prescribed in accordance with the Traineeship Agreement or as notified to the Trainee by the West Australian Training Council.

(ii) A Traineeship shall not commence until the relevant Traineeship Agreement, made in accordance with a Traineeship Scheme, has been signed by the Employer and the Trainee and lodged for registration with the West Australian Training Council. Provided that if the Traineeship Agreement is not in the standard format a Traineeship shall not commence until the Traineeship Agreement has been registered with the West Australian Training Council. The employer shall ensure that the Trainee is permitted to attend the training course or program provided for in accordance with the Traineeship Agreement and shall ensure that the Trainee receives the appropriate on and off the job training.

(iii) The employer shall provide a level of supervision in accordance with the Traineeship Agreement during the traineeship period.

(iv) Officers of the West Australian Training Council will monitor the overall training program. The monitoring and assessment process shall be binding on the employer and shall involve the use of training records or work books as required in accordance with the terms of the training Agreement.

(v) The employer shall not require a Trainee to perform any task unless that person has achieved the level/s of competency to do so.

(vi) The ratio of registered trainees to existing employees (including those persons engaged as permanent or casuals who may or may not enter into a Traineeship arrangement) shall be determined through consultation and written agreement at the site between the Joint Consultative Committee and the employer after due consideration of the total enterprise training and employment needs.

Provided that if agreement cannot be reached, the ratio of registered Trainees to existing employees shall not exceed 20%.

2.1.5.5 Employment Conditions

(i) A Trainee shall be engaged as a permanent employee, with the skill level undertaken by the Trainee determining the nominal duration of the Traineeship as follows—

Level 1	6 months
Level 2	12 months
Level 3	24 months

Traineeship arrangements shall be subject to a satisfactory probationary period of up to three (3) months which may be reduced at the discretion of the employer. By agreement in writing, and with the consent of the West Australian Training Council, the employer and the Trainee, the duration of the Traineeship may be varied and/or reduced in recognition of the level of competence achieved by the Trainee.

(ii) Stand down shall be in accordance with this Agreement. This shall not prevent the West Australian Training Council in conjunction with the employer and the Consultative Committee developing stand down arrangements pertaining to trainees. Trainees who are supernumerary to the workforce shall not be used in a training capacity to the extent that they replace or disadvantage existing employees.

(iii) Cancellation of Traineeship shall be in accordance with the terms outlined in the Traineeship Agreement.

(iv) The Trainee shall be permitted to be absent from work without loss of continuity of employment and/or wages to attend the training in accordance with the Traineeship Agreement.

(v) Where the employment of a Trainee by the employer is continued for a period of six (6) weeks after the completion of the Traineeship period, such traineeship period shall be counted as service for the purpose of this Agreement or any other legislative entitlements.

- (vi)(a) The Traineeship Agreement may restrict the circumstances under which the Trainee may work additional hours and shiftwork in order to ensure the training program is successfully completed.
- (b) No Trainee shall work additional hours or shiftwork on their own unless consistent with the provisions of this Agreement.
- (c) No Trainee shall work shiftwork unless the parties to the Traineeship scheme agree that such shiftwork makes satisfactory provisions for approved training. Such training may be applied over a cycle in excess of a week, but must average over the relevant period no less than the amount of training required for non shift trainees.
- (d) The Trainee wage shall be the basis for the calculation of additional hours prescribed by this Agreement, unless otherwise agreed by the parties to a Traineeship Scheme, or unless the Trainee and/or existing employee is on a higher rate or this Agreement makes specific provision for a Trainee to be paid at a higher rate, in which case the higher rate shall apply.

(vii) All other terms and conditions of this Agreement that are applicable to the Trainee or would be applicable to the Trainee but for this Clause, shall apply unless specifically varied by this Clause.

(viii) A Trainee who fails to either complete the Traineeship or who cannot for any reason be placed in full time employment with the employer on successful completion of the Traineeship, shall not be entitled to any severance payments payable pursuant to termination, change and redundancy provisions or provisions similar thereto.

(ix) All existing employees are able to participate in traineeship arrangements and will not be displaced from employment as a result of the engagement of new employees with little or no previous relevant experience in the meat industry.

2.1.5.6 Employment of Trainees

Trainees employed with no or little industry experience will not be expected to perform in accordance with the speed of the chain. Once a Trainee has been assessed as being competent to perform a specific task, the Trainee may at the discretion of the employer perform that task, and be part of a production team.

2.1.6 Work to be Performed

2.1.6.1 The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training and any such direction issued by the employer will be consistent with the employer's responsibility to provide a safe and healthy work environment.

2.1.6.2 The employee will perform such work as the employer requires, and will comply with all health, hygiene and safety requirements during the ordinary hours of work and during additional hours if required and all such work must be carried out to the satisfaction of the employer.

2.1.6.3 If there is a delay or interruption to work for any reason whatsoever, then at the request of the employer, employees will resume work in time to complete the tasks commenced, avoid any loss of product and to process any animals which the AQIS veterinarian declares must be slaughtered because of animal welfare considerations.

2.1.7 Payment for Work Performed

2.1.7.1 Nothing in this Agreement shall affect the right of the employer to terminate summarily the employment of any employee for malingering, inefficiency, neglect of duty or misconduct, in which case wages shall be paid up to the time of dismissal only.

2.1.7.2 Nothing in this Agreement shall affect the right of the employer to deduct payment for any day or part of a day upon which any employee cannot be usefully employed because of any form of industrial action, through any breakdown of machinery, loss of essential services, unavailability of suitable raw material for processing or any other cause beyond the employers control provided that, except in the case of industrial action, the employee will not be required to remain at the employers workplace during any period of non payment.

2.1.7.3 Should an employee not attend or not perform duties as directed, (except where otherwise expressly provided for in this Agreement), they shall lose pay for the actual time of such non-attendance or non-performance.

2.1.8 Calculation of Continuous Service

2.1.8.1 In the case of unpaid absences (including absences for the purpose of receiving workers compensation benefits) continuity of service shall not be broken unless and until the services of the employee are formerly terminated during the absence. However, during such unpaid period of absence no entitlements under this Agreement shall accrue and the unpaid period of absence shall not be taken into account when calculating such entitlements.

2.1.8.2 Continuity of service will exist in any case where the employer terminates the employee solely to avoid obligations under this Agreement.

2.1.9 Termination of Employment

2.1.9.1 Notice of Termination by Employer

- a) In order to terminate employment of an employee (other than a casual or probationary employee or for seasonal closure), the employer shall give to the employee the following minimum periods of notice—

<u>Period of Completed Continuous Service</u>	<u>Period of Notice</u>
Not more than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

- b) In addition to the notice specified in sub paragraph (a), if the employee is over forty-five (45) years of age at the time of the giving of the notice and has no less than two years completed continuous service, the employee shall be entitled to an additional week's notice.
- c) Notice prescribed in this sub-clause may be given at any time during the week but if given at any time during the employee's rostered working hours shall apply from the rostered finishing time for the day.
- d) Payment may be made (either partially or totally) in lieu of notice but any such payment shall be at the base ordinary rate for the classification in which the employee was employed in accordance with sub-clause 3.1 at the time notice of termination was given.
- e) If payment is made partially or totally in lieu of notice the period of notice shall be calculated from the actual time the notice was given.
- f) In cases where termination of employment is only temporary because of seasonal closures one week's notice or pay in lieu thereof shall be required.
- g) Nothing shall prevent the employer exercising its rights under sub clauses 2.1.7.1, 2.1.7.2 or 2.1.9.4 of this Agreement during any period of notice.

2.1.9.2 Notice of Termination by Full time Employee

- a) The notice of termination required to be given by a full time employee will be not less than one (1) weeks notice provided that if it is given during the employee's rostered ordinary working hours it shall apply from the rostered finishing time for that day or shift.
- b) If the employee fails to give the required notice, or having given such notice leaves before the notice expires, the employee shall have an amount equivalent to the amount of notice unserved deducted from any outstanding monies owed to the employee on termination.

2.1.9.3 Casual Employees—Required Notice

The required period of notice in respect to a casual employee will be one hour. If the required period is not given, one hour's wages will be paid by the employer or forfeited by the employee.

2.1.9.4 Notice May Be Waived

By agreement between the employer and the employee any notice period or part thereof prescribed in this sub-clause may be shortened or waived.

2.1.9.5 Instant Dismissal

Any period of notice prescribed in this sub-clause shall not apply in the case of dismissal for misconduct that justifies instant dismissal.

2.1.9.6 Abandonment of Employment

In the event that any employee is absent for more than three (3) consecutive working days without notifying the employer, they will be considered to have abandoned their employment and their services may be terminated immediately by the employer.

2.1.10 Suspension

Notwithstanding the provisions of this clause the employer may suspend any employee without pay for a maximum of ten (10) ordinary working days for any misdemeanour which otherwise would warrant dismissal.

2.1.11 Medical

Employees must submit to and pass any medical examination required to maintain the employers export status and the employer will meet any expenses associated with such examination.

2.1.12 Q Fever Vaccination

It is a condition of employment that employees agree to undergo testing and if necessary vaccination against Q fever. All expenses relating to the procedure will be paid by the employer.

2.1.13 Drug and Alcohol Testing

The employer reserves the right to test employees for drugs and alcohol on both a random or "for cause" basis.

The parties to this Agreement undertake to meet as soon as is practical after this Agreement is registered to agree on a common rehabilitation policy that will be adopted in the case of a positive test result.

2.2 HOURS OF WORK

2.2.1 Full time Employees

2.2.1.1 The ordinary hours of work for full time employees shall not exceed ten (10) hours per day or shift or forty (40) hours per week Monday to Friday between the hours of 6.00 a.m. and 6.00 p.m.

2.2.1.2 Subject to sub-clause 2.2.1.3 the ordinary hours of work for full time employees shall be worked on the basis of four (4) consecutive ten (10) hour days Monday to Friday.

2.2.1.3 To meet production requirements the employer may roster the ordinary hours of work for full time employees on five (5) consecutive days Monday to Friday inclusive provided the maximum number of ordinary hours rostered on a Friday shall not exceed six (6).

2.2.1.4 The employer shall give one (1) week's notice of changes to the rostered working days.

2.2.2 Casual Employees

2.2.2.1 The minimum and maximum ordinary hours of work for a casual employee shall be as follow—

- Daily minimum—four (4) ordinary hours
- Daily maximum—Ten (10) ordinary hours
- Weekly maximum—Forty (40) ordinary hours.

2.2.2.2 The ordinary hours of work for casual workers may be rostered at any time of the day provided that the ordinary hours of work for full time employees transferred to casual employment in accordance with sub-clause 2.1.2 will be rostered in accordance with the provisions of sub-clause 2.2.1.3.

2.2.3 Alterations to starting and finishing

Starting and finishing times of the rostered ordinary hours of work may be set and/or altered either by agreement with the majority of employees in the plant or department or section whose employment is covered under the terms of this Agreement, or if no agreement is forthcoming, by the employer with a minimum of one (1) week's notice.

2.2.4 Work to be Consecutive

With the exception of meal breaks and rest breaks, the ordinary hours of work shall be consecutive.

2.2.5 Employees are required to be "on the job" ready to commence work at the nominated commencement time of ordinary hours and to remain "on the job" (with the exception

of approved breaks) until the nominated finishing time. Wash up, cleaning of equipment, showering and changing will be in the employee's own time.

2.3 ADDITIONAL HOURS

2.3.1 With the exception of extra production days (sub-clause 2.4) all time worked in excess of, or outside of, the employee's ordinary hours of work shall be additional hours and shall be paid for at the rates of pay prescribed in sub-clause 3.1 of this Agreement.

2.3.2 Other loadings and allowances (e.g. shift loading, location allowance) shall not apply during any additional hours.

2.3.3 An employee may be recalled to work for emergent reasons for non production work after completing ordinary hours and in such circumstances shall be paid for a minimum of two (2) hours at the appropriate additional hourly rate.

2.3.4 Employees shall work additional hours as requested by the employer, unless prior exemption has been obtained, provided that any additional hours beyond five (5) hours in any weekly pay period shall be voluntary.

2.4 EXTRA PRODUCTION DAYS

2.4.1 The employer may, at its discretion, call for extra production days outside and in excess of the normal ordinary hours of work subject to the following limitations and obligations—

- at least forty eight (48) hours prior notice shall be given
- work on extra production days will be voluntary and will be paid at the appropriate ordinary hourly rates set out in sub-clause 3.1.

2.4.2 No earnings on extra production days shall be taken into account when calculating any other entitlement under this Agreement.

2.5 REDUNDANCY

2.5.1 Where an employee's position is redundant the employer will consult with the employees concerned immediately a decision is made—

- a) With respect to the likely effect on employees
- b) To ensure continuity of employment for as many employees as possible.

2.5.2 Subject to sub-clause 2.5.3, in addition to the period of notice prescribed in sub clause 2.1.9.1, if an employee (other than a casual) is terminated due to redundancy the employee shall be entitled to two (2) weeks pay for each year of completed continuous service to a maximum of eight (8) weeks pay.

2.5.3 Existing employees at the commencement of this Agreement whose entitlement to redundancy applying the provisions of the Metro Meat International Limited, Linley Valley Division AMIEU Meat Processing Agreement 1997 to their pre-existing length of service, would be more than is provided by sub-clause 2.5.2 shall continue to hold that entitlement but shall only accrue further entitlement in respect to any additional period of service up to a combined maximum of eight (8) weeks i.e. those employees with an entitlement of eight (8) weeks or more at the commencement of this Agreement will not accrue any further entitlement.

2.5.4 For the purposes of this sub clause "weeks' pay" shall mean the employee's normal base classification rate as set out in sub clause 3.1 of this Agreement.

2.5.5 Interview Leave

If an employee has been informed that they are to be made redundant, they will receive eight (8) hours paid leave to seek other employment during any period of notice which has been given by the employer and is being worked out by the employee. The eight (8) hours leave need not be consecutive.

2.5.6 Transfer to lower paid jobs

If an employee is transferred to a lower level for reasons set out in paragraph 2.5.1 hereof, the employee shall be entitled to the same period of notice of transfer as would have applied should the employment been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the employee's former classification rate and the new lower classification rate for the number of weeks of notice still owing.

2.5.7 Alternative Employment

The provisions of this sub-clause shall not apply where the employer arranges acceptable alternative employment for an employee who would have otherwise been terminated due to redundancy.

2.6 PAYMENT OF WAGES

2.6.1 Wages will be paid by electronic funds transfer, by deposit into the employee's nominated bank account (or other similar account to be nominated by the employee) by 10 am on each Friday in respect to the previous week's earnings.

2.6.2 On each pay day the employee will receive a statement on a pay envelope or pay slip showing the total amount of ordinary wages, additional hours, allowances and all deductions made therefrom.

2.6.3 At the request of the employee the employer agrees to deduct and remit Union dues from the employees earnings without charge to the employee or Union.

2.7 MEAL BREAKS

2.7.1 Employees shall be allowed a period of between thirty (30) minutes and sixty (60) minutes for a meal break on each day or shift (including extra production days) and such time shall not be counted as part of the ordinary hours of work.

2.7.2 The time and duration of meal breaks shall be fixed by agreement so as to suit the operational requirements of the plant provided that the meal break must commence no later than six (6) hours after the employees normal commencing time and shall not, except as outlined in clause 2.7.4, be altered unless twenty four (24) hours notice is given to the employee.

2.7.3 If the employee is called upon to work during a scheduled meal interval the employee shall be paid as additional hours at the appropriate rate for the period so employed and such payment shall continue until a meal break is allowed, provided that any such period shall constitute ordinary hours of work.

2.7.4 The employer may direct that any meal break be brought forward or delayed by up to thirty (30) minutes.

2.8 RELIEF BREAKS

2.8.1 Employees shall be entitled to paid relief breaks calculated at the rate of five (5) minutes for each continuous completed ordinary hour worked. The times of taking and the duration of each break shall be established by agreement. but must be compatible with operational requirements.

2.8.2 If an employee works additional hours immediately subsequent to expiration of the ordinary hours of work the employee shall be allowed an additional paid rest break of fifteen (15) minutes duration after each two (2) consecutive hours of additional hours worked.

2.8.3 The employer may direct that any relief break prescribed by this sub-clause be brought forward or delayed by up to thirty (30) minutes.

2.9 SHIFT WORK

2.9.1 Shifts may be introduced following consultation with the Joint Consultative Committee.

2.9.2 Hours of Work

2.9.2.1 The ordinary hours of work of employees engaged on shift shall not exceed forty (40) per week with a daily maximum of ten (10) hours and a daily minimum of five (5) hours.

2.9.2.2 Subject to sub-clause 2.9.1 shift work may be rostered on up to five (5) consecutive days, any day of the week.

2.9.2.3 Shifts may be worked at anytime of the day.

2.9.3 Loading

2.9.3.1 A flat loading of \$2.00 per hour will be paid in addition to all other earnings for each ordinary hour or part thereof performed by an employee engaged on shift work outside the hours 6.00 am to 6.00 pm Monday to Friday.

2.9.3.2. Unless expressly provided as otherwise by this Agreement shift workers shall be entitled to the same benefits as other employees covered by this Agreement.

2.10 REQUIREMENT TO WORK SHIFT WORK

The employer shall advise employees upon employment of any requirement to work shift work. Employees shall not be transferred to or from shift work other than by agreement or with at least one (1) week's prior notice by the employer to so transfer.

2.11 EMPLOYEES FACILITIES

2.11.1 Boiling water in sufficient quantities to make an adequate supply of hot drinks for each employee immediately each meal break or rest break commences.

2.11.2 Changing rooms, dining rooms, toilets, wash basins, showers, etc in accordance with the provisions of the Code of Practice for Workplaces made pursuant to the Occupational Health and Safety Act.

2.11.3 Adequate supplies of cool drinking water at convenient locations.

2.11.4 Adequate supplies of antibacterial soap and sterile drying equipment in all washrooms.

2.11.5 Adequate and appropriate heating facilities for employees, meals and a refrigerator in each lunch room.

3.—CLASSIFICATION AND RATES OF PAY

3.1. WAGE RATES

3.1.1 The following shall be the ordinary rates of pay for each level of employee—

EMPLOYEES LEVEL	ORDINARY HOURS			ADDITIONAL HOURLY RATE	ALLOWANCES	
	Full Time Employee Weekly Base Rate \$/week	Full Time Employee or Shiftworker Hourly Base Rate \$/hour	Casual Employee Hourly Rate \$/hour	Hours Per week \$/hour	Location (Sub-clause 3.1.2.1)	Multi-Skilled (Sub-clause 3.1.2.3)
					Ordinary Hours \$/Hour	Ordinary Hours \$/Hour
1	385.40	9.64	12.04	14.46	1.08	N/A
2	400.00	10.00	12.50	15.00	0.70	N/A
3	450.00	11.25	14.06	16.88	0.63	N/A
4	475.20	11.88	14.85	17.82	0.63	N/A
5	500.00	12.50	15.63	18.75	0.63	N/A
6	550.00	13.75	17.19	20.63	0.63	N/A
7 & 7A	600.00	15.00	18.75	22.50	0.63	1.35
Junior-U/17 yrs	231.24	5.78	7.23	8.67	N/A	N/A
Junior-17/18 yrs	252.80	6.32	7.90	9.48	N/A	N/A
Trainee-Level 1	231.24	5.78	N/A	8.67	N/A	N/A
Trainee-Level 2	252.80	6.32	N/A	9.48	N/A	N/A
Trainee-Level 3	346.86	8.67	N/A	13.01	N/A	N/A

Notes—

- (1) The employer may appoint the employee to a higher level at any time.
- (2) The above rates shall be used as the basis for calculation of all entitlements under this Agreement unless specified otherwise elsewhere in the Agreement.

3.1.2 Allowances

Employees may be entitled to any or all of the following allowances in respect to each ordinary hour worked. Allowances when payable shall be added to, but not form part of, the ordinary rates set out in sub-clause 3.1.

3.1.2.1 Location Allowance

As an incentive to attract suitable permanent employees to its plant the employer agrees to pay a location allowance at the rates set out in sub-clause 3.1 for each ordinary hour worked. The allowance will not be paid to casual employees, unless they are full time employees who have been transferred to casual employment in accordance with sub-clause 2.1.2, or employees on light duties.

3.1.2.2 Seasonal Allowance

If the employer does not operate the plant on either a full time or casual basis during at least thirty two (32) weeks in each and every year a seasonal allowance of five percent (5%) will be paid to all employees employed by the employer at the time of seasonal closure or the 30th June, whichever is the earliest, calculated on the employee's total ordinary hourly earnings (excluding loadings and allowances) during that year.

For the purpose of this sub-clause "year" shall mean the twelve (12) month period commencing 1st July in each and every year.

3.1.2.3 Multi-skilled Pieceworkers Allowance

All existing level 6 and 7 pieceworkers who are assessed competent in processing beef and smallstock and who transfer to level 7A shall receive a multi-skilled allowance of \$1.35 cents for each ordinary hour worked.

3.2. GRADING OF EMPLOYEES

3.2.1 The classification structure set out below is designed to provide employees with a clear career path, promote multi-skilling and to remove and prevent any demarcation barriers.

3.2.2 The structure is based upon the principle that each employee is graded at a particular level having regard to their skill, competency, experience, and qualifications, not the tasks they may be actually performing on any day or shift. Consequently the employee may be required to perform any tasks within their skill and competency but shall be paid the ordinary level rate of pay appropriate to their classification level, regardless of the work they actually perform.

3.2.3 The approval discretion for the employee's grading level shall be with the Plant Manager following consideration of any recommendation from the Joint Consultative Committee. New employees will commence at level one (1) unless approved otherwise by the employer.

3.2.4 Employees will be notified of their initial grade at the time of appointment. Prior skills will be recognised to the extent of the skills appropriate to the position being filled. The Joint Consultative Committee will make recommendations for promotion to the Plant Manager who has the right of final endorsement.

3.2.5 Provided adequate opportunity is first given to an employee to upgrade their skills the employer may transfer an employee to a lower grade if they cease to hold the skill, competency, experience or qualification required for the grade to which they have been appointed.

3.2.6 All existing employees at the commencement of this Agreement shall continue on their current grading except pieceworkers who will be regraded to level 7A provided nothing shall prevent the employer reclassifying an employee in accordance with sub-clause 3.2.5.

3.3 CLASSIFICATION STRUCTURE

3.3.1 Level 1

Undergoes Induction Training which may include Work and Documentation Procedures, Quality Assurance, Training, Conditions of Employment etc.

Has had less than 3 months experience in the meat industry—(new employee).

Is undergoing formal training through a trainee scheme set up by the Company covering set modules.

Works under direct supervision.

Remains at this level until performance determines his or her service is terminated or upgraded.

Promotion Criteria is assessment of Competency or appropriate certification of Level 2 skills and a position becoming vacant in Level 2.

Tasks performed are of a general labouring nature.

3.3.2 Level 2

Performing routine manual work under direct supervision.

Has completed level (1) of Certificate in Meat Processing.

Works under direct supervision.

Has an understanding of Quality Control, Meat Handling, Health and Hygiene, Processing Techniques.

Typical duties may include—

- trimmer, whizzard knife operator, chiller room hand, strapping machine operator, stockman, running off casings, packing and cleaning tripe, running up stock.

3.3.3 Level 3

Upgrade of Level 2—using discretion and judgement particularly in reference to Quality Assurance. This may include forklift driver, strapping machine operator, basic packing and knife skills, basic trimming, general tasks in the slaughter floor/boning room environment.

- Possesses basic knife skills.
- Have numeracy and literacy skills.
- Be able to competently use relevant tools and equipment.
- Works in a team environment.
- Undertakes Further Training so as to be able to advance to Level 4.

3.3.4 Level 4

An employee at this level has completed level 1 of the Certificate in Meat Processing, has completed tasks in level 2/3 to the satisfaction of the Company Assessor and can work under general supervision and can perform most functions in a particular area in a department.

Is aware of requirements to produce hygienic product and carry out all Hygiene procedure as required by AQIS to produce clean product.

Typical duties may include slash pack boning, operate restrainer, knocking, saw operator, slicing, rodding and tying weasand, cleaning duties.

3.3.5 Level 5

An employee at this level works above the skill of level 4. They have received on and off the job training, and must—

- Have a sound knowledge of the Company Quality Assurance and customer specification requirements.
- Works with minimum supervision, and provides on the job training to other employees.
- Perform basic maintenance of equipment.
- Have completed Level 2 of Certificate in Meat Processing.

Tasks at this level may include precision boning, precision slicing, legging, gutting.

3.3.6 Level 6

An employee on this level works above and beyond the skill of an employee on Level 5 and has received on and off the job training and must have—

- Superior knife skills.
- Be able to competently perform all tasks associated with either slaughtering or boning and slicing.
- Be responsible for assuring their own and others work.
- Be able to work without supervision.
- Train other employees.
- Perform routine maintenance.
- Have and utilise literacy and numeracy skills.

3.3.7 Level 7

An employee at this level has an appropriate qualification and has received on and off the job training and therefore possesses skill above level 6. Typically an employee at this level would be capable of acting as a team leader and possess training and assessing skills.

The employee must—

- Be able to lead selective working teams and identify and correct any deficiencies generated from the team.
- Have off the job training in areas of Quality Assurance, OH&S, Client specifications.
- Be able to perform competently all meat processing tasks in the slaughtering and boning departments and train employees in these tasks.
- Perform routine maintenance.

3.3.8 Level 7A

All existing pieceworkers holding seniority at the commencement of this Agreement. Employees at this level may be asked to carry out any or all of the duties for other levels provided they have the required competency and skill. There will be no new appointments to this level.

4.—OTHER PAYMENTS

4.1 OCCUPATIONAL SUPERANNUATION

Subject to the provisions of this sub-clause contributions to occupational superannuation shall be made in accordance with the Superannuation Guarantee and Administration Act.

4.2 MEAL ALLOWANCE

Unless notified of a request to work additional hours on the working day prior or earlier an employee if required on any day or shift to work additional hours for more than ninety (90) minutes directly after the rostered ceasing time of ordinary hours on that day or shift will be paid an \$8.00 meal allowance in addition to any additional hours payment to which the employee may be entitled and such meal allowance shall not be taken into account when calculating any other entitlement under this Agreement.

4.3 TOOLS OF TRADE

4.3.1 Grindstones

The employer will provide a power driven grindstone and a sharpening bench or other suitable device for the securing of sharpening stones free of cost where the employees are required to use knives in the course of their duties.

4.3.2. Employees shall be responsible for supplying their own tools of trade provided that the employer shall supply employees undergoing training with knives, pouches and steels. Any knife or tool provided by the employer shall remain the property of the employer and shall be returned to the employer when required. If it is not so returned or returned in an unworkable or damaged state the employer shall be entitled to deduct the replacement cost from any monies owing to the employee.

5.—LEAVE PROVISIONS

5.1 ANNUAL LEAVE

5.1.1 Period of Leave

Except as hereinafter provided, after a period of twelve months continuous service an employee (other than a casual) will be entitled to annual leave at a rate of .07693 hours leave for each completed ordinary hour of work or during each hour of paid leave up to a maximum of 160 hours. Unless emergent circumstances exist annual leave will be taken during periods of annual plant shutdown.

5.1.2 Public Holiday during Period of Leave

If any public holiday as outlined in sub clause 5.5.1 falls within an employee's period of annual leave and is observed on a day which would have been an ordinary rostered working day the number of ordinary hours the employee would normally have worked on that day will be added to their period of annual leave.

5.1.3 Leave may be taken in shorter periods

Leave is to be taken consecutively except where any individual employee and the employer agree annual leave may be taken in periods of less than four (4) consecutive weeks.

5.1.4 Termination of Employment & Leave

If, after one week continuous service, in any annual qualifying period, employment is terminated the employee will be paid .07693 hour's pay since annual leave was last taken in respect of each completed ordinary hour of work or for each hour of paid leave taken since the employee was last on annual leave.

5.1.5 Notice

At least fourteen (14) days notice shall be given by either party of the intention to take or the requirement to take annual leave, provided this notice may be waived by mutual agreement.

5.1.5 Payment whilst on Annual Leave

Whilst on Annual Leave the employee shall be paid for each hour of annual leave at the base ordinary hourly rate of pay for the classification in which the employee is employed in accordance with sub-clause 3.1 of this Agreement.

5.2 SICK LEAVE

5.2.1 Entitlement & Accrual

An employee (other than a casual) shall be entitled to paid sick leave for each completed year of continuous service to be accrued at the rate of .03846 hours of sick leave for every ordinary hour worked and/or every hour of paid leave granted and taken.

5.2.2 Sick Leave May be Paid Out

If an employee's services are terminated because of a seasonal closure the employer will pay the employee for any unused sick leave accrued under this Agreement at the employee's ordinary base rate set out in sub-clause 3.1.

5.2.3 Notification

5.2.3.1 The employee will, prior to 12 noon on the first day of absence inform the employer of the nature of the injury or illness and the estimated duration of the absence.

5.2.3.2 Should the employee not observe the notice obligations prescribed under this sub-clause the employee shall not be entitled to be engaged on the employees next ordinary day or shift should that be the desire of the employer.

5.2.4 Proof of Illness

The employee will, if requested by the employer provide a certificate from a registered medical practitioner as proof of any absence on sick leave.

5.2.5 Payment for Sick Leave

Sick leave actually taken shall be paid at the base ordinary hourly rate of pay for the classification in which the employee is employed in accordance with sub-clause 3.1 of this Agreement.

5.2.6 Sickness During Annual Leave

If the employee becomes ill or is injured whilst on annual leave the employee may apply and be granted sick leave in lieu of Annual Leave providing that the application is made within the first three (3) days of the return from Annual Leave and the application is supported by a medical certificate.

5.2.7 Effect Upon Workers Compensation

The provisions of this clause do not apply if the employee is absent from work and entitled to payment of Workers Compensation benefits in lieu of wages. This clause will apply during periods when the employee is engaged on alternative duties via a rehabilitation program.

5.2.8 Sick Dependant

Employees may, in their second and subsequent years of employment apply for up to twenty four (24) hours of sick leave entitlement to be converted to leave to care for sick dependants. The employer may request a medical certificate to support the application for leave and any such application will not be unreasonably refused.

5.3 LONG SERVICE LEAVE

Employees shall be entitled to Long Service Leave in accordance with the provisions of the Western Australia Industrial Relations Commission as contained in Volume 60 of the West Australian Industrial Gazette.

5.4 BEREAVEMENT LEAVE

5.4.1 An employee (other than a casual) shall on the death of a Wife, Husband, Mother, Father Sister, Brother child or

stepchild, Mother-in-law or Father-in-law or any other person who immediately before the persons death, lived with the employee as a member of the employees family shall be entitled to leave for a period not exceeding the number of hours worked by the employee in two ordinary working days and shall be paid at the employee's base ordinary rate set out in sub-clause 3.1.

5.4.2 The right to such leave shall be dependent on compliance with the following conditions—

- a) The employee shall give the employer notice of the intention to take such leave as soon as reasonably practicable after the death of such relation.
- b) The employee shall furnish proof of such death to the satisfaction of the employer.
- c) The employee shall not be entitled to leave under this clause during any period in respect of which any other leave has been granted.
- c) Husband/Wife shall include de-facto spouse.

5.5. PUBLIC HOLIDAYS

5.5.1 For the purposes of this Agreement the following days (or the days observed in lieu thereof) will be regarded as and allowed as public holidays namely;

- a) New Years Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Christmas Day, Boxing Day, Queen's Birthday, Labour Day, Foundation Day, and
- b) where any other day is proclaimed as a public holiday in Western Australia.

5.5.2 When any of the days mentioned in sub-clause 5.5.1 falls on a Saturday or a Sunday and a substitute public holiday is proclaimed, the holiday will be observed on the substitute day. In such case the substituted day will be a holiday and will be paid at the employee's base ordinary rate set out in sub-clause 3.1 and the day for which it is substituted will not be a public holiday.

5.5.3 Where an employee is absent from their employment on the last working day (or part thereof) or the first working day (or part thereof) after a public holiday(s), without reasonable excuse which is satisfactory to the employer or without the consent of the employer, the employee will not be entitled to payment for the holiday(s).

5.5.4 The provisions of this sub-clause will not apply to casual employees or if the employee would not normally have worked rostered ordinary hours on the day on which the public holiday or substituted day falls.

5.5.5 Subject to sub-clause 5.5.3, payment for public holidays will be at the employee's ordinary base rate set out in sub-clause 3.1.

5.5.6 In addition to any payment due to an employee under sub-clause 5.5.5 all work actually performed on a Public Holiday shall be paid for at the relevant ordinary hourly rates as contained in sub-clause 3.1.

5.5.7 Any of the public holidays (or substitute days) referred to in sub-clauses 5.5.1 and 5.5.2 may, by agreement with the majority of employees whose employment is covered under the terms of this Agreement be deferred or brought forward in respect to the plant as a whole, individual departments or sections thereof and/or individual employees and in such a case the replacement date shall be deemed to be a public holiday for all purposes of this Agreement. Provided that the employer may defer or bring forward Australia Day, Queen's Birthday, Labour Day, Foundation Day at its discretion with at least a week's advance notice.

5.5.8 No payment shall be made for public holidays which fall during, immediately before or immediately after a period when an employee is absent without pay.

5.6 SPECIAL LEAVE

5.6.1 In circumstances where genuine need and/or hardship arises an employee (other than a casual) will be entitled to request special leave from the employer. Special leave shall be without pay and will only be granted if adequate arrangements at no additional cost can be made by management to cover the employee's absence.

5.6.2 Where such leave is granted the following conditions shall apply—

- The leave will be unpaid.
- All entitlements will be frozen and no further entitlements shall accrue during the period of leave.
- Public holidays falling during the period of leave will not be paid.

5.7 PARENTAL LEAVE/ MATERNITY LEAVE

Parental Leave and Maternity Leave shall apply to all staff in accordance with the relevant provisions of the Western Australian Industrial Relations Act.

6.—RESOLVING ISSUES

6.1 Adoption of Principles

6.1.1 To ensure the orderly conduct of and speedy resolution of issues, disagreements, conflicts and disputes, the following Six Stage Resolution Procedure will be adopted.

6.1.2 The object of the procedure is to promote the resolution of issues and disagreements through consultation, co-operation and discussion between members of the shop floor and their respective line management.

6.1.3 This procedure is based upon the recognition and development of the relationship between line management and their employees.

6.1.4 The procedure is designed to resolve any disagreement or concern in a fair manner and is based upon the following principles.

- a) Commitment by the parties to observe this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or concern which may give rise to conflict or dispute.
- b) Throughout all stages of this procedure, all relevant facts will be clearly identified and recorded.
- c) Realistic time limits will be allowed for the completion of the various stages of discussions.
- d) Emphasis will be placed on an in-house settlement if issues brought about through consultation and negotiation is exhausted without resolution of the conflict or dispute the parties will jointly or individually refer the matter to the Commission for assistance in resolving the dispute.
- e) In order to achieve the peaceful resolution of issues the parties will be committed to avoid stoppages of work, lockouts or any other bans or limitations on the performance of work whilst the procedures of consultation, negotiation, conciliation and arbitration are being followed. Observance of this principle will avoid consequential loss of production and wages and disruption of supply to customers.

6.2 Six Stage Resolution Procedure

6.2.1 Stage One (1)

The employee and/or the delegate with issue of concern will discuss the matter with their immediate first line manager (e.g. departmental supervisor). The line manager will set aside time to hear the issue or concern in a private discussion with the employee and or delegate and after consideration provide a comprehensive answer to the delegate. The person with the concern should document the issue or concern and the answer provided for by the line manager will be in writing.

6.2.2 Stage Two (2)

In the event of the employee/delegate not being satisfied with answer provided, they will take their concern to the Works Delegate who will put in writing the comprehensive complaint details and arrange a meeting with the supervisor and the delegate concerned. The same procedure as set out in Stage One (1) will apply, with all relevant facts being clearly recorded. Failing a settlement the Works Delegate will then meet with the Plant Manager or his nominee in an effort to settle the matter in dispute.

6.2.3 Stage Three (3)

Failing a settlement the Works Delegate will convene a meeting of the Union shop committee which will discuss the matter in dispute in an endeavour to solve the issue, then a

delegation from that meeting will negotiate further with senior company management.

6.2.4 Stage Four (4)

In the event that the matter remains unresolved the works delegate will notify the Union and a paid Union Official will discuss the matter with the Plant Manager or his nominee.

6.2.5 Stage Five (5)

Failing a settlement of the dispute the works management will notify the General Manager—Operations and discussions will be held between the General Manager—Operations and the Union with a view to settling the particular dispute.

6.2.6 Stage Six (6)

If no negotiated settlement can be achieved and the process is exhausted without the dispute being resolved, the parties will jointly or individually refer the matter to the Commission where the parties will use their best endeavour to resolve the matter by conciliation.

6.2.7 A procedural form to follow in accordance with this procedure is contained in Appendix 2 to this Agreement.

7.—PERSONAL PROTECTIVE EQUIPMENT AND CLOTHING

7.1 The employer shall where necessary and relevant provide employees with all protective clothing and equipment required.

7.2 Employees must at all times wear or use the appropriate safety clothing or equipment as required to carry out the specific task.

7.3 Where any clothing is provided by the employer it shall remain the property of the employer, and the employee shall take responsible care of such clothing.

7.4 The employee must prior to commencing work collect clean clothing from the laundry and return it following completion of work.

7.5 The employee shall clean and maintain personal protective equipment and tools when, and to a standard required by the employer, outside of rostered ordinary hours of work.

7.6 The employee is responsible for the care and safe keeping of all clothing and equipment issued and shall return each article to the employer on request or on cessation of employment in good order and condition. In default, the employer may deduct from monies owing, an amount equal to its replacement value, having regard to normal fair wear and tear.

7.7 The employee will not remove the employers clothing or equipment from the site and the employer will provide a secure area for the safe keeping of the clothing and equipment issued to the employee.

8.—UNION ARRANGEMENTS

8.1 RIGHT OF ENTRY OF UNION OFFICIALS

Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23 (3)(iii) of the Industrial Relations Act, a representative of the Union shall not exercise the rights under this sub-clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer, of a member of the Union.

8.1.1 On notifying the employer or its representative, the Union Secretary or any officer duly authorised by the Union for the purposes of this Agreement shall have the right to visit the business premises of the employer at any time when work is being carried out and to interview employees whose conditions of work are subject to this Agreement without unduly interfering with work in progress but, subject to sub-clause 8.1.2, this right shall not be exercised without the consent of the employer more than once in any one week in any one establishment.

8.1.2 In the case of a disagreement existing or anticipated concerning any of the provisions of this Agreement, the authorised official of the Union, on notifying the employer or a representative thereof, shall have the right to enter the business premises of the employer to view the work the subject of any such disagreement but shall not unduly interfere with the carrying out of such work.

8.2 NOTICE BOARD

The employer will erect noticeboards in lunch rooms for the purpose of posting Union notices and information to be circulated from the Joint Consultative Committee.

8.3 TIME AND WAGES RECORDS

8.3.1 Except where mechanical recording devices are used for the purpose of recording starting and finishing times, an employer will provide a timebook or timesheet in which he or she will cause to be entered each day's starting and finishing times, each day's hours of work of each employee (including additional hours if any) and the wages received each week. Such entries will at least once a week, be vouched for by the signature of the employee or his or her representative.

8.3.2 Such production will not be required unless the Union suspects that a breach of this Agreement is being or has been committed, and considers that the inspection is necessary in order to investigate such suspected breach.

8.3.3 The representative making an inspection will be entitled to make photocopies of entries in such time book, or time sheet, or other record, relating to the suspected breach.

8.3.4 Where the Union exercises its rights under this Agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

8.3.4.1 The employer may refuse the representative access to the 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 as soon as possible after being notified of the requirement to inspect by the representative.

8.3.4.2 Provided reasonable notice of not less than twenty four hours (24) hours is provided to the employer the time book or time sheet or other record kept in compliance with sub-clause 8.3.1 will be available for inspection at the works where the employee whose time has been recorded is employed at any reasonable time between 9.00am and 4.00pm Monday to Friday inclusive.

8.3.4.3 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 Union.

8.3.5 It will be a breach of this Agreement if any person knowingly makes, certifies or vouches for a false entry in such time book or time sheet.

8.3.6 Time books, time sheets and other records kept in compliance with this clause will be kept for at least six years after they have been completed.

8.4 INFORMATION TO BE MADE AVAILABLE

The employer shall notify the Union within seven (7) days of the end of each month the name, age and classification of each new employee (other than casuals) and a list of employees who have been terminated during the preceding month.

9.—UNION CONSULTATIVE ARRANGEMENTS

9.1 JOINT CONSULTATIVE COMMITTEE

The employer recognises the Joint Consultative Committee as the appropriate forum in which all matters pertaining to their employment at the plant will be raised. The Union will be advised and remain informed on these matters.

9.1.1 This Committee will consist of nominated employee, Union and management representatives, as determined in accordance with the Consultative Committee Constitution.

9.1.2 The Committee will meet on a regular basis to consider any issues relating to the operation of this Agreement or any other matter which may be raised by the Union or the employer.

9.1.3 The Constitution of the Joint Consultative Committee is contained in Appendix 3.

10.—SIGNATURES

This Agreement is signed

For and on behalf of Western Australian Meat Marketing Co-operative Ltd

Signature: B. J. AITKEN
Full Name: BRIAN JAMES AITKEN
Position: CHIEF EXECUTIVE OFFICER

Witness Signature: K. A. WALKER
Full Name: KEITH ANTHONY WALKER
Position: GENERAL MANAGER—FINANCE

For and on behalf of the Australasian Meat Industry Employees Union

Signature: D. H. HOPPERTON *Common Seal*
Full Name: DAVID HAROLD HOPPERTON
Position: BRANCH SECRETARY
Witness Signature: R. J. BRYANT C.D.
Full Name: ROBERT JOHN BRYANT
Position: OCCUPATIONAL HEALTH AND SAFETY OFFICER

WAMMCO (LINLEY VALLEY)
AMIEU PROCESSING AGREEMENT 1999
APPENDIX 1—INCENTIVE SCHEME

The following sets out details of the incentive scheme referred to in sub-clause 1.9 of the EBA document.

1. Eligibility

The following categories of employees shall not be eligible to participate in the incentive scheme and will not be included in the calculations.

- Juniors and Trainees
- Level One employees
- Employees absent (either paid or unpaid) on any day or part of a day or shift for any reason
- Light duty employees
- Casuals (other than full time employees transferred to casual employment in accordance with sub-clause 2.1.2).

2. Payment

2.1 Incentives will be calculated daily and paid weekly. Daily incentive details will be prominently displayed on the following production day.

2.2 Incentives are pooled and divided amongst the employment categories as indicated.

2.3 Incentive payments will not be taken into account when calculating any other entitlements.

3. Multi-Skilled Employees

Employees who at the request of the employer alternate between departments on any day or shift shall participate in the incentive payment for the department in which they spend the majority of the day or shift.

4. Incentives Payable

4.1 Base Calculation

Incentives will only be payable after a daily base figure is exceeded. The base shall be calculated by multiplying the number of scheduled working minutes for the day or shift by the following throughput requirements.

Sheep, lamb, goat slaughtering	5.682 carcasses per minute
Sheep, lamb, goat, boning or bandsawing	1.932 carcasses per minute
Beef and red deer slaughtering	0.227 carcasses per minute
Beef, red deer boning	0.154 carcasses per minute

4.2 Rates Payable

The following rates shall be applied to the number of carcasses that exceed the base during ordinary or additional hours.

Each sheep, lamb, goat, slaughtered	\$1.75 per head
Each sheep, lamb, goat, boned	\$1.75 per head

Each sheep, goat, bandsawed or mechanically boned \$0.60 per head

Each lamb bandsawed or mechanically boned \$0.75 per head

Each beef, red deer slaughtered \$10.75 per head

Each beef, red deer boned \$10.75 per head

Subject to clause 4.3 each chain will be calculated separately.

4.3 Mixed Beef/Smallstock Kill and /or Boning

If there is a mixed kill and/or boning of beef and smallstock on any day or shift that involves the movement of the majority of the employees from one chain to the other the incentive payable will be the higher of—

4.3.1 Calculating the incentive for each chain separately, or

4.3.2 (a) If the combined working minutes for both chains equals or exceeds the available ordinary minutes for a single day or shift (ie, 550 minutes in a 10 hour shift) the base will be determined by applying the base throughput requirements to the actual minutes worked on each chain and proceeding to calculate each chain separately.

For example—

Beef killed 150 head 275 mins processing time
Smallstock killed 1500 head 275 mins processing time
= 550 ordinary minutes available for single 10 hour shift

Beef Calculation—

Beef 275 mins x 0.227 carcasses per min = 62 carcasses to be exceeded
Smallstock 275 mins x 5.682 carcasses per min = 1563 carcasses to be exceeded

(b) If the combined working minutes for both chains does not equal or exceed the available ordinary minutes for a single day or shift (ie, less than 550 minutes is worked in a 10 hour shift) the shortfall in minutes will be apportioned between the two chains in proportion to the actual minutes worked on each.

For example—

Beef killed 150 head – 275 mins processing time = 56% of total working minutes
Smallstock killed 1000 head – 215 mins processing time = 44% of total working mins
Time not utilised – 60 mins (550 mins – 490 mins)

Apportionment of time not utilised—

Beef 60 mins x 56% = 34 mins
Smallstock 60 mins x 44% = 26 mins

Beef throughputs to be exceeded—

Beef 275 mins + 34 mins = 309 mins x 0.227 carcasses per min = 70 carcasses
Smallstock 215 + 26 mins = 241 mins x 5.682 carcasses per min = 1369 carcasses

4.4 Smallstock – Mixed Boning/Bandsawing

If a combination of product is boned and bandsawed or mechanically boned that in total exceeds the base then the excess will be apportioned between boned and bandsawed or mechanically boned by applying the ratio that the number boned has to the number bandsawed or mechanically boned.

When portion of a carcass is boned and a portion bandsawed or mechanically boned the equivalent set out in Appendix 4 of the Metro Meat International Limited – Linley Valley Division AMIEU Meat Processing Agreement 1997 will be applied.

4.5 Additional Hours

When additional hours are worked any incentives earned will be pooled separately and only divided between eligible employees who worked the additional hours. There shall be no increase to the daily base figure that must be exceeded before the incentive is earned. i.e., if the daily base has been exceeded during ordinary hours then all throughput during additional hours will be eligible for the incentive payment subject to performance criteria).

4.6 Shifts

Where shifts are worked the daily base figure must be exceeded for each shift.

4.7 Example:—Assuming a 10 hour day

Kill	4500 smallstock	150 cattle
Boning	1500 smallstock	150 cattle
Bandsawing	500 smallstock	
Carcase	2500 smallstock	

Base—

Slaughterfloor	Smallstock—550 mins x 5.682 carcasses per min = 3125 carcasses	
	Beef – 550 mins x 0.227 carcasses per min = 125 carcasses	
Boning	Smallstock – 550 mins x 1.932 carcasses per min = 1063 carcasses	
	Beef – 550 mins x 0.154 carcasses per min = 85 carcasses	

Apportionment – Boning vs Bandsawing

Smallstock boned	1500 head	75%
Smallstock bandsawed	<u>500 head</u>	25%
Total	2000 head	
Base Figure	<u>1063 head</u>	
Excess	937 head	

Apportionment of excess—

Boning (937 head x 75%)	703 head
Bandsaw (937 head x 25%)	234 head

Incentive Pool Calculation—

Slaughterfloor	Smallstock 4500 – 3125 = 1375 head @ \$1.75 = \$2406.25
	Beef 150 – 125 = 25 head @ \$10.75 = \$268.75
Boning Room	Smallstock – boning 703 head @ \$1.75 = \$1230.25
	Smallstock – bandsawing 234 head @ \$0.60 = \$140.40
	Beef 150 – 85 = 65 head @ \$10.75 = \$698.75
	Total Incentive Pool \$4744.40

5. Level Weighting

Each level of employee will be given a weighting representing relative responsibility. Level weightings will be as follows—

Level 6, 7, 7A	= number of employees x 3
Level 4,5	= number of employees x 2
Level 2 & 3	= number of employees x 1

For example—

Employee Levels	No of Employees	Weighting Factor	Weighting
6, 7, 7A	42	x 3	126
4,5	71	x 2	142
2,3	<u>77</u>	x 1	<u>77</u>
	190		345

6. Division of Pool

The level weighting will be used to divide the pool between individual employees.

For example—

Level	% of Pool	Per Employee	
6, 7, 7A	$\frac{162}{345} \times \$4744.00$	$= \frac{\$1732.74}{42}$	= \$41.26
4, 5	$\frac{142}{345} \times \$4744.00$	$= \frac{\$1952.77}{71}$	= \$27.50
3, 2	$\frac{77}{345} \times \$4744.00$	$= \frac{\$1058.89}{77}$	= \$13.75

7. Qualifying Criteria

Individual employees will forfeit their entitlement to receive an incentive payment in respect to any day when—

- Key performance indicators for their department are not achieved
- The receive a written warning regarding their performance and/or behaviour
- They are late commencing work or resuming after a break

Entitlements that are forfeited will revert to the Company.

8. Key Performance Indicators (KPI's)

The following KPI's must be achieved—

All Departments

- No lost production time incurred attributable to the carelessness of employee(s) (e.g., caused by employee inattention).

Lairage

- No reworks from Meat Hygiene Assessments on slaughterfloor.
- Conformance monitoring greater than 80% at each check.

Slaughterfloor

- No reworks from Meat Hygiene Assessments.
- Conformance monitoring greater than 70% at each check.
- Skin take off (average for day)
 - Less than 10% employee damage
 - Less than 16% employee damage
- Minimum runner recovery 100% (excluding condemnns on slaughterfloor)
- Average recovery for all offal items exceeds 90% (excluding tripe)

Offal/Runner/Tripe Room

- Conformance monitoring greater than 80% at each check.
- Minimum full length (ie no shorts) runner recover greater than 97%. (lambs); 94% mutton
- Average recovery of all offal items exceeds 90% (excluding tripe)

Boning Room

- Allowable limits at boneless re-inspection not exceeded.
- Conformance monitoring greater than 80% at each check.
- Boneless equivalent yield greater than 54%.
- Chemical lean tests for all boneless product within tolerance.

Chillers/Freezers

- Conformance monitoring greater than 80% at each check.
- Time parameters for placing product under refrigeration complied with.

Loadouts

- Conformance monitoring greater than 80% at each check.
- No re-work from Meat Hygiene Assessments.
- No unsatisfactory meat transfer reports
- No detention time incurred
- Minimum container storage as follows—
 - FROZEN MUTTON CARCASS (Or similar product)**
 - Weight Range 14-20 kg per CS = 40' X 9ft 6" Container = Min 15.5 MT
 - Weight Range 20-35 kg per CS = 40' X 9ft 6" Container = Min 18.0 MT
 - ANIMAL CASINGS**
 - 20' Container = Min ctns 695
 - BONELESS MUTTON LEGS (Or similar product)**
 - 20' Container = Min 16.5 MT (or as requested if less)
 - BONELESS MUTTON TRUNK (Or similar product)**
 - 20' Container—Min 18 MT (or as requested if less)

By-Products

- Conformance monitoring greater than 80% at each check.
- Tallow FFA tests all less than 2%.

Skins / All other areas

- 80% conformance with check lists at all times.

WAMMCO INTERNATIONAL & AMIEU
 AGREED DISPUTES PROCEDURE—LINLEY
 VALLEY DIVISION
 APPENDIX 2

Set out below is the procedure for resolving of issues which are in dispute or are likely to lead to a dispute. In addressing such issues Management, Union delegates and officials and employees should note—

1. No other action shall occur unless and until all stages 1 to 6 have been completed.
2. If unresolved at a particular Stage the issue must be referred to the next Stage as soon as possible. At no point should the issue be left unresolved or attended.
3. Nominated persons are only to become involved at the relevant Stage.
4. If a particular step is not relevant to the dispute, it may be omitted provided both parties agree.

Identification of Issue—Person or Delegate raising issue to provide a brief description of what the issue is.

.....

Stage 1—Issue to be discussed between Departmental Supervisor, Employee/s and relevant Union Delegate/s.

.....

Signed Signed
 Supervisor Union Delegate
 Date: Date:

If unresolved at Stage 1 the issue is to be referred to Stage 2 as soon as possible.

Stage 2—Issue to be discussed with Works Delegate, Departmental Delegate & Operations Manager and failing settlement issue will be discussed with the Plant Manager.

Result of Discussion—

.....

Signed Signed
 Plant Manager Works Delegate
 Date: Date:

If unresolved at Stage 2 issue will be referred to Stage 3 as soon as possible.

Stage 3—Issue will be discussed at meeting of Shop Committee, a delegation from which will meet with Senior site Management including the Plant Manager.

Result of Discussion—

.....

Signed Signed
 Plant Manager Works Delegate
 Date: Date:

If unresolved at Stage 3 issue will be referred to Stage 4 as soon as possible.

Stage 4—Issue to be discussed with paid Union Official and Plant Manager.

Result of Discussion—

.....

Signed Signed
 Union Official Plant Manager
 Date: Date:

If unresolved at Stage 4 issue will be referred to Stage 5 as soon as possible.

Stage 5—Issue will be discussed by State Secretary of the Union and the General Manager—Operations.

Result of Discussion—

.....

Signed: Signed:
 State Secretary General Manager—
 Operations

Date: Date:

Stage 6—If issue remains unresolved it may be referred to WAIRC.

- Referred Not referred

WAMMCO INTERNATIONAL CONSULTATIVE
 COMMITTEE CONSTITUTION PREAMBLE
 APPENDIX 3

Union and Management are committed to improved and effective consultation in the workplace. Both parties agree that consultation will provide Union members with an opportunity to participate fully in decisions which impact on their working lives and support the principle of consultation. Management and Union also agree that effective consultation is dependant on—

- Information Sharing
- Facilities and training for Union and Management representatives
- Commitment from both sides

It is therefore agreed that the establishment of a Union/Management Consultative Committee is the most appropriate method whereby the above principles can be practised and upheld.

Objectives of the Committee

The objectives of the committee will be—

- to increase the quality of working life for all company employees, particularly in the areas of job design, skills formation, training and the working environment, both physical and mental.
- to negotiate, renegotiate and monitor the effectiveness of Enterprise Agreements.
- to improve job security, productivity and efficiency within the company
- to increase the competitiveness of the company and its products.

Terms of Reference

The following matters will be discussed at the Committee, and where appropriate, decisions made and agreements reached will go to senior management in the form of recommendations, to enable decisions made by the company to taking into account the views of the Committee.

1. Future plans including proposals for new products.
2. Current Market conditions and general conditions of the industry.
3. The introduction of new technology/machines or new or revised work methods and the associated planning of layout, training, job numbers, skill requirements etc.

4. Company training plans developed in accordance with the Agreement.

5. The company's affirmative action policy and programs of equality of opportunity within the workplace.

6. Management practises and organisational change.

7. Effectiveness and impact of enterprise agreements.

8. The grading of employees within the classification structure.

9. Any other matters raised by the Union or management which impact on the Union members or the efficiency of the Company.

Composition

1. Management and the Union will jointly determine the size of the Committee.

2. The appointment of management representatives will be determined by management and the appointment of employee representatives will be determined by the rank and file. All Union representatives shall be employees of the enterprise concerned. Nominated State Officials of the AMIEU will be permitted to participate.

3. In the determination of employee representation on the Committee, consideration shall be given to—

the make up on the workforce—in particular the proportion of women, migrants and juniors;

the size of the workforce;

the number of distinct operations at the workplace shift arrangements

the corporate structure

other existing consultative mechanisms

4. The committee, once established, may invite other persons to attend specific meetings.

Facilities and Rights for Union Representatives

It is agreed that Union representatives should have the following facilities and rights—

1. Paid time off to a maximum of 2 hours per month so as 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 proceedings of Joint Consultative Committee meetings.

2. All arrangements for meetings and time off for the stipulated purposes shall have regard for the make up of the workforce and the equality of opportunity to participate.

3. Facilities such as meeting room, photocopier and word processing facilities should be made available as needed. Additional storage facilities shall be provided on request to any of the relevant work areas representatives in a place convenient to their area.

4. All Union representatives and potential Union representatives should attend a Trade Union Training Course on the subject of Enterprise Bargaining and the negotiating process.

5. A Union member will not be discriminated against by the employer or treated unfairly because of being a member of the Consultative Committee or having an interest in the Consultative Committee.

Responsibilities of Committee Members

All Committee Members have the following responsibilities—

1. To attend all meetings wherever possible and to give serious consideration to all matters raised.

2. To represent the views of their constituents.

Management Response

Senior management must formally respond in writing to the Committee's recommendations.

Normally this will take place prior to the next meeting of the Committee.

Confidentiality and Rights of Access to All Relevant Information

At all times the spirit of genuine consultation it is paramount that—

Management and Union representatives have the right of access to all information and documents relevant to issues being considered by the Committee. Should information and/or documents requested or required by the Committee or its representatives be denied because they are "commercial in confidence" such a decision must be fully justified by management. All reasonable effort will be made by representatives request for specific documents and/or items of information within adequate time. However, this does not diminish management's responsibility to provide all relevant information and documents in a timely manner.

Training

All members of the Committee are entitled to extra training to ensure they are able to represent their members and fully participate in the Consultative Committee.

It is agreed that—

1. Such training for Union Committee members is separate from, and in addition to, Trade Union Training Leave.

2. That the nature and extent of such training will be agreed between Union and management before it is entered into.

3. Training will be at no financial cost and without loss of pay to Union members.

Evaluation

A review of these procedures shall be conducted at the end of each twelve months operation.

WAMMCO INTERNATIONAL (SPEARWOOD) AMIEU PROCESSING AGREEMENT 1999. No. AG 5 of 2000.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Meat Marketing
Co-operative Limited

and

West Australian Branch, Australasian Meat Industry
Employees' Union, Industrial Union of Workers, Perth.

No. AG 5 of 2000.

WAMMCO International (Spearwood) AMIEU
Processing Agreement 1999.

COMMISSIONER J F GREGOR.

24 March 2000.

Order.

HAVING heard Mr M J Darcy on behalf of the Western Australian Meat Marketing Co-operative Limited and Mr D Hopperton on behalf of the West Australian Branch, Australasian Meat Industry Employees' Union, 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 agreement made between WAMMCO International (Spearwood) AMIEU Processing Agreement 1999 to be registered in terms of the following schedule as an Industrial Agreement and replaces Western Australian Meat Marketing Corporation And The Australasian Meat Industry Employees' Union Western Australian Meat Processing Spearwood Employees Agreement 1996.

(Sgd.) J.F. GREGOR,
Commissioner.

[L.S.]

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1.—THE AGREEMENT

1.1 TITLE

This Agreement shall be known as the WAMMCO International (Spearwood) AMIEU Processing Agreement (1999).

1.2 APPLICATION OF AGREEMENT

1.2.1 This Agreement has been negotiated between the Western Australian Meat Marketing Co-operative Limited (the employer) and the Australasian Meat Industry Employees' Union, WA Branch (the Union) representing all employees engaged in processing operations undertaken at the Spearwood plant only, and who are eligible to be Union members.

1.2.2 This Agreement is binding on the Union and shall apply to its officers and members and the employer and the employees of the employer employed at Spearwood who are eligible to be members of the Union. Approximately 100 employees are covered by the Agreement.

1.2.3 This Agreement shall apply in relation to any employment to which it is applicable to the exclusion of any other Award or Agreement.

1.2.4 Any reference to "the employer" in this Agreement shall include reference to such employer or part thereof notwithstanding any change in its name or status.

1.3 DURATION AND RENEWAL

1.3.1 This Agreement shall come into operation on the 16 December 1999 and shall remain in force until 31 December 2001 inclusive.

1.3.2 The parties to this Agreement agree that negotiations to renew this Agreement will commence three (3) months prior to the expiration of this Agreement.

1.3.3 Should negotiations not achieve agreement by the date of renewal, the wages and conditions of employment shall continue as at the date of expiration of this Agreement or until such time as agreement is reached.

1.4 WAGE INCREASES/NO EXTRA CLAIMS

1.4.1 Subject to sub-clause 1.4.2 the rates of pay set out in sub-clause 5.1 of this Agreement shall be increased by the amount of any future Safety Net, National Wage Case increase granted by the Commission in relation to the State Meat Award during the life of this Agreement. Payment of such increases when granted shall be backdated to the first pay period commencing on or after the date the application was lodged in the Commission.

1.4.2 Any "flow on" increase included in the State Meat Award in respect to any Safety Net, National Wage Case in respect to an application that had been granted by the Australian Industrial Relations Commission prior to the commencement of this Agreement shall be excluded.

1.4.3 It is a condition of this Agreement that the Union, its members and all persons eligible to be members bound by this Agreement undertake not to pursue any extra claims for the duration of this Agreement other than those provided for in sub-clause 1.4.1.

1.4.4 Three panel roster/10 hour days

It is a condition of this Agreement that significant changes to existing roster or working systems, e.g. 3 panel rosters and/or 10 hour days and/or 6 day weeks, be agreed with the Union and its members.

Any such changes shall first be subject to an adequate trial period and monitored by the Enterprise Consultative Committee (Clause 10).

The Union reserves the right to renegotiate the terms of this Agreement, upon completion of an adequate trial period and

prior to final introduction of the mutually agreed roster or working hour arrangements.

1.5 NATIONAL STANDARDS

This Agreement shall not operate so as to cause employees to suffer a reduction in ordinary time earnings, or any way in which it does not take into account the Minimum Conditions of Employment Act 1993 and the Industrial Relations Legislation Amendment and Repeal Act 1995, or any other standard as determined by the Commission.

1.6 AIMS AND OBJECTIVES OF THIS AGREEMENT

1.6.1 The parties to this Agreement are committed to—

1.6.1.1 Encouraging a harmonious industrial relations environment through a commitment to consultation and recognition of the role of the Union and the responsibilities of the employer in all aspects of this Agreement.

1.6.1.2 During the period of operation of this Agreement the parties have as an aim improvement of the plant's efficiency and productivity in order to assist the employers international and domestic competitiveness. The parties will be addressing key performance indicators and efforts may include measurement of operations for comparison with international best practices relevant to the industry.

1.6.1.3 Ensuring the ongoing success and growth of the employer and the job security and career satisfaction of employees.

1.6.1.4 The reduction of workplace injuries to zero, and implementation of a programme of rehabilitation of injured employees back into the workplace.

1.6.2 To achieve these objectives the Parties agree to consider a broad agenda through the consultative processes established by this Agreement. The agenda will include—

1.6.2.1 Increasing labour flexibility by examining and trialling alternatives to existing roster, working hours and working weeks arrangements.

1.6.2.2 Ongoing review of work and operational practices affecting efficiency and job safety and job satisfaction.

1.6.2.3 Looking at measures to improve plant utilisation, including skill improvement, multi-skilling and security of employment and necessary training.

1.6.2.4 Pursuing occupational health and safety issues with a view to reducing injuries and illnesses suffered by employees.

1.6.2.5 Reviewing and improving the Productivity Bonus Incentive Scheme to the fair benefit of both Parties.

1.7 POSTING OF AGREEMENT

This Agreement shall be posted by the employer in places accessible to all employees and copies will be held by the accredited Union delegate.

1.8 SINGLE BARGAINING UNIT

1.8.1 This Agreement has been negotiated directly between the Parties through a consultative process involving AMIEU officers, elected delegates, and employees at the Spearwood plant. The employer was represented by senior management and management directly involved with processing operations.

1.8.2 This Agreement shall be a complete document representing the Union and employer positions at the Spearwood plant and there shall be no reference to any other Award or Agreement based thereon.

1.8.3 Should both parties fail to find agreement in the event of a dispute either party may refer the issue to the Industrial Relations Commission.

1.9 DEFINITIONS

1.9.1 Commission

Means the Western Australian Industrial Relations Commission.

1.9.2 Juveniles

Means persons under eighteen years of age.

1.9.3 Redundant

Means being no longer required by the employer to continue doing a job because, for a reason that is not a usual reason for change in the employer's workforce, the employer has decided that the job will not be done by any person.

1.9.4 Sharpening

Means the use of grindstones, emery or like wheels, and the use of oil, carborundum or like stones, but does not include steeling.

1.9.5 Union

Means the Western Australian Branch of the Australasian Meat Industry Employees' Union (AMIEU).

1.9.6 Elected delegate

Means the elected Union representative for the plant as a whole.

1.9.7 Standard Hours of Work

The starting and finishing times for ordinary working hours shall not be earlier than 6 am and shall not be later than 6 p.m., Monday to Friday included. Ordinary working hours shall average 38 hours per week.

1.9.8 Employment conditions—

WEEKLY HIRE—All employees other than casual or daily hire employees are employed by the week and remain subject to one week's notice of termination.

CASUAL HIRE—Casual employees are engaged for a period of less than one month with the period of notice for termination to be no less than 1 hour. Payment shall be for at least 7 hours employment on each day worked.

REGULAR DAILY HIRE—Refers to weekly hire staff who have been stood down because of seasonal conditions but who have been selected and who have agreed to be on standby on a 24 hour notice to report for work on a daily basis.

PART-TIME—Refers to Weekly Hire staff who have elected to job share, or have arranged to work for part of the week on a regular basis.

1.9.9 Grading

Refers to the age and skill levels determining individual pay rates. Age factors include 16 years and under, 17 years and 18 years and over: skill levels include Levels 1, 2, 3, 4 and 5.

1.9.10 Productivity Scheme

A bonus payment system based on an output scheme which takes account of various degrees of difficulty, and therefore time, involved in production of a diverse range of meat products for a wide variety of markets.

1.9.11 Enterprise Consultative Committee (ECC)

This Committee is comprised of a Union accredited delegate, elected employee members and management representatives with the aim of negotiating matters brought to it by the elected delegate, the safety committee, or management.

1.9.12 Base Rate/Ordinary Pay/Award Rate.

Refers to the minimum weekly rate of wage as set down in sub-clause 5.1 for each grading of employee.

1.9.13 Continuous service

For the purpose of Continuous Service, ongoing employment shall be deemed unbroken notwithstanding—

- (i) Periods of Annual leave, Long Service leave, other or Special leave (agreed to in writing by the employer).
- (ii) Any absence from work of not more than 10 days in a year of employment on account of sickness or accident.
- (iii) Any absence with respect to Workers' Compensation.
- (iv) Any interruption or ending of the employment if such interruption is made with the intention of avoiding obligations under this Agreement

1.9.14 Termination

Within this Agreement "Termination" refers to that advice which, following due process including payout of legally

required accrued entitlements, an employee ceases to be in the employ of the employer.

Seasonal stand-down with conversion to regular daily hire does not constitute termination of employment.

2.—CONDITIONS OF EMPLOYMENT

2.1 CONTRACT OF EMPLOYMENT

2.1.1 All Employees

2.1.1.1 Engagement

An employee shall be informed when engaged of the nature of their engagement whether as a casual, weekly hire, regular daily hire or part-time employee.

2.1.1.2 Medical Examinations

It is the responsibility of all employees who feel sick to seek medical advice to ensure that their attendance at work will not compromise the employer's personal hygiene procedures, and its obligations to international food safety laws and regulations.

Employees are required to be medically examined prior to, and periodically during employment in order for the employer to meet the export standards imposed by food safety laws, regulations and its customers and to determine the person's physical capacity to perform the prescribed duties. Employees shall submit to routine medical examinations and certification as required by those standards provided that such medical examinations and certification shall be used for no other purpose and all expenses relating to such examinations shall be paid for by the employer.

2.1.1.3 Notification in Writing

Subject to sub-clause 2.1.1.1 an employee upon engagement shall be advised in writing of their employment status, hours of work and grading.

2.1.1.4 Appointment and Probation

(i) With the exception of a casual employee, all employees shall be on probation for four (4) months, provided that where an employee has been employed as a casual employee in the three (3) months prior to the date of appointment, that period of employment shall have the effect of reducing the probationary period, provided further that such employees shall be on probation for at least a further two (2) weeks.

(ii) At the conclusion of the probationary period and whenever necessary prior to that time, the performance of the employee shall be initially assessed by the Plant Manager.

(iii) If it is necessary to terminate the services of an employee during their probationary period they shall be given one (1) days notice during their first month of employment, or, after that month, one (1) weeks notice, or alternatively paid out in lieu of such notice/s depending on their length of service.

(iv) Any dispute over such actions shall be referred to the Enterprise Consultative Committee.

(v) The employee shall be notified in writing of their successful completion of their probationary period.

2.1.2 Weekly Employees

2.1.2.1 Engagement

All employees other than those employed as casuals shall be employed as weekly, regular daily, or part-time employees.

2.1.2.2 Termination

(i) Notice of Termination by Employer

- (a) In order to terminate employment of an employee (other than a casual or probationary employee or if the employee is terminated for misconduct or because of a seasonal closure), the employer shall give to the employee the following minimum periods of notice—

<u>Period of Completed Continuous Service</u>	<u>Period of Notice</u>
Not more than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

- (b) In addition to the notice specified in sub paragraph (a), if the employee is over forty-five (45) years of

age at the time of the giving of the notice and has no less than two years completed continuous service, the employee shall be entitled to an additional week's notice.

- (c) Notice prescribed in this sub-clause may be given at any time during the week but if given during the employee's ordinary working hours shall apply from the usual finishing time for the day.
 - (d) Payment may be made (either partially or totally) in lieu of notice but any such payment shall be at the base ordinary rate for the classification in which the employee was employed in accordance with sub-clause 5.1 at the time notice of termination was given.
 - (e) If payment is made partially or totally in lieu of notice the period of notice shall be calculated from the actual time the notice was given.
 - (f) In cases where termination of employment is only temporary because of seasonal closures one week's notice or pay in lieu thereof shall be required.
 - (g) Nothing shall prevent the employer exercising its rights under sub clause 2.1.8.6 of this Agreement during any period of notice.
- (ii) Notice of Termination by Employee
- (a) The notice of termination to be given by an employee will not be less than one (1) week. Such notice may be given at any time during the week but if given during the employee's ordinary working hours shall apply from the usual finishing time for the day.
 - (b) A weekly employee leaving their employment without notice or having given such notice leaves before the notice expires shall have an amount equivalent to the amount of unserved notice deducted from monies owed. This sub-clause may not be binding if management accepts extenuating and exceptional circumstances.

2.1.3 Casual Employees

2.1.3.1 Engagement

An employee shall be deemed to be a casual employee—

- (i) If the expected duration of the employment is to be of less than one month; or
- (ii) If the notification in sub-clause 2.1.3.2 is not given and the employee is dismissed through no fault of their own within one month of commencing employment.

2.1.3.2 Notification

On the first day of engagement the employer shall notify the employee that they are being employed as a casual employee, and of the expected duration of such employment.

2.1.3.3 Termination

The period of notice required to be given for a casual employee is one (1) hour with a minimum payment for seven (7) hours for that day.

2.1.3.4 Loadings

An employee employed under casual conditions shall be employed by the hour and paid on the basis of one thirty-eighth of the weekly rate for the classification they are engaged under as prescribed in sub-clause 5.1 of this Agreement plus twenty percent (20%) of such rate for each day or shift. The twenty percent (20%) additional payment is compensation for Holidays, Annual Leave, Sick Leave, Bereavement Leave and Long Service Leave which are not entitlements for casual employees.

2.1.4 Regular Daily Hire

2.1.4.1 Engagement

Weekly employees may be engaged as regular daily hire employees during any period when not employed on a weekly basis.

2.1.4.2 Loading and Entitlements

Regular daily employees shall receive a five percent (5%) loading over the ordinary pay rate as outlined in sub-clause 5.1, but additionally will retain all entitlements applicable to weekly employees with the exception of pay for Public Holidays not worked unless these occur within seven (7) days before or after any period of non-employment as a regular daily hire employee.

Service for the calculation of annual leave and long service leave purposes will increase by one day for each day worked.

Service for sick leave will increase by one sixth of a week for each twenty (20) days worked.

2.1.4.3 Conditions of Regular Daily Hire

(i) In the event of seasonal downturn and restrictions to stock supplies, weekly employees may have their employment status changed to regular daily hire until termination, or re-instatement to weekly employment following an increase in stock numbers.

(ii) Regular daily hire employees may be employed in the event of short fall labour requirements.

(iii) The re-engagement of regular daily hire employees shall require a notice period of no less than twenty four (24) hours.

2.1.4.4 Payment

(i) Regular daily hire employees shall be paid by electronic fund transfer on the same day as is applicable to weekly employees.

(ii) When either the employer or employee wish to terminate regular daily hire employment notice shall be given by twelve (12) noon before the end of the day on which the termination is to be effective and all monies due to the employee shall be paid to the employee at the end of the working day or, at the employees request by bank transfer to their account.

(iii) Should such notice not be given and the employee appears to commence work on the following day, if there is no useful employment for that person resulting in their being sent home, they shall be paid at base rate for that day.

2.1.5 Part-Time employees

2.1.5.1 A weekly employee may be employed on a part-time or job share basis with the proviso that the minimum engagement on any one day shall not be less than four (4) hours. The employer should give the employee one weeks notice of any change to agreed working hours including days worked, hours worked and start and finish times.

2.1.5.2 A part-time or job share employee shall receive payment of wages, annual leave, public holidays, sick leave, bereavement leave and long service leave as prescribed in this Agreement for weekly employees on a pro rata basis in the same proportions as the number of hours normally worked at the plant. Public Holidays will be taken as paid days only if a day normally worked co-incides with a declared Public Holiday.

2.1.5.3 There will be a minimum of five (5) full-time employees for each part-time/job share employee and this ratio will be monitored by the Enterprise Consultative Committee.

2.1.6 Contract Labour

2.1.6.1 Right To Use Contract Labour

Nothing in this Agreement shall prevent the employer, when management deems there is a requirement, from utilising the services of bona fide contract labour hire firms to meet emergency situations of labour shortage.

2.1.6.2 Contract Labour On A Shift By Shift Basis

Where particular skill and/or supplementary labour is needed to meet production requirements and the skill and/or labour is not available from amongst experienced casual or regular daily employees management may supplement that shift with necessary contract labour.

2.1.6.3 Delegate Advised

Management will advise the elected delegate when there is need to employ contract labour.

2.1.6.4 Productivity Bonus

The overall number of employees on any one day will be used to calculate productivity bonus payments, but such payments derived from contract labour will be partially retained by the employer as part offset against the increased cost of the emergency labour (sub-clause 8.2.6).

2.1.7 Deductions

2.1.7.1 An employee not attending to their duty shall, except where otherwise expressly provided for in this Agreement, lose their pay for the actual time of such non-attendance.

2.1.7.2 The employer may deduct payment for any day or part of a day on which an employee cannot be usefully employed because of—

- (i) Any strike, other than a bona fide occupational health and safety issue that may involve any imminent risk to the employees health safety and welfare.
- (ii) Through any breakdown of machinery, or non-availability of essential services, for which the employer cannot reasonably be held responsible.
- (iii) Any industrial disputes by employees of authorities or organisations responsible for the supply of electricity, water, gas, sewerage or other goods or services essential to the continuance of plant operations, for which the employer cannot reasonably be held responsible.
- (iv) The exception to the above being where it can be demonstrated that a breakdown at Spearwood has been the result of the employers insufficient maintenance.

2.1.8 Warnings/Dismissals

Employees who exhibit unsatisfactory performance or behaviour, or breach the employers Health/Hygiene policies, shall be counselled so that they understand the standards expected of them and will be offered assistance and guidance in achieving those standards. Each such counselling event or written notice will be recorded in the employees' records and signed by the employee and an employer's representative.

2.1.8.1 The employer shall not dismiss an employee without valid cause and any dispute relating to this sub-clause shall be determined in accordance with the agreed Dispute Settlement Procedure.

2.1.8.2 (i) Should an employee be found guilty of faulty and/or inefficient work and/or a failure to adhere to policies and procedures established by the employer and advised verbally or by written notice, the employer shall serve a notice on that employee warning him/her of the allegation. For Union members the warning shall be given in the presence of the elected delegate who will also be given a copy of the notice concerned to adhere

(ii) If the circumstances referred to in sub-clause 2.1.8.2 (i) occur on a second occasion a second notice will be issued.

(iii) If, following a second notice, a further allegation of faulty and/or inefficient work is made and proven a notice of termination shall be issued to that employee.

2.1.8.3 In the event that an employee incurs a second warning within a period of twelve (12) months that employee's record will not be expunged until a further twelve (12) months has passed from the time of the second warning.

2.1.8.4 The employer shall have the right to suspend an employee for up to two (2) weeks without pay in instances where the employee may otherwise be dismissed.

2.1.8.5 If the employee recommences at the end of the suspension period such period will not affect continuity of service, but will not be used for accrual of entitlements.

2.1.8.6 Nothing in this Agreement shall affect the right of an employer to summarily dismiss an employee, without the notice specified in sub-clauses 2.1.8.2 (i) and (iii), because of neglect of duty or proven gross misconduct. In such a case wages shall be paid up to the time of dismissal only.

3.—SENIORITY

3.1 SENIORITY LISTS

3.1.1 The employer shall keep a seniority list by employment categories of all employees.

3.1.2 To qualify for seniority, an employee must successfully complete their four (4) month probation period. On completion of their probation period the employee shall be deemed to have seniority from the commencement date of their employment.

3.2 RETRENCHMENTS

3.2.1 It is the right of the employer to retain a nucleus of skilled staff within each employment category sufficient to maintain efficient operations within the prevailing and anticipated seasonal stock supply conditions and/or market requirements.

3.2.2 It is therefore agreed between the Parties that, as commercially necessary, the employer can retrench employees initially within categories commencing with the Level 1, to a point where an essential nucleus of experienced employees remains. If necessary, further retrenchments, to a viable nucleus will then take place from Level 2 employees; subsequent retrenchments, with the same proviso, will occur at Level 3 and then Level 4 and finally from Level 5.

3.2.3 Other things being equal, the employer will not retrench an employee before an employee who has been employed for a shorter time.

3.2.4 If the employer wishes to retain an employee in preference to an employee with longer service in the same classification (subject to the limits of their skills, competence and training) it will give five (5) working day's written notice to the elected delegate of its intention.

3.2.5 If the delegate objects the objection will be advised to the Plant Manager.

3.2.6 If the Manager cannot resolve the issue the employer undertakes to consult.

3.2.7 If the parties cannot reach agreement the matter will be referred to the Commission.

3.3 DISMISSAL

Nothing in this Agreement operates to prevent the dismissal of any employee for misconduct or unsatisfactory service.

3.4 SHIFT TRANSFER

3.4.1 An employee transferred from day shift to another shift will not forfeit their seniority on the day shift as a result.

3.4.2 A new employee wishing to transfer from afternoon shift to day shift may be so transferred and retain existing seniority providing they have completed their probationary period.

3.5 SERVICE FOR SENIORITY

3.5.1 The employer shall keep a separate seniority list for employees regularly employed on the afternoon shift.

3.5.2 The seniority of an afternoon shift employee shall be based on the accumulation of service through consecutive periods of employment, and from the date upon which the employee first commenced employment with the employer.

3.5.3 Time worked under conditions of regular daily hire, and part-time employment will count in calculating seniority.

3.6 CASUALS

Time worked as a casual in accordance with sub-clause 2.1.3 Casual Employees of this Agreement will not count in calculating seniority except as outlined in sub-clause 2.1.1.4 (i) Appointment and Probation.

3.7 RECOMMENCEMENT OF DUTIES

3.7.1 The employer shall give listed employees a minimum of one weeks notice of the date of availability of weekly work. Such notice may be extended to two (2) weeks notice for employees who notify the employer that an extended period is required.

3.7.2 Notice shall be given by placement of a notice in the Public Notices section of the West Australian Newspaper. Employees not contactable by telephone shall have written advice forwarded to their last known address.

3.7.3 Failure by an employee to respond to advice supplied as per sub clauses 3.7.1 and 3.7.2 shall result in a loss of entitlement to seniority, further provided that in the case of unforeseen circumstances, the employer agrees to hold discussions with the elected delegate and the employee concerned, with the view of reinstatement of seniority if the circumstances determine such.

4.—WORK TO BE PERFORMED

4.1 The employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training and any direction issued by the employer shall be consistent with the employer's responsibility to provide a safe and healthy work environment.

4.1.1 Employees shall perform such work as the employer requires on the days and during the hours usually worked by the class of employee affected.

4.1.2 All work performed under this Agreement shall be carried out to the satisfaction of the employer.

4.2 CHANGES TO SYSTEMS AND METHODS OF WORK

4.2.1 Significant decisions regarding methods of work, production processes, waste minimisation, introduction of machinery or new technology etc. shall be made following consultative processes within the Enterprise Consultative Committee.

4.2.2 New Technology

Where the employer proposes to introduce new technology that may reduce the number of employees and/or affect the productivity scheme the employer shall hold discussions with the Enterprise Consultative Committee.

Prior to the introduction of such machinery the following shall apply—

- 4.2.2.1 The employer shall give the elected delegate and employees one (1) months notice of the date upon which the employer intends to install such equipment.
- 4.2.2.2 Where, subject to the discussions referred to in sub-clause 4.2.1. the parties agree that the new technology proposed to be introduced is likely to affect the operation of the productivity bonus payments scheme, the parties agree that a trial will be conducted to determine a means of integration of the technology within the productivity bonus payments scheme. The trial period will be no longer than one (1) month, unless otherwise agreed by the Parties.
- 4.2.2.3 Whilst any trial as set out in sub-clause 4.2.2.2 above is being conducted, employee earnings from productivity bonus payments shall not be adversely affected, save that seasonal/supply factors may reduce throughput and thus the practical possibility of bonus level achievement.
- 4.2.2.4 At the conclusion of the trial, the method agreed between the Parties for integration of the technology within the productivity bonus payments scheme shall be applied, and employees will revert to actual earned productivity bonus payments.

4.2.3 Operational Changes

The parties to this Agreement recognise the provisions of the Agreement and the Productivity Scheme are mainly formulated around the employer's current business operations at Spearwood, which is mainly the cutting and packing of lambs for export. In the event that the employer proposes significant and permanent changes to the nature of operations carried out at Spearwood (e.g. introduction of new species and/or service processing) the parties agree to meet and agree appropriate changes to this Agreement and the Productivity Scheme. Such negotiations will be carried out in good faith

4.3 HOURS OF WORK

4.3.1 Except as provided elsewhere in this Agreement, the ordinary hours of work for all employees, other than part-time or daily hire, but including casuals, shall be 38 hours per week.

4.3.2 The actual ordinary working hours shall not exceed eight (8) hours on any day or thirty eight (38) hours in any week to be worked in the case of employees other than shift workers, on five (5) days of the week, Monday to Friday inclusive, between the hours of 6.00 a.m. and 6.00 p.m. subject to sub-clause 4.6 (Shift Work and Work On Weekends And Public Holidays).

4.4 ROSTERED DAYS OFF—Weekly Workers

4.4.1 Employees shall take their rostered time off in the following manner—

4.4.1.1 During the period from 1 September to 31 December in any year, employees will accrue two (2) hours per week towards four (4) rostered days off to be taken at the employer's discretion over the Christmas—New Year and/or Easter holiday periods or such other times as may be agreed between the employee and the employer.

4.4.1.2 During the period from 1 January to 31 August in any year—

- (i) The ordinary hours of work shall not exceed six (6) hours on Friday, with payment for Fridays calculated as twenty percent (20%) of the ordinary weekly rate for each classification.
- (ii) Employees may continue to work for up to six (6) hours on a Friday before a meal break of at least thirty (30) minutes is required.

4.4.2 Implementation

Rostered days off shall be taken with payment for each rostered day off calculated as twenty (20%) of the ordinary weekly rate of wage for each classification.

4.4.3 Resignation or Termination

Any rostered time off not taken shall be paid out upon resignation or termination.

4.4.4 Service

Time spent on annual leave, long service leave, maternity/paternity leave or Worker's Compensation shall not be treated as service for the purpose of this sub-clause.

4.4.5 Other Leave

Where an employee has already been granted a rostered day off on a particular day, they shall not be entitled to sick leave or bereavement leave in substitution for the rostered day off.

4.4.6 Casual Employees

This sub-clause shall not apply to casual employees.

4.5 STARTING AND FINISHING TIMES

4.5.1 The starting and finishing time for ordinary hours shall not be earlier than 6.00am and not later than 6.00pm Monday to Friday inclusive.

4.5.2 Starting and finishing times shall be mutually agreed between the employer and the employee.

4.5.3 Significant changes proposed to start and finish times will be discussed by the Enterprise Consultative Committee.

4.5.4 Management has the right to alter start and finish times applying to individuals or a group of employees.

4.5.5 An employee directed to an earlier start time will complete eight (8) hours at ordinary rate before being entitled to overtime rate for further work, save that in circumstances where work prior to the completion of ordinary hours ceases due to a management decision overtime shall be paid on authorised "pre-start" work.

4.5.6 Employees shall be given at least one days notice of any change to start and finish times, and at least one weeks notice of changes to days rostered for work.

4.6 SHIFT WORK AND WORK ON WEEKENDS AND PUBLIC HOLIDAYS

4.6.1 Introduction of Shift Work

4.6.1.1 The employer may introduce shifts providing that prior to such implementation the Enterprise Consultative Committee must be notified, and will negotiate and reach agreement on the relevant starting and finishing times for the intended shift.

4.6.1.2 The employer shall not require an existing employee to work on shifts other than the day shift, if the employee has a justifiable reason for not so working.

4.6.1.3 Shift work, other than that provided by this sub-clause, shall be discussed with the Enterprise Consultative Committee.

4.6.2 The spread of hours for an "Afternoon Shift" shall commence between 4.00 p.m. and 7.00 p.m. and extend until 12.30 a.m. before work attracts overtime penalty rates.

4.6.3 Shift Allowances

An employee on afternoon shift shall be paid the appropriate rate for the grading for which they are employed under the Agreement, plus fifteen percent (15%) thereof.

4.6.4 Work On Weekends and Public Holidays

4.6.4.1 All process work performed on a Saturday shall be paid at one and one-half (1.1/2) times ordinary pay for the first two (2) hours and double time thereafter, provided that employees required to work on a Saturday shall be guaranteed a minimum of five (5) hours work.

4.6.4.2 Transport, loading and maintenance work performed on a Saturday shall be paid at one and one-half (1.1/2) times ordinary pay for the first two (2) hours and double time thereafter and be guaranteed a minimum of three (3) hours work.

4.6.4.3 All process work performed on Sunday shall be paid for at double time provided that employees required to work on a Sunday shall be guaranteed a minimum of four (4) hours work.

4.6.4.4 Public Holidays

An employee who voluntarily agrees to working on a Public Holiday shall be paid double the ordinary rate and will be guaranteed payment for a minimum of four (4) hours work.

4.7 REDUNDANCY

4.7.1 Where an employee's position is redundant the employer will consult with the employees concerned immediately a decision is made—

- (i) With respect to the likely effect on employees.
- (ii) To ensure continuity of employment for as many employees as possible.

4.7.2 Subject to sub-clause 4.7.3 in the event that an employee (other than a casual) is terminated for the reasons set out in sub-clause 4.7.1 severance payments of two weeks pay for every year of completed continuous service shall apply (in addition to any notice or pay in lieu of notice as prescribed in sub-clause 2.1.2.2 and paid out leave entitlements) PROVIDED that in no case shall a combination of pay as prescribed by this sub-clause and sub-clause 2.1.2.2 be greater than sixteen (16) weeks pay.

4.7.3 Employees who at the commencement of this Agreement would have had an entitlement in excess of sixteen (16) weeks pay based on two (2) weeks for every year of completed continuous service shall continue to hold that entitlement up to a maximum of thirty two (32) weeks PROVIDED that any such employee shall accrue no further entitlement and the existing entitlement, calculated in accordance with this sub-clause, shall be inclusive of any notice or pay in lieu of notice as prescribed in sub-clause 2.1.2.2.

4.7.4 For the purposes of this sub clause "weeks' pay" shall mean the employee's normal base classification rate as set out in sub-clause 5.1 of this Agreement.

4.7.5 Interview Leave

If an employee has been informed that they are to be made redundant, they will receive eight (8) hours paid leave to seek other employment during any period of notice which has been given by the employer and is being worked out by the employee. The eight (8) hours leave need not be consecutive.

4.7.5 Transfer to lower paid jobs

If an employee is transferred to a lower level for reasons set out in sub-clause 4.7.1 hereof, the employee shall be entitled to the same period of notice of transfer as would have applied should the employment been terminated, and the employer may, at the employer's option, make payment in lieu thereof of an amount equal to the difference between the employee's former classification rate and the new lower classification rate for the number of weeks of notice still owing.

4.7.6 Alternative Employment

The provisions of this sub-clause shall not apply where the employer arranges acceptable alternative employment for an employee who would have otherwise been terminated due to redundancy.

4.7.7 Transmission of business

4.7.7.1 Where a business is, before or after the date of this Agreement, transmitted from the employer (the transmitter) to another employer (the transmittee) and an employee who may, at the time of such transmission, become an employee of the transmittee—

- (i) The continuity of employment of such employee shall be deemed not to have been broken by reason of such transmission.
- (ii) The period of employment which the employee has with the transmitter shall be deemed to be of the employee with the transmittee.

4.7.7.2 Employees of the transmitter not transferring to the transmittee shall have all accrued entitlements paid out at the time of termination.

4.7.7.3 In this sub-clause "business" includes trade, process, business or occupation and includes part of any such business and "transmission" includes transfer, conveyance, assignment or succession whether by agreement or by operation of law, and "transmitted" has a corresponding meaning.

4.8 PAYMENT OF WAGES

4.8.1 Wages shall be paid during the employees normal working hours on the usual pay day of the employer, which shall not be later than Friday in each calendar week.

4.8.2 Wages shall be paid by electronic funds transfer to the employee's nominated bank or similar account.

4.8.3 On each pay day each employee shall receive a statement on the pay envelope or pay slip showing the total amount of ordinary wages, overtime and all deductions therefrom, in respect of all such moneys paid to him or her inclusive of productivity.

4.8.4 Wages due to a casual employee, or terminated employee, shall be paid by a company cheque immediately on the finish of work on each day on which he or she is engaged, or terminated, if so requested by any such employee.

4.9 MEAL TIMES

4.9.1 A period of one half hour shall be allowed to all employees no later than five (5) hours after commencing work. A mid-day meal break shall be allowed commencing at any time between 11.00 a.m. and 2.00 p.m. Notwithstanding anything else contained in this sub-clause, employees may by mutual consent be allowed either half an hour, three quarters of one hour or one hour for meal breaks.

4.9.2 (i) Except in the event of an emergency (e.g. plant breakdown or lack of product), no variation may be made to an established meal break unless twenty four (24) hours notice is given to the employees concerned. Such notice shall be deemed to have been given by the posting of a notice on the locked notice board.

(ii) In the event that a variation to a meal break is sought and agreement cannot be reached between the employer and employees, this matter shall be considered by the Enterprise Consultative Committee which shall make a recommendation on the matter.

(iii) In the event of a machinery breakdown or product shortage within one half hour of a normal meal break an employee may be directed to take their break early.

4.9.3 An employee called upon to work during a meal interval shall be paid at double the rate to which the employee would otherwise be entitled and shall continue to receive such rate until a meal break is taken.

4.9.4 Afternoon Shift Workers

Afternoon shift workers shall be allowed a meal break no less than five (5) hours after commencing their shift.

4.10 EMPLOYEE FACILITIES

4.10.1 The employer shall provide the following facilities for employees—

- (i) Boiling water in sufficient quantities to make an adequate supply of hot drinks for each employee immediately each meal or rest break commences.
- (ii) A microwave oven for the heating of pre-cooked meals.
- (iii) Changing rooms, dining rooms, toilets, wash basins, showers, etc., in accordance with the provisions of the Code of Practice for Workplaces made pursuant to the Occupational Health, Safety & Welfare Act.
- (iv) Adequate supplies of cool potable drinking water at convenient locations.
- (v) Adequate supplies of anti-bacterial soap and sterile hand drying equipment (e.g. paper towels) in all washrooms.

4.11 JUVENILES

4.11.1 No juvenile employee shall be permitted to work in a chamber with a temperature below zero Celsius. "Chamber" shall mean any room artificially cooled.

4.11.2 Provided that, where there is no express provision in this Agreement, juveniles may be employed on a particular task after the employer has consulted with the Enterprise Consultative Committee as to the suitability of such tasks for juveniles.

4.11.3 Except as provided in this sub-clause, and unless a contrary intention appears, the terms and conditions prescribed by this Agreement shall apply to juveniles as well as adults.

4.11.4 Rates of wages shall apply as provided for in sub-clause 5.5 Pay Rates. Juvenile rates shall be subject to the following provisions —

- (i) A juvenile shall not be permitted to operate any form of pneumatically, hydraulically or electrically driven machinery (e.g. flow wrapper, bandsaw, backstrapping machine, gas flush machine, french rack machine, strapping and cryovac machine).
- (ii) Provided a person under eighteen (18) years shall not be permitted to use a knife—unless there is mutual agreement with the Enterprise Consultative Committee as to that person having received the required training and having reached the required level of competence. Where juveniles are used in this capacity they will be paid the appropriate adult rate.

4.12 MANUAL HANDLING

To reduce accidents it is essential that employees are not exposed to hazards in the course of their duties. Manual handling at Spearwood, particularly lifting and carrying, is a hazardous activity and management and employees should be aware of and adhere to the Code of Practice attaching to the Occupational Health, Safety and Welfare Act 1984.

Management and the Safety Committee will co-operate to continually assess accident risk, to make safe hazardous areas and operations, and to train supervisors and employees in control methods to eliminate or reduce the risk of injuries.

All employees are referred to the Code of Practice Manual Handling Sections 4.21—4.26 and 5.19—5.43 for particular guidance with respect to handling weights.

Juveniles required to do any physically demanding labour shall do so in accordance with their physique and their capacity to handle the task involved. If this becomes a matter of dispute it shall be resolved by consultation within the Enterprise Consultative Committee.

5.—PAY RATES AND CLASSIFICATION STRUCTURE

5.1 RATES

Wage rates effective—16 December 1999

Level	Full Time	Full/Part Time	Casual Rate	Overtime Rate	
	Weekly Rate	Ord Hourly Rate		\$ per hour	\$ per hour
	\$ per week	\$ per hour		1½	Double Time
1	\$385.40	\$9.635	\$12.171	\$14.453	\$19.270
2	\$400.64	\$10.016	\$12.652	\$15.024	\$20.032
3	\$412.56	\$10.314	\$13.028	\$15.471	\$20.628
4	\$440.08	\$11.002	\$13.897	\$16.503	\$22.004
5	\$458.40	\$11.460	\$14.476	\$17.190	\$22.920

Wage rates effective first pay period commencing on or after 1 January 2001

Level	Full Time	Full/Part Time	Casual Rate	Overtime Rate	
	Weekly Rate	Ord Hourly Rate		\$ per hour	\$ per hour
	\$ per week	\$ per hour		1½	Double Time
1	\$385.40	\$9.635	\$12.171	\$14.453	\$19.270
2	\$415.68	\$10.392	\$13.127	\$15.588	\$20.784
3	\$428.04	\$10.701	\$13.517	\$16.052	\$21.402
4	\$456.60	\$11.415	\$14.419	\$17.123	\$22.830
5	\$475.60	\$11.890	\$15.019	\$17.835	\$23.780

5.2 DIVISOR

Payment of ordinary hourly wages for employees other than casuals shall be calculated on the basis of a 40 hour divisor.

5.3 GRADING OF EMPLOYEES

5.3.1 The classification structure set out below is designed to provide employees with a clear career path, promote multi-skilling and to remove and prevent any demarcation barriers.

2.2.2 The structure is based upon the principle that each employee is graded at a particular level having regard to their skill, competency, experience, and qualifications, not the tasks they may be actually performing on any day or shift. Consequently the employee may be required to perform any tasks within their skill and competency but shall be paid the ordinary level rate of pay appropriate to their classification level, regardless of the work they actually perform.

2.2.3 The approval discretion for the employee's grading level shall be with the Plant Manager following consideration of any recommendation from the Enterprise Consultative

Committee. New employees will commence at level one (1) unless approved otherwise by the employer.

5.3.4 Employees will be notified of their initial grade at the time of appointment. Prior skills will be recognised to the extent of the skills appropriate to the position being filled. The Enterprise Consultative Committee will make recommendations for promotion to the Plant Manager who has the right of final endorsement.

5.3.5 Provided adequate opportunity is first given to an employee to upgrade their skills the employer may transfer an employee to a lower grade if they cease to hold the skill, competency, experience or qualification required for the grade to which they have been appointed.

5.4 CLASSIFICATION STRUCTURE

The skills required in the workplace are broadly grouped into the following levels of the classification structure.

Level 1

New employees at this level are undertaking on-the-job training during an initial period of employment of six (6) months. Such training may include information on the company or enterprise, the Union and this Agreement, occupational health and safety requirements, plan layout, quality control/assurance production techniques, work and documentation procedures, training requirements and career path opportunities. An employee would also be expected to demonstrate that they have the attitude and ability to work in a team environment.

An employee at this level performs routine labouring duties essentially of a manual nature, works under direct supervision, exercises minimal judgement, works to defined procedures, may perform general cleaning duties and is undertaking on-the-job training to enable him or her to work at Level 2.

During the initial six (6) months of employment, an employee with previous experience in the meat industry may request to have their competence assessed by the Plant Manager (or their nominee). If the employee demonstrates their competence in the tasks required by the criteria for Level 2 to the satisfaction of the Plant Manager (or their nominee) they will progress to Level 2. If the employee is unable to demonstrate the required competence, they shall not request another assessment within three (3) months.

After three (3) months employment at Level 1, an employee with no previous experience in the meat industry may request to have their competence assessed by the Plant Manager (or their nominee). If the employee demonstrates their competence in the tasks required by the criteria for Level 2 to the satisfaction of the Plant Manager (or their nominee) they will progress to Level 2. If the employee is unable to demonstrate the required competence, the balance of the initial six months employment will be completed before they progress to Level 2.

Level 2

Has completed on-the-job training to enable the employee to perform work within the scope of this level.

At this level an employee—

- (1) Is responsible for the quality of their own work, subject to routine supervision.
- (2) Works under routine supervision, either individually or in a team environment.
- (3) Exercises discretion within their level of skills and training.

Indicative of the tasks which an employee at this level will be capable of performing are the following—

- Operating flexibly between production stations.
- Operating machinery and equipment that perform routine functions.
- Engaging in one or more of the following: receiving, despatching, weighing, distributing, sorting, checking, stamping and packing; Operating manual equipment including pallet trucks and hand trolleys.
- Measuring accurately.
- Assisting in on-the-job training in conjunction with trades persons and/or supervisors and trainers.

- Basic inventory control in the context of production process.
- Carcass and/or primal cut trimming to a customer specification and export requirements.

Level 3

Has completed on-the-job training to enable the employee to perform work within the scope of this level.

At this level an employee performs work above and beyond the skills attained by a fully trained Level 2 employee.

(1) Works according to complex instruction and procedures.

(2) Assists in the provision of on-the-job training to a limited degree.

(3) Co-ordinates work in a team environment or works individually under general supervision.

(4) Is responsible for assuring the quality of their own work.

Indicative of the tasks which an employee at this level will perform competently are the following—

- Be able to sharpen knife and maintain it in a sharp condition.
- Pre-trim carcass to AQIS and/or Company requirements.
- Trim primal cuts to customer specification or as directed by the Supervisor.
- Use machinery as required (e.g. rack machine, loin de-boner, scales, strapping machine, basic saw cuts (e.g. tipping legs)).
- Be able to follow production schedules (i.e. production and expiry dates, right stickers and inserts on primals or other packaging).
- Keep control of packaging materials (i.e. cartons, bags, plastics, etc).

Level 3 employees must demonstrate that they are proficient in a minimum of 3 of the above tasks with the use of a knife the main criteria for this grade. An employee at this level must also be able to demonstrate they can work with minimum supervision and maintain high levels of productivity and quality of work.

Employees with skill levels equal to the above (e.g. accredited forklift drivers) may also be appointed to this level.

Level 4

Has completed on-the-job training to enable the employee to perform work within the scope of this level.

At this level an employee performs work above and beyond the skills attained by a fully trained Level 3 employee.

(1) Works according to complex instruction and procedures.

(2) Assists in the provision of on-the-job training to a limited degree.

(3) Co-ordinates work in a team environment or works individually under general supervision.

(4) Is responsible for assuring the quality of their own work.

Indicative of the tasks which an employee at this level will perform competently are the following—

- Operating a band saw so as to be able to perform all cuts to customer specification and export requirements with a minimum of wastage.
- Maintaining band saw equipment.
- Machine setting, loading and operation.
- Using tools and equipment within the scope of (basic non-trades) maintenance.
- Conducting basic quality checks on the work of others.
- Assisting with on-the-job training in conjunction with supervisors/trainers.

Level 5

A Level 5 holds a Trade Certificate or is able to demonstrate that they can exercise skills and knowledge of that trade. At this level an employee performs work above and beyond the skills of Levels 2, 3 and 4 employees and to the level of their training.

Indicative of the tasks which an employee at this level will be capable of performing, are the following—

- Properly caring for the tools of trade (i.e. a knife).
- Knowing the cutting lines and natural seams of a lamb carcass and all the bone joints.
- Removing meat cuts without damage, i.e. knife scores to other cuts, by following the prescribed cutting lines to produce the required product.
- Working in a safe manner and not endangering other employees.
- Understanding and applying quality control techniques.
- Performing work under limited supervision, either individually or in a team environment.
- Performing non-trade tasks incidental to the work.
- Performing work, which while primarily involving the skills of the employee's trade, is incidental or peripheral to the primary task and facilitates the completion of the whole task. Such incidental or peripheral work would not require additional formal technical training.
- Inspecting products and/or materials for conformity with established operational standards.
- Assisting in provision of on-the-job training in conjunction with supervisors/trainers.

An employee at each level will be required to carry out work as the employer may reasonably require, subject to the limits of their skills, competence and training.

5.5 JUVENILES

Juvenile employees shall receive the following percentage of the adult rate of pay of the classification applicable.

16 years and under =	60%
17 years	= 75%
18 years and over	= 100%

6.—ADDITIONAL PAYMENTS

6.1 OVERTIME

6.1.1 General

6.1.1.1 It is a condition of engagement and of employment that an employer may require an employee to work reasonable overtime (including overtime on Friday, Saturdays and Sundays) at overtime rates and such employee shall work overtime in accordance with such requirements.

6.1.1.2 Penalty rates shall apply to all overtime of fifteen (15) minutes or more with the final fifteen (15) minutes rounded up or down from the actual finishing time.

6.1.1.3 All work performed in excess of, or outside of, the rostered ordinary hours of work will be deemed to be overtime.

6.1.1.4 In calculating overtime each day shall stand alone and the maximum rate payable shall be double the ordinary rate.

6.1.1.5 An employee (other than a casual employee) who works so much overtime on top of ordinary hours that commencement of work on the succeeding day occurs within eight (8) hours of ceasing that overtime shall be released, without loss of pay for any time not worked, until eight (8) hours after such overtime has elapsed.

6.1.1.6 Pre Start Overtime

It is a condition that pre-start/set-up employees work through to the full finish time of the plant.

Pre-start or follow-up work performed outside the spread of hours shall be deemed as overtime.

Work performed prior to the normal start-time shall be deemed to be part of the ordinary hours of work for that day or shift and overtime shall not be paid until the completion of eight (8) ordinary hours, including such pre-start time, the exception being if work for the day finishes before eight (8) hours in which case sub-clause 4.5.5 applies.

6.1.2 Standard Hours

Time worked after the completion of ordinary hours in any day or shift shall be deemed to be overtime and shall be paid for at time and one half (1.1/2) for the first two hours and double time thereafter at the rates set out in sub-clause 5.1.

6.2 PRODUCTIVITY INCENTIVE BONUS SCHEME

The parties agree that the provisions of Order C695/1992 relating to the practices and rules of the employers Productivity Bonus Scheme form part of this Agreement with the following amendments;

6.2.1 Level 1 employees and employees on light duties shall be excluded from receiving any entitlement under the Productivity Bonus Scheme.

6.2.2 Sub-clause 6.2 of the Productivity Bonus Scheme shall be amended to read—

“6.2 Employees who are absent for any part of a week, but produce a doctor’s certificate on their return, will have their bonus calculated on a daily basis using the proportion that the number of hours they actually worked on each day or shift has to the total hours worked on that day or shift.”

6.2.3 Sub-clause 6.3 of the Productivity Bonus Scheme shall be amended to read—

- “6.3 (a) Individual payments under the scheme shall be conditional on the basis that the employee shall have taken no unauthorised absences during the week pertaining to the productivity period involved, save that in the event of a properly notified (at least twenty four (24) hours) notice of a National AMIEU stoppage employees who are members of the Union may be deemed as on authorised leave during the period of such stoppage.
- (b) For the purpose of this sub-clause, unauthorised absence will include industrial action where the dispute settlement procedure has not been adhered to explicitly.”

6.2.4 Subject to sub-clause 6.2 of the Productivity Bonus Scheme (as amended by sub-clause 6.2.2 above), the conditions and calculations of the Productivity Bonus Scheme will be determined on a weekly basis for each shift.

6.2.5 Because of the negative impact of frequent individual absences on the bonus payments to other, more reliable, workers, the Enterprise Consultative Committee shall discuss problems relevant to this issue and provide recommendations to the elected delegate and the employer’s management.

6.3 Leading Hand Allowance

An employee who is placed in charge of more than two other employees for not less than one day shall be paid the following weekly Leading Hand’s Allowance for all purposes—

- 3 to 10 people \$18.00
- 11 to 20 people \$28.05
- 21 or more people \$36.90

6.4 MEAL ALLOWANCE

6.4.1 (i) An employee required to work overtime of more than two (2) hours on any one day (see sub-clause 6.1 shall be supplied with a meal by the employer or paid \$7 by the employer to purchase a meal.

(ii) If the amount of overtime required to be worked exceeds 4 hours the employer shall supply a second meal or pay the employee a further \$7.

(iii) No such meals need to be provided or payments need to be paid to employees living in the same locality as the Spearwood plant who can feasibly return home for such meals.

7.—PRODUCTION PROCESSES

7.1 GRINDSTONES

The employer shall provide sufficient grindstones where the employees are required to use knives in the course of their duties.

7.2 TOOLS OF TRADE

7.2.1 The following tools of trade shall be supplied to employees when necessary for the performance of their duties—

- (i) Knives, equipped with a suitable guard of the type which prevents the hand from slipping on to the blade.
- (ii) Scabbard or other sheath made of impervious and non-ferrous material capable of being made sterile with ease.

- (iii) Steel, with a plastic ring of at least 5cm, (two inches) diameter.

7.2.2 These shall remain the property of the employer.

7.2.3 They shall be returned to the employer on termination of the employment or if they are not returned the employer shall be entitled to deduct their cost from any money owing to the employees.

7.3 SHARPENING

7.3.1 Employees who are employed at Level 5 shall ensure that knives are sharp before the commencement of each shift and shall sharpen their knives or any other tool that they are required to sharpen and keep sharp in the performance of their duties, at times which do not interfere with the smooth running of the plant.

7.3.2 Provided that should an employee be required to work the hours prescribed in sub-clause 4.3 (Hours of Work) of this Agreement sufficient time shall be allowed by the employer to sharpen knives or any other tool that the employees are required to sharpen and keep sharp in the performance of their duties.

8.—LEAVE PROVISIONS

8.1 ANNUAL LEAVE

8.1.1 Except as otherwise provided in this Agreement every employee, other than a casual employee, shall at the end of each year of continuous or accumulated employment become entitled to Annual Leave of four (4) weeks on ordinary pay. The employer shall give at least four (4) weeks notice to an employee of the date the employee is required to commence annual leave.

8.1.2 Any time during which an employee is absent from work, except time for which they are entitled to claim sick pay, or time spent on authorised leave, shall not count for the purpose of calculating the period of entitlement to annual leave.

8.1.3 Where the employer and the employee agree annual leave may be taken in shorter periods provided that the employer may only once in the course of a year’s service direct an employee to take annual leave or a portion thereof at the employer’s convenience. Provided further that where the employee and employer reach agreement on the matter, subsequent periods of annual leave may be taken at the employer’s convenience. Any leave taken under this sub-clause shall be paid at the ordinary rate of pay.

8.1.4 Annual Leave entitlements shall be given by the employer and shall be taken by the employee before the expiration of a period of twelve (12) months after the date upon which the right to such leave accrues.

8.1.5 Except as otherwise provided in this sub-clause, payment shall not be made by an employer to an employee in lieu of Annual Leave or part thereof to which the employee is entitled under this Agreement nor shall any such payment be accepted by the employee.

8.1.6 The employer shall pay each employee in advance before the commencement of Annual Leave their ordinary pay for the Annual Leave Period.

8.1.7 A loading of seventeen and one-half percent (17.5%) shall be paid on the ordinary pay rate to persons proceeding on approved annual leave, except that such loading shall not be paid when calculating entitlements for employees resigning prior to completing twelve (12) months continuous service.

8.1.8 Where any public holiday as provided for under sub-clause 8.4 (Public Holidays) of this Agreement occurs during any period of Annual Leave taken by a weekly employee, the period of the leave shall be increased by one (1) day in respect of that holiday.

8.1.9 Where the employment of an employee who has become entitled to Annual Leave provided by this Agreement is terminated and the worker has not taken any, or part, of that leave, the employer shall forthwith pay to the worker, in addition to all other amounts due to them, their ordinary pay for the period of that remaining Annual Leave.

8.2 SICK LEAVE

8.2.1 Entitlement

An employee other than a casual who is absent from their work on account of personal illness or on account of injury by accident shall be entitled to ten (10) days leave of absence

per year without deduction of pay to be accrued at the rate of one sixth of a week for each completed month of service with the employer, subject to the following conditions and limitations—

- (i) Employees shall not be entitled to paid leave of absence for any period in respect of which they are entitled to workers' compensation.
- (ii) An employee shall be required to produce a medical certificate (being from a bona fide medical practitioner, dentist, chiropractor, or physiotherapist if referred to same by a certified medical practitioner) or other reasonable proof of illness to the employer after an initial one (1) day absence, or for any period exceeding one (1) day in any year of service to be entitled to payment for such absence.
- (iii) In the event of an unauthorised absence, and/or where an employee fails to notify the employer prior to the commencement of ordinary hours of work of reasons for the illness and/or their non-attendance, the employee shall forfeit any rights to a productivity bonus for that week during which the unauthorised absence occurred. See sub-clauses 8.2.2 and 8.2.6.
- (iv) With regard to sub-clause 2.1.1.2 the employer retains the right to request an apparently ill employee, who has reported for work, to leave the premises and take sick leave until such time as they obtain a medical clearance.

8.2.2 Reliability Payment

8.2.2.1 This sub-clause will apply to full-time and part-time weekly employees who have been in the equivalent of continuous service for two (2) or more years.

8.2.2.2 This sub-clause will not apply to casual employees.

8.2.2.3 This sub-clause will only apply to sick leave accrued from the date of this Agreement.

8.2.2.4 The employer may by agreement with any employee, pay an employee for the portion of sick leave accrued in excess of forty (40) hours in any one calendar year.

8.2.2.5 All employees will be required to maintain a minimum sick leave bank of forty (40) hours at all times in order to qualify for payment in accordance with the provisions of this sub-clause.

8.2.2.6 The payment for accrued hours in excess of forty (40) will be made in the payment which co-incides with Christmas.

8.2.3 Method of payment of Accrued Sick Leave

8.2.3.1 Where authorised sick leave is taken during the year it shall be paid at the relevant ordinary rate as described in sub-clause 5.1 "Rates of Pay".

8.2.3.2 Where accrued sick leave is paid out in accordance with sub-clause 8.2.2 payment shall be based on the ordinary pay rate as defined in this Agreement but shall be subject to sub-clauses 8.2.6.2 and 8.2.6.3.

8.2.4 Sick dependents

An employee may, in their second and subsequent years of employment apply for up to three (3) days of their sick leave entitlement to be converted to leave to care for sick dependents. The employer may request a medical certificate to support the application for leave.

8.2.5 Resuming after an absence

8.2.5.1 Employees absent from work for any reason whatsoever except from Annual, Long Service, Bereavement or Special leave, shall contact the employment officer or person nominated by the employer no later than 3.00 p.m. on the working day prior to resuming and make the necessary arrangements to resume work.

8.2.5.2 Should any casual or weekly employee present themselves for work after an absence without first making the necessary arrangements to resume work, the employer shall not be obliged to employ him or her on that particular day.

8.2.6 Ongoing absenteeism

8.2.6.1 The employer and Union acknowledge the high level of absenteeism existing in the workforce and agree to cooperate as needed, using legal means if necessary, to improve the situation to the benefit of the employer and more reliable employees.

8.2.6.2 Where as a result of an employee taking unauthorised leave they lose entitlement to Productivity Bonus payments for that week during which the absence occurred, such withheld bonus will be "pooled" and distributed proportionally (according to the days used to calculate the Reliability Payment (sub-clause 8.2.2) amongst employees qualifying for the Reliability Payment PROVIDED that, where exceptional circumstances exist, the Plant Manager and the Union may, by agreement, "deem" to include an employee who would otherwise be excluded because of illness. The hours to be credited to any employee "deemed" to be included in accordance with this sub-clause shall be set by the the parties up to a maximum of forty (40) hours.

8.2.6.3 Where the employer is required to employ Contract Labour to overcome extreme labour shortage (sub-clause 2.1.6), fifty percent (50%) of any productivity bonus, up to a maximum of two thousand five hundred dollars (\$2,500) in any one year, attributable to such contract staff, shall go to the "pool" for distribution to qualifying employees as in sub-clause 8.2.6.2 above. The balance of the productivity bonus derived from use of contract labour shall be retained by the employer as an offset against the cost of such labour.

8.3 LONG SERVICE LEAVE

1.1.1 Subject to sub-clause 8.3.2 all employees covered by this Agreement shall accrue entitlement to Long Service Leave based on fifteen (15) years in accordance with the terms and conditions laid down by the Commission in Volume 60 of the West Australian Industrial Gazette.

8.3.2 Any employee employed by the Western Australian Meat Marketing Corporation as at the 20 December 1996 shall continue to accrue any entitlement that commenced prior to 20 December 1996 based on seven (7) or ten (10) years, as appropriate, in accordance with the provisions of the LONG SERVICE LEAVE—State Government Wages Employees Order No. 763/1982 PROVIDED that once the employee has completed any entitlement period that commenced prior to 20 December 1996 they will accrue future Long Service Leave in accordance with sub-clause 8.3.1.

8.4 PUBLIC HOLIDAYS

8.4.1 Subject to the conditions and limitations of sub-clause 8.4.2, all employees, except casual employees, shall be entitled to public holidays viz. Christmas Day, Boxing Day, New Year's Day, Australia Day, Labour Day, Anzac Day, Good Friday, Easter Monday, Sovereign's Birthday, Foundation Day. But, if any other day be by Act of Parliament or Proclamation substituted for any of the above mentioned holidays, all employees shall be entitled to such day in lieu of the holiday for which it was substituted, providing that the holiday falls on a normal working day.

8.4.2 An employee shall not be entitled to payment for any such holiday or holidays if the employee took unauthorised leave from their employment on the working day before or the working day after such holiday or holidays except where such absence is by the consent of the employer or on account of Annual Leave, Workers' Compensation under the relevant State legislation, Bereavement Leave, Personal Sickness or Incapacity. A doctor's certificate provided by the employee if required by the employer shall be proof of such sickness or incapacity. Provided that if the employee is dismissed by the employer through no fault of the employee on a working day seven (7) days before and re-engaged within seven (7) days after the holiday or holidays they shall qualify for payment for such holiday or holidays.

8.4.3 All employees subject to this Agreement shall receive payment for the holidays at the ordinary rate prescribed in sub-clause 5.1.

8.5 BEREAVEMENT LEAVE

8.5.1 An employee, other than a casual, shall, on the death of their spouse or defacto spouse, child or step-child, parent or step-parent, brother or sister, mother-in-law or father-in-law, 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 of up to two (2) days within each year of service.

8.5.2 The two (2) days need not be consecutive.

8.5.3 Bereavement leave shall not be taken during a period of any other kind of leave, or be paid for on any day not normally worked by part-time or regular daily hire employees.

8.5.4 Proof of such death shall be furnished by the employee to the satisfaction of the employer.

8.5.5 For the purposes of this sub-clause "wife" and "husband" shall not include a wife or husband from whom the employee is separated or divorced but shall include a person who lives with the employee as a de facto wife or husband.

8.6 PARENTAL LEAVE

8.6.1 Entitlement

8.6.1.1 Subject to this sub-clause, employees with a minimum of twelve (12) months continuous service with the employer prior to taking leave pursuant to this sub-clause are entitled to maternity, paternity and adoption leave in connection with the birth or adoption of a child.

8.6.1.2 Provided that where both parents are employees of the employer, the sum total of maternity, paternity and adoption leave entitled to be taken by both parents in connection with the birth or adoption of a child shall be no more than fifty two (52) weeks unpaid leave, and provided further that any application by an employee for maternity, paternity and adoption leave in excess of three (3) weeks shall be for a minimum period of thirteen (13) weeks.

8.6.2 Maternity Leave

A female employee shall, upon the production of a medical certificate confirming her pregnancy and expected date of confinement be entitled to a period of up to fifty two (52) weeks unpaid maternity leave up to the child's first birthday.

8.6.3 Paternity Leave

A male employee shall, on the production of a medical certificate naming his spouse (including de facto spouse), confirming her pregnancy and expected date of confinement or date of birth, be entitled to fifty two (52) weeks unpaid paternity leave up to the child's first birthday. Where both parents work for the employer such leave may be taken as a period of one week immediately following the birth or adoption of the child and in any other period up to the child's first birthday after the mother has returned to work.

8.6.4 Adoption Leave

An employee shall, upon the production of appropriate documentation from an adoption agency or government authority confirming the placement of an adopted child, be entitled to fifty two (52) weeks unpaid adoption leave up to the child's first birthday. Such leave may be taken as a period of up to three (3) weeks at the placement of a child and subsequent period of forty nine (49) weeks or an unbroken period of fifty two (52) weeks following the placement of a child. Where both adopting parents are employees of the employer, this period of unpaid leave may be shared by both parents.

8.6.5 Job Guarantee

8.6.5.1 The employer shall not terminate the employment of an employee on the grounds of pregnancy or absence on maternity, paternity or adoption leave but otherwise the rights of the employer in relation to termination of employment are not hereby affected.

8.6.5.2 An employee returning to employment following an absence authorised by this sub-clause shall be entitled to a position at the same pay classification as he or she held immediately before taking such leave, providing that it is a position for which they are qualified and capable of performing.

8.6.6 Sick Leave

If a pregnancy is terminated other than by the birth of a living child the employee shall be entitled to either such period of paid sick leave to which she is entitled or such period of unpaid leave as a registered medical practitioner certifies as necessary before her return to work.

8.7 SPECIAL LEAVE

8.7.1 An employee who has completed at least five (5) years continuous employment with the employer and who proves to the employer's satisfaction the necessity to return to their country of origin may be granted a maximum of three (3)

months unpaid leave of absence provided that where practicable fourteen (14) days notice shall be given in advance of the taking of such leave.

8.7.2 An employee who is granted leave in accordance with this sub-clause shall not qualify for, or accumulate, any entitlement under this Agreement for the duration of such leave of absence.

8.7.3 An employee who fails to resume work at the expiration of their agreed period of special leave shall be deemed to have abandoned their employment and their employment shall be deemed to have terminated from the date of beginning special leave.

8.8 JURY SERVICE

8.8.1 If any employee, other than a casual employee, is required to attend on any day at Court in compliance with a summons to appear as a juror they shall, for each day on which they so attend, be granted leave by the employer for that day.

8.8.2 Such employee shall be paid an amount equal to the difference between the fee to which they are entitled for attending on such day and the ordinary pay rate prescribed in sub-clause 5.1 (Pay Rates) for the classification in which they are employed.

8.8.3 An employee will be required to furnish proof of such obligation in order that benefits can be paid in accordance with sub clause 8.8.2.

8.8.4 An employee chosen for jury service but not selected then released by the Court must return to work to receive catch-up pay for that day.

9.—UNION ARRANGEMENTS

The employer shall hold a supply of AMIEU membership application forms and payroll deduction forms and will provide upon request such forms to new employees.

9.1 RIGHT OF ENTRY

Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23 (3)(iii) of the Industrial Relations Act, a representative of the Union shall not exercise the rights under this sub-clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer, of a member of the Union.

9.1.1.1 On notifying the employer or its representative, the Union Secretary or any officer duly authorised by the Union for the purposes of this Agreement shall have the right to visit the business premises of the employer at any time when work is being carried out and to interview employees whose conditions of work are subject to this Agreement without unduly interfering with work in progress but, subject to sub-clause 9.1.1.2, this right shall not be exercised without the consent of the employer more than once in any one week in any one establishment.

9.1.1.2 In the case of a disagreement existing or anticipated concerning any of the provisions of this Agreement, the authorised official of the Union, on notifying the employer or a representative thereof, shall have the right to enter the business premises of the employer to view the work the subject of any such disagreement but shall not unduly interfere with the carrying out of such work.

9.2 UNION MEETINGS

9.2.1 Authorised Union meetings may be held once per month at the Spearwood operation. An authorised Union meeting shall be held during a day shift meal break and the employer shall be advised if there is any possibility of the meeting continuing beyond the meal break into ordinary working time.

9.2.2 On two (2) occasions per annum, subject to notification provided in sub-clause 9.2.1 above, authorised Union meetings shall be permitted to continue up to half an hour into ordinary working time, and that time shall be paid time.

9.2.3 Any meeting held by the Union with its members at the Spearwood operation other than an authorised Union meeting shall be held only by permission of the employer, and shall only be during a day shift meal break.

9.2.4 It will be deemed to be a stoppage if a Union meeting other than an authorised Union meeting established as at 9.2.2 continues beyond the meal break into ordinary working time, provided that nothing in this sub-clause shall prohibit the employer from permitting, upon receipt of a request from the

Union, further time for the meeting concerned, and that such further time beyond the meal break is unpaid time.

9.3 NOTICE BOARD

9.3.1 The employer shall install a locked notice board in a prominent position in the works for the purpose of posting Union notices and information from management and the Enterprise Consultative Committee.

9.3.2 Productivity Bonus Scheme

9.3.2.1 The employer shall provide a notice board that indicates the carcasses available for each days work.

9.3.2.2 The level of productivity calculated from each preceding day, shall be posted no later than the conclusion of the following days work.

9.3.2.3 In the event of the employer being unable to provide productivity calculations from the previous day due to computer failure, or other circumstances beyond management control, or if there is a need to recalculate productivity levels, the employer will ensure that the figures are available as soon as practicable, and they will indicate on the notice board the reasons for the delay, and give an indication as to when these figures will be available.

9.4 TIME AND WAGES RECORDS

9.4.1 Except where mechanical recording devices are used for the purpose of recording starting and finishing times, an employer shall provide a time book or time sheet and cause to be entered each day's starting and finishing times, each day's hours of work of each employee (including overtime if any) and the wages received each week. Such entries shall, at least once a week, be vouched for by the signature of the employee or their representative.

9.4.2 Subject to sub-clause 9.4.3 an authorised official of the Union may inspect the time and wages records provided that such production shall not be required unless the Union suspects that a breach of this Agreement is being or has been committed and advises its nature to management.

9.4.3 Where the Union exercises its rights under this Agreement to inspect the time and wages records of an employee or former employee, that power shall be exercised subject to the Industrial Relations (General) Regulations 1997 (as may be amended from time to time) and the following—

9.4.3.1 The employer may refuse the representative access to the 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 as soon as possible after being notified of the requirement to inspect by the representative.

9.4.3.2 Provided reasonable notice of not less than twenty four hours (24) hours is provided to the employer the time book or time sheet or other record kept in compliance with sub-clause 9.4.1 will be available for inspection at the works where the employee whose time has been recorded is employed at any reasonable time between 9.00am and 4.00pm Monday to Friday inclusive.

9.4.3.3 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 Union.

9.4.4 The representative making an inspection will be entitled to make photocopies of entries in such time book, or time sheet, or other record, relating to the suspected breach.

9.4.5 It shall be a breach of this Agreement if any person knowingly makes, certifies or vouches for a false entry in such time book or time sheet.

9.4.6 Time books, time sheets and other records kept in compliance with this sub-clause shall be kept for at least six (6) years after they have been completed.

9.4.7 Employees whose record from the time clock output does not verify a start time shall be deemed to have worked only ordinary hours for that day.

9.5 UNION DELEGATE

9.5.1 The employer recognises the elected delegate at Spearwood as the appropriate person with whom any matters

relating to the operation of this Agreement will be raised initially with the Union.

9.5.2 The employer shall release the elected delegate for Union matters affecting business at Spearwood without loss of earnings.

9.5.3 The elected delegate shall have access to the use of company telephones and facsimile machines for matters affecting the Spearwood plant and there is need to contact the Union's WA headquarters or a State official.

10.—CONSULTATIVE ARRANGEMENTS

10.1 ENTERPRISE CONSULTATIVE COMMITTEE

10.2 The major parties to this Agreement accept that each has legal, commercial and social responsibilities which will limit their abilities to open-ended negotiations.

10.3 It is the intention of all parties to this Agreement that as far as possible matters of contention shall be resolved at plant level. To this end there shall be an Enterprise Consultative Committee established at the Spearwood plant.

10.4 The Enterprise Consultative Committee shall consist of the elected delegate, and other elected employee representatives in equal proportion to management, including senior management representatives.

10.5 Candidates for employee representative elections shall have at least three (3) years service with the employer.

10.6 Particular issues or matters relating to the daily operation of the Spearwood plant must be initially referred to the immediate supervisor, safety committee representative and/or elected delegate, whereupon these persons may be able to immediately resolve the matter. Should such persons not be independently able to resolve the matter they may elect to refer it to the Enterprise Consultative Committee for resolution.

10.7 An issue should not be the cause of a dispute until it has been examined by the Enterprise Consultative Committee and the outcome is unsatisfactory to the Parties involved.

11.—SETTLEMENT OF DISPUTES

11.1 In the event of a dispute the following dispute procedure shall be initiated, but unless there is a safety issue involved work will continue while the Disputes Procedure is followed. Forms allowing the steps in a dispute to be documented will be available from the Plant Manager.

11.2 Dispute Procedure—Step 1

(i) The elected delegate shall discuss the matter with the plant supervisor. If the matter is not resolved.—

Step 2

(ii) The elected delegate and plant supervisor shall refer the matter to the Plant Manager or their nominee. If the matter is not resolved.—

Step 3

(iii) The elected delegate and the Plant Manager shall refer the matter to the General Manager and /or their nominee and to the Union Secretary and/or their nominee. The General Manager shall reply to the dispute as soon as possible, provided that such reply shall be given within 24 hours of the matter being referred.—

Step 4

(iv) If no resolution is found after following Steps 1-3, and either of the Parties believe the response of the other is unacceptable, then each party reserves the right to take further action.

Should matters not be resolved either party may take the issue to the Industrial Relations Commission for hearing and determination.

12.—OCCUPATIONAL HEALTH AND SAFETY

12.1 OPERATION OF OCCUPATIONAL HEALTH AND SAFETY ACT, CODES OF PRACTICE AND REGULATIONS

12.1.1 The Parties have agreed to co-operate in pursuing health and safety issues to ensure compliance with employer health policies and to reduce accident rates and improve rehabilitation where necessary.

12.1.2 The Occupational Health and Safety Act including all Codes of Practice and Regulations made under the Act shall apply.

12.1.3 In the event that changes to occupational health and safety practices are deemed necessary by either party the issue shall be initially referred to the Safety Committee, then if necessary to the Enterprise Consultative Committee.

12.2 REST PERIODS

12.2.1 All employees, except shift employees, shall be allowed a fifteen (15) minute rest break between 8.00 am and 10.00 am and a fifteen (15) minute break between 2.00 p.m. and 4.00 p.m., provided that, if mutually agreed, such rest breaks may be varied to a twenty (20) minute period between 8.00 am and 10.00 am and a ten (10) minute period between 2.00 p.m. and 4.00 p.m.

12.2.2 Shift employees shall be allowed a fifteen (15) minute rest break before their meal break and a second fifteen (15) minute rest break after the meal break.

12.2.3 All employees shall be permitted to take up to three (3) additional periods of five (5) minutes at fixed times during ordinary working hours. If overtime extends the working time an additional five (5) minute break may be necessary with the timing of these breaks possibly varied by mutual agreement between the employer and the employees.

12.2.4 Such breaks shall not be called if employees are late back from a Union meeting.

12.3 PROTECTIVE CLOTHING

12.3.1 Weekly and daily hire employees shall supply their own gloves and boots and maintain these to the hygiene standards required by management and set out in the Western Australian Meat Marketing employer's Personal Hygiene Code (Document No.SOP-4-9-9). All employees will wear clean outer clothing, and clean head covering and in accordance with job requirements waterproof boots and aprons.

12.3.2 Clothing for staff shall be available daily, free of charge prior to the commencement of work and shall be placed in designated receival areas after work has concluded for the day.

12.3.3 Supplied clothing remains the property of the employer and the employee will be responsible for any wilful damage. Such damage may result in a charge of misconduct against the employee concerned.

12.3.4 The employer shall provide to employees working in the chillers appropriate clothing and gloves for the working environment.

12.3.5 When processing frozen carcasses employees shall be provided with woollen or similar, inner working gloves and rubber gloves.

12.4 FIRST-AID

12.4.1 There shall be a person qualified in first aid readily available to attend to any injuries sustained by any employee. The employer will provide first aid training for selected employees who are willing to undergo such training.

12.4.2 The employer shall supply transport for the immediate treatment of any injured employee, without cost to the employee.

12.4.3 The employer shall maintain an adequate first aid kit accessible to employees at all times. Such kit shall include as a minimum—

- Cotton wool swabs in plastic bag—2 bags
- Assorted sizes of self-adhesive dressings—1/2 dozen
- Unmedicated sterile gauze dressings—
small 5 cm—6
medium 7.5 cm—6
- Gauze bandages (roller type)—
2.5 cm—3
5 cm—3
- Individually wrapped elastic dressing strips—3
- Triangular bandages
- Antiseptic—1 x 100 ml bottle Centrimide 1 in 1000 strength
- One roll of plastic adhesive strapping 2.5cm wide (e.g. SLEEK)
- Safety pins
- Small unbreakable bowl
- Scissors—pointed—1 pair

- Tweezers—1 pair
- One packet of eye pads
- Box of rubber finger stalls

13.—TRAINING

13.1 PROCESS FOR DEVELOPMENT OF TRAINING

13.1.1 Consistent with the objectives set out in sub-clause 1.6 employees shall be given access to and participate in training programmes which shall be directly relevant to the needs of both employees and the employer's business operations and resources and which shall be established and delivered in accordance with procedures agreed by the Enterprise Consultative Committee.

13.1.2 In establishing and delivering training the parties commit to the following principles—

- (i) Training will be predominantly 'on the job', delivered on employer premises but when necessary off the job training will be provided.
- (ii) The Enterprise Consultative Committee will be informed of all training programmes.
- (iii) Levels of competency required and assessments as to whether they have been successfully reached shall be determined through the consultative process.
- (iv) Employees will be given access to appropriate training programmes.
- (v) Employees will be encouraged to participate in training programmes aimed at skill development, multi-skilling and other relevant learning.

13.2 INDUCTION TRAINING

13.2.1 All new employees shall complete an induction program.

13.2.2 Induction training shall be delivered on the job.

13.2.3 Elected representatives of the Health and Safety Committee, elected delegates and other appropriate employees may receive training to assist them play their part in presenting aspects of induction training with respect to the role of the Union, features of this Agreement, and Occupational Health and Safety.

13.3 FURTHER TRAINING

The parties to this Agreement recognise that in order to increase efficiency, productivity and international competitiveness of the employer, a greater commitment to training and skill development is necessary. Accordingly the parties commit themselves to—

- Developing a more highly skilled and flexible workforce.
- Providing employees with career opportunities through appropriate training to acquire additional skills.
- Removing barriers to the utilisation of acquired skills.

The Enterprise Consultative Committee will identify skills needed to enhance multi-skilling and increase workplace flexibility, and to examine future skill needs of the employer.

13.4 TRADE UNION TRAINING LEAVE

13.4.1 Entitlement

13.4.1.1 The employer may provide paid leave to employees for the purpose of attending trade union training courses conducted or approved by the AMIEU and/or the Australian Trades Union Training Authority.

13.4.1.2 Paid leave of absence may also be granted to attend appropriate courses or seminars as from time to time are approved by agreement between the parties.

13.4.2 An employee shall be granted up to a maximum of five (5) days paid leave per year for trade union training or similar approved courses or seminars. Leave of absence in excess of five (5) days and up to ten (10) days per year may be granted provided that the total leave granted in that year and the subsequent year does not exceed ten (10) days.

13.4.3 (i) Leave of absence will be granted at the ordinary rate of pay.

(ii) Where a public holiday or rostered day off falls during the duration of a course, a day off in lieu of that rostered day off will not be granted.

13.4.4 Subject to sub-clause 13.4.3 shift workers attending a course shall be deemed to have worked the shifts they would have worked had they not undertaken the course, providing that the time of such attendance prevents them undertaking normal duties.

13.4.5 The granting of training leave is subject to the plant's operations and permission will not be given if the absence interferes with operations.

13.4.6 (i) Any application by an employee shall be submitted to the employer at least four (4) weeks prior to the course, providing that the employer may agree to a lesser period.

(ii) Applications for leave shall be accompanied by a statement from the Union indicating that the employee has been nominated for the course, and shall provide details as to the subject, commencement date, length, venue and the name of the authority conducting the course.

13.4.7 A qualifying period of twelve (12) months service with the employer shall be served before an employee is eligible to attend Union courses or seminars of more than a half day's duration. An employer may, where special circumstances exist, approve an application to attend a course or seminar where the employee has less than twelve (12) months service.

13.4.8 (i) The employer shall not be liable for any expenses associated with an employee's attendance at trade union training courses.

(ii) Leave of absence granted under this sub-clause shall include any necessary travel time in normal working hours immediately before or after the course

(iii) Where practicable the employee is expected to report for work in the morning before an afternoon or evening course, and in the afternoon or evening following a morning course.

14.—DECLARATION AND SIGNATORIES

14.1 Declaration

This enterprise Agreement has been negotiated through extensive consultation between management and employees. The content of the agreement has been canvassed with all parties. All parties are entering into this Agreement with full knowledge as to the content and effect of the document.

The parties declare that this Agreement—

- Is not contrary to public interest;
- Is not unfair, harsh or unconscionable;
- Was at no stage entered into under duress, and;
- Reflects the interest and desires of the parties.

14.2 Signatories

For and on behalf of Western Australian Meat Marketing Co-operative Ltd

Signature: B. J. AITKEN
 Full Name: BRIAN JAMES AITKEN
 Position: CHIEF EXECUTIVE
 Witness Signature: K. A. WALKER
 Full Name: KEITH ANTHONY WALKER
 Position: SECRETARY

For and on behalf of the Australasian Meat Industry Employees Union

Signature: D. H. HOPPERTON *Common Seal*
 Full Name: DAVID HAROLD HOPPERTON
 Position: BRANCH SECRETARY
 Witness Signature: J. DA SILVA
 Full Name: JOHN DA SILVA
 Position: OFFICE MANAGER

WESTERN CONSTRUCTION CO WORKSHOP ENTERPRISE BARGAINING AGREEMENT 1999. AG 238 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

Western Construction

AG 238 of 1999.

Western Construction Co Workshop Enterprise Bargaining Agreement 1999.

COMMISSIONER S.J. KENNER.

29 March 2000.

Order.

HAVING heard Mr D Hicks on behalf of the applicant and Mr B Storer 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 Western Construction Co Workshop Enterprise Bargaining Agreement 1999 filed in the Commission on 17 December 1999 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 Western Construction Co Workshop Enterprise Bargaining Agreement 1999.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Incidence and Parties Bound
4. Date, Period of Operation, and Review
5. Relationship to Parent Award/Order
6. Re-classification
7. Aims and Objectives
8. Strategy for Achievement of Aims of the Agreement
9. Productivity Improvements
 - 9.1 Sick Leave/Absenteeism
 - 9.2 Rostered Days Off
 - 9.3 Multi-skilling
 - 9.4 Training
 - 9.5 Consumables
 - 9.6 Power Cost Reduction
 - 9.7 Minor Maintenance
 - 9.8 Utilisation of Scrap Material
10. Dispute Resolution Procedure
11. Settlement of Safety Grievances
12. No Extra Claims Commitment
13. Wage Increases
 - 13.1 Wage Rates
14. Allowances
15. Income Protection Insurance
16. Journey Cover Insurance
17. Trade Union Training Leave
18. Signatories

3.—INCIDENCE AND PARTIES BOUND

This Agreement shall apply to and be binding upon G & M Construction Pty Ltd trading as Western Construction Co. (WCCo) and its employees working at its Kwinana Workshop who are, or are eligible to be, members of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch.

4.—DATE, PERIOD OF OPERATION, AND REVIEW

4.1 This Agreement shall operate on and from the first pay period to commence on or after 8 December 1999 and continue in operation until 30 June 2001.

4.2 The parties shall review the Agreement within the three (3) months prior to its expiration.

5.—RELATIONSHIP TO THE PARENT AWARD/ORDER

5.1 The provisions of this Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966 and the Metal Trades (Western Construction Unit Trust) Order No. 1679 of 1993 as amended.

5.2 Where there is any inconsistency between this Agreement and the above-mentioned award/order, this Agreement shall prevail to the extent of any inconsistency.

6.—RE-CLASSIFICATION

6.1 The parties agree to assess the viability of introducing the Metal Trades Award classification structure into this Agreement during its period of operation.

6.2 Employees will be aligned to the appropriate classification based on their designated classification and skills recognised through the National Metal and Engineering Competency Standards.

7.—AIMS AND OBJECTIVES

7.1 The aim of this Agreement is to achieve productivity by increasing efficiency and flexibility in all aspects of the workshop through a more competitive workforce.

7.2 Specific Aims and Objectives are—

- 7.2.1 To reduce the cost of the final product by eliminating inefficiencies.
- 7.2.2 To provide a more flexible workshop to retain existing clients and to attract new clients.
- 7.2.3 To increase the safety profile of Western Construction Co. by further reducing time lost through accidents.
- 7.2.4 To ensure a high quality of fabricated items to maintain quality certification to AS/NZS ISO 9002.

8.—STRATEGY FOR ACHIEVMENT OF AIMS OF THE AGREEMENT

In order to achieve the aims and objectives set out in Clause 7 of this Agreement, on-going discussions will take place through the Consultative Committee, regarding productivity, work practices, management/employee relations and general proposals for improvement of any aspect of operations.

The parties will continue to address issues designated to increase productivity and flexible at the workshop.

9.—PRODUCTIVITY IMPROVEMENTS

The following items have been established, with desired targets, to form the base for the entitlement to the wage increases prescribed in Clause 13—Wage Increases of this Agreement.

9.1 SICK LEAVE/ABSENTEEISM

- 9.1.1 All employees will aim to reduce the number of days absent for personal business and sick leave.
- 9.1.2 The amount of Sick Leave will be monitored and ways to reduce them will be investigated.
- 9.1.3 All employees will strive to reduce sick and absent days by 25%.

9.2 ROSTERED DAYS OFF

- 9.2.1 Employees will accrue and shall take one (1) Rostered Day Off (RDO) every 28 days.
- 9.2.2 The RDO shall be taken at a time mutually agreed between the employee and their Supervisor. Should the RDO request not be suitable to the Supervisor, an alternate day will be agreed within seven (7) days.
- 9.2.3 RDO's may accrue to a maximum of six (6) days and a maximum of two (2) days consecutive days may be taken at any time.
- 9.2.4 RDO's shall not be paid out in lieu of the time off.
- 9.2.5 Time accrued towards a RDO will be shown in hours on the employee's pay slip, as soon as practicable.

9.2.6 Employees transferred to another site will take RDO's in accordance with site conditions, provided that any days accrued in accordance with this sub-clause may be taken in addition.

9.3 MULTI-SKILLING

When required, employees shall carry out all duties within the limits of their skill, competence and training.

9.4 TRAINING

- 9.4.1 The parties agree that a greater commitment to training and skills development is required, as per clause 35 Training of the Metal Trades (General) Award to—
- 9.4.2 Meet the current and future skill needs of WCCo,
- 9.4.3 Increase efficiency, productivity and competitiveness; and
- 9.4.4 Provide employees with improved career opportunities.
- 9.4.5 All training undertaken by employees will comply with a training program based on the above principles.

9.5 CONSUMABLES

- 9.5.1 Employees will reduce the level of consumables used. These will include, but not be restricted to, welding rods and wire, all grinding discs and safety equipment.
- 9.5.2 The target is to reduce the level of use by 10%.

9.6 POWER COST REDUCTION

- 9.6.1 Employees will turn off welding machines during smokos, lunch breaks, and other extended periods when machines are not being used.

9.7 MINOR MAINTENANCE

- 9.7.1 Employees will keep machines under their control free of dust, clean out liners and keep hand pieces and leads in good order.
- 9.7.2 Employees will check Oxy-acetylene equipment for leaks or damage before and after use.

9.8 UTILISATION OF SCRAP MATERIAL

- 9.8.1 Employees will undertake to use re-useable material wherever possible—eg strong backs and bracing instead of new material.
- 9.8.2 All employees undertake to return equipment to its correct location after use.

10.—DISPUTE RESOLUTION PROCEDURE

10.1 Where a question, dispute, or difficulty occurs the matter shall initially be discussed between the employee concerned and, if that employee so desires the union delegate, and the employee's immediate Supervisor.

10.2 If the issue is not resolved by Sub-clause (1), the union delegate shall discuss the dispute with Workshop Supervisor.

10.3 Where the matter is still not resolved, it shall be referred to a senior management representative and the appropriate full-time union official who will initiate steps to resolve the issue as soon as possible.

10.4 While the above steps are being followed industrial action shall not be taken. A minimum of seven days is allowed for the steps prescribed in Sub-clauses (1), (2), and (3) to solve the matter.

10.5 If after seven days the issue is still unresolved, either party may refer the matter to the Western Australian Industrial Relations Commission, provided that parties have taken all reasonable steps to resolve the dispute before referring the matter to the Commission

10.6 Either party will advise the other, as early as possible, of any issue or problem that may give rise to a dispute. All relevant facts shall be clearly identified and recorded throughout. At least seven days shall be allowed for all stages of the discussion to be finalised.

10.7 No bans or limitations will be placed on the performance of work while the dispute procedure is being followed.

11.—SETTLEMENT OF SAFETY GRIEVANCES

11.1 An employee shall raise any problem of a safety nature with the Supervisor, in the first instance, where an employee

encounters what they believe to be a safety hazard or is allocated work they believe to be unsafe. The employee shall immediately advise the Supervisor and the work process in question shall not be carried out, except under such conditions as are agreed between the employee and Supervisor until the matter has been finally determined.

11.2 The Supervisor shall immediately discuss the matter with the employee with a view to resolving the problem without delay.

11.3 Should the safety grievance remain unresolved, the Supervisor concerned and the Health and Safety Representative shall meet and inspect the work to ascertain a resolution.

11.4 Should the safety grievance remain unresolved, senior management and the Health and Safety Representative shall meet and inspect the work to ascertain a resolution.

11.5 If the grievance remains unresolved, WCCo shall advise the appropriate statutory authority.

11.6 Employees who have refused to work in, or have been removed from, the immediate area where the possible safety hazard exists, shall be allocated, and shall accept, alternate work in another area.

12.—NO EXTRA CLAIMS COMMITMENT

12.1 Pursuant to the terms of the State Wage Case Decision, there shall be no further claims for the duration of this Agreement, except where consistent with a State Wage Case Decision.

12.2 The parties to this Agreement shall be bound by the terms of the Agreement for its duration.

12.3 The parties to this Agreement shall oppose any application by other parties to be joined to the Agreement.

12.4 The terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

13.—WAGE INCREASES

On the basis of the successful operation of this Agreement and a continued commitment from all parties, a flat wage increase of 6.3% shall be payable on the current rates prescribed in the Western Construction Enterprise Agreement 1998.

The wage increase shall be payable in three instalments on the first pay period to commence on or after the following dates—

2% from 13 December 1999

2% from 20 June 2000

2.3% from 25 December 2000

13.1 WAGE RATES

Classification	Existing	13/12/99	20/6/00	25/12/00
Welder Special Class	649.88 [17.101]	662.88 [17.44]	675.88 [17.79]	690.82 [18.18]
Tradesperson	638.11 [16.79]	650.87 [17.13]	663.63 [17.46]	678.31 [17.85]
Fabrication Worker 1	632.43 [16.64]	645.08 [16.98]	657.73 [17.31]	672.27 [17.69]
Rigger—Certificated	609.23 [16.03]	621.41 [16.35]	633.60 [16.67]	647.61 [17.04]
Fabrication Worker 2	609.23 [16.03]	621.41 [16.35]	633.60 [16.67]	647.61 [17.04]
Rigger—Other	592.06 [15.58]	603.90 [15.89]	615.74 [16.20]	629.36 [16.56]
Fabrication Worker 3	592.06 [15.58]	603.90 [15.89]	615.74 [16.20]	629.36 [16.56]
TA/Grinder	558.04 [14.69]	569.20 [14.98]	580.36 [15.27]	593.20 [15.61]
Crane 0 to < 8	588.70 [15.49]	600.47 [15.80]	612.25 [16.11]	625.79 [16.47]
Crane 8 to < 15	602.00 [15.84]	614.04 [16.16]	626.08 [16.48]	639.93 [16.84]
Crane 15 to < 40	613.40 [16.14]	625.67 [16.47]	637.94 [16.79]	652.04 [17.16]
Crane 40 to < 80	622.30 [16.38]	634.75 [16.70]	647.19 [17.03]	661.50 [17.41]

14.—ALLOWANCES

14.1 Welder Special Class and Tradespersons shall supply their own tools and be paid a Tool Allowance of \$10.00 per week [for all purposes].

14.2 Attendance Allowance—\$8.30 per day in accordance with the provisions of the Metal Trades (Western Construction Unit Trust) Order No. 1679 of 1993 as amended.

15.—INCOME PROTECTION INSURANCE

15.1 WCCo. will provide Income Protection Insurance for employees covered by this Agreement up to a maximum of 1% of the payroll applicable to the Workshop.

15.2 Any adjustment required to the policy will be to the plan and not the premium.

15.3 Employees making a claim for a period of absence will be assessed immediately and reviewed as determined by the insurance company.

15.4 Employees will undertake rehabilitation, which includes assessment on a regular basis by a medical service nominated by the insurance company.

15.5 Casual employees will not be covered in the first four weeks of employment.

15.6 In the event that a viable insurance policy cannot be maintained for 1% of gross earnings, the policy will be discontinued and employees will be paid 1% as a wage increase.

16.—JOURNEY COVER INSURANCE

Should the Income Protection Policy mentioned in Clause 15 not contain a "Death Cover" benefit then WCCo will provide the "Death Cover" benefit of the Journey Cover Insurance.

17.—TRADE UNION TRAINING LEAVE

A duly accredited union delegate shall be entitled to leave to attend Trade Union Training for up to two days per annum (one delegate only per annum) and be paid for ordinary time [without allowances]. This entitlement will not accrue from year to year.

18.—SIGNATORIES

The parties whose signatures appear below have agreed to this Agreement—

Signed for and on behalf of G & M Construction Pty Ltd [trading as Western Construction Co.]

Signed	Martin Epis	8/12/99
Signature	Full Name (Print)	Date
Address: 1 Butcher Street Kwinana WA 6167		
Telephone: 08 9419 4022		

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers, Western Australian Branch.

Signed	J Sharp-Collett	9/12/99
Signature	Full Name (Print)	Date
Address: 1111 Hay Street Perth WA 6005		
Telephone: 08 9481 1511		

PUBLIC SERVICE ARBITRATOR— Awards/Agreements— Variation of—

GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989. No. PSA A3 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western
Australia Incorporated

and

Albany Port Authority and Others.

No. P4 of 2000.

Government Officers Salaries, Allowances and
Conditions Award 1989.

No. PSA A 3 of 1989.

8 March 2000.

Order.

HAVING heard Mr E. Rea on behalf of the applicant and Ms A. Davison and with her Ms N. Embleton on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the *Government Officers Salaries, Allowances and Conditions Award 1989* be varied in accordance with

the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of January 2000.

[L.S.] (Sgd.) A.R. BEECH,
Public Service Arbitrator.
Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete the words “Schedule G—Clause 32.—District Allowances” and insert in lieu the following—

SCHEDULE G—Clause 31.—District Allowances

2. Schedule G—District Allowances: Delete this Schedule and insert in lieu thereof the following—

SCHEDULE G

PART II

CLAUSE 31.—DISTRICT ALLOWANCES

(a) Officers without dependants (subclause 31(3))—

Column I District No.	Column II Standard Rate \$ p.a.	Column III Exceptions to Standard Rate Town or Place	Column IV Rate \$ p.a.
6	3,032	Nil	Nil
5	2,481	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	3,341
		Liveringa (Camballin) Marble Bar Wittenoom	3,104
		Karratha	2,922
		Port Hedland	2,718
4	1,250	Warburton Mission	3,359
		Carnarvon	1,177
3	788	Meekatharra Mount Magnet Wiluna	1,250
		Laverton Leonora Cue	
2	565	Kalgoorlie Boulder	189
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	746
1	Nil	Nil	Nil

(b) Officers with dependants (subclause 31(4))—

Double the appropriate rates prescribed in (a) above for officers without dependants.

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after January 1, 2000.

**GOVERNMENT OFFICERS (SOCIAL TRAINERS)
AWARD 1988.**

No. PSA A20 of 1985.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western
Australia Incorporated

and

Disability Services Commission.

No. P2 of 2000.

Government Officers (Social Trainers) Award 1988.

No. PSA A 20 of 1985.

8 March 2000.

Order.

HAVING heard Mr E. Rea on behalf of the applicant and Ms A. Davison and with her Ms N. Embleton on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the *Government Officers (Social Trainers) Award 1988* be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day the January 2000.

[L.S.] (Sgd.) A.R. BEECH,
Public Service Arbitrator.
Commissioner.

Schedule.

1. Schedule E—Clause 27. District Allowances: Delete this Schedule and insert in lieu thereof the following—

SCHEDULE E— Clause 27.—District Allowances

(a) Officers without dependants (subclause 27(3))—

Column I District No.	Column II Standard Rate \$ p.a.	Column III Exceptions to Standard Rate Town or Place	Column IV Rate \$ p.a.
6	3,032	Nil	Nil
5	2,481	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	3,341
		Liveringa (Camballin) Marble Bar Wittenoom	3,104
		Karratha	2,922
		Port Hedland	2,718
4	1,250	Warburton Mission	3,359
		Carnarvon	1,177
3	788	Meekatharra Mount Magnet Wiluna	1,250
		Laverton Leonora Cue	
2	565	Kalgoorlie Boulder	189
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	746
1	Nil	Nil	Nil

(b) Officers with dependants (subclause 27(4))—

Double the appropriate rate as prescribed in (a) above for officers without dependants.

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after January 1, 2000.

PUBLIC SERVICE AWARD 1992.
No. PSA A4 of 1989.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western
Australia Incorporated

and

Aboriginal Affairs Department and Others.

No. P3 of 2000.

Public Service Award 1992.

No. PSA A 4 of 1989.

8 March 2000

Order.

HAVING heard Mr E. Rea on behalf of the applicant and Ms A. Davison and with her Ms N. Embleton on behalf of the respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the *Public Service Award 1992* be varied in accordance with the following schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of January 2000.

[L.S.]

(Sgd.) A.R. BEECH,
Public Service Arbitrator.
Commissioner.

Schedule.

1. Schedule D—District Allowance: Delete paragraphs (a) and (b) of this Schedule and insert in lieu the following—

SCHEDULE D—District Allowance

(a) Officers without dependants (paragraph 31(3)(a))—

Column I District No.	Column II Standard Rate \$ p.a.	Column III Exceptions to Standard Rate Town or Place	Column IV Rate \$ p.a.
6	3,032	Nil	Nil
5	2,481	Fitzroy Crossing Halls Creek Turner River Camp Nullagine	3,341
		Liveringa (Camballin) Marble Bar Wittenoom	3,104
		Karratha	2,922
		Port Hedland	2,718
4	1,250	Warburton Mission	3,359
		Carnarvon	1,177
3	788	Meekatharra Mount Magnet Wiluna Laverton Leonora Cue	1,250
2	565	Kalgoorlie Boulder	189
		Ravensthorpe Norseman Salmon Gums Marvel Loch Esperance	746
1	Nil	Nil	Nil

(b) Officers with dependants (paragraph 31(3)(b))

Double the appropriate rate as prescribed in (a) above for officers without dependants.

The allowances prescribed in this Schedule shall operate from the beginning of the first pay period commencing on or after January 1, 2000.

AWARDS/AGREEMENTS—
Application for variation of—
No variation resulting—

CLERKS' (BAILIFF'S EMPLOYEES) AWARD.
No. 19 of 1976

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Clerks' Union of Australia Industrial Union of
Workers, WA Branch

and

Bailiff's Office, Perth and Others.

No. 2038C of 1989.

7 March 2000.

Order.

WHEREAS the application cited herein was filed in the Commission pursuant to the Industrial Relations Act, 1979 (the Act) to vary the Clerks' (Bailiff's Employees) Award No. 19 of 1976; and

WHEREAS conferences were held on 26 March 1991 and 3 June 1994;

AND WHEREAS on 3 March 2000 the Commission received a facsimile transmission from the applicant union advising that they wished to discontinue the abovementioned matter;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby discontinued.

[L.S.] (Sgd.) C. B. PARKS,
Commissioner.

CLERKS' (COMMERCIAL RADIO AND
TELEVISION BROADCASTERS) AWARD 1970.
No. 14C of 1968.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Clerks' Union of Australia Industrial Union of
Workers, WA Branch

and

Nicholson's Broadcasting Services Pty Ltd and Others.

No. 1580C of 1989.

7 March 2000.

Order.

WHEREAS on 10 July 1989 the application cited herein was filed in the Commission pursuant to the Industrial Relations Act, 1979 (the Act) to vary the Clerks' (Commercial Radio and Television Broadcasters) Award No. 14C of 1968; and

WHEREAS conferences were held on 26 March 1991 and 3 June 1994;

AND WHEREAS on 3 March 2000 the Commission received a facsimile transmission from the applicant union advising that they wished to discontinue the abovementioned matter;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby discontinued.
(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

**CLERKS' (CREDIT AND FINANCE
ESTABLISHMENTS) AWARD.
No. 16 of 1952.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Clerks' Union of Australia Industrial Union of
Workers, WA Branch

and

Citizen Finance Services and Others.

No. 2036C of 1989.

7 March 2000.

Order.

WHEREAS the application cited herein was filed in the Commission pursuant to the Industrial Relations Act, 1979 (the Act) to vary the Clerks' (Credit and Finance Establishments) Award No. 16 of 1952; and

WHEREAS conferences were held on 26 March 1991 and 3 June 1994;

AND WHEREAS on 3 March 2000 the Commission received a facsimile transmission from the applicant union advising that they wished to discontinue the abovementioned matter;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby discontinued.
(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

**CLERKS' (CUSTOMS &/OR SHIPPING &/OR
FORWARDING AGENTS) AWARD.
No. 47 of 1948.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Clerks' Union of Australia Industrial Union of
Workers, WA Branch

and

Frank Cadd & Co Ltd and Others.

No. 1581C of 1989.

7 March 2000.

Order.

WHEREAS on 10 July 1989 the application cited herein was filed in the Commission pursuant to the Industrial Relations Act, 1979 (the Act) to vary the Clerks' (Customs &/Or Shipping &/Or Forwarding Agents) Award No. 47 of 1948; and

WHEREAS conferences were held on 26 March 1991 and 3 June 1994;

AND WHEREAS on 3 March 2000 the Commission received a facsimile transmission from the applicant union

advising that they wished to discontinue the abovementioned matter;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby discontinued.
(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

**CLERKS' (TAXI SERVICES) AWARD.
No. 14B of 1968.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Federated Clerks' Union of Australia Industrial Union of
Workers, WA Branch

and

Swan Taxis Co-op Ltd.

No. 2033C of 1989.

7 March 2000.

Order.

WHEREAS the application cited herein was filed in the Commission pursuant to the Industrial Relations Act, 1979 (the Act) to vary the Clerks' (Taxi Services) Award No. 14B of 1968; and

WHEREAS conferences were held on 26 March 1991 and 3 June 1994;

AND WHEREAS on 3 March 2000 the Commission received a facsimile transmission from the applicant union advising that they wished to discontinue the abovementioned matter;

NOW THEREFORE the Commission, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby discontinued.
(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

**NOTICES—
Award/Agreement matters—**

IN THE WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Application No. AG 102 of 2000

APPLICATION FOR REGISTRATION OF AN
INDUSTRIAL AGREEMENT TITLED

“CEPU COMMUNICATIONS DIVISION
(TELECOMMUNICATIONS AND SERVICES BRANCH)
CLERICAL STAFF AGREEMENT 1999”

Notice is given that an application has been made to the Commission by the Australian Municipal, Administrative, Clerical and Services Union of Employees, W.A. Clerical and Administrative Branch under the Industrial Relations Act 1979 for registration of the above Agreement.

As far as relevant, those parts of the Agreement that relate to area of operation or scope are published hereunder.

3A.—SCOPE

This Agreement shall apply to all employees in the classifications in Clause 8 at the CEPU Communications Division (Telecommunications and Services Branch) and to the Australian Municipal, Administrative, Clerical and Services Union (West Australian Clerical and Administrative Branch).

8.—SALARIES MINIMUM ANNUAL

The classifications referred to in this clause are—

- (i) Office Assistant
- (ii) Office Administrator

A copy of the Agreement may be inspected at my office at the AXA Centre, 111 St George's Terrace, Perth.

6 April 2000. (Sgd.) J.A. SPURLING,
Registrar.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Application No. 471 of 2000

APPLICATION FOR VARIATION OF AWARD
ENTITLED "EDUCATION DEPARTMENT
MINISTERIAL OFFICERS SALARIES ALLOWANCES
AND CONDITIONS AWARD 1983 No. 5 of 1983"

Notice is given that an application has been made to the Commission by The Civil Service Association of Western Australia Incorporated under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed variation which relate to area of operation or scope are published hereunder.

1. Clause 3.—Scope—Delete this clause and insert in lieu—

3.—SCOPE

This Award shall apply to all Government Officers employed by the Minister for Education (hereinafter referred to as the Minister) or the Chief Executive Officer, Education Department of Western Australia in an administrative, clerical or general capacity who are not employed under the Government Officers Salaries, Allowances and Conditions Award 1989 or the Public Service Award 1992. It does not apply to any officer employed on the teaching staff under provisions of the Education Act 1928, or the regulations made under the Act, or to any child care workers

A copy of the proposed variation may be inspected at my office at the AXA Centre, 111 St George's Terrace, Perth.

3 April 2000. J.A. SPURLING,
Registrar.

**UNFAIR DISMISSAL/
CONTRACTUAL
ENTITLEMENTS—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Teresa Acacio

and

Bina Karisma Pty Ltd trading as Wartell Mobile Phone Shop.

No. 1535 of 1997.

24 February 1998.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: The claim before the Commission is that the former employer of Ms Acacio (the applicant) has not allowed her a benefit she was due under her contract of employment.

The Notice of Application filed in the Commission cites Wartell Mobile Phone Shop to have been the employer however by a notification to the Commission in writing the applicant sought to amend her application to cite as the respondents thereto Bina Karisma Pty Ltd and Karisma International Pty Ltd which entitles the applicant served by hand a copy of her principal application, and a copy of the application to cite them as parties to her application.

Notices of hearing were forwarded by pre-paid post to the parties named in the principal application and the application to amend, however there has been no Answer to these applications filed by any of the named respondents. No appearance has been entered before the Commission.

Having heard the applicant on her own behalf the Commission is satisfied that Bina Karisma Pty Ltd traded as Wartell Mobile Phone Shop and had been the employer of the applicant. The Commission being satisfied that notice of the proceedings before the Commission has been given to each of the named respondents in form and manner prescribed by the Industrial Relations Commission Regulations 1985, and that such notice has not been returned by the postal authorities as unclaimed, is therefore satisfied that the application to amend the principal application to cite Bina Karisma Pty Ltd as the sole respondent thereto ought be granted and the principal application is amended accordingly. The application to cite Karisma International Pty Ltd as a second respondent will be dismissed.

The Commission is further satisfied that circumstances are such that it ought proceed to hear the principal application in the absence of the named respondent.

It is the claim of the applicant that on a number of fortnightly pay periods the respondent failed to pay her either the whole or part of the \$750.00 wage due to her, despite assurances from Mr Yogi Bima Sakti, a director of the respondent, that such payments would be made to the applicant. Entered into evidence is a schedule prepared on behalf of the applicant which identified each of the underpayments alleged to have been made by the respondent (exhibit 4), together with notices from the Commonwealth Bank of Australia (exhibits 2 and 3) dishonouring cheques drawn upon the account of Wartell Mobile Phone Shop in favour of the applicant. Ms Acacio has told the Commission that the wages payments contained in the dishonoured cheques have subsequently been received by her in cash payments, and such is reflected in the schedule entered before the Commission (exhibit 4), hence I am satisfied as to the veracity of the information the applicant has submitted to the Commission.

I find that on the fortnight ending 14 March 1997 the applicant was underpaid the sum of \$50; that on the fortnight ending 28 March 1997 she was underpaid \$750; on 11 April 1997, \$250; on 25 April 1997, \$750; on 9 May 1997, a further \$750; on 6 June 1997, \$250; on 20 June 1997, \$750; and on 4 July 1997, \$500; and that totalled an underpayment of \$4050 gross.

The applicant has indicated a willingness to offset against the moneys owed to her the sum of \$350 for her purchase of a mobile phone from her employer, for which she has not paid to date. However, it is not a matter for the Commission to offset a debt to the employer against a benefit owed to an employee.

I therefore am satisfied that Ms Acacio is entitled to an order in the sum of \$4050.

Appearances: Ms T. Acacio on her own behalf

No appearance on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Teresa Acacio

and

Bina Karisma Pty Ltd trading as Wartell Mobile Phone
Shop.

No. 1535 of 1997.

3 March 2000.

Order.

HAVING heard Ms T. Acacio on her own behalf and there being no appearance on behalf of the respondent, the Commission, pursuant to the power conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT Bina Karisma Pty Ltd pay Teresa Acacio the sum of \$4050, being unpaid wages due and payable.

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jeffrey Alan Adams

and

Morton's Specialist Seed and Grain Merchants.

No. 376 of 1999.

COMMISSIONER P E SCOTT.

13 March 2000.

Reasons for Decision.

THE COMMISSIONER: This is an application made pursuant to s.29(1)(b)(i) of the Industrial Relations Act 1979.

The Applicant claims that he was unfairly dismissed from his employment. He says that he accepts that there were to be redundancies due to the downturn in the Respondent's business on account of the seasonal nature of the work. However, he says that it was inappropriate that he should have been selected for redundancy as there were others employed by the Respondent who had started later than he had. Some employees were offered training which improved their likelihood for being preferred by the Respondent and yet he was not offered such training. The Applicant says that he saw another employee, who he had understood to have been given notice, still working there on the Monday after his employment had terminated. Further, he says that the Respondent should not have relied upon or given weight to the advice of the Australian Quarantine and Inspection Service ("AQIS") representative as to who should do the work, and that the employer, rather than its Operations or Yard Manager, should have informed him of the termination of employment.

The Respondent operates a grain and seed business, which is very much of a seasonal nature with the exception of ad hoc contracts. The main period of seasonal work is between October and February or March, depending upon a range of factors. The Respondent says that in February/March 1999, it reduced its workforce in the yard by seven, two from the office and two from its Wagin plant. This was a normal seasonal downturn. Prior to these terminations occurring, Mr Jonathon Dudley Morton, the business owner, and Mr Kenneth James Canning, the Operations Manager, had observed the usual reduction in work and had let other employees go. They continued to monitor and discuss the situation. At a meeting on 27 February 1999, the two of them decided that the services of a further two employees would need to be terminated. Consideration was given to the work requirements and the skill levels of the three persons concerned being Dean Lardie, Andrew Beet and the Applicant. Mr Morton discussed with the AQIS inspector the prospect of putting the Applicant on night shift in place of Andrew Beet who had previously done cleaning on the night shift. The AQIS inspector's view was

that the business's hygiene would be best served by Mr Beet continuing on the night shift. On this basis, it was decided that the Applicant and Mr Lardie were to be selected for termination of employment. Mr Canning gave evidence that he told the Applicant on the Monday following this discussion that it was likely that his employment was to be terminated on the Friday of the following week but if they could keep him on they would do so. He says in this way he gave the Applicant two weeks' notice.

The Applicant denies that he was given two weeks' notice. In examination in chief he said that he was advised of his termination on Thursday, the day before his employment actually terminated. However, in cross-examination he says that it was the Tuesday and denied saying that it was the Thursday. On the Friday, he asked Mr Canning whether he should come back on Monday. Mr Canning went away and came back and said that he should finish that afternoon. The Respondent says that Mr Lardie's employment terminated a few days later – he was kept on to undertake some additional shifts including fork lift operations.

Mr Morton says that the Applicant was reliable and did his job well. He had worked for the Respondent before and accordingly, he gave the Applicant a suitable reference.

Mr Morton says that for operational reasons, he felt that the Applicant was not suitable to undertake training, which had been made available to certain other employees. The basis of selection of personnel to be made redundant was on the skills they had and on the operational requirements.

Both parties agree that the Applicant's employment was casual. The Applicant initially said that he had been employed by the Respondent on four occasions. When he had first started he had been employed for eight weeks, on the second occasion he had been employed for two weeks in October 1997; there were two weeks in January, then on the last occasion, from October 1998 to March 1999. He had occasionally worked on a Saturday whilst he was employed elsewhere. He then said that he was employed only three times by the Respondent.

The Payroll Advice records for the Applicant (Exhibit 1) indicate that the Applicant's hours of work varied each week from as little as 22.75 to over 80 hours. In the week of 8 January 1999, only one hour is recorded. The Applicant was paid \$15.00 per hour at the time of the termination of his employment.

I have considered all of the evidence in this matter. Having observed the witnesses as they gave their evidence, I prefer the evidence called for the Respondent to that of the Applicant. Mr Adams' evidence was unreliable in a number of respects to which I have referred earlier.

The Respondent's business was highly seasonal and the Applicant had been employed by the Respondent on a number of occasions to suit the convenience of both parties. The difficulty for the Applicant appears to have arisen because his last period of engagement spanned a number of months, although it is clear that his hours varied significantly each week and he was paid on an hourly basis. He was not expecting to receive payment for any absences on account of sick leave nor payment for annual leave. The parties clearly believed that the arrangement was a casual one. I am satisfied that the employment was casual in nature.

The termination of employment came about because of a genuine redundancy being caused by the seasonal nature of the business. The Respondent went through a process of assessing the relative skills of its employees and its operational requirements, taking account of views expressed by an inspector whose views were important to its operations. The decision ultimately was to be made by the employer. Mr Morton decided that terminations needed to occur. He authorised Mr Canning to make the decision as to who would be terminated and to undertake the terminations.

I am satisfied that the Respondent was entitled to come to a conclusion about who it should retain and who should go, and at what stages, based on the operational needs of the business and the skill levels of the employees. The Applicant was quite adamant that it was unfair that an employee who had been with the business a shorter time than he had should stay in preference to him. However, there is no such principle established by this Commission as being the basis upon which

decisions as to who should go and who should stay should be made. In some industries there are agreements between employers and unions that the last engaged should be the first to depart but there is no evidence before the Commission that such an agreement, policy or arrangement existed within the Respondent's business nor is there a requirement for it to exist. *Amalgamated Metal Workers and Shipwrights Union of Western Australia and the Operative Painters and Decorators Union of Australia, Western Australian Branch Union of Workers v. Australian Shipbuilding Industries (WA) Pty Ltd (1987) 67 WAIG 733*. The Respondent was entitled to make a decision according to its business needs and it did so. The Applicant has not demonstrated that any other person ought to have been dismissed rather than himself.

There is no indication that there was any untoward element in the decision to terminate. Although the Applicant says that he believes that he was selected for termination because he had refused to work on Saturdays when the employer changed the payment arrangements for Saturday, I am not satisfied that this was the basis upon which a decision to terminate his employment was made.

There is no evidence that the dismissal occurred in any way in which might be said to be harsh, oppressive or unfair. The Applicant was given as much notice as possible particularly bearing in mind the casual nature of his employment. He was given almost two weeks' notice.

The Applicant appears to have been given a reasonable reference in all of the circumstances and this would tend to indicate that there was no animosity between the parties at the time of termination.

In all of these circumstances, it has not been demonstrated that the dismissal was harsh, oppressive or unfair. Accordingly, the application will be dismissed.

APPEARANCES: The Applicant appeared on his own behalf

Mr Taylor (of Counsel) appeared on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jeffrey Alan Adams
and

Morton's Specialist Seed and Grain Merchants.

No. 376 of 1999.

COMMISSIONER P E SCOTT.

13 March 2000.

Order.

HAVING heard the Applicant on his own behalf and Mr Taylor (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.

[L.S.] (Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Sidney Barcello and
Pauline Mary Barcello

and

Denmark Holdings Pty Limited.

Nos. 607 and 608 of 1999.

CHIEF COMMISSIONER W.S. COLEMAN.

13 March 2000.

Reasons for Decision.

CHIEF COMMISSIONER: Mr Barcello was employed as bar manager. It appeared from what he says that his instructions were to "clean up the hotel". This meant that Mr Barcello was to attract new clients and discourage some of the existing customers from drinking at the bar. Mr Barcello states that he pointed out to Mr Morrison, a director of Denmark Holdings Pty Limited (the respondent company), the implications of this policy would be a downturn in business in the first instance. He says that Mr Morrison recognised and accepted this. When Mr Barcello commenced employment in December 1998 he was to report to the hotel manager. However, it appears that the person performing the duties of that position did not attend the hotel. About a week after he commenced employment Mr Barcello approached Mr Morrison and enquired as to what was happening. Mr Barcello had been working extended hours (7.00am until midnight) at that time. Mr Morrison undertook to find another manager and sometime in February 1999 a new person was appointed to that position.

From Mr Barcello's evidence it is clear that he has knowledge of the hotel business. Indeed he has worked in the industry for 20 years. Mr Barcello had some awareness of the hotel's performance through the "percentages" of the bar. This meant wages as a percentage of bar takings.

He was told by Mr Morrison that they were running about 22 per cent and when this came down to 16 per cent at one time Mr Barcello stated that Mr Morrison was pleased.

Mr Barcello attended for work on 24 April and at about 10.00am the hotel manager came down to the bar and told him his employment was terminated. In response to Mr Barcello's question as to why, he was told "percentages". With that Mr Barcello was required to hand back the keys and was told that "you might as well go". It is Mr Barcello's evidence that the dismissal took place in front of the customers at a time when the bar was full.

Mr Barcello left the premises. He was not paid any wages, accumulated entitlements nor payment in lieu of notice. He states that he subsequently received payment some two weeks later (Exhibit 2).

Mr Barcello submits that he had been a permanent employee. He had performed his duties without criticism but had been summarily dismissed. Apart from the loss sustained because there was no income for a period of two weeks before he was able to obtain part time employment cleaning fish and then subsequent to that a full time position as a truck driver, there was the injury arising from the embarrassment of being terminated from employment in the workplace and the affect that it had on his self-esteem and confidence. In fact, it is Mr Barcello's evidence that he was so debilitated by the dismissal that for a short time he was unable to attend to his duties as a rugby coach.

While Mr Barcello was employed at the Carlton Hotel as bar manager he says that Mr Morrison inquired of him as to whether he knew anyone who could run the kitchen. Mr Barcello put his wife's name forward. Mrs Barcello was subsequently interviewed by Mr Morrison and his accountant. It appears that the kitchen had been closed down for some time. Mrs Barcello says that she was told to re-open it. She was required to provide lunch and evening meals five days a week. On weekends food was to be available for re-heating. It is her evidence that the instructions given to her were in effect limited to getting the kitchen up and running. She was not told that her appointment was for a trial period nor was she told her hours of duty. Mrs Barcello states that she received no

directions nor any complaints about the food she prepared. Indeed, it is her evidence that on one occasion Mr Morrison complimented her on the meal he had enjoyed.

Mrs Barcello claims that on average she worked about 45 hours per week. She was paid \$12.74 per hour but this was not discussed with her when she commenced employment.

On 12 April 1999 Mrs Barcello was told by the hotel manager that the "percentages were too high", that the kitchen was being closed down and that her services were no longer required. With this Mrs Barcello finished up. She claims that the termination was a summary dismissal and that it was effected without warning and without cause. Mrs Barcello says that she was not paid any entitlements or wages in lieu of notice when she was dismissed but subsequently received a pay envelope which was brought home by her husband.

Mrs Barcello claims to have been shattered by the experience of her termination and continues to suffer the feeling of humiliation. She has not been able to secure full time employment but was able to obtain a part time position in a restaurant earning approximately \$200 per week.

As far as the respondent is concerned, with respect to Mr Barcello, it was claimed that it was always made clear what was expected of him on the percentages for the hotel. Anything more than 15.5 per cent and the hotel would be losing money. For this reason it was important for Mr Barcello to know what the percentages for the bar were so that the work roster could be structured to assist in achieving this outcome.

It is Mr Morrison's evidence that Mr Barcello was a "good bloke". He tried his best. Although he had some criticisms of Mr Barcello's dress standards these were never brought to the applicant's attention. However, as far as Mr Morrison is concerned, notwithstanding the applicant's pleasant demeanour, he was not the man to build up the business. According to Mr Morrison, Mr Barcello was more than aware that there had been no increase in trade whatsoever. He claims that as bar manager it was the applicant's responsibility to build up business. There was an expectation on Mr Morrison's part that with Mr Barcello's involvement in rugby he would bring business to the hotel from that quarter.

It is also Mr Morrison's evidence that the opportunity to appoint Mr Barcello as hotel manager presented early in the year. When he was not appointed to that position Mr Morrison believes Mr Barcello should have realised that his own job as bar manager was in jeopardy. However, it was conceded that this was never told to Mr Barcello.

Mr Morrison did not terminate Mr Barcello's services, in fact he never gave instructions for that to occur. Mr Morrison had appointed Mr John Smith as manager. On 24 April, Mr Morrison met with Mr Smith in the beer garden of the Carlton Hotel. In that discussion Mr Morrison says he made it clear that he was not happy with the way things were going at the hotel. It appears that Mr Smith was told that he had to get the percentage right. With that, it appears, Mr Smith approached Mr Barcello and terminated his employment. While Mr Morrison has no knowledge of the circumstances in which the applicant's services were terminated, he expressed surprise that Mr Barcello was terminated in front of customers as he claims. Mr Morrison has no direct knowledge of when Mr Barcello received his final payment. According to Mr Morrison wages were drawn on 26 April.

While Mr Morrison agrees that Mr Barcello was a permanent employee he contends that the dismissal was consistent with the industry standard. If a bar manager does not build up the business and this was in Mr Morrison's view an explicit requirement of Mr Barcello's appointment, then the appointee's services are terminated.

As far as Mrs Barcello's employment is concerned it was Mr Morrison's evidence that he was approached by Mr Barcello as to the possibility of his wife's employment in the kitchen. It was not as Mr Barcello claims an initiative that came from Mr Morrison.

According to Mr Morrison, Mrs Barcello's employment was on a casual basis. However, Mr Morrison does not recall if he interviewed her prior to her taking up the position. As far as he was concerned Mrs Barcello was employed as a casual cook. He conceded that she was not required to check with anyone as to the hours she was to work. From Mr Morrison's

evidence it appears that he was not impressed with her cooking and the way she dressed for work. However, nothing was said to her about these shortcomings. It appears that the decision was taken to replace Mrs Barcello as soon as possible when the opportunity presented. This occurred early in April when a chef, who had been previously employed by Mr Morrison, became available and was retained by the respondent.

Mrs Barcello's services were terminated on the premise that her employment had only been on a casual basis. In this respect Mr Morrison believes that she had not been unfairly treated.

I have no doubt from what Mr Morrison said that the hotel industry is very competitive. While a constant watch must be kept on costs, unless bar taking maintain a certain level an enterprise will fail. This can occur even through employees may be performing efficiently and promoting a friendly environment for customers.

I accept that Mr Barcello was required to build up the business in his role as bar manager. However there was a manager above him who it appears carries direct responsibility for the performance of the hotel. Unless it was made clear to Mr Barcello what percentages he required to achieve and his performance in this respect was monitored on a regular basis it is, in my view difficult to say that termination of employment was fairly effected when only one word "percentages" was given to him as the reason. There is no evidence that the situation or the circumstances surrounding the dismissal were any different from that put by the applicant. I do not accept that Mr Barcello's employment was conditional upon attaining certain bar percentages nor that it was the subject of review with him.

However it appears to be the case that the general requirement given to Mr Barcello to clean up the hotel and build up business had not progressed to Mr Morrison's satisfaction. I reject the position proffered by Mr Morrison that when Mr Barcello was not appointed as hotel manager he should realise that his job was in jeopardy.

In all of the circumstances it appears that the applicants prospects in the long term were not all that bright.

Consistent with the requirement to consider the position both from the employees view point and that of the employer it is apparent that in all the circumstances the dismissal was harsh given that the applicant had not been given any warnings about his performance particularly with respect to bar percentage targets.

I am satisfied that on the evidence before me, that Mr Barcello was summarily dismissed. The fact that a payment was made subsequently does not alter the situation.

It is not an answer to say that employment in the hotel industry generally has a different standard which means that employees services can be dispensed with in a way that enables ultimate flexibility to respond to the vagaries of the bar's financial performance. If that is to be the case the contract of employment should make that very clear at the outset. Notwithstanding this it appears that having regard to all of the circumstances that the applicant's prospects in the long term were not that secure. As bar manager he could not be ignorant of the hotel's performance generally and expect things to go on as they were. However he could have expected a reasonable period of notice.

Mr Barcello's claim seeks compensation in lieu of reinstatement or re-employment. It is calculated on the basis of loss of income for a period of unemployment, the difference in earnings when he subsequently worked as a casual employee and recompense for injury arising from the stress of being terminated from employment in the manner and under the circumstances that occurred. Another amount is sought as outstanding entitlement to severance payment.

With respect to Mrs Barcello's claim, her employment with the respondent lasted only 6 weeks. While it is difficult to accept that she was given an open-ended appointment as to the hours she was to work, the fact that she was told to get the kitchen "up and running" may explain how this came to be. Furthermore given the respondents focus on costs and performance through monitoring the "percentages" generally, it appears that there may have been an intention to have the

kitchen re-opened on a trial basis. However none of this seems to have been discussed with Mrs Barcello. She commenced work and appears to have applied herself to the task of re-establishing the kitchen. Although Mr Morrison may not have been impressed with the food there is nothing to suggest that any directions or warnings were conveyed to the applicant. The situation appears to be that a more appealing option presented when a chef, a former employee became available. In the absence of any evidence which clearly identified the employment as being a casual appointment, the applicant is entitled to be regarded as a permanent full time employee. The termination effected in the manner it was and in circumstances which did not afford any appreciation of the hotel's change in plans for the kitchen was unfair. Clearly an appointment made on the basis of casual employment and on the understanding that the kitchen's performance would be monitored would have overcome the problem. There was a failure to at least set down the parameters of employment. The circumstances of the dismissal cannot be explained under some approach which is said to be general practice in the industry. Such an approach does not render the termination fair.

The claim for compensation includes a period of unemployment following the dismissal and an amount to cover the difference between the reduced level of income Mrs Barcello has been able to earn since. On top of this a discretionary payment is sought for injury arising from the "hurt and humiliation" suffered by Mrs Barcello. Reference was also made to an award entitlement for unpaid leave. In all, the amount sought exhausts the limit available under the Act.

Mr and Mrs Barcello both claim that their respective dismissals have impacted upon their well being. Loss of self esteem, and confidence as well as humiliation were cited. It has been said that there is an element of distress in every termination (See *Burazin v. Blacktown City Guardian Pty Ltd* 41 AILR 3-453). However the extent to which it specifically recognised would seem to need more than an expression applicant's feelings in the first instance. The circumstances of the dismissal may have been shown to be particularly harrowing or exacerbated by the actions of the employer whereby the dignity of the employee was attacked. It may have been that there was a need for professional care following the termination of employment. The nature of the relationship between the parties and the duration of the employment may have conditioned the extent to which the dismissal impacted on the employee. In the circumstances of the dismissals presently under consideration I am not satisfied that recognition should be given the expression of distress claimed by the applicants. The length of service has been an important factor in this regard.

In both cases the applicants were subsequently paid a termination payment. However as already noted this does not change the character of the dismissal. In assessing losses and the compensation attaching thereto, it is not necessary to take those payments into account. (*Gilmore v. Cecil Bros* (1996) 76 WAIG 4434). It is clear that reinstatement or reemployment is impracticable.

After taking into account the circumstances of the dismissals and the length of service of each of the applicants with the respondent, I consider that the respective losses which need to be recognised for the purposes of compensation are appropriately determined to be amounts equivalent to two weeks pay in the case of Mr Barcello and for Mrs Barcello an amount equivalent to ninety hours at the rate of \$12.74 per hour.

Minutes of proposed order giving effect to these payments now issue.

Appearances: Mr C. Fayle appeared on behalf of the Applicants.

Mr Morrison appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Sidney Barcello

and

Denmark Holdings Pty Ltd.

No 607 of 1999.

13 March 2000.

Order.

HAVING heard Mr C Fayle on behalf of the applicant and Mr Morrison on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. DECLARES that the Applicant was unfairly dismissed from his employment with the Respondent on or about 24 April 1999;
2. DECLARES that it is impracticable to reinstate the employee to his former position;
- and
3. ORDERS that the Respondent pay to the Applicant the amount equivalent to two weeks pay at the rate of \$650.00 per week by way of compensation for the unfair dismissal.

(Sgd.) W. S. COLEMAN,

Chief Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Pauline Mary Barcello

and

Denmark Holdings Pty Ltd.

No 608 of 1999.

13 March 2000.

Order.

HAVING heard Mr C Fayle on behalf of the applicant and Mr Morrison on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby—

1. DECLARES that the Applicant was unfairly dismissed from her employment with the Respondent on or about 12 April 1999;
2. DECLARES that it is impracticable to reinstate the employee to his former position;
- and
3. ORDERS that the Respondent pay to the Applicant the sum equivalent to ninety hours work at the rate of \$12.74 per hour by way of compensation for the unfair dismissal.

(Sgd.) W. S. COLEMAN,

Chief Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Richard Bennell

and

Goomburrup Aboriginal Corporation.

No. 1259 of 1997.

4 November 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: Richard Bennell (the applicant) claims he was unfairly dismissed from his employment

as a supervisor of a work group employed upon a Community Development Employment Program (CDEP) conducted by the respondent. The applicant concedes that he met with his superordinate, Frederick George Bathurst, the Manager CDEP, on 22 May 1997 and acted in a threatening way toward Mr Bathurst. He says he did so "on the spur of the moment". It is for this reason the applicant was later dismissed from employment.

Mr Bathurst was empowered to dismiss the applicant. He took no immediate action to do so nor to report the incident to his superordinates. At a usual monthly meeting of the Governing Committee (the Committee) of the respondent corporation on 27 May 1997, Mr Bathurst was questioned regarding what had occurred in relation to Mr Bennell and in response to that he reported upon the 22 May 1997 incident. The applicant is a member of the Committee however he was absent from that meeting attending another in the town of Northam. In his absence the Committee is said to have decided that he ought not continue as a Committee member and that he be dismissed from the CDEP. Mr Bathurst was instructed to effect the dismissal.

Mr Bennell says he first became aware of his dismissal when on 13 June 1997, following his return from Northam, he, as a matter of course sought and obtained a copy of the Committee minutes for the meeting on 27 May 1997. Subsequently he received a letter from Mr Bathurst dated 18 June 1997 which said his "position ... has been withdrawn". Attached to that was a Separation Certificate dated 17 June 1997, which states that he had been dismissed. That Mr Bathurst did not act on his own authority to either dismiss the applicant, or to report the incident, indicates that he did not consider such action appropriate, and condones the conduct of Mr Bennell. Furthermore the Committee had become aware of the incident and questioned Mr Bathurst. There is no evidence that any explanation was sought from Mr Bennell and hence he was given no opportunity to defend himself. Mr Bennell was not afforded natural justice and his dismissal was therefore unfair.

The application made seeks reinstatement in employment. There is no argument that such is impracticable, and that being the primary remedy prescribed by the Industrial Relations Act, 1979, I will therefore order that such occur. Mr Bennell is entitled to be compensated for the wages he has lost since his dismissal. That I am satisfied is the sum of \$3690.00 (gross) and that he is due the sum of \$3312.00 (net after tax). The respondent will be ordered to pay to the applicant this lastmentioned sum.

Appearances: Mr G. Patrick on behalf of the applicant
Mr J. O'Sullivan on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Richard Bennell

and

Goomburrup Aboriginal Corporation.

No. 1259 of 1997

3 March 2000.

Order.

HAVING heard Mr G. Patrick on behalf of the applicant and Mr J. O'Sullivan on behalf of the respondent the Commission, pursuant to the power conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the applicant be reinstated in his employment;
and

THAT the Goomburrup Aboriginal Corporation pay Richard Bennell the sum of \$3312.00 (net).

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Catherine Boxall

and

Rodney Harry Wisbey.

No. 956 of 1999.

COMMISSIONER A.R. BEECH.

28 February 2000.

Reasons for Decision.

This is an application lodged by Catherine Boxall claiming that she has not been paid by Rodney Harry Wisbey wages due under her contract of employment with him. It is agreed between the parties that Mrs Boxall commenced employment as a dairy hand on the respondent's farm on 25 January 1999. Mrs Boxall claims that she was not paid wages between 14 May and 28 May 1999, being an amount of \$800.00, nor holiday pay for the period of her employment, which she has calculated as six and one half days, amounting to \$424.00.

Mr Wisbey's farm is Orlanda Park in Narrikup in the south west of Western Australia. After her employment ceased Mrs Boxall moved to Victoria. It was not practicable to arrange for the parties and the Commission to convene in one location to enable it to hear and determine Mrs Boxall's claim in the ordinary way by hearing oral evidence from both parties and their witnesses, having their evidence subject to cross-examination, and the Commission deciding the matter accordingly. However, both parties expressly agreed to the Commission deciding Mrs Boxall's claim on the basis of the statutory declarations of both parties and of any witnesses relied upon by either party. The Commission has, therefore, decided this matter on the basis of the information set out by each party in their respective Notice of Application and Notice of Answer, the statutory declarations of Mrs Boxall and Mr Wisbey, together with statutory declarations from Kenneth Barry Boxall, Leonard George Mason, Kerry Luscombe and Lorraine Grace Wisbey, all of whom gave evidence at the request of Mrs Boxall, together with statutory declarations from Brenton Ray Wisbey, two statutory declarations from Stephen William Hall dated 7 October 1999 and 19 November 1999 respectively, and two statutory declarations of Peter Edward Shotter dated 26 September 1999 and 22 November 1999 respectively, all of whom gave evidence at the request of Mr Wisbey.

In general terms, Mrs Boxall states that she remained employed by the respondent and worked until 28 May 1999. Mr Wisbey claims that Mrs Boxall resigned her position on 11 April 1999 and that her employment ceased from that date.

Before turning to consider the evidence before the Commission on these matters, Mr Wisbey states that the Commission does not have the jurisdiction to deal with Mrs Boxall's application because the employment relationship was governed by the Farm Employees' Award 1985. That award is an award of this Commission. The significance of Mr Wisbey's statement that the award applies is that if he is correct then Mrs Boxall's entitlement to wages and annual leave derives from the award and her claim to have been underpaid her wages and annual leave will be a claim to enforce the award. A claim to enforce the award must be made before an Industrial Magistrate and not an Industrial Relations Commissioner and therefore this Commission would not have the jurisdiction to deal with her claim.

The claim that Mrs Boxall's employment was covered by the award was not raised by Mr Wisbey when he first answered Mrs Boxall's claim. His Notice of Answer filed on 16 August 1999 states that Mrs Boxall was employed "pursuant to an employment contract". The terms of the employment contract were, *inter alia*, that the applicant would be employed on a part time basis, working five hours per day, being a total of 35 hours per week. The applicant would be paid \$400.00 gross per week. There is nothing in Mr Wisbey's Notice of Answer to suggest that the award was discussed between the parties when the employment commenced. Nevertheless, whether the award applies is a matter of an interpretation of the Scope clause of the award. If it applies, it will apply whether or not the parties agreed at the time that it would apply.

Clause 3.—Area and Scope of the Farm Employees' Award 1985 (as consolidated at 73 WAIG 2226) states—

“This award shall apply throughout the state of Western Australia to employees employed—

- (a) on farms in connection with the sowing, raising, harvesting and/or treatment of grain, fodder or other farm produce;
- (b) on farms or properties in connection with the breeding, rearing, or grazing of horses, cattle, sheep, pigs or deer; or
- (c) in clearing, fencing, well sinking, dam sinking or trenching on such farms or properties ...”

The information before the Commission shows that Mrs Boxall was employed on a farm. Mr Wisbey's Notice of Answer states that she was employed as “a dairy hand”. No further detail of her duties was specifically provided by Mr Wisbey. Mrs Boxall's application describes her duties as—

“Help milking and general farm duties”.

By that description of her duties I conclude that Mrs Boxall was employed on a dairy farm. It is likely that Mrs Boxall was engaged “in connection with the breeding, rearing or grazing of ... cattle”. If that conclusion is correct the Farm Employees' Award 1985 applied to Mrs Boxall's employment.

However, the rate of wage agreed between Mrs Boxall and Mr Wisbey was \$400.00 per week. That is a rate above the rates specified in the award. To the extent that it is a rate above the award rate Mrs Boxall can claim the full amount of the money owed to her as being a non-award benefit (*Roberts v. Country Stud Tavern* (1984) 64 WAIG 774). Accordingly, even if the Farm Employees' Award 1985 applied to Mrs Boxall's employment the Commission has the jurisdiction to deal with her claim.

I turn then to consider the claim before the Commission. In theory, the first part of Mrs Boxall's claim is straightforward. If Mrs Boxall remained in the respondent's employment until 28 May 1999 and worked she is, on the face of it, entitled to be paid wages until that date. If, in fact, she resigned as Mr Wisbey maintains and her employment ended at the time of her resignation, then she is not entitled to be paid the wages she claims. The claim is not as straightforward to resolve in practice however, because of the differences in the evidence before the Commission. The Commission has not had the advantage of seeing each of the persons who gave evidence in this matter in order to assess their credibility. The task of the Commission is, therefore, made somewhat more difficult. In this case, the resolution of Mrs Boxall's claim will depend upon an analysis of the contents of the evidence before the Commission.

Mr Wisbey maintains that the statutory declarations of Leonard George Mason and Kerry Luscombe are irrelevant and, therefore, inadmissible as evidence before the Commission. The Commission agrees with that submission. Whilst I do not necessarily doubt the evidence of both those persons, their evidence does not go to an issue that the Commission has to decide. I have, therefore, disregarded their evidence.

Further, the evidence overall includes evidence showing that there is much bitterness between Mr & Mrs Boxall and Mr Wisbey. Indeed, that may also be the case as between Mr Wisbey and Mrs Wisbey. I have explicitly refrained from referring to any of the accusations and counteraccusations in that evidence. The task of this Commission is a straightforward industrial relations task. To the extent that each of the parties to this matter alleges conduct on the part of the other which paints them in a bad light, I have excluded it from a consideration of the facts of whether work was performed and the calculation of the entitlement, upon resignation, to pro rata annual leave.

Mrs Boxall maintains that she remained in employment until 28 May 1999. On her evidence she commenced employment initially on a part time basis but eventually worked a seven day week for long hours because Mr Wisbey was away a considerable amount of time. On approximately 30 March 1999 Mr Boxall hurt his back and Mrs Boxall asked Mr Wisbey for either himself or another person to come and assist her. Her evidence is that Mr Wisbey stated he was unable to assist her because he was going away and that he could not afford to pay another wage.

Both Mrs Boxall and Mr Wisbey agree that on 11 April 1999 a further conversation occurred between them. I note that, as Mrs Boxall points out, the Notice of Answer refers to Mrs Boxall ceasing employment on 23 April 1999, which is in contrast to Mr Wisbey's current statement that she ceased employment on 18 April 1999, and the corresponding dates when she had the conversation with Mr Wisbey are also different. However, in my view little turns upon these differences as to dates. I am satisfied that the conversation did occur whether it occurred on 11 or on 18 April 1999. However, the fact that Mr Wisbey's Notice of Answer and his later evidence contain conflicting dates tends to lessen the strength of his evidence.

However, Mrs Boxall and Mr Wisbey do not agree on the content of the conversation. Mrs Boxall states that Mr Wisbey again stated he would not put anybody else on the farm to assist her. She states that she was finding it difficult working full time, and that she did not want to work the long hours because she had to care for her three children. She states that Mr Wisbey was abusive towards her and she left.

The evidence of Mr Wisbey in relation to this conversation is different. His evidence is that, on 11 April 1999, at approximately 7.00am Mrs Boxall came to the front door of his house and said “you can find someone else to milk your f- cows as I have had enough working with him”. Mr Wisbey's evidence is that he then stated that he would find somebody else and that was the end of the conversation. His further evidence is that, on 16 April 1999, Mrs Boxall came to the kitchen to collect her pay cheque and, as he gave it to her, Mr Wisbey stated that this would be her last pay cheque because he had replaced Mrs Boxall with Mr Shotter who would start on 18 April 1999. Mr Wisbey states that Mrs Boxall did not work, nor was required to work, for the period 18 April 1999 to 28 May 1999 and this forms the basis of his answer that Mrs Boxall was not owed any further wages.

Mr Wisbey's evidence is supported in part by a letter which he wrote to Mr and Mrs Boxall dated 4 May 1999. In that letter he states—

“I only replaced Kathy [Boxall] because of the abusive phone calls on my mobile and also she came over to the house on the Sunday morning and told me to find somebody else to milk the f- cows because she was quitting so I done just that, and replaced her with Peter Shotter.”

I have little doubt that the conversation between Mr Wisbey and Mrs Boxall on 11 April 1999 is as Mr Wisbey recollects. Mr Wisbey's recollection of the conversation is supported by Stephen William Hall who was staying in Mr Wisbey's house on 11 April 1999. He heard words to the effect “you can find someone else to milk your f- cows as I have had enough of working for you” and that Mr Wisbey replied with words to the effect “all right, I'll find someone else to do it”. The essential difference between Mr Wisbey's recollection and that of Mr Hall is that Mr Wisbey recalls Mrs Boxall stating that she had had enough of working with her husband, whereas Mr Hall recalls Mrs Boxall saying that she had had enough of working for Mr Wisbey. They both agree however, that Mrs Boxall stated that Mr Wisbey could find someone else to milk the cows.

It is also the case that Mr Wisbey did employ Mr Shotter and he did so saying to Mr Shotter that Mrs Boxall had resigned from her job. That is Mr Shotter's evidence in both of his statutory declarations. I do not understand Mrs Boxall to be challenging Mr Shotter's evidence in that regard and I accept Mr Shotter's evidence. The issue, however, does not end there. Although Mr Wisbey believes that Mrs Boxall resigned by virtue of her words to him on 11 April 1999, Mrs Boxall states that she did not resign. Certainly, she told Mr Shotter that she had not resigned when he started on 18 April 1999 because Mr Shotter says that she stated it to him. Further, the evidence of Mrs Boxall is that she continued to work up until 28 May 1999. There is certainly evidence to support Mrs Boxall's claim that she continued to work.

There is the evidence of Mrs Wisbey (who lives apart from her husband, the respondent in this matter). Her evidence is that on 10 April 1999 Mrs Boxall spoke to her stating that she needed someone to assist her but that she was willing to continue on her part time basis. Mrs Wisbey's understanding is that Mrs Boxall did not resign until 28 May 1999 when she

did so with Mr Boxall. Mrs Wisbey states that she is a Director and partner of the company which, apparently, runs the farm. I regard Mrs Wisbey's evidence as reliable because it is supported by a letter from a firm of solicitors which represented Mr Wisbey, Holden Barlow, dated 27 May 1999 (a date reasonably contemporaneous with the events in question). The solicitors' letter indicated that they had been instructed that Mr and Mrs Boxall resigned, effective 28 May 1999, and that Mr Wisbey will be returning to the farm on 28 May 1999 to "pay out" and oversee their departure. I place weight upon the letter from Holden Barlow as being an accurate representation of what they had been told regarding the date of resignation of both Mr and Mrs Boxall. I infer from that letter that Mrs Boxall, far from having resigned on 11 April 1999, continued in employment until she resigned effective 28 May 1999. Even Mr Shotter, in both his statutory declarations, states—

"Over the next six weeks [i.e. from 18 April 1999] Catherine arrived at the dairy at approximately 5.20am and stayed until 7.00am on weekdays, except for Tuesday." (Statutory declaration 22 November 1999.)

and—

"Over the next few weeks she came to the dairy at 5.20am to 7am. Most afternoon milkings were not done by her... Kath Boxall did help her husband at times during the day.

During the six weeks before they left they tended to intimidate and ridicule me." (Statutory declaration 26 September 1999.)

The evidence of Mr Shotter is particularly important. That evidence was called by Mr Wisbey and I assume that Mr Wisbey wants me to regard Mr Shotter's evidence as being completely truthful and reliable. Mr Shotter's evidence is that Mrs Boxall continued to work, at least in the mornings mentioned by Mr Shotter, and helped her husband at times during the day, for the six weeks after Mr Shotter commenced his own employment before she left.

I find the evidence of Mrs Wisbey, Mr Shotter and the letter from Holden Barlow leads inevitably to the conclusion that Mrs Boxall continued to work at the farm after the conversation which occurred on 11 April 1999. Therefore, even though Mr Wisbey's evidence is that he regarded Mrs Boxall as having resigned and that he "replaced" Mrs Boxall, Mrs Boxall nevertheless continued to perform work at the farm. The difference between Mr Wisbey's belief that she resigned and the fact that Mrs Boxall continued in her employment whilst Mr Shotter was employed may be able to be explained by the evidence that she had requested some assistance because of the injury to Mr Boxall. Nevertheless, even if that is not the correct explanation, it is clear from the evidence that Mrs Boxall continued to work after the conversation of 11 April 1999 between her and Mr Wisbey. I note that even though the conversation on 11 April was as Mr Wisbey has related, Mrs Boxall did not use the word "resign". Any issue whether her words did constitute a resignation will therefore depend on all of the circumstances. Those circumstances include the fact that Mrs Boxall did in fact continue to work until 28 May.

The circumstances also include a photocopy of a bank deposit slip of 17 May 1999 which Mrs Boxall has supplied to the Commission and which she says is evidence of payment of her wages of \$800.00. She makes the point that, if she had indeed resigned as Mr Wisbey indicates, she would not have been paid these wages on that date. Mr Wisbey, as I understand his evidence, believes that his estranged wife paid that money and in doing so acted without authority and that Mrs Boxall should not have been paid that money. However, for the purposes of these proceedings in the Commission, Mrs Wisbey's status as a Director and partner of the company which runs the farm is sufficient for me to believe that, *prima facie*, Mrs Wisbey had the authority to make the payment. In making the payment, I assume that Mrs Wisbey believed that Mrs Boxall was still employed and was working and paid the wages accordingly. There is no suggestion to the contrary in her evidence.

In all, the evidence is that, although the conversation on 11 April 1999 which Mr Wisbey relates did occur, Mrs Boxall did not, in fact, resign, and she continued to work until 28 May 1999. On the evidence of Mr Shotter, as well as of Mrs

Boxall herself, Mrs Boxall performed work until 28 May 1999. It follows that she is entitled to be paid wages for the work she performed and accordingly she has made out her claim that she should be paid the wages she has claimed for the period 14 May to 28 May 1999.

Mrs Boxall's second claim for payment of pro rata annual leave is far more straightforward. There is no direct evidence that annual leave, or payment of pro rata annual leave on termination of employment was discussed between Mrs Boxall and Mr Wisbey at the time of employment. Therefore, there is no direct evidence that it was a term of Mrs Boxall's contract of employment that she is entitled to payment of pro rata annual leave on the termination of her employment. However, Mr Wisbey does not state that Mrs Boxall has no entitlement. I do not regard Mr Wisbey's opposition to the claim as denying that Mrs Boxall is entitled to be paid pro rata annual leave at all. Rather, he claims that her entitlement should be calculated only from the date of commencement to 18 April 1999 and, in any event, any payment due should be offset by a payment of \$2,400.00 which he says was paid to her by his estranged wife and which should be taken into account and offset against any annual leave entitlement. I therefore find that both parties accept that Mrs Boxall does have an entitlement to payment of pro rata annual leave on termination of employment. The resolution of this claim is, therefore, to be approached on the following basis.

Given my findings above, Mrs Boxall is entitled to be paid pro rata annual leave calculated on the period between the date she commenced and 28 May 1999.

Mrs Boxall has not objected to Mr Wisbey's statement that she had received the sum of \$2,400.00. However, I am unable, on the evidence before me, to determine the circumstances of this payment and therefore cannot be positive that this sum represents an overpayment. I am, therefore, not persuaded that the Commission should refrain from ordering that the pro rata annual leave payment now be made to Mrs Boxall. In any event, if Mrs Boxall has indeed been overpaid, the remedy for that lies elsewhere within the law.

I therefore conclude that Mrs Boxall's claim has been proven and the Minute of an Order now issues that she be paid forthwith, the sum of \$800.00 by way of wages and \$424.00 by way of pro rata annual leave.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Catherine Boxall

and

Rodney Harry Wisbey.

No. 956 of 1999.

9 March 2000.

Order.

HAVING RECEIVED submissions from Catherine Boxall on behalf of herself as the applicant and from Ms R. Reynolds (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—

Catherine Boxall has been denied by Rodney Harry Wisbey benefits to which she is entitled under her contract of service with him; and

2. ORDERS THAT—

Rodney Harry Wisbey forthwith pay Catherine Boxall the sum of—

- (a) \$800.00 by way of wages due to her; and
- (b) \$424.00 by way of payment of pro rata annual leave due to her.

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stephen Maxwell Brown

and

Frank Dall and Corallee Dall Trading as The Toodyay
Junction.

No. 963 of 1999.

COMMISSIONER P E SCOTT.

7 March 2000.

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 7th day of March 2000 the following directions relating to the substantive hearing of the matter issued;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby directs—

1. THAT no later than 21 March 2000 the Applicant shall file and serve on the Respondents the grounds upon which he says that his dismissal by the Respondents was harsh, oppressive or unfair; and
2. THAT no later than 4 April 2000 the Respondents shall file and serve on the Applicant a response to the grounds set out by the Applicant;
3. THE parties shall examine and confer regarding the possibility of evidence being adduced by way of statutory declaration and whether such evidence is to be accepted without challenge;
4. (a) THAT the Applicant shall put to the Respondents those matters which he seeks to have the Respondents agree for the purposes of a Statement of Agreed Facts, and those matters that are in issue; and
 - (b) the Respondents shall put to the Applicant those matters which they seek to have the Applicant agree for the purposes of a Statement of Agreed Facts, and those matters that are in issue; and
 - (c) no later than 7 days prior to the date of hearing set for this matter, the parties shall file a schedule of agreed facts and matters in contention.

[L.S.]

(Sgd.) P. E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Daniel Andrew Chevin

and

Wiltrading (WA) Pty Ltd.

No. 1543 of 1997.

22 January 1998.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: Before the Commission is an application by Mr Chevin (the applicant) wherein he alleges that Wiltrading (WA) Pty Ltd (the respondent) failed to allow him a benefit due under his contract of employment.

The claim of the applicant is expressed in the Notice of Application in the following terms—

“3 MTH REVIEW EXPECTED INCREASE AS DISCUSSED PRIOR TO EMPLOYMENT OF \$2000.00

12 MTH REVIEW—FOLLOWING APPRAISAL EXPECTED INCREASE OF 10% FOR PERIOD OF 3 MONTHS UNTIL RESIGNATION OF \$1050.00

TOTAL AMOUNT CLAIMED \$3050.00”

It is common ground that the parties signed a document titled Terms and Conditions of Employment (exhibit L1), where in clauses 2. Remuneration and 7. Termination/ Period of Employment, a salary of \$40,000 per annum and a 3 month probationary period of employment are prescribed respectively. The applicant commenced employment with the respondent on 4 June 1996 and the aforementioned document was signed by the parties on 21 June 1996. It is also agreed that at the interview that Robert Berkeley Lynn, the Managing Director for the respondent, informed the applicant that the appointee to the position would be subject to a 3-month probationary period following which a performance review would be held and further review held after 12 months of employment.

Mr Chevin claims that in a telephone conversation with Mr Lynn, prior to being interviewed for the position of employment, Mr Lynn informed him that the annual salary for the position would be \$42000.00 however he did not take issue with the salary of \$40000.00 when offered to him at his interview nor at any time during his employment. The applicant implies that performance appraisals were to be undertaken for the purpose of salary reviews. Mr Lynn says he does not recollect making a telephone offer of the salary level which Mr Chevin claims but he does recollect offering the salary of \$40000.00 per annum which was accepted without question.

Notwithstanding what may have passed between Messrs Chevin and Lynn prior to the interview, at that interview the applicant was offered, and accepted both orally, and then in writing seventeen days later, an annual salary of \$40000.00. No evidence has been provided showing that the salary agreed between the parties was subject to any express promise that such would be increased by any given amount at some specified time, ie upon the successful completion of a performance appraisal, or at all. Plainly Mr Chevin was to have undergone a performance appraisal after 12 months employment however such was delayed because of the absence of Mr Lynn overseas, and ultimately was not finalised because the applicant resigned from the employment, however such is not material to the determination of this matter. The applicant has provided no evidence of any kind which supports the claims made in his application. Hence his application will be dismissed.

Counsel for the respondent made oral application for an order against the applicant for costs totalling \$1319.70. The applicant has not submitted anything to the Commission which had the potential to support any limb of his claims and the respondent has been put to a totally unnecessary expense to defend the action against it. For this reason I find that an order for costs is warranted, but not to the level claimed by the respondent.

The costs the Commission will order that the applicant pay to the respondent are—

Filing fees	\$10.00
Service of documents	\$5.00
Photocopying	\$20.70
Travel (Fremantle to Perth and return—3 occasions)	\$43.00
Vehicle parking (3 occasions)	<u>\$12.00</u>
TOTAL	\$90.70

Appearances: Mr DA Chevin on his own behalf
Mr T Lucev on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Daniel Andrew Chevin

and

Wiltrading (WA) Pty Ltd.

No. 1543 of 1997.

3 March 2000.

Order.

HAVING heard the applicant on his own behalf and Mr T. Lucev on behalf of the respondent the Commission, pursuant to the power conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the claims by Daniel Chevin for alleged contract benefits be and are hereby dismissed.

THAT Daniel Chevin pay Wiltrading (WA) Pty Ltd costs in the sum of \$90.70.

(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David John Cooling

and

City of Geraldton.

No. 2151 of 1997.

COMMISSIONER A.R. BEECH.

10 February 2000.

Reasons for Decision.

The Commission, constituted by Cawley C, found that Mr Cooling's dismissal by the City of Geraldton was unfair. With the understanding of the parties, the matter was then adjourned to allow the parties to endeavour to reach an agreement regarding the remedy. This, they failed to do and, following the retirement of Cawley C, the matter was re-allocated to the Commission as currently constituted and listed for hearing.

Mr Cooling seeks an order from the Commission re-instating him in his employment. His evidence is that, since his dismissal, he has applied for a number of positions in Geraldton but has, generally, been unsuccessful. He has not been totally unsuccessful because he has received some casual work of two to three days in a week. He has, as a consequence of his dismissal, suffered financially. He had to liquidate his assets, cash in his superannuation and borrow a sum of money. His evidence is that he has found the period since his dismissal as an "extreme struggle". He assures the Commission that he holds no animosity against any of the persons connected with the events which led to the decision of the City of Geraldton to dismiss him.

The City of Geraldton opposes Mr Cooling's claim for re-instatement. It refers to the findings of Cawley C that—

"The applicant left much to be desired as an employee. He may have been awful in some respects. He menaced Martin and Traeger and her brothers with the respondent's truck. He abused Martin. He misused a work vehicle contrary to policy. He acknowledged that he verbally "sprayed" co-workers with abuse. He refused to work at times with some employees. He abused his supervisor. He threatened to run over Holberton. He was apparently late to work on some occasions (although not as much as Reynolds would have it). He was contemptuous of Hughes' authority on occasions. He ignored a lawful direction. He abused Reynolds verbally. He may have abused others. He reacted poorly to reprimands and failed to accept responsibility. He may have slammed a door as an expression of disgust during a meeting between the Mayor and employees. He probably swore on the two-way radio contrary to policy."

(Reasons for Decision at p.31.)

The City of Geraldton believes that Mr Cooling is seen as a bully and an intimidatory person. He has a proprietorial attitude to driving the litter truck. In all, his attitude means that there is a real prospect of disruption in the workplace. The opinion of the current Chief Executive Officer (who was not the Chief Executive Officer at the time the decision was made to dismiss Mr Cooling) of the City of Geraldton was contained in a Statutory Declaration (exhibit J). His decision not to support or recommend Mr Cooling's reinstatement is based upon a report given to him by the City of Geraldton's Waste Management Officer as a result of that person speaking to a number of Mr Cooling's former fellow employees. In these proceedings the City of Geraldton presented evidence from those former fellow employees, which largely bore out the matters the Waste Management Officer had referred to in his report to the CEO.

The first of the former fellow employees was Mr Reynolds, a relief litter truck driver, who had worked with Mr Cooling for seven years. His evidence is that, if Mr Cooling was reinstated or re-employed, he would not feel comfortable working with Mr Cooling. In his view Mr Cooling had harassed him, given him a hard time and "made my life a misery". In his view, Mr Cooling is a bully who would not change. Mr Reynolds hopes to be the driver of the litter truck once the issue of Mr Cooling's reinstatement or otherwise is resolved. He accused Mr Cooling of driving in an aggressive manner towards Mr Reynolds in approximately September 1999 whilst Mr Cooling was working in his casual employment. Mr Reynolds stated that he had felt frightened.

Mr Holberton then gave evidence. He is a member of the sanitation crew at the City of Geraldton. He had worked with Mr Cooling on some weekends. He believed that Mr Cooling had victimised him because of his beliefs and values and believed that this would continue if Mr Cooling returned to employment. He also feared that Mr Cooling would make Mr Reynolds' life "difficult and uncomfortable" by not working as a team in the litter pickup. He also referred to Mr Cooling being very possessive of the litter truck.

This evidence was then followed by Mr Porter who is a truck driver. His evidence was that if Mr Cooling returned to employment it would cause disruption and disharmony in the workforce because Mr Cooling bullies other employees, especially Mr Reynolds. His return would cause disruption and disharmony in the workplace and cause uncertainty.

Mr Donald Clinch is a truck driver whose evidence is that Mr Cooling would continue to intimidate Mr Reynolds and that, in mid 1999, Mr Cooling had said to him that Mr Reynolds would not be driving the litter truck if he, Mr Cooling, was to return to work.

Finally, Mr Brian Clinch gave evidence. He is a sanitation worker for the City of Geraldton who believes that Mr Cooling has a domineering personality and shows no concern for the feelings of his fellow employees. He displays arrogance and loses his temper, using strong, abusive language.

In summary, it was submitted on behalf of the City of Geraldton that Mr Cooling should not be reinstated. Mr Moss, who appeared for the City of Geraldton, referred to a culture in the Australian workplace of employees not "dobbing in" their workmates. The evidence given before the Commission by Mr Cooling's former fellow employees should be accorded great weight for that reason.

Before turning to examine whether or not Mr Cooling should be reinstated, it is necessary to deal with a jurisdictional issue raised by the City of Geraldton. The City of Geraldton has expressly informed the Commission that it agrees to pay compensation to Mr Cooling instead of re-instating or re-employing him. The City of Geraldton points to the provisions of s.23A(1a)(b) of the Act and submits that this agreement by the City of Geraldton precludes the Commission from making an order for reinstatement or re-employment if such an order was otherwise to be made. Section 23A of the Act relevantly provides as follows—

"23A. Powers of Commission on claims of unfair dismissal

(1) On a claim of harsh, oppressive or unfair dismissal, the Commission may —

(a) order the payment to the claimant of any amount to which the claimant is entitled;

- (b) order the employer to reinstate or re-employ a claimant who has been harshly, oppressively or unfairly dismissed;
 - (ba) subject to subsections (1a) and (4), order the employer to pay compensation to the claimant for loss or injury caused by the dismissal; and
 - (c) make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this subsection.
- (1a) The Commission is not to make an order under subsection (1) (ba) unless —
- (a) it is satisfied that reinstatement or re-employment of the claimant is impracticable; or
 - (b) the employer has agreed to pay the compensation instead of reinstating or re-employing the claimant.
- ...
- (3) If an employer fails to comply with an order under subsection (1) (b) the Commission may, upon further application, revoke that order and, subject to subsection (4), make an order for the payment of compensation for loss or injury caused by the dismissal.
- ...

The Commission's power to order an employer to reinstate or re-employ an unfairly dismissed employee does not arise under subsection (1)(ba). It arises under subsection (1)(b). Subsection (1a) only relates to the powers in (1)(ba) and not to (1)(b). Therefore the power of the Commission to order an employer to reinstate or re-employ an unfairly dismissed employee is unaffected by subsection (1a). Subsection (1a) only precludes the Commission from making an order to pay compensation to an unfairly dismissed employee for loss or injury caused by the dismissal unless the Commission is satisfied that reinstatement or re-employment of the claimant is impracticable, or the employer has agreed to pay the compensation instead of re-instating or re-employing the dismissed employee. The agreement by the City of Geraldton that it will pay compensation instead of re-instating or re-employing the claimant merely permits the Commission to make an order of compensation. It follows that the agreement of the City of Geraldton to pay compensation instead of reinstating or re-employing the claimant does not, in any way, affect the power of the Commission to order the City of Geraldton to reinstate or re-employ Mr Cooling if the Commission, in the proper exercise of its discretion, believes that that is appropriate to do so. To the extent that the decision of *Gregor C in Harwood v. Pearlside Investments t/as Midland Monumental* (1998) 79 WAIG 275 at 278 is to the contrary, I am unable, with respect, to agree with it. Indeed in that context I note that *Kenner C in Australian Workers' Union v. Cockburn Cement Ltd* (1999) 79 WAIG at 1232 rejected the argument that the agreement by an employer to pay compensation precluded the Commission from ordering reinstatement or re-employment. I conclude, therefore, that the agreement of the City of Geraldton to pay compensation to Mr Cooling does not remove the discretion of the Commission under s.23A(1)(b) of ordering the City of Geraldton to reinstate or re-employ Mr Cooling.

Most of the authorities to which the parties referred have approached the issue of reinstatement according to whether or not reinstatement is, or is not, "impracticable". While the point was not, of itself, argued, I tend more to the view that the wording of s.23A(1)(b) merely requires the Commission to exercise its discretion by taking into account all of the circumstances of the case relating to both employer and employee and to evaluate the practicability of a reinstatement order in a commonsense way. It is only necessary to consider whether the reinstatement is "impracticable" if the Commission is to make an order for compensation. That consideration appears to be a second step if the Commission, in the proper exercise of its discretion, declines to order reinstatement. In the

context of the authorities to which reference was made, however, it is the case that—

"Reinstatement is, therefore, required if it can be done. If the employer is still employing, or able to employ someone to perform the same or similar tasks, then reinstatement will be practicable. Its practicability does not depend on notions of loss of confidence in the employee."

These were the comments of Gray J in *Liddell v. Lembke (t/as Cheryl's Unisex Salon)* (1995) 127 ALR 342 at 368 as endorsed by the Full Bench of this Commission in *Gilmore v. Cecil Bros* (1996) 76 WAIG at 4446 and as endorsed by the Industrial Appeal Court in the appeal (which was dismissed) against this decision (1998) 78 WAIG 1099 at 1101. Whether Mr Cooling is to be reinstated is a matter for the proper exercise of the Commission's discretion. That will take all of the relevant circumstances into account but I also note that the City of Geraldton is "still employing, or able to employ someone to perform the same or similar tasks" and that on the test laid down in this State, reinstatement is, prima facie, not impracticable.

With that in mind, I turn to consider the evidence that is now before me. The evidence brought by the City of Geraldton against Mr Cooling being reinstated should not inspire Mr Cooling with confidence. There is, clearly, a deeply held belief that he is a bully with an "attitude" problem towards his fellow employees. His former fellow employees are not of the view that he should be reinstated. However, the view of Mr Cooling's former fellow employees is only one matter to be taken into account by the Commission. Furthermore, although Mr Cooling's former fellow employees have the fears that they have expressed, their fears must be seen in context. For example, although Mr Reynolds holds the beliefs that he put in his evidence, he nevertheless concedes that, while he would not wish to work with Mr Cooling, Mr Cooling may well be able to work with others. Furthermore, Mr Reynolds' evidence was, I suspect, exaggerated to at least some extent. For example, he gave evidence that he thought Mr Cooling was racially prejudiced but was shaken in this evidence later. I treat Mr Reynolds' evidence with some caution, although I acknowledge that even Mr Cooling himself admits having stated to Mr Don Clinch that, if he was reinstated, he would have difficulty working with Mr Reynolds on "his" vehicle in the light of what has happened over the last two years. However, the decision to reinstate or re-employ Mr Cooling will not depend upon a possibly difficult working relationship with one former employee.

In that connection, it is not without relevance that Mr Holberton had only a limited working relationship with Mr Cooling. Although Mr Porter's evidence is to be given weight, he did not work with Mr Cooling but rather worked in the same crew in a different truck. Similarly Mr Don Clinch has not worked closely with Mr Cooling, although he has been in the same crew with him, as had Mr Brian Clinch. Indeed, Mr Brian Clinch in fact conceded that he got on well with Mr Cooling when he did work with him.

In relation to the evidence of Mr Cooling's former fellow employees as a whole, I concede that, if Mr Cooling was reinstated or re-employed, there would be a risk that the workplace would not be as harmonious as it currently is without him. However, to the extent that the workforce was not harmonious due to Mr Cooling's presence prior to his dismissal, the City of Geraldton bears some of the blame. As Cawley C noted on the very page 31 to which the City of Geraldton earlier referred—

"... The reaction of the [City of Geraldton] to poor conduct was inconsistent, and at times tolerant. Then there are other parallels in evidence. Panels of a supervisor's car on the premises were kicked in by an employee. It is thought he got a written reprimand. An employee is assaulted by another employee to the extent that at least a head lock is applied and one person ended up on the ground. The assaulting employee is told he is not to attend any further social functions on the premises. Other instances of what might be described as mild reaction are evidenced. And in some instances, such as the Martin complaint, there was really no reaction or follow through."

It is for the respondent to manage its employees properly. It has a duty of care towards its employees and also the public. If it does manage its employees properly, then the risk that the workplace will not be as harmonious is lessened.

The task of the Commission is to evaluate the claim of reinstatement in a commonsense way. I accept that Mr Cooling's former fellow employees do not want him back. As opposed to that, however, is the evidence of Mr Cooling that he has found the last two years since his dismissal to be a very difficult time for him. As a result of the dismissal, Mr Cooling has been largely unemployed. His evidence is that he will find it difficult to find alternate work in Geraldton. That evidence is not contradicted and I accept it. In the context of the respondent's apparent inconsistent and tolerant attitude towards the misdemeanours of its employees in the waste management area, including Mr Cooling, the loss of Mr Cooling's job at the age of 47 has been a severe consequence to him.

His dismissal was unfair, as the Commission found. It was not unfair only for procedural reasons. The City of Geraldton could not show to the Commission, as a matter of merit, that the events upon which it relied to dismiss Mr Cooling actually occurred. The dismissal was procedurally unfair as well but it is not correct merely to say that the reason for Mr Cooling's dismissal being unfair was only procedural. I also tend to the view that, whilst Mr Cooling's former fellow employees harbour a fear that if he is reinstated, the workplace will not be harmonious, or that Mr Reynolds will be victimised by Mr Cooling, Mr Cooling has reached the conclusion that having his job at the City of Geraldton, is far preferable to being largely unemployed, or only casually employed outside the City of Geraldton. Two years have now passed and I conclude that Mr Cooling has learned to value the employment which he had with the City of Geraldton. He indicated at least some preparedness to re-consider his attitude. I have no doubt that he will need to re-consider his attitude. If Mr Cooling is reinstated and exhibits the same attitude as he exhibited before, he should not be confident of remaining an employee for long. The fears of Mr Cooling's former fellow employees should be able to be adequately met by a change in Mr Cooling's attitude and a proper management approach by the City of Geraldton. The fears of the City of Geraldton, as presented in the evidence, amount to a loss of confidence in the employee which, in the words of Gray J, does not mean that reinstatement is impracticable.

It is with those thoughts that I have reached the conclusion that the equity, good conscience and substantial merit of this case results in a decision that Mr Cooling should be reinstated although the City of Geraldton should consider that Mr Cooling not be put into a position on a litter truck with Mr Reynolds. However, the position in which Mr Cooling is to be reinstated is, ultimately, up to the City of Geraldton. It is also up to the City of Geraldton to set the standards of behaviour in the workplace to its employees, including Mr Cooling, and ensure that they are observed.

The Minute of a Proposed Order that Mr Cooling be reinstated by the City of Geraldton in a position as a litter truck driver other than with Mr Reynolds now issues. The order will include an order that the City of Geraldton pay to Mr Cooling a sum equal to the wages he would have earned had he not been dismissed, less the money he has in fact earned since the dismissal. A liberty to apply is reserved to the parties in the event that they are unable to agree on the sum to be paid to him.

Appearances: Mr. A. Gill (of counsel) on behalf of the applicant.

Mr D.G. Moss on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David John Cooling

and

City of Geraldton.

No. 2151 of 1997.

COMMISSIONER A.R. BEECH.

15 March 2000.

Further Reasons for Decision.

The Commission's decision is that Mr Cooling be reinstated. The Reasons for Decision refer to him being reinstated in a position as a litter truck driver other than with Mr Reynolds. The Commission's intention in ordering reinstatement is that Mr Cooling is to be reinstated to the same classification, and with the same terms and conditions of employment, in which he had been employed at the time of his dismissal. On the submissions before the Commission, that is the classification of truck driver.

The Commission also decided that Mr Cooling should not work with Mr Reynolds and that the position to which Mr Cooling is to be reinstated is ultimately up to the City of Geraldton. The Commission's order therefore should give to the City of Geraldton the capacity to change the location where Mr Cooling will work if it is necessary to do so to avoid him working with Mr Reynolds.

The Commission's Order reflects these further Reasons. The parties still have a liberty to return to the Commission for a further 14 days from the date of the Order if the calculation of the compensation is not able to be agreed.

Order Accordingly.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

David John Cooling

and

City of Geraldton.

No. 2151 of 1997.

15 March 2000.

Order.

HAVING heard Mr A. Gill (of counsel) on behalf of the applicant and Mr D.G. Moss on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby orders—

1. THAT the City of Geraldton reinstate David John Cooling to a position within the City's outside workforce at the same classification and on the same terms and conditions which applied to his employment immediately prior to his dismissal.
2. THAT the City of Geraldton pay David John Cooling a sum of money equal to the wages he would have earned had he not been dismissed, less the monies earned by him since his dismissal.
3. THAT liberty is reserved to either party for 14 days from the date of this Order in the event the parties are unable to agree on the sum referred to in Order 2. above.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Glenn Crawford
and

The City of Perth.

No. 967 of 1999.

COMMISSIONER A.R. BEECH.

8 March 2000.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings as edited by the Commissioner)

The facts surrounding Mr Crawford's dismissal are agreed and need not be repeated here at this moment. I am quite satisfied that the City of Perth was entitled to view Mr Crawford's actions as severely as it did. The claim before the Commission is that the dismissal was harsh. Specifically, Mr Crawford has given evidence of two matters this morning. Those two matters are Mr Crawford's family and personal circumstances at the time he chose not to tell the City of Perth of the loss of his motor vehicle driver's licence and the effect upon him and his family of the dismissal. I accept Mr Crawford's evidence. Indeed, I find Mr Crawford to have been quite truthful and frank in the evidence that he gave. As I indicated to Mr Crawford at the time, it would not have been an easy thing for a person to air publicly even in a courtroom the intimate details of that person's family life which properly are the business only of that family. That evidence having been given however, and accepted by the Commission, it will be taken into account in deciding this matter.

It is the fact of that evidence which distinguishes these proceedings before the Commission from the circumstances confronting the City of Perth when it decided to dismiss Mr Crawford. As has been made quite apparent in these proceedings, the fact of Mr Crawford's family and personal circumstances were not made known to the City of Perth at the time his dismissal was being contemplated. I do not see that as a criticism of the City of Perth. Mr Crawford has made it quite plain to the Commission that he is a proud man and that he regards his private business as just that, private. The Commission is not to simply review the decision of the City of Perth, it is to decide whether its right to dismiss Mr Crawford was exercised so harshly or oppressively towards him as to amount to an abuse of that right taking into account all of the evidence and all of the circumstances. I conclude that Mr Crawford's act certainly amounted to misconduct. Not all misconduct justifies dismissal however, and it is necessary for all of the circumstances to be taken into account. I take into account that Mr Crawford exposed the City of Perth to significant insurance risk, that he concealed from the City of Perth the loss of his motor vehicle driver's licence at a time when he was driving its vehicles and that he continued to drive its vehicles for two months afterwards. I also find that dismissal in the circumstances of 22 years of almost excellent service, Mr Crawford's age and limited range of skills, together with his somewhat moving family circumstances at the time the misconduct occurred, leads me to conclude that his conduct was quite uncharacteristic. I also take into account the evidence that the loss of Mr Crawford's job has had on his family. Mr Crawford has been unable to secure alternative work and I accept that he has tried to do so. Mr Crawford has given evidence of the significant financial distress that he has encountered and informed the Commission that he is now at risk of losing his family home. I also find that Mr Crawford's inability to support his family has meant that he has lost his self respect. While I find it difficult to excuse Mr Crawford's conduct and the consequences of it to the City of Perth, I also note that although he exposed the City of Perth to significant risk, in fact the City of Perth did not suffer loss other than the breach by one of its employees of the trust which is inherent in the contract of employment.

I agree with the words of Deputy President Stevens from the South Australian Industrial Relations Commission that a decision to dismiss an employee who is in fact guilty of misconduct may not be unjust or unreasonable but may in particular circumstances nevertheless be harsh (*Wasiewicz v*

Dom Polski Society Ltd 11/1/99 [1999]SAIRComm 1 at p.17). I do not see that one uncharacteristic action in circumstances where no real loss was suffered by the City of Perth should result in so much distress to Mr Crawford and his family. I find that Mr Crawford's dismissal on this evidence was indeed harsh.

I consider the issue of remedy and I find on the submissions before me that re-employment, but not reinstatement, is appropriate. I find that reinstatement is inappropriate because it would restore Mr Crawford to his previous position and carry with it an implication that his conduct is condoned by the Commission. Far from it. What Mr Crawford did was plainly wrong. He has only himself to blame for his present position. If it had not been for Mr Crawford's very long past employment record with only one, and in this case not significant, incident in 1997 and the details of his family circumstances, especially at the time, his claim could have no merit. As it is, I find it appropriate that as Mr Crawford now has his motor vehicle driver's licence that the City of Perth re-employ him in a new position in the refuse collection department within 14 days. His employment will be as a new employee and no order will be made as to compensation or continuity of service.

The Minute of a Proposed Order now issues.

Appearances: Mr M. Keogh (of counsel) on behalf of the applicant.

Mr D. Jones on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Glenn Crawford
and

The City of Perth.

No. 967 of 1999.

COMMISSIONER A.R. BEECH.

14 March 2000.

Further Reasons for Decision.

At the Speaking to the Minutes the parties, very properly, observed that the Minute did not specify the position or level to which Mr Crawford is to be re-employed. The conclusion reached by the Commission was that whilst reinstatement is inappropriate, re-employment in a new position is appropriate. Although the Reasons did not make it as clear as I would have liked, the conclusion reached was that while it is inappropriate to reinstate Mr Crawford in his former position with no loss of service and the payment of compensation, it is appropriate that he be re-employed in his former position as a new employee but not have continuity of service or be paid any compensation for his loss. That is, if his former position was full time and in a particular classification, then it is intended that that he be re-employed full time in that classification. The duties to be performed by him are as much a matter for the respondent now as they were at the time Mr Crawford was last employed.

The intention also was for the respondent to make the offer to Mr Crawford within 14 days of the date of the order issued.

An amended Minute now issues.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Glenn Crawford

and

The City of Perth.

No. 967 of 1999.

15 March 2000.

Order.

HAVING HEARD Mr M. Keogh behalf of the applicant and Mr D. Jones on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby—

1. DECLARES that the dismissal of Mr Peter Glenn Crawford was harsh in all of the circumstances;
2. ORDERS that within 14 days of the date of this order that the City of Perth offer to Mr Peter Glenn Crawford a new contract of employment in his former position in the Refuse Collection Department.

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kellie Michelle Dell

and

Mystical Holdings Pty Ltd t/a Fairbridge Realty.

No. 98 of 1999.

COMMISSIONER A.R. BEECH.

22 March 2000.

Reasons for Decision.

The respondent in this matter runs a real estate business. Ms Dell commenced with the respondent in approximately January 1998 as a receptionist. She worked in that capacity for approximately 8 months before she was offered, and accepted, the position of property manager with the respondent. Ms Dell had not previously been a property manager and, on her evidence, she had no previous experience in that particular work. When she expressed interest in becoming a property manager, she completed the relevant REIWA property manager's course. She worked in that position for approximately three months before taking a period of annual leave commencing 24 December. She was dismissed by letter dated 7 January 1999. She claims that her dismissal is harsh and unfair. She states that she was not given any warnings and there were no complaints about her work standards. She was dismissed over the telephone, without one week's notice and whilst on holidays.

The respondent opposes the claim. It states that it was during the period of Ms Dell's annual leave that it became aware of the problems which it relies upon to support its dismissal of Ms Dell. These problems were discovered by the then receptionist Ms Miller who acted as property manager during Ms Dell's annual leave. She was assisted by Mr Lorimer who was a licensee/manager with the respondent at the time. The evidence of Ms Miller and Mr Lorimer is that during Ms Dell's annual leave the respondent received many irate telephone calls relating to property management complaining that particular jobs had not been done. These jobs were the responsibility of Ms Dell as property manager. Further, the evidence is that two cheques were found in files on Ms Dell's desk which ought to have been banked by her. The respondent regards a failure to bank such cheques as a breach of section 68 of the *Real Estate and Business Agents Act, 1978*. The discovery of the cheques was viewed seriously by the respondent. Furthermore, there was letter from a firm of solicitors acting on behalf of a client requiring the respondent to transfer the management of the client's property to that firm. This correspondence had not been acted on.

The respondent states that Ms Dell was contacted and came into the office and answered some of their queries. On 7 January the respondent contacted Ms Dell by telephone and asked her to come into the office again but on this occasion she refused. It was during this conversation that Ms Dell, according to the respondent, said that she had better look for another job. The respondent decided to dismiss Ms Dell and did so by letter dated 7 January 1999. It gave Ms Dell 7 days' notice. By further letter dated 22 January the respondent paid Ms Dell her outstanding holiday pay.

The hearing of this matter in Mandurah was protracted. Ms Dell gave evidence herself. The respondent called evidence from Ms Miller, the person who acted as temporary property manager during the critical time of Ms Dell's absence on leave; from Ms Harris who is the property manager employed in Ms Dell's former position approximately one month after Ms Dell's dismissal; from Mr Lorimer and from Mr Berglund. It also tendered a great deal of documentary material. There were written replies to it from Ms Dell. The many different properties and incidents relied upon by all persons who gave evidence are variously referred to in different documents. Reconciling the conflicting oral evidence about the properties and incidents and comparing it with the written evidence about them has not been a quick task.

The material before the Commission, and much of the time taken in court, covered a range of particular properties and allegations that Ms Dell either did, or did not, perform the duties the respondent required of her. However, Mr Berglund, who is the principal of the respondent and is responsible for the decision to dismiss, stated at the conclusion of the case that the reasons why Ms Dell was dismissed are the issue of the two cheques not banked and of the unanswered letter from the solicitors, coupled with Ms Dell's refusal to come in from annual leave to discuss the matters which the respondent then needed to sort out very quickly. He stated that if those incidents had not occurred, then the other issues about which evidence was produced would not have warranted Ms Dell's dismissal. Those other issues were something which could have been sorted out and corrected later. I have therefore approached this matter on the basis of examining with particularity the reasons upon which Mr Berglund made his decision.

With that in mind, I turn to consider the evidence concerning the principle issues upon which Mr Berglund decided that Ms Dell's employment would be terminated. The most serious of all the issues levelled against Ms Dell goes to the evidence that Mr Lorimer and Ms Miller found two rent cheques which had not been banked. Ms Miller's evidence is that the cheques were dated in October. It is, however, not clear when the cheques were received by the respondent. While there may be some room to criticise the respondent's office procedures in regards to recording inward mail received, I am inclined to accept Ms Miller's evidence that the cheques were received and had not been accepted and processed.

I prefer the evidence of Ms Miller for the following reasons. Ms Miller is a receptionist in the respondent's office but who has previous experience as a property manager. She was the person in the office who gave the most help and support to Ms Dell when Ms Dell became property manager. Ms Dell admits that Ms Miller had no hesitation in helping her and was a huge help. Ms Miller prepared a Statutory Declaration of her evidence to the Commission and it was Mr Berglund's intention to present Ms Miller's evidence by means of that document. It became clear during the proceedings that the respondent had not intended to call her to give oral evidence. Once the disadvantage of this course was explained to Mr Berglund, he arranged for Ms Miller to attend court at short notice. I found her evidence when cross-examined to have been given most naturally. I regard her as being relatively dispassionate on the various issues covered by her evidence and I accept it. To some extent, her evidence conflicted with that of Ms Dell. In deciding whose evidence I prefer, I refer to the issue of the bond for the tenant of 43 Glencoe Parade. The evidence from Ms Dell in relation to this bond is that she did get a forwarding address and posted the bond by cheque to that address prior to her going on leave on 24 December (transcript p. 48). In contrast, Ms Miller's evidence is that the bond had not been posted to the owner when she assumed the duties of acting property manager (exhibit B, re paragraph 11).

Once the owner had brought to her attention the fact that the bond had not been posted she had to issue the cheque on 19 January 1999 and forward it to the owner.

The difference in the evidence of Ms Dell and Ms Miller on this point is able to be resolved on the evidence of the cheque stub (exhibit C). It shows the bond refund cheque to have been drawn on 18 or 19 January 1999. Therefore, on this particular issue Ms Miller's evidence is correct. Although this is only one example, I tend to prefer the evidence of Ms Miller where it conflicts with that of Ms Dell. I have no doubt that Ms Dell's evidence was given with the utmost frankness and honesty from her point of view. Nevertheless, as the above example illustrates, she may be genuinely mistaken in some of her evidence of which the above example is one illustration. This conclusion is significant because the onus of proving that her dismissal was unfair is upon Ms Dell.

Ms Dell vigorously argued her position. She was adamant that she worked extremely hard in the position and that a number of the issues which were raised during the proceedings were matters which were in hand but which needed to be completed by others whilst she was on annual leave or were matters where she had indeed done the work required. In relation to the two rent cheques which had not been banked, Ms Dell states that she never saw cheques on file, although there was one cheque on file that had been held for quite some time and that both Mr Lorimer and Mr Berglund knew about that. Ms Dell was of the opinion that Mr Lorimer was following that matter up. She is adamant that she did not see cheques on files when she was called into the office on the first occasion during her annual leave. Both Mr Berglund and Mr Lorimer, when they gave their evidence, did not agree with Ms Dell's evidence.

The issue facing the Commission is that Ms Dell's evidence is effectively countered by the evidence of Mr Berglund and Mr Lorimer. In those circumstances it cannot be confidently said that Ms Dell has proven that her evidence is to be preferred. Further the evidence of Ms Miller (exhibit B) is quite clear that she and Mr Lorimer found two rent payment cheques and one cheque for the payment to a solicitor together with a faxed letter withdrawing the respondent's management authority. I have no reason to accept Ms Dell's evidence over that of Ms Miller and over the evidence of Mr Lorimer and Mr Berglund. Ms Dell admits that she was a busy person and things could have been misplaced. Therefore, on the essential issues as identified by Mr Berglund, Ms Dell has not been able to demonstrate to the Commission that her evidence is correct. I accept that the respondent was perfectly entitled to view these matters seriously.

It is sufficient to refer to the balance of the evidence before the Commission in the following way. The evidence of all of the witnesses referred extensively to issues concerning individual properties. I have endeavoured to compare the differing written and oral evidence about individual properties. I have not found it necessary, however, to list each of the properties, the various pieces of evidence in relation to each of them, and my conclusion in relation to each of them. The balancing of the evidence in relation to each of them frequently results in Ms Dell's evidence being denied by Ms Miller or Ms Harris and is inconclusive. I am prepared to accept that in relation to some of these properties Ms Dell may not have been responsible. In at least one question he put to Ms Dell, Mr Berglund admitted there were some of the previous property manager's problems for Ms Dell to sort out (transcript p. 17).

Nevertheless it is not without significance that Ms Miller did not agree with the submission put to her that, using 24 Pelican Road as an example, the loss of that property was due to problems Ms Dell inherited from the previous property manager (transcript p 92). Ms Dell's written response regarding this property (headed Annexure A, Paragraph B) that even Mr Lorimer did not complete an appraisal before Christmas was denied by Mr Lorimer (transcript p. 19). The balance of the evidence does not show that the loss of that property was therefore not Ms Dell's responsibility. Therefore, at best from Ms Dell's point of view, her evidence is, at the very least, effectively countered by the evidence of Ms Miller and of Ms Harris. Even if I was to prefer Ms Dell's evidence concerning some individual properties, that finding would not be sufficient to hold that overall, Ms Dell will have demonstrated she was not responsible for all the properties lost by the respondent.

Ms Dell strongly submitted that the respondent's office procedures were lax and that it was wrong for the respondent to have allowed Ms Dell to work as a property manager given that she did not have previous experience in the position. I am not unsympathetic to the argument. However, it cannot in fairness be said that the case presented by Ms Dell established that the respondent's office procedures were at fault or that the respondent was at fault in giving Ms Dell too much responsibility for her experience. Whilst there may be reason to criticise the lack of office procedures which, for example, do not record the day cheques are received in the mail I cannot conclude that the absence of such procedures provides a complete explanation for all of the matters referred to in the course of the evidence.

On the facts, Ms Dell was indeed given the responsibility of the position after having completed the relevant property manager's course but without having had previous experience in that work. However, Ms Miller gave help on a day to day basis (transcript p. 25) and Ms Dell regarded her work as "under control" for most of the time. I place weight on the evidence of Ms Miller that some of the matters to which she referred did not require extensive experience. Ms Miller's evidence is that she found "a lot of areas that had not to my knowledge been done correctly at all to what I would have done as property manager" (transcript p. 91). I am unable to conclude on the evidence that the situation which Ms Miller and Mr Lorimer found when Ms Dell proceeded on leave is the respondent's fault for having given the job to a person without experience.

The final issue to which reference needs to be made is the events of the dismissal and its timing. I take into account that, at least prior to 24 December, the respondent had been complimentary to Ms Dell regarding her work. The respondent even referred to her as "property manager of the year" at the staff Christmas function immediately prior to Ms Dell proceeding on leave. I am satisfied from the evidence that the issues upon which the respondent reached the decision to dismiss Ms Dell only came to the attention of the respondent subsequently and its actions prior to that time cannot be held against it. Nevertheless, Ms Dell was well regarded. She came into the office on at least two occasions during her leave. One of those times was at the request of Mr Berglund (transcript p. 20) and she came in quite willingly. She also went to the Pinjarra Court House on one occasion during her leave. She did refuse to come in on the last occasion but this was due to her imminent departure to the south-west. Given that Ms Dell had been so obliging on at least those three previous occasions, I do not hold against her the refusal to come in when she was requested. Ms Dell believed everything was under control. Therefore, if Ms Dell had been dismissed only for failing to come in to her work during her annual leave her dismissal would have been unfair.

Although both Ms Dell and Mr Berglund may have become upset during that particular telephone conversation, the reasons for Ms Dell's dismissal extend beyond the telephone conversation. The reasons for her dismissal go also to the issues which have been canvassed above (see exhibit 1). The fairness of the dismissal therefore is to be assessed more according to the issues which have been canvassed above than to the fact the Ms Dell was on leave at the time she was dismissed. The fact that she was on leave is only one factor to be considered in the evidence overall. On the conclusions of the Commission thus far, it cannot be said that Ms Dell has shown that respondent's right to dismiss her was exercised so harshly or oppressively towards her as to amount to an abuse of that right. The onus is upon Ms Dell to prove her claim and at best her evidence raises only the possibility that the cheques referred to, and the solicitor's letter, were not her direct responsibility. However, it cannot be said that the evidence presented by her has proven those matters on the balance of probabilities. Considering the evidence overall, Ms Dell has not discharged that onus and her claim will be dismissed.

Order accordingly.

Appearances: Mr R. Lashansky (of counsel) on behalf of the applicant.

Mr D.G. Berglund on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kellie Michelle Dell

and

Mystical Holdings Pty Ltd t/a Fairbridge Realty

No. 98 of 1999.

22 March 2000.

Order.

HAVING HEARD Mr R. Lashansky (of counsel) on behalf of the applicant and Mr D.G. Berglund on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the application be dismissed.

(Sgd.) A.R. BEECH,

[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Alan Ebert

and

Mania-Nicholson.

No. 1902 of 1999.

31 March 2000.

Order.

HAVING heard Mr T M Retallack as Counsel on behalf of the Respondent and there being no appearance on behalf of the Applicant, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

1. The application be and is hereby dismissed for want of prosecution.
2. The Applicant pay to the Respondent the sum of \$300.00 as and by way of costs associated with the attendance of the Respondent's directors before the Commission.

G.L. FIELDING,

[L.S.] Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Alan Winston Edwards

and

Bridgestone Earthmover Tyres Pty Ltd.

No. 1205 of 1999.

COMMISSIONER J F GREGOR.

2 March 2000.

Order.

WHEREAS the respondent has sought further and better particulars in this matter at a hearing on 21 February 2000; and

WHEREAS after hearing Mr Colin Touyz (of Counsel) on behalf of the applicant and Ms Maria Saraceni (of Counsel) on behalf of the respondent, the Commission decided that it would order that the respondent advise the applicant—

- 1) Why the applicant was not suited to a managerial position,
- 2) What were the “added difficulties of being in such a position located in a remote area”; and

WHEREAS the Commission ordered that the respondent supply further particulars within 14 days of the date hereof.

NOW THEREFORE, the Commission, pursuant to the powers vested in it under the *Industrial Relations Act 1979*, hereby orders—

THAT the respondent provide further and better particulars as follows—

- 1) Why it reached the conclusion that the applicant was not suited to a managerial position,
- 2) What were the “added difficulties of being in such a position located in a remote” area.

(Sgd.) J.F. GREGOR,

[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony Richard Ellery

and

St John's School.

No 950 of 1999.

COMMISSIONER A.R. BEECH.

24 February 2000.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings as edited by the Commissioner)

Mr Ellery was employed by the respondent school either as a gardener/groundsman or as a groundsman/handyperson and he was employed for approximately 15 years. His employment came to an end when he was dismissed by the school on the 21st of May 1999 by reason of redundancy. The reasons given to him are reflected not only in the conversation between him and the Principal of the school, Mr Kenworthy, but they are also set out in writing in the letter of termination given to him subsequently. Those reasons are that over time the amount of work to be done in the area of grounds and maintenance has been significantly reduced to the point where the school has made the decision to make the position of gardener/groundsman redundant.

Mr Ellery challenges that decision. His principal challenge is the genuineness of the redundancy. It is appropriate to comment that the reasons given for the dismissal—that is, that over time the amount of work to be done in the area of grounds and maintenance has been significantly reduced—has in part come about, according to the evidence, because of decisions taken by the school to contract out some of the work that Mr Ellery had done. This applies particularly to the work that he had to do in mowing the four significant grounds at the school.

It should be said that it is up to the school to decide how best to run the school's operations. It is not for the Commission to tell the school how to run its affairs and the school is able to decide to contract work out even if there is still work to be done by a particular employee. There might be differing views in the community about such decisions, but I am not aware of any authority that in principle the termination of employment of an employee, merely because that person's work is being contracted out is of itself unfair. Rather any unfairness comes out of a consideration of the individual's/employee's circumstances.

It is also appropriate to point out that the process of terminating an employee by reason of redundancy is in fact a two-stage process. The first stage is the decision that the job the employee is doing is to be made redundant. If there is then no other work available for the employee, then the second stage is that the employee's employment would be terminated.

With that in mind, I then turn to consider the facts of this matter. Essentially, as I find it, Mr Ellery's employment consisted in the early stages of his employment of a significant amount of work lawn mowing and the maintenance of the lawn mowing equipment. A decision was taken by the school

that that work would be contracted out but, significantly, the Principal of the school advised Mr Ellery that, notwithstanding the use of contractors, his job was secure and that the use of contractors should not be seen as a threat to his position. Indeed, he was not advised differently until in fact he was dismissed by reason of redundancy. Following the use of the contractors for lawn-mowing, Mr Ellery's work then consisted of work watering lawns and then also some increased time spent on maintenance.

At the beginning of this year the school board decided that the automation of the watering system would be completed. Mr Ellery was not informed of that decision and at its next meeting, as I understand it, the board then also considered that Mr Ellery's position could no longer be maintained and the decision was made to dismiss him.

I am satisfied that at the time Mr Ellery was dismissed, the position that he had of working between 8.30 and 3.30 pm, or perhaps until 4 pm, 5 days a week, as such, no longer existed. It is also clear on the evidence that there was other work that could have been done by Mr Ellery, albeit in a different position, perhaps a position that was more part-time. It is also clear on the evidence that the school did not discuss with Mr Ellery any options that were open to him, or to the school, to reduce the effect upon him of the decision to make his position redundant.

In particular, although the school professed to follow the Catholic Education Commission policy statement regarding the termination of services of staff members due to redundancy, I am satisfied—and indeed the school has, I think, properly conceded—that the evidence shows that there were no discussions with Mr Ellery regarding the measures which could be taken to avoid or minimise the redundancy or to mitigate any adverse effects of the redundancy on him that would allow him to remain in employment once the decision had been made by the board to make his position redundant.

Not only do I find that the school did not follow its own policy, but similarly it did not have the discussions that were required to be held with Mr Ellery by virtue of the contract of employment between it and Mr Ellery in accordance with the *Minimum Conditions of Employment Act 1993*, in particular sections 5 and 41.

There is also no evidence that the school, in deciding to make Mr Ellery redundant, or make his position redundant and terminate his employment, took into account at all, the previous assurance that had been given to him by its Principal that the use of the lawn-mowing contractors would not have an effect upon his employment and that his position was still secure.

In that context, if I consider the reasons for dismissal given to him, that is—

“Over time the amount of work to be done in the area of grounds and maintenance has been significantly reduced.”

Those words are sufficiently broad to encompass not only the change that would come from fully automating the watering system, but also the other changes including the use of lawn-mowing contractors. Therefore, in taking the decision that it did, I find that the board failed to recognise the previous assurance that Mr Ellery had been given that his position was secure.

I also take into account the evidence that subsequent to the termination, the school has engaged a contractor to perform some maintenance work on, as I find, a regular basis of 4 to 6 hours per week, to check the watering system, sweep paths, do pruning and perhaps, on occasions after the lawns have been mowed, to trim the edges. I also find that there is certain other irregular work—work of which perhaps exhibit 2 is an example—which is work that could have been offered to Mr Ellery. Indeed, I take it one step further and indicate that given that Mr Ellery was a long term employee with a good record and had, in the absence of any evidence to the contrary, completely loyal service to the school, it was indeed an option—that is, the alternative work—that ought to have been offered to him as an employee.

Furthermore, on the evidence, the school did not make any attempts to find any alternative work for Mr Ellery within the school system until he had lodged his claim of unfair dismissal and there had been a conference before the Commission.

Whilst I do not say the school was obliged to try and find alternative work for him, the fact that it did eventually take that step suggests to me that it could have been—

“...a measure to avoid or minimise the redundancy or to mitigate the adverse effect of redundancy on the employee concerned.”

I take into account that the school did indicate that Mr Ellery might wish to tender for one or two contracts which would be let to cover “the little remaining work” but I also take into account that it was not specified precisely what that would mean to Mr Ellery and the indication was certainly not a measure that was being offered by the school to avoid his redundancy.

For those reasons, I find that the dismissal of Mr Ellery was unfair.

Having found that Mr Ellery's dismissal was unfair, I then move to consider what should be done about it. Mr Ellery has sought reinstatement. However, I find that the position that was held by him in fact no longer exists. It is therefore not appropriate for an order to issue reinstating Mr Ellery into employment in the position of gardener/groundsman or groundsman/handyman for the hours and days that he had worked, because I am satisfied on the evidence that that position is no longer there.

There is nothing in the evidence before me and nothing in the submissions of either party as to what the alternatives are that the Commission should consider regarding compensation as an alternative to reinstatement. I would be assisted by any submissions that you have to make on the subject and I propose then to cease my Reasons for Decision at the moment and ask you to give some thought over the next few minutes about what orders are now sought and I might be able to then bring the matter to a conclusion.

UPON RESUMPTION—

The requirements of the *Industrial Relations Act, 1979* are that the compensation to be awarded is to be for both the loss or the injury arising from the dismissal. I have therefore considered the matter along these two heads.

As for compensation for loss, it is the case, as I think all parties agree, that there is no reliable evidence as to loss. If, for example, the remaining work—particularly the 4 to 6 hours plus that had been referred to as being contracted out—had been offered to Mr Ellery, it might not have been accepted, or if it had been accepted there is no evidence upon which I could conclude that his employment would have continued for any particular length of time and it makes the task of the Commission that much more difficult.

Nevertheless, I am unwilling merely to try and invent a figure without it being given some basis. I have therefore chosen to try and calculate the figure of compensation in the following manner: I have used the evidence that there is currently work done by a contractor 4 to 6 hours per week and, given that that is a contract which was let after the termination, it might be a reasonable guide at least as to that work being part of the work which could have been done by Mr Ellery.

I also take into account the evidence that that work might not necessarily be regular, 4 to 6 hours being a range of hours. Also, there is further evidence that was not contradicted by Mr Ellery and which is corroborated effectively by the list of duties or jobs to be done that became exhibit 2, that there was other work which could occasionally be done. I have assumed that if both of those were added together, that might give an average of 7 hours work per week that would have been available to Mr Ellery. I have then also attempted to calculate an hourly rate for Mr Ellery. I have taken the salary that is mentioned in the Notice of Application, which was not in any sense contradicted in any of the evidence I have before me, and that is a fortnightly salary of \$786.67. I have divided that by 2 to give a weekly rate.

I have also reached the conclusion that Mr Ellery worked approximately 7 hours per day, they being the hours between 8.00 and 3.30 and allowing some time for lunch. By dividing 7 hours into the weekly rate, I have come up with a figure of approximately \$11 per hour. I therefore reached the conclusion that if, for example, Mr Ellery had been offered that combined work it would, on average, constitute 7 hours per week and he would have been receiving \$77 per week.

I have also taken into account some 8 months have elapsed between the termination of his employment and today's date, in round terms. Eight months equals 32 weeks and 32 weeks times \$77 equals \$2,464. Using that as a guide – that is \$2,464—I think it is possible, perhaps more likely than not, that that would represent Mr Ellery's loss had that option been taken up and he had continued in that option until today's date.

I have also considered whether or not he has suffered any injury and it does seem to me that given the assurance which had been given to him regarding the security of his employment – (whilst that does not, of course, mean that it can never be revisited or that his employment would not be in jeopardy for the rest of his working life) and then nothing further having been said to him about his job security until he was actually made redundant, and taking into account his long service, I order a sum of \$1,000 for the injury arising from the dismissal.

The order that I would propose to is firstly that I declare that the school unfairly dismissed Anthony Richard Ellery; second, that reinstatement is impracticable; and that the school forthwith pay to Anthony Richard Ellery the sum of \$3,464.00 as compensation for the loss or injury arising from his dismissal.

The order will issue that the sum of money to be paid forthwith is \$3,464.00.

Appearances: Ms P. Homer (of counsel) on behalf of the applicant.

Ms A. Britto on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony Richard Ellery

and

St John's School.

No. 950 of 1999.

25 February 2000.

Order.

HAVING HEARD Ms P. Homer (of counsel) on behalf of the applicant and Ms A.M. Britto on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby—

1. DECLARES—

- (a) THAT St. John's School unfairly dismissed Anthony Richard Ellery;
- (b) THAT re-instatement is impracticable.

2. ORDERS—

THAT St John's School forthwith pay to Anthony Richard Ellery the sum of \$3,464.00 as compensation for the loss and injury caused by the dismissal.

(Sgd.) A. R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lawrence Kevin Fahy

and

LMS Property Group Pty Ltd.

No. 375 of 1999.

COMMISSIONER S WOOD.

31 March 2000.

Reasons for Decision.

THE COMMISSIONER On 17 March 1999, Lawrence Kevin Fahy (the applicant) filed an application seeking orders

pursuant to section 29 (1)(b)(ii) of the Industrial Relations Act 1979. The applicant contends that when his employment contract (Exhibit F1) ended with LMS Property Group Pty Ltd (the respondent) in September 1997, outstanding benefits, being non-award entitlements, were due to him.

By leave of the Commission the application was amended at hearing so that the benefits sought by the applicant are he says unpaid commissions of—

- \$4,650.00 for Units 5 and 6, Lots 7 and 8 Capel Court, Bentley 6102 (hereafter referred to as Sale A)
- \$3,037.50 for Unit 4, Lot 12, Catherine Street, Bentley 6102 (hereafter referred to as Sale B)
- \$1,522.50 for Unit 3, Lot 11, Capel Court, Bentley 6102 (hereafter referred to as Sale C)
- \$4,675.09 for Unit 3, Ultimo Apartments, 1 Delhi St, West Perth (hereafter referred to as Sale D), and
- \$1,657.28 for Unit 4, Lot 11, Capel Court (hereafter referred to as Lease A).

The total claimed being \$15,542.37 in unpaid commissions which the applicant says were due under the contract and, in relation to Sale A, was an unconditional contract which did not proceed due to the actions of the respondent.

I would note for completeness that the claim for Sale B was referred to by the applicant as \$3,337.50 (page 2, transcript) and \$3,037.50 (page 24, transcript). The later figure tallies with the applicant's total and is the figure used by the applicant in a document provided to the respondent and the Commission at hearing. Hence I consider \$3,037.50 is the figure claimed.

The applicant sought interest at the rate of 6% on the alleged unpaid commissions in accordance with he says section 32 of the Supreme Court Act from 15 September 1997 to date of judgement.

The applicant also claimed costs in relation to an allowance for the applicant's attendance, parking and meal expenses for the day of hearing.

The applicant withdrew at hearing the claim for Lease A. I will not deal with this aspect of the claim further other than in relation to exhibit F8.

The employment contract commenced in early February 1997 and ended on 15 September 1999 when the applicant resigned. He was employed as the Manager, Sales and Leasing.

The applicant says that his contract, which he discussed with the respondent in late January 1997, and settled with the respondent on 30 January 1997, gave him the exclusive right (hereafter referred to as the "exclusivity" condition) to commissions on the sale of the properties listed in the contract. He says that the commissions were due once the sales were made unconditional (hereafter referred to as the "unconditional" condition), as opposed to on settlement of the sales.

He says also that at a meeting of 15 September 1997, between the applicant and the respondent, the respondent agreed to pay the alleged monies owing except for Sale B. This he says is apparent by the ticks against items on exhibit F8.

The dispute is whether the applicant is entitled to commissions on the properties specified in the claim rather than the actual amounts claimed.

The applicant does not say that the "exclusivity" and "unconditional" conditions are stated expressly in the contract. Clearly these conditions are not expressed in the contract and I do not consider that they are implied by the general form of the contract which refers to certain properties to be sold. There is therefore no implication on reading the contract that the applicant is the only person to have rights to sell the properties listed.

The applicant asks the Commission, in closing submissions, to find that there are oral terms which were agreed. He says that these are implied terms of the contract and that if the "exclusivity" condition had not been part of the contract then he would not have taken the job. Therefore the "exclusivity" condition in the view of the applicant was part of the contract from the beginning of his employment.

He says in relation to the "unconditional" condition, Hong Ballard, the secretary and receptionist for the respondent,

advised him that this would apply. He says also that the respondent was a developer, not a real estate office, and as such the commission would be paid once the sale was unconditional, not on settlement.

In *Reginald Simons v Business Computers International Pty Ltd 1985 (65 WAIG 2039)* the learned Acting President, in relation to proceedings brought under section 29(1)(b)(ii), observed that—

“Accordingly although the Commission’s jurisdiction in proceedings such as these is judicial, there is always room for the Commission to grant relief which has at its roots the ascertainment of rights and obligations which can fairly and properly be implied as terms of the contract of service. In proceedings under section 29(b)(ii) of the Act it is not therefore necessary for an employee to rely upon an express term whether oral or written where the law otherwise recognises that there is legitimate room for the implication of the term relied upon by an applicant.”

It is common ground that Sale A was made by the applicant but did not settle; Sale B was not made by the applicant, nor by anyone employed at the time by the respondent; Sale C was made by the respondent; and Sale D was made by Adrian Ballard, who was employed by the respondent.

I have weighed carefully the evidence of both the applicant and the respondent. I have two versions of whether the contract included impliedly the “exclusivity” condition. On this point I am convinced by the evidence of the respondent. I find his evidence to be more credible and plausible. He was straightforward and unshaken in his evidence and answers on this issue. I will detail my reasoning sale by sale.

The applicant says that he would not have taken the job if the contract did not mean he had the exclusive right to sell the properties listed in the contract. The respondent says he never offered the applicant an exclusive right to sell the properties and that the respondent’s company was not the only seller of the properties.

The respondent’s evidence that the properties were openly listed and that other agents could sell the properties was not contradicted. It is commonly agreed that Sale B was not made by the respondent’s company. In fact, for Sale B the applicant says in his evidence that he saw the file on that sale in the cabinet, asked the respondent about it but did not discuss commission on the sale.

The applicant seeks also to rely on a meeting with the respondent on 15 September 1997 to support his claims. The meeting was requested by the applicant to discuss, in part, the alleged unpaid commissions. He says that the respondent agreed at this discussion to pay the amounts claimed as ticked on the document which is Exhibit F8. There are other sales ticked, but for the purposes of this application Sales A and B are ticked, and Lease A is ticked. Sale B is ticked but the applicant says that he should have ticked Sale C.

I find there was no agreement to pay commission on Sale B which was made by another agent.

In relation to Sale D this is covered by Exhibit F8 by a question put by the applicant to the respondent, ie “What is the situation on commission as regards leasing and selling of Ultimo apartments?”. There is no evidence from the applicant of the outcome of discussion on that item, except that he says he had an exclusive right to sell those properties from the commencement of the contract. The applicant says that he queried the respondent during the term of his contract as to what was to happen with the selling of the Ultimo Apartments. He says he was advised that another agent would be selling them and that the applicant would get commission on any apartment he sold. The applicant also says that he received a 2% override payment on the apartment sold by Adrian Ballard, that he queried the respondent about the full commission on this sale but he does not remember what the respondent said. I find there was no agreement to give the applicant the full commission on Sale D.

In relation to Sale A the applicant says that Hong Ballard told him he would be paid commission on the sale when it became unconditional. This is not contradicted and whilst it may have been possible for Hong Ballard to bind her employer, this is not what is really being put. It is common ground

that settlement was not reached. The sale would have been unconditional once finance had been obtained. The applicant under cross-examination agreed the sale was conditional upon finance being obtained. It is clear from the evidence that this was never achieved. I find there was no “unconditional” condition in the contract. Nevertheless, even if there were, this condition was never fulfilled and so the commission was not payable.

The applicant says that the respondent said he would organise the finance and so the fault lies with the respondent for the lack of finance. He says also that the fault lies with the respondent for the withdrawal of the buyer as the building of the factory was delayed hence causing the buyer to pull out. The respondent says that there was no delay in building and that he sought to assist in obtaining finance but that he is not a finance broker and the buyer did not have the necessary backing to secure finance.

I accept the respondent’s evidence on this issue. I find it credible and that the sale failed for lack of finance. It is unlikely in my view that the respondent did not wish to make the sale.

The applicant says that he was due the commission on Sale A as the respondent had earlier paid half the commission and this was later deducted from another sale. The respondent says that the commission paid on Sale A in May 1997 was effectively a loan as the applicant was going on holidays. This he says is indicated by the handwritten notes on Exhibit F15. He says that as the sale did not settle, no commission was due and the earlier payment was hence deducted from other monies owing.

I accept the respondent’s evidence on this point. I find that the respondent paid 50% of the commission for Sale A in May 1997 as a loan as the applicant was going on holidays. The amount is shown in Exhibit F7 with a note that the balance would be payable on settlement, not when the sale became unconditional. At that time and at the subsequent meeting of 15 September 1997 both parties expected that the sale was going to proceed. Hence it is not inconsistent, if the ticks on Exhibit F8 signify agreement, and I do not find so, that the applicant ticked this sale.

The applicant says that Exhibit F7 does not say it was a loan. I make nothing of this. Both parties expected at that stage that commission would be due at some point, although they have different versions of when it was due. The respondent says that Exhibit F7 is a payroll slip and in that context the reference to commission is unexceptional.

In relation to Sale C the applicant says that he gave Paul Tan a conjunction on the sale one Saturday. He says that Paul Tan was to show his client the property from the outside on the Thursday and if the client liked it they would arrange an inspection. Paul Tan says that he rang the applicant on Saturday, 9 August 1997, arranged a conjunctional sale and arranged to meet the applicant at the property that day. He says the applicant did not show up; the respondent was there on the site and they arranged a conjunctional sale which settled on the following Monday. I have two versions of what happened and I accept Paul Tan’s evidence. Even though there was some confusion in cross-examination whether the date was 2 August or 9 August, both were Saturdays, and I think it more likely that Paul Tan took his client to the property expecting they would meet the applicant and inspect the property.

I have some doubt as to why the respondent did not confront the applicant about not keeping an appointment. There is also a query as to the meaning of Exhibit F8 in relation to this sale where the applicant says he should have ticked this sale and not Sale B. However, I accept the evidence of the respondent that there was no agreement at the 15 September 1997 meeting to pay this commission. Additionally, both of these points do not lead me to read some “exclusivity” condition into the employment contract.

I do not think that Adrian Ballard’s evidence assists in understanding the contract between the applicant and the respondent and I have given no weight to his evidence.

It is for the applicant to establish and prove his case. He has to prove, on the balance of probabilities, that his agreement with the respondent entitles him to the benefits he claims. I

am not satisfied that the applicant has established his claims for all the reasons I have expressed and hence the application will be dismissed.

Appearances: Mr B Stokes on behalf of the applicant.
Mr L Smith on his own behalf.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lawrence Kevin Fahy

and

LMS Property Group Pty Ltd.

No. 375 of 1999.

COMMISSIONER S WOOD.

31 March 2000.

Order.

HAVING heard Mr B Stokes on behalf of the applicant and Mr L Smith 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.) S. WOOD,

[L.S.]

Commissioner.

AND WHEREAS application no. 1644 of 1992 asserts that twelve months notice to terminate his employment ought be implied in the contract of employment, and absent that, he is entitled to the benefits under the contract he has been denied for that period;

NOW THEREFORE the Commission, being satisfied—

- (1) That the express terms of the contract of employment applicable to the applicant do not require that twelve months notice of termination be given; and
- (2) That the Decision of the Commission delivered on 20 April 1999 held
 - (a) that the employment was likely to have been reasonably terminated within 33.75 weeks from the actual date of dismissal; and
 - (b) that the potential degree of loss to the applicant under the contract of employment has been satisfied by the additional 33.75 weeks of salary paid to the applicant; and
- (3) That the time which has elapsed since the application was filed in the Commission is such that it would not be in the public interest for the matter to remain afoot; and

On these premises the Commission, pursuant to the powers conferred under s27 of the Industrial Relations Act, 1979 hereby orders—

THAT application no. 1644 of 1992 be and is hereby dismissed.

[L.S.]

(Sgd.) C. B. PARKS,

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Graham Feltham

and

Home Building Society.

No. 1644 of 1992

3 March 2000.

Order.

WHEREAS on 31 December 1992 the applicant made application to the Commission alleging that he had been denied contractual benefits by the respondent; and

WHEREAS at or about the aforementioned date the applicant filed in the Commission application no. 1645 of 1992 alleging that the same respondent unfairly dismissed him from employment; and

WHEREAS following upon the hearing of preliminary matters the Commission, on 9 October 1994, held that the applicant had been dismissed and he was not estopped from prosecuting the aforementioned two applications, and on 5 October 1994 declared accordingly.

WHEREAS application no. 1645 of 1992 was decided by the Commission on 20 April 1999 and

- (a) it was held that the applicant had been unfairly dismissed however reinstatement was impracticable; and
- (b) it was found that the applicant had been paid the equivalent of his salary for 33.75 weeks beyond that which was due according to his contract of employment; and
- (c) held that the employment relationship was likely to have been appropriately terminated within the period of 33.75 weeks and hence he suffered no loss and compensation was therefore not justified; and
- (d) the application was dismissed; and

WHEREAS there has been no request from the applicant to prosecute application no. 1644 of 1992, nor any communication received in relation thereto since 2 November 1994;

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael John Flatman

and

Sushi and Spice Holdings WA Pty Ltd.

No. 1718 of 1999.

23 March 2000.

Reasons for Decision.

(Extempore)

SENIOR COMMISSIONER: The Applicant, as is common ground, was employed by the Respondent from the 1st May until on or about the 5th September 1999 as the General Manager of the Respondent's restaurant in Nedlands.

It is common ground that the restaurant was not in existence prior to the Applicant beginning his employment. He was employed with a task amongst other things, of helping to establish the restaurant. It seems common ground that the restaurant opened for the first time in or about July 1999.

It is common ground that the Applicant was employed at a salary of \$40,000 per annum under and by virtue of the terms of a written contract which is embodied in a letter written by one of the Respondent's directors to the Applicant. That written contract makes no reference to the hours of work.

It is common ground too that the Applicant resigned his employment with effect as I have said, from early in September 1999. It seems common ground also that the Applicant has been paid all his entitlements under the contract, except the Applicant says, in one respect. He says that he should have been paid for time he worked over and above five in each working week. The Applicant says that it is standard practice within the hospitality industry that all employees even at managerial level, work a five day week. Where the exigencies of the situation requires employees to work more than 5 days in any week the industry standard is that they are entitled to the equivalent time off in lieu. Furthermore, he says that when the employment terminates such persons are entitled to be paid for the accrued but untaken time in lieu. The Applicant admits that there was no discussion of those

matters or at least he cannot recall any discussions of those matters, when the contract was signed.

The Respondent's director Mrs Bearne says that there was no discussion about those matters with the Applicant when the arrangements were made with him for his employment. She took it that he was employed at a salary considerably in excess of the industry award to cover the fact that he would be engaged in setting up the business and therefore working irregular hours. Furthermore, she says and it is only fair to say that the Applicant does not question it, that at least in the early stages there were a number of occasions where he only worked three or four days a week because the restaurant was not then operating and there was really nothing for him to do.

In essence there is little or no conflict in the evidence. In so far as there is a conflict, I accept the evidence advanced by the Respondent as being the most reliable.

The onus is on the Applicant to establish that it was either an express or implied term of his contract with the Respondent that he was entitled not only to time off in lieu for each day worked in excess of five in every week but also, that he was entitled when the employment ended to be paid for time which had accrued but not been taken.

I am bound to say that I on the evidence adduced in these proceedings I am far from satisfied that it was a term either expressed or implied that the Applicant's salary was in effect to cover only five days work a week, and that he was entitled to time off in lieu at some future time when he worked in excess of the five days. Even if the position was that he was to be entitled to time off in lieu on that basis I am far from satisfied that it was a term of his contract that he was to be paid in cash for that accrued but untaken time in lieu.

The decided authorities, for example, *Lai Corporation Pty. Ltd (receiver and manager appointed) v. Steinberg*, make it clear that in absence of some express provision to that effect an employee is not entitled to convert untaken leave to cash. That I suggest, is, all the more compelling in a case such as this where the arrangement is at best a loose one. It is simply not satisfactory for the Applicant to suggest that what occurs in the industry generally occurred in this case. The evidence is that at least the Respondent did not intend that should be the case. I accept, as Mrs Bearne put it, that that was the reason why the salary was considerably more than the industry award.

There is no suggestion by the Applicant that his employment was at any material time covered by an award and if it was it would not be enforceable in proceedings of this nature. Likewise, it is not suggested that the *Minimum Conditions of Employment Act 1993* operated to give the applicant the entitlement to the benefit he seeks furthermore, if it did, it is not a matter for the Commission but for the Industrial Magistrates Court. It follows in my view, that the Application should be dismissed and I intend to so order, on the basis that the Applicant has not established that it was a term of his contract and he was entitled to the benefit that he now claims.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael John Flatman

and

Sushi and Spice Holdings WA Pty Ltd.

No. 1718 of 1999.

23 March 2000.

Order.

HAVING heard the Applicant in person and Mrs L Bearne on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders—

THAT the Application be and is hereby dismissed.

(Sgd.) G.L. FIELDING,

[L.S.]

Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Aaron Follows

and

Western Australian Turf Club.

No. 358 of 1999.

COMMISSIONER A.R. BEECH.

28 March 2000.

Reasons for Decision.

Mr Follows claims that he was unfairly dismissed by the Western Australian Turf Club (WATC). The WATC denies that it was Mr Follows' employer. If it was not his employer then it cannot have dismissed him and Mr Follows' claim against it is invalid. The Commission heard the parties on both that matter and the merit of Mr Follows' claim. The Commission is obliged to decide first whether WATC was Mr Follows' employer.

The starting point for the answer to that question is the document headed "Apprenticeship Indenture" signed by Mr Graham Jordan (a trainer licensed by the WATC), Mr Trevor Follows (Mr Follows' father) and Mr Follows. By the terms of that document, the three persons in the capacities, respectively, of Master, Guardian and Apprentice created an apprenticeship for the purposes of Mr Follows learning the occupation of a jockey, subject to the terms and conditions of the Indenture document, for five years. By that document Mr Follows became an apprentice jockey and remained so until his dismissal on 18 February 1999.

It is significant that Mr Follows was not an apprentice as that is defined in the *Industrial Relations Act, 1979*. An apprentice for the purposes of the *Industrial Relations Act, 1979* is a person who is an apprentice under the *Industrial Training Act, 1975*. That is, the apprenticeship is in a trade to which the *Industrial Training Act, 1975* applies and it is registered as required by that Act. It is understood that the Apprenticeship Indenture signed by Mr Follows was not registered. Therefore none of the provisions of that Act which may condition the right of an employer to dismiss an apprentice apply in this case. (Although the *Industrial Training Act, 1975* is repealed by s.61 of the *Vocational Education and Training Act, 1996* that section has not yet, as I understand, been proclaimed.) Mr Follows was nevertheless an employee and the issue is the identity of his employer.

Mr Follows argues that the WATC was his employer because the Apprenticeship Indenture allocates a role to the WATC. Paragraph (2) of the Apprenticeship Indenture provides that the WATC shall appoint a Master of Apprentices to act on its behalf in matters pertaining to the administration and control of any matter relating to the Indenture. Further, the Apprentice, Guardian and Master specifically agree to abide by the decisions and directions given by the Master of Apprentices. Mr Follows argues that the supervisory role of the Master of Apprentices, together with the fact that the WATC paid a workers' compensation premium on his behalf and was seen by the insurer as the employer of Mr Follows, to mean that, properly viewed, the WATC and not Mr Jordan (or any other trainer to whom the Apprenticeship Indenture was assigned) was Mr Follows' employer.

For its part, the WATC correctly points out that there is nothing in the Apprenticeship Indenture which mentions an employment relationship at all. The document deals only with an Apprenticeship Indenture. The WATC is not a party to the Apprenticeship Indenture.

Both parties rely on the Apprenticeship Indenture to support their respective positions. There is nothing in the Apprenticeship Indenture which identifies the WATC as anything other than a body which will provide a Master of Apprentices. It was argued on behalf of Mr Follows that it is appropriate to decide who was Mr Follows' employer by applying the standard tests for determining whether there is an employment relationship. The Commission was referred to the tests endorsed by Olney J in *WA Carpenters and Joiners etc. Union v. Dario Izzo* (1994) 64 WAIG 411 at 415. Those tests are (a) the employer's power of selection of the employee; (b) the payment of wages or other remuneration; (c) the

employer's right to control the method of doing the work; and (d) the employer's right of suspension or dismissal.

Mr Follows points to the supervisory role of the Master of Apprentices to conclude that the WATC had the right to control Mr Follows in his work. However, there is nothing in Mr Follows' evidence to show that the Master of Apprentices directed Mr Follows in the method of his training. On a day to day basis, Mr Follows' duties were assigned to him by the trainer. It is far more consistent with the facts overall to conclude that the right to control Mr Follows in his work lay with the trainer, and not the Master of Apprentices.

There was certainly one occasion when the Master of Apprentices directed that Mr Follows not take certain medication. Also, it was the Master of Apprentices that set dress standards for apprentices and told Mr Follows while he was at apprentice school that he could not have a motor vehicle. However, that does not alter the conclusion that the control exercised over the method of Mr Follows' training as a jockey came from the trainer and not the Master of Apprentices. The role given to the Master of Apprentices in the Apprenticeship Indenture goes more to the wider standards applicable to apprenticeships than it does to the individual apprentice. Although the Riding Master prevented Mr Follows on three occasions from riding in races when his trainer had approved him riding, that appears to be more consistent with the WATC controlling racing standards and safety generally for all jockeys, not just Mr Follows. It is one thing to have the control over whether a jockey will be permitted to race in a certain event. It is another to control the training of an individual jockey so that he or she eventually reaches or exceeds the standard necessary to be permitted to race in that event. I do not think that test (c) points to the WATC as being Mr Follows' employer.

It is conceded that Mr Follows' attendance at the trainer's premises, the payment of his wages and granting of leave, the deduction of tax and the payment of his superannuation entitlements were the responsibility of the trainer and not the Master of Apprentices. The trainer issued the group certificate. While the document tendered in relation to the payment of the workers' compensation premium identifies the WATC as Mr Follows' employer, that is the only evidence which might indicate that the identity of the employer was the WATC. However, that document is also able to be explained by the WATC providing a common fund for workers' compensation purposes for all apprentices. That one document would not, given the other evidence before the Commission, permit the conclusion that the WATC was the employer of Mr Follows. It does permit the conclusion that the trainer was the employer. The trainer is not only the employer, he is the Master for the purposes of training an apprentice. The conclusion that the Master or trainer is the employer is not out of step with the historical structure of an apprenticeship (see for example *Coastal Painters and Paperhangers' Industrial Union of Workers and Coastal Painters and Signwriters' Industrial Union of Employers* (1924) 4 WAIG 102 at 103, 106). Mr Follows himself referred to Mr Casey as "my boss" during the hearing, which lends itself to the conclusion that Mr Casey had the right to control Mr Follows. Shaun Casey was a trainer, and Master, to whom the Apprenticeship Indenture had subsequently been transferred. I do not think that test (b) points to the WATC as being Mr Follows' employer.

It was also argued by Mr Follows that as the notification of his dismissal was given (to his mother) by an official of the WATC, and not by the Master, that the WATC must have been Mr Follows' employer. The evidence of Mrs Follows is that she was telephoned on 18 February by Mr Grigsby. He told Mrs Follows:

"We don't want [Mr Follows] back as an apprentice jockey any more ... he's just not coming along as well as he should be ... he doesn't have to go to work Monday because Shaun Casey doesn't want him back either".

I accept that Mr Follows, and his family, were greatly distressed by that news. Given the evidence before me from Mr Follows and his parents, the decisions of both Mr Casey and the WATC were taken without recent contact with Mr Trevor Follows, as guardian, regarding their views of his son's lack of progress. On Mr Follows' own evidence, he was not aware that his dismissal was being contemplated. Both Mr Casey

and WATC could have handled their decision-making processes with more consideration toward Mr Follows. Nevertheless, that conclusion does not mean that the WATC was Mr Follows' employer when the evidence compels a different conclusion.

Mr Grigsby's statement to Mrs Follows was in two parts. I assume that "we" referred to the WATC. Mr Grigsby was identified in the proceedings as a Riding Master. Mr Grigsby's statement was that the WATC did not want Mr Follows back as an apprentice jockey. He also communicated Mr Casey's decision that Mr Casey too did not want Mr Follows back. It does not mean that the WATC dismissed Mr Follows. The WATC had a supervisory role in relation to apprenticeships. It was the WATC that coordinated the transferring of Mr Follows' apprenticeship from Mr Jordan to Mr Davies, and from Mr Davies to Mr Casey. Mr Grigsby's statement is quite consistent with the WATC saying that it did not believe that another transfer was appropriate given that Mr Casey had reached the decision that he did not want Mr Follows to return. The fact that Mr Casey has, apparently, the right to come to that decision illustrates the right that he has as an employer to select his employees. This does not support tests (a) and (d) as showing that the WATC was Mr Follows' employer.

The issue can also be approached another way. Mr Follows was both an apprentice for the purposes of his training as a jockey and an employee. They are both separate concepts. An apprentice is an employee, but an employee is not necessarily an apprentice. The Apprenticeship Indenture provided for its cancellation in clause 5(f). If the Master of Apprentices cancels the apprenticeship that act would not terminate Mr Follows' employment. He could remain employed, but as he could no longer be an apprentice jockey, he would have to be employed in another capacity. That is, the trainer could have kept Mr Follows on as an employee (in another capacity) even after the Apprenticeship Indenture had been cancelled.

The conclusion overall is that Mr Follows is not able to show that his employer was the WATC. It necessarily follows therefore that his claim must be struck out for want of jurisdiction. This conclusion is not reached without some regret in that Mr Follows is now unable to have his grievance dealt with in the forum established by the Parliament for that express purpose.

Order accordingly.

Appearances: Mr K.J. Trainer on behalf of the applicant.

Mr C. Stanley on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Aaron Follows

and

Western Australian Turf Club.

No. 358 of 1999.

28 March 2000.

Order:

HAVING HEARD Mr K.J. Trainer on behalf of the applicant and Mr C. Stanley on behalf of the respondent;

NOW THEREFORE, I the undersigned, pursuant to the powers conferred on me under the *Industrial Relations Act, 1979*, hereby:

THAT the application be struck out for want of jurisdiction.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Julie Isitt

and

Top Optical Pty Ltd.

No. 1557 of 1999.

COMMISSIONER J F GREGOR.

7 March 2000.

Reasons for Decision.

(Extempore)

On 12 October 1999, Julie Isitt (the applicant) applied to the Commission for orders pursuant to Section 29 of the *Industrial Relations Act 1979* (the Act) and a Notice of Answer was filed on 2 November 1999 by Top Optical Pty Ltd (the respondent)

The respondent admitted employing the applicant between 18 August 1999 and 16 September 1999 but advised the Commission that at all times the parties were bound by a registered workplace agreement. It was pleaded by the respondent that the agreement expressly provided for a 3 month probationary period of employment but did not provide for review under Section 7G of the Act.

If the Notice of Answer was correct the application was incompetent and the Commission lacked jurisdiction to deal with it. The Commission had cause to write to the applicant on 9 December 1999. The relevant part of the letter is—

"In paragraph 19 of your application you state that your employment relationship was governed by a registered state workplace agreement. The Industrial Relations Act 1979 in some circumstances prevents the Commission dealing with industrial disputes arising from employment relationships governed by a workplace agreement.

To determine whether the Commission has jurisdiction to deal with your application, please forward a copy of your workplace agreement within 14 days."

Although there was some communication between the applicant and the Commission, she had not provided the documentation to the Commission within the specified time. The matter was therefore, listed for hearing for mention only to show cause why the application should not be dismissed for want of prosecution.

The applicant has had a number of conversations with the officers of the Commission but she still did not file the registered workplace agreement, although she admits that she was bound to a workplace agreement.

The proceedings were listed for 9am on Thursday, 17 February 2000. By 9:30am there was no appearance by the applicant or by the respondent. Therefore, the Commission has decided on the basis of the information before it and the lack of appearance by the applicant that the application will be dismissed for want of prosecution.

Appearances: No appearance for the applicant

No appearance for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Julie Isitt

and

Top Optical Pty Ltd.

No. 1557 of 1999.

COMMISSIONER J F GREGOR.

7 March 2000.

Order.

HAVING conducted proceedings on 17 February 2000, and there being no appearance from the Applicant or by the

Respondent the Commission, pursuant to the powers vested in it under the *Industrial Relations Act, 1979*, hereby orders—

THAT the application be, and is hereby, dismissed for want of prosecution.

(Sgd.) J. F. GREGOR,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Aaron Samuel Kerr

and

Cook's Construction Pty Ltd.

No. 519 of 1999.

COMMISSIONER A.R. BEECH.

15 March 2000.

Reasons for Decision.

Mr Kerr was employed as a driller by the respondent from 30 October 1998 until 5 April 1999. Mr Kerr claims that his dismissal by reason of redundancy on 5 April was harsh, oppressive or unfair. The respondent's position is that it was necessary to reduce the number of drillers on site by one and Mr Kerr was fairly selected as the person to be made redundant.

At the time that Mr Kerr was employed at the Western Queen site the respondent had one other driller on site. In approximately February 1999 a further driller, Mr Horton had been employed. During February the drilling work became a bit slow, in part due to troubles with water in the pit. On 1 March 1999 the respondent appointed a new drill-and-blast supervisor, Mr Clark. Over the course of March five more drillers were employed: Mr Coomers, Mr Major, Mr Hefford, Mr Sanchez and Mr Bishop. These persons did not all commence employment on the same day. In total there were eight drillers then on site. In March a larger drill, an SK45, arrived on site. It had significantly more capacity to drill both larger holes and to drill faster than the drill rigs that they were then using. It came with its own drillers.

There is no agreement in the evidence on whether the amount of work available to the drillers was reducing. Mr Kerr maintains that the arrival of the SK45 rig on site did not really result in a significant reduction in the amount of work which was available to the smaller rigs because it worked in a different part of the pit. He states that there was a time when the pit had water in it and he and Mr Horton were given work cleaning out a container. I find on the evidence overall that towards the end of the month work had been scaling down because there was not much drilling left in the pit. The evidence of Mr Hereen, a drill fitter, was that he took leave at the time because the rigs were having a quiet time. Mr Horton also acknowledged that there was not as much drilling work to be done. I also find that it would have been likely to have been known to the drillers, as it was to Mr Horton, that there was a possibility some of them might be laid off. Indeed, I find on the evidence that Mr Clark did mention that possibility to the drillers, although I am not satisfied that he directly informed them that there would be some redundancies.

Mr Clark's evidence is that when he arrived on site he calculated that the respondent needed a bigger rig with a quicker drill capacity. The respondent decided that there were two drillers too many and Mr Clark was to investigate redundancies.

I am satisfied from the evidence that there was a need for the respondent to reduce the number of drillers on site. The evidence of the increased capacity of the SK45, of the presence of water in the pit, particularly after the cyclone and of a reduction in the areas to be drilled is largely uncontradicted and to some extent corroborated by the evidence of Mr Horton and Mr Hereen. The task of choosing who would be made redundant fell to Mr Clark. On his evidence, Mr Clark took into account safety and a willingness to work on the part of

the drillers as the criteria for deciding who would be made redundant (transcript pages 95-96). Mr Clark had observed the drillers' performances and he also "glanced over their references". Mr Clark admits, however, that he did not discuss these criteria with the drillers themselves. He merely made up his own mind and reached the conclusion that it would be Mr Kerr who would be made redundant. He implemented his decision by going to Mr Kerr's accommodation shortly before Mr Kerr was due to commence shift. He informed Mr Kerr that he would be made redundant and gave as his reasons that Mr Kerr had less experience and he could not work unsupervised. Mr Kerr was paid 40 hours' wages in lieu of notice.

Mr Kerr complains that his dismissal was unfair because he rejects any notion that he had less experience or that he was not able to work unsupervised. It is upon these two considerations that the determination of Mr Kerr's claim in this Commission depends. It is clear that Mr Clark did not discuss his conclusions about Mr Kerr with him and obtain his responses to them prior to deciding that Mr Kerr would be made redundant.

By not giving Mr Kerr the opportunity to respond to his conclusions before deciding to dismiss him, Mr Clark denied Mr Kerr natural justice: see the Industrial Appeal Court in *Shire of Esperance v. Mouritz* (1991) 71 WAIG 875 where Kennedy J stated—

"In my opinion any breach of the rules of natural justice was a relevant circumstance in the determination of the critical question as to whether the dismissal was harsh or unjust. Whether an employer, in bringing about a dismissal, adopted procedures which were fair to the employee is an element in determining whether the dismissal was harsh or unjust—see *The Law of Employment*, Macken, McCarty and Sappideen 3rd edition, 277-278, and the authorities there cited. In some cases, this can be a most important circumstance."

However, the denial of natural justice will only result in Mr Kerr's dismissal being unfair if Mr Kerr would have been able to show Mr Clark that he was wrong in his conclusions: *Stead v. SGIO* (1986) 161 CLR 141. If Mr Kerr could have shown that someone other than Mr Kerr should have been made redundant (*Gromark v. FMWU* (1993) 73 WAIG at 225) then the denial of natural justice will have been a most important circumstance. Further, if Mr Clark based his conclusions on an irrelevant consideration then his discretion will have miscarried. He did so. Mr Clark admits that he took safety into account. As the respondent very properly conceded before the Commission, as far as safety was concerned all of the drillers rated equally. In retrospect, time might have been saved in the examination and cross-examination of all witnesses had this concession been made at the commencement, rather than the end, of the case.

While it is true to say that the day before Mr Clark made the decision to dismiss Mr Kerr, Mr Kerr had been reported for an incident involving driving a personnel carrier on the wrong side of a connecting road to the site, there had not been an investigation of that incident and no negative report regarding safety against Mr Kerr. Therefore, to the extent that Mr Clark considered that Mr Kerr had a lesser record on safety than the other drillers, Mr Clark was wrong to do so. Although in his evidence Mr Clark states that he recognised that the incident had not been investigated, that a decision had not been reached on it and that it was not a significant factor, when Mr Kerr's termination was recorded by the respondent he was given a rating for "safety" of five out of ten. That hardly seems an appropriate rating for somebody who did not have any blemishes on his safety record. I therefore conclude, contrary to Mr Clark's assertion, that the motor vehicle incident was seen as significant and counted against Mr Kerr when it should not have been.

Further, Mr Clark stated that he also took the incident into account in concluding that Mr Kerr was not as able as the other drillers to work unsupervised. Given the lack of evidence from the respondent that Mr Kerr was at fault in the incident Mr Clark should not have taken it into account against him.

In concluding that Mr Kerr was not as able as the other drillers to work unsupervised Mr Clark also believed that Mr Kerr, on occasions, did work which was properly fitting work

when he should have been doing driller's work. Mr Kerr, and to an extent this is supported by Mr Hereen, admits that he did additional duties from time to time. Both Mr Kerr and Mr Hereen regarded Mr Kerr having his own toolbox and doing maintenance on the rig, or assisting Mr Hereen, as very much in Mr Kerr's favour. Mr Clark took the view that Mr Kerr should not have done so. It is not for the Commission to judge whether or not Mr Kerr should, or should not, have done some fitting work. The point to be made is that Mr Kerr was never told that the respondent viewed his doing fitting work as a negative factor or that he should not do it. It was unfair to Mr Kerr for Mr Clark to use it as a factor against him. On the evidence therefore, Mr Clark's conclusion that Mr Kerr was not as able as the other drillers to work unsupervised was not justified.

The other criterion relied upon by Mr Clark is his understanding that Mr Kerr had less experience in drill-and-blast drilling than the other drillers. On the evidence, Mr Clark is on much stronger ground in that conclusion. Much of Mr Kerr's past experience as a driller was in exploration drilling. He referred to at least 7 ½ years' drilling experience. Only 3 of those were in drill-and-blast drilling (transcript pp 33-35). I am satisfied on the evidence before me that exploration drilling is "totally different" (transcript p. 105) from drill-and-blast drilling. That is Mr Clark's evidence and I accept it. Mr Clark has more than 10 years' experience in drill-and-blast drilling and his evidence regarding the difference is not entirely inconsistent with Mr Kerr's own acknowledgement that there are differences. Even Mr Horton's evidence acknowledges that the two types of drilling are different, particularly as to the rigs. Therefore, although Mr Kerr has extensive drilling experience, Mr Clark was entitled to conclude that his experience was not in the area of expertise of the other drillers and his experience in drill-and-blast drilling was more than Mr Horton's experience but less than the other drillers on site. Mr Clark also reached a conclusion that although Mr Kerr had been on site for a longer period of time than Mr Horton, in his view, Mr Horton was a better driller. I do not consider that conclusion was successfully challenged in the evidence and given that Mr Clark has more than 10 years' experience, including supervisory experience, in drill-and-blast drilling he was quite entitled to form that opinion.

In summary, Mr Clark denied Mr Kerr natural justice in not putting to him the very criteria upon which Mr Kerr's future would be decided and giving him an opportunity to comment. For those reasons the dismissal of Mr Kerr by reason of redundancy was unfair to him. However, it is by no means clear on the evidence that had Mr Kerr been given the opportunity to put his responses to Mr Clark, there could have been a different outcome. His relative length of experience in drill-and-blast drilling compared to the other drillers except Mr Horton does count, in the circumstances of this case, against Mr Kerr. Mr Kerr's task before the Commission is essentially to show that someone else other than him should have been made redundant. The evidence before the Commission does not go that far. On the issues of safety and, as I find, ability to work unsupervised there has been no difference established between Mr Kerr and the other drillers. Indeed, there has been only one difference established: that of experience in drill-and-blast drilling. While Mr Kerr is obviously an experienced and competent driller, he did not have the actual length of experience on that specific kind of drilling of the others except Mr Horton and a discussion between Mr Kerr and Mr Clark about Mr Kerr's experience would not alter that. It is quite valid for the respondent, given its operations, to see that as a decisive issue.

It might be valid to conclude that the respondent had to decide between Mr Kerr and Mr Horton. Mr Kerr, to be fair to him, did not directly argue that Mr Horton should have been made redundant prior to him. Nevertheless, it is proper for the Commission to consider the argument given the decision of the Industrial Appeal Court in the *ASI* case to which I have already referred. If the evidence showed that there was no difference between Mr Kerr and Mr Horton then Mr Kerr's longer service with the respondent would become significant. However, Mr Clark believed that Mr Horton was a better or "more productive" driller. Mr Clark, in his supervisory position stated that although Mr Horton had drilled less time than Mr Kerr, Mr Horton was giving better performance rates. I

have no reason to reject that evidence and I accept it. Even Mr Kerr himself, who trained Mr Horton when Mr Horton arrived on site, states that Mr Horton was a good driller. Mr Kerr had trained him well. On the evidence before the Commission it cannot be said that there was no difference between Mr Kerr and Mr Horton. That is, it was open to Mr Clark to decide that Mr Kerr would be made redundant over Mr Horton. It cannot be said that Mr Kerr has shown that someone else other than him should have been made redundant.

To the extent that Mr Kerr claims unfairness because Mr Clark did not seek out a Curriculum Vitae for Mr Kerr in order to review his background, I have not been persuaded that this was a significant factor. It is true that Mr Clark did not seek a copy of Mr Kerr's Curriculum Vitae at a time when he had access to the Curriculum Vitae's of the other drillers. However, on the evidence I cannot conclude that a different result could have been achieved had Mr Clark had a copy of Mr Kerr's Curriculum Vitae.

There is, on the evidence, only one ground for validly finding that Mr Kerr's dismissal was unfair. That ground is the procedure which was followed, or not followed. Reference has already been made to the lack of any consultation with Mr Kerr. While that lack may not ultimately have altered the outcome, one consequence is that Mr Kerr's dismissal came to him as a shock when it should not have done. Even if it can fairly be said that Mr Kerr might have known someone was to be made redundant, given that he was the second longest-serving driller on site and had no performance or safety issues against him I understand his reaction to the news. His reaction is borne out by the reaction of Mr Horton on hearing the news. Mr Horton was surprised that Mr Kerr had been dismissed before himself. He might have also, and most naturally, felt a tinge of relief but he was nevertheless shocked.

Further, the *Minimum Conditions of Employment Act 1993* implied into the contract of employment between Mr Kerr and Cook's Construction Pty Ltd that as soon as the respondent made a decision to make Mr Kerr redundant there would be a discussion with him regarding the possible alternatives to redundancy and ways to minimise the effect of it. While I appreciate that when Mr Clark advised Mr Kerr of his redundancy, any extended conversation was not possible when Mr Kerr shut the door between them, it is clear from Mr Clark's evidence that he had merely intended to inform Mr Kerr that Mr Kerr would be kept in mind for future vacancies. There is nothing in the evidence of Mr Clark that showed that if the conversation had continued he would, as required by the legislation, have discussed with Mr Kerr alternatives to redundancy or ways to minimise the effect upon Mr Kerr other than the vague possibility of future employment. Whilst the Commission does not enforce the *Minimum Conditions of Employment Act 1993*, the fact that it was not observed is an additional factor in the conclusion of the Commission that Mr Kerr's termination was done in a less than fair manner to him.

Having found that the dismissal was unfair for those reasons, I consider what the appropriate remedy is to be. Mr Kerr seeks reinstatement. However, given the earlier finding that it was appropriate that the number of drillers be reduced by one reinstatement is not a suitable remedy. The position held by Mr Kerr effectively no longer exists.

The Commission is able to award compensation for loss or injury. In this case even if a fair process had been followed, Mr Kerr would probably still have been made redundant. If a proper process had been followed, that redundancy might have occurred some little time later than it actually did. On the evidence of Mr Clark he had been considering the matter for approximately two weeks. In my view, Mr Kerr's employment is unlikely to have continued for more than a further two weeks and his loss is a further two weeks' employment. Injury includes consideration of the stress involved in the termination of an employee's employment. There will inevitably be some measure of distress to an employee in every termination. Nevertheless, I find that Mr Kerr is also entitled to compensation for the suddenness and unexpectedness of his dismissal. The assessment of compensation for injury is not capable of precise calculation but is a matter for individual assessment. I regard a further one week's wages as a fair sum

in the circumstances. Accordingly the Commission will order compensation to Mr Kerr of a further three weeks' wages.

The Minute of a Proposed Order now issues.

Appearances: Mr K. Trainer on behalf of the applicant.

Mr S. Heathcote (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Aaron Samuel Kerr

and

Cook's Construction Pty Ltd.

No. 519 of 1999.

21 March 2000.

Order.

HAVING heard Mr K. Trainer on behalf of the applicant and Mr S. Heathcote on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby

1. DECLARES that the dismissal of Aaron Samuel Kerr by Cook's Construction Pty Ltd was unfair.
2. ORDERS THAT Cook's Construction Pty Ltd forthwith pay Aaron Samuel Kerr 3 weeks' wages by way of compensation for the dismissal which occurred.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Derek Lamont

and

Westlake Corporation Pty Ltd t/a Trendsetter Homes.

No. 474 of 1999.

COMMISSIONER S J KENNER.

9 March 2000.

Reasons for Decision.

THE COMMISSIONER: This is an application pursuant to s 29(1)(b)(ii) of the Industrial Relations Act 1979 ("the Act") by which Derek Lamont ("the applicant") claims that he was denied certain contractual benefits by Westlake Corporation Pty Ltd trading as Trendsetter Homes ("the respondent"), in the form of commission on the sale of a new home at Luttrell Gardens, on the termination of his employment.

At the outset of the proceedings, counsel for the respondent, Mr Wilson, made an application that the proceedings be dismissed because the applicant had not brought his claim against the proper entity as his employer, rather a trading name only. After having heard from the parties on this issue, and having considered the circumstances of the application and the proper identity of the employer, the Commission was satisfied that the employer as named in the notice of application had been misdescribed, rather than it being a case of a claim against the wrong employer. Accordingly, the Commission exercised its powers pursuant to s 27 of the Act and amended the notice of application to reflect the proper name of the respondent employer.

The applicant, appearing in person, claimed that he had been employed by the respondent from in or about February 1998 as a Homes Sales Consultant to sell new homes on behalf of the respondent. The applicant testified that his principal place of employment was a display home constructed by the respondent in Atwell. His duties were to introduce prospective

purchasers to the respondent's business, with a view to those persons entering into a building contract with the respondent for the construction of a new home.

The applicant said that he discussed the terms of his employment with Mr Carbone, a director of the respondent. He said that he was to be employed by the respondent and was not engaged as an independent contractor. The written terms of the applicant's engagement were set out in a document on the letterhead of the respondent, which document was signed by both the applicant and Mr Gino Carbone. The terms of engagement were set out in exhibit A1 and formal parts omitted, provided as follows—

"This letter dated the 27th day of February 1998 is to confirm that Derek Lamont and Westlake Corporation Pty Ltd trading as Trendsetter Homes, have agreed to enter an agreement at the stated percentage rate of 2.5% for the first three homes signed under a Building Contract per calendar month. Thereafter during the same calendar month, Westlake Corporation Pty Ltd will pay an extra 0.5% over the 2.5% rate for any additional Building Contract signed for a new home to be constructed.

The above commission fees are paid in full seven days after the first progress claim amount is received by Westlake Corporation.

This agreement is at (sic) a trial basis of six weeks from the abovementioned date. Either party may terminate the agreement at any time by giving seven days notice without any explanation."

As to the relationship between the applicant and the respondent, the applicant testified that he was at all material times subject to the direction and control of the directors of the respondent. He was required to work, according to his evidence, on a "set timetable" and worked four days per week they being Saturday, Sunday, Monday and Wednesday. The applicant said that he had no power to delegate work that he was required to do to others. He understood that the respondent would be responsible for taxation and insurance matters, but conceded that this issue was not expressly discussed. He had to provide a motor vehicle and a mobile telephone in the performance of his duties. He was not obliged to rectify any defective work as he understood it, and the respondent would be responsible for all advertising expenses associated with selling the respondent's new homes. It was also the applicant's evidence that it was part of his duties to obtain a signed preparation of plans agreement, a deposit, and a signed building contract with a prospective customer.

In relation to the Luttrell Gardens home, it was the applicant's evidence that he came into contact with a person named "Jeff" and his partner, whilst at the respondent's display home. He testified that he discussed with these persons the possibility of building a new home, but said that they did not want to build the respondent's style of project time. As a result, the applicant said that he discussed with them possible plans and sketches and prepared what apparently is known as a "sketch plan" of a home design. The evidence of the applicant was that he kept in close contact with this potential customer but apparently, the relationship deteriorated to the extent that the customer requested that he not maintain this contact with him. Furthermore, it was the evidence of the applicant that when he ceased working with the respondent, which on the evidence was agreed to be on or about 11 March 1998, he was prevented by the respondent from having any further contact with the customer.

The applicant said that when the arrangement with the respondent terminated, he asked the respondent as to whether he would be paid anything for work that he had performed. The applicant testified that he was told that the respondent "would look after him". In cross-examination, the applicant denied that he harassed the potential customer in relation to their proposed home, but did concede that they did get annoyed at his constant sales calls to them. Furthermore, the applicant conceded in his evidence that he did not present any signed contracts to the respondent, either in relation to the disputed sale or otherwise. Nor did he have any customer sign a preparation of plans document, which is apparently an industry standard type of document.

On or about 8 July 1998, the applicant received a letter dated 8 July 1998 from Mr M Carbone, in the following terms, formal parts omitted (exhibit A2)—

"This letter is to inform you that the contract of 231 Luttrell Gardens has been completed. The amount of commission to be made payable to you will be \$1,200.

This letter will be required to be signed and returned before payment will be mailed to the above address."

The applicant's evidence was that when he received this letter he went to see the respondent at its premises to discuss it. The exchanges between the applicant and the respondent in relation to this matter were apparently less than harmonious. However it is not necessary for me to deal with this matter in the context of the applicant's claim.

In the final analysis, the applicant refused to sign an acknowledgement contained in exhibit A1, believing that he was entitled to substantially more than what the respondent had offered to pay him. However, it is to be noted that there was no evidence before the Commission, adduced by the applicant, as to the quantum of his contractual benefits claim, nor any evidence as to the value of the home ultimately constructed, referred to in exhibit A2. It was the applicant's claim that whatever this sum was, he was entitled to 2.5% of that amount under the terms of the agreement.

Somewhat unusually, at the conclusion of his own evidence, the applicant also called evidence from Mr G Carbone and Mr M Carbone, directors of the respondent, which persons presumably, the respondent may have called in any event. Mr G Carbone denied that the applicant had done any sketches of a prospective home for the respondent and nor did he, Mr Carbone, do any drafting work for the applicant in connection with the construction of a home. It was his evidence that in or about May 1998 the customer, who ultimately built the home at Luttrell Gardens, and who initially dealt with the applicant, came back to the respondent to progress the building of a new home. It was further his evidence, that unless the applicant secured a signed preparation of plans agreement, it was clearly understood that the respondent had no customer as such.

Mr M Carbone testified that he was the author of exhibit A2. He said that whilst he had been in the building industry from 1975, at the time he wrote the letter, he had little experience in management and wrote and sent the letter to the applicant without the knowledge or authority of other directors of the respondent. It was his evidence, that he decided to pay the applicant some money, to, as he put it, "get the applicant out of his hair", as he said that the applicant had been constantly demanding some payment.

No Case Submission

At the conclusion of the applicant's evidence, counsel for the respondent moved the Commission for an order that the application be dismissed on the basis that the respondent had no case to answer. This application was erected on the basis that firstly, the applicant was not an employee and therefore the claim was beyond the Commission's jurisdiction. Secondly, it was submitted that the claim could not succeed because the terms of the engagement contained in exhibit A1 required the applicant to procure a signed building contract before any payment was due and payable to him. Finally, counsel submitted that in any event, there was no evidence before the Commission as to the quantification of the applicant's claim and it was therefore submitted that even if the Commission was to find for the applicant in relation to the first two limbs of the no case submission, there was simply no evidence upon which an order could be made in the applicant's favour.

I turn now to consider each element of the no case to answer submission.

Employee or Independent Contractor

The tests as to whether a person is an employee or an independent contractor are well established. In this respect, I refer generally to the text *Macken, McCarry and Sappiden's The Law of Employment* (4th Ed) in particular at 8-25, in which the learned authors set out the relevant legal principles. It would appear that on the decided authorities, the "control test", is an important albeit not the only relevant factor, in determining the nature of the relationship: *Stevens v Brodribb Sawmilling Co Pty Ltd* (1986) 160 CLR 16. Additionally, I note that

Stephen J in *The Commissioner of Taxation of the Commonwealth of Australia v Barrett* (1973) 129 CLR 395 concluded that a real estate sales person, paid solely by commission, was an employee. In *Barrett*, the court, whilst considering the issue of control, concluded that there were other factors that pointed to the real estate salesmen in that case as being employees, rather than independent contractors. For example, the engagement of the salesman was on a more or less permanent basis as a representative of the firm, and not for a specific task or for a specific period of time. There were also other indicia, for example obligations to account for time spent, to account for money received, to comply with rosters and to attend an office to deal with clients. Additionally, in that case, the real estate salesmen were prevented from working for other firms by reason of relevant legislation.

Having regard to the evidence in this matter, I am satisfied that in terms of the relevant indicia as to an employment relationship, that the applicant was an employee of the respondent. In particular, I note the obligations on the applicant to attend the respondent's premises at nominated times, to be subject to the general direction and control of the respondent and to, as the applicant put it, "obey orders" of directors of the respondent. The absence of any power to delegate his duties to anyone else was also a relevant consideration. The fact that he understood that he was not free to work for other firms, and that beyond the initial trial period of six weeks, as set out in exhibit A1, it was clearly contemplated that the applicant would be engaged by the respondent on a permanent basis, are other indicia of an employment relationship.

I do not regard the absence of discussions as to taxation and insurance matters, as being fatal to this conclusion, as was urged by counsel for the respondent. Furthermore, the absence of express terms of the contract as to annual leave and sick leave entitlements, do not, by those factors alone, render the relationship as being other than employment, particularly when one has regard to the existence of legislation conferring minimum entitlements for such matters on employees in this State.

Entitlement Under the Contract

For the purposes of these proceedings, it was not in dispute that the material express terms of the contract between the applicant and the respondent were those contained in the written document as exhibit A1.

In conjunction with this element of the respondent's application, counsel for the respondent submitted that the line of authority dealing with claims for commission payments for real estate sales persons were distinguishable and had no application to the circumstances of the present application. Thus, it was submitted that irrespective as to whether the applicant could be regarded as an "effective cause of sale" in relation to the ultimate signing of a contract in relation to Luttrell Gardens, this was inapplicable to the present circumstances.

The relevant principles in relation to determining an entitlement to commission under a commission only sales agreement, applicable to real estate sales persons, were set out in a decision of the Full Bench of the Commission in *Royal International (WA) v Valli* (1998) 78 WAIG 1110. In *Valli*, the Full Bench considered the relevant authorities and Sharkey P observed at 1113 as follows—

"Whether an agent is entitled to a commission depends on a person identifying the event which the contract of agency contemplates will give rise to the agent's entitlement to commission, and second, if necessary, determining whether the agent has been the effective cause of the transaction proceeding (see LJ Hooker Ltd v WJ Adams Estates Pty Ltd (op cit) at p 66 per Gibbs J).

Sometimes, depending on the terms of the agreement, introducing a person who is able, ready and willing to purchase might be sufficient to entitle the agent to a commission (see EP Nelson and Co v Rolfe (1950) 1 KB 139 (CA) and (1949) 2 ALL ER 584).

Similarly, introducing "a prospective purchaser" might be sufficient (see Drewery and Another v Ware Lane (1960) 3 ALL ER 529 (CA)).

However, what might entitle an agent to commission from a vendor might be different from what entitles an employee, agent or land salesmen to remuneration by his employer in the form of commission."

It should be noted that the line of cases dealing with commission payments, are not solely concerned with real estate sales persons, but more generally with obligations of a principal to an agent. Thus, the relevant principles can arise in numerous types of agency relationships.

Having considered the circumstances of the present application, I am not persuaded by counsel for the respondent's submission that the circumstances of the applicant's employment are so different such that the relevant principles set out in *Valli* would have no application in this case. Whilst the fact that the respondent is not, of itself in the present circumstances, the agent of a vendor of a specific property, nonetheless, the applicant, as an employee of the respondent, was in the course of his employment, an agent of the respondent as his employer principal, with the duty to sell new homes on behalf of the respondent, to prospective purchasers.

The first question of course, even accepting the application of the principles in *Valli*, is what were the material terms of the contract between the applicant and the respondent? The essence of the contract, as set out in exhibit A1, provided that a payment of 2.5% would be made for "the first three homes signed under a building contract per calendar month". The Commission payment was then to be due and payable seven days after the first progress claim was paid to the respondent by the purchaser. As is sometimes the case, the express terms of the contract do not, in my view, completely determine the answer to the primary question as to the terms of the applicant's entitlement to a commission.

In the context of the present application, the transaction required to be brought about was the execution of a building contract. The question then becomes what is required of the applicant or someone else in his position, to give rise to an entitlement to a commission payment? It seems clear enough from the terms of exhibit A1, that the triggers for the payment of any sum of money were firstly, the signing of a building contract and secondly, the receipt by the respondent of a progress payment.

Are the terms of exhibit A1 so complete and unambiguous such that the surrounding circumstances, or the factual matrix, around the contract would be excluded in applying the parole evidence rule? I do not think so. It was clear on the evidence and I find, that the parties to the agreement understood that the applicant was required, as a part of the performance of his duties in securing a building contract, to obtain a signed "plans and preparation agreement" and a deposit, before a person could be properly regarded as a customer of the respondent. None of this occurred on the applicant's own admission. It was also undisputed that the applicant did not, as required by the agreement, obtain a signed building contract in relation to Luttrell Gardens.

In my opinion, it is unnecessary to imply a term into the agreement, in the context of the present case, to the effect that the applicant would be entitled to a commission payment if he were an effective cause of sale of the home in issue. The agreement, in the context of the factual matrix that I have outlined, is capable of having meaning and effect without such a term being implied.

Whilst at first blush the terms of exhibit A2 may have been problematic for the respondent, taken in the context of the evidence adduced through Mr Carbone and its representation as an ex-gratia payment, the more reliable indicators of contractual intent in my opinion, are the terms of the agreement itself and the parties understanding, on the evidence, as to how it was to operate.

I am not therefore satisfied that the applicant has established that he would have an entitlement to commission in the present circumstances, even if he was able to particularise and establish the quantum of his claim, which is the final matter that I consider.

Entitlement

Even if I am incorrect as to the contractual position, as I have noted above, the applicant was unable to particularise his claim in the proceedings. At the time of the no case to answer submission from the respondent, there was simply no evidence as to the value of the building contract upon which the applicant's commission payment could be calculated. The applicant was not able to, to any extent, quantify his claim and there was no evidence to support it.

The test of course, on a no case to answer submission, is not whether the applicant should succeed in his claim, but whether upon the evidence as it stands, he could succeed. In my opinion, on the evidence before the Commission, the Commission could not make an order in favour of the applicant, as he has simply failed to establish the quantum of his claim in any respect.

I therefore uphold the respondent's application and dismiss the applicant's claim.

APPEARANCES: The applicant appeared on his own behalf.

Mr A Wilson of counsel appeared on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Derek Lamont

and

Westlake Corporation Pty Ltd t/a Trendsetter Homes.

No. 474 of 1999.

COMMISSIONER S J KENNER.

9 March 2000.

Order.

HAVING heard Mr D Lamont on his own behalf and Mr A Wilson 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.) S. J. KENNER,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arnold Juris Leiskalns

and

Goldrush Holdings Pty Ltd trading as SecureForce International.

No. 195 of 1997.

1 March 2000.

Reasons for Decision.

COMMISSIONER C.B. PARKS: A Notice of Application filed in the Commission on 31 January 1997 by Arnold Leiskalns (the "applicant") alleges that he was unfairly dismissed from his employment as a security officer with SecureForce International (the "respondent") on 18 January 1997. The applicant further alleges that there are "outstanding benefits" or "unpaid benefits" he has not received from the respondent. The applicant pleads for the remedy of monetary compensation in relation to the dismissal and for monetary payment to recover the value of the "benefits" he cites.

The compensation and benefits claimed are expressed as follows—

- (1) \$10,000.00 for unfair dismissal;
- (2) Sick pay & holiday pay; as per award
- (3) 1 week's pay in lieu of notice; as per award.
- (4) All the hours I worked that were not paid for breaks that John got paid.
- (5) The statutory employer's superannuation contribution"

SecureForce International denies that the applicant was dismissed from his employment and asserts that the applicant resigned from employment in accordance with oral advice to

that effect given by him on 14 January 1997. The Notice of Answer and Counter Proposal does not address the express "benefit" claims but asserts that he received all entitlements due to him.

At a conference conducted pursuant to s32 of the Industrial Relations Act, 1979 ("the Act") it was established that the former employment relationship between the parties had been governed by the Security Officers' Award, an award of this Commission and that the second, third and fourth of the claims itemised by the applicant were claims for entitlements allegedly arising from the operation of the award. That being so the claims seek an enforcement of the award which may not be prosecuted before the Commission and hence they were struck out. The Commission is informed that since the conduct of the conference the fifth listed claim has been settled between the parties and therefore does not require address by the Commission.

One matter remains to be determined by the Commission, that is, whether the applicant was dismissed from his employment and if so was he dismissed unfairly and entitled to a remedy. The Commission heard argument from the parties and at the conclusion thereof declared that the applicant had resigned from his employment, and had not been dismissed, and informed the parties that the reasons for so finding would subsequently be delivered in writing. These are those reasons.

Mr Leiskalns is equivocal whether he orally resigned from his employment and implies that if that were the case he did not do so voluntarily and was coerced to that course of action by Messrs Adrian Nitu and Barry Spencer, his superordinates, at a meeting with them on 14 January 1997. The applicant asserts that Messrs Nitu and Spencer conspired with John Wayne Ryan, the Principal for the respondent, to bring about the termination of his employment. Mr Leiskalns told the Commission that he did not attend the 1996 office Christmas function which caused Mr Ryan to become upset and to thereafter set about plotting an end to his employment. On the evening of 13 January 1997 the applicant was on duty, and partnered by another security officer Sean Deering, at a shopping centre when Mr Deering, whom in his opinion is given to perversely creating situations of conflict, sought to involve both of them in what he, Mr Deering, perceived to be a situation where persons nearby to a telephone box were about to damage such. According to the applicant the telephone box was not within the area of the shopping centre where they were to provide security, hence it was inappropriate to become involved in relation thereto, and he also feared that Mr Deering wished to create an incident, and he suspected that such was a ploy organised between Mr Ryan and Mr Deering in order to provide a cause to end his employment.

No incident developed in relation to the telephone box. Following the event Mr Deering made a mobile telephone call and then handed the mobile telephone to Mr Leiskalns who found he was speaking to Mr Ryan who apparently sought his version of events and who is said to have stated to the effect "someone is lying about what occurred" and requested that the applicant meet with him the following morning.

The applicant did not report to Mr Ryan the following morning but attended the office of the respondent on the afternoon of that day, shortly prior to when he was to commence duty at the shopping centre. Mr Ryan was absent from the office and he met with Messrs Nitu and Spencer, who respectively are second and third in charge to Mr Ryan, in a small confined office which he says, coupled with the demeanour of his superordinates, and what they said, intimidated him. Reference was made to a report submitted by Mr Deering regarding what had occurred the previous night. According to the applicant that report dealt with his alleged associated misdeeds, and it was said by Mr Nitu that he had the authority to dismiss him immediately for all his alleged wrongdoings. His behaviour was said to be unacceptable and would not be tolerated and ultimately he was instructed to return his uniform shirts and pick up his pay the following Monday because they had not had time to prepare it that day.

Counsel for the respondent put several questions to Mr Leiskalns in which he plainly referred to Mr Nitu speaking to him regarding a number of reports. The applicant did not expressly deny that Mr Nitu had been referring to more than one report however each answer he gave was in reference only to the report submitted by Mr Deering. During cross

examination the applicant described himself as having been upset at the time of the meeting and was equivocal whether he said to the effect "if the men don't like working with me that's it. I'm not working anymore".

John Wayne Ryan says that on 18 January 1997 Mr Leiskalns attended the office and in his presence signed the pay record (exhibit 1) where he, Mr Ryan, had printed on one side of the monetary figure paid to the applicant, the word "resigned", and on the other side of the figure the words "full + final payment" and that the applicant took no issue with these two notations.

Mr Leiskalns declined to cross examine Mr Ryan.

Adrian Ino Nitu, formerly an employee of the respondent, says that at the meeting of 14 January 1997 he showed Mr Leiskalns the report by Mr Deering together with those given by other officers who had worked with, and were responsible for training, the applicant, and asked what he had to say about their content. Mr Nitu says his response was to the effect that if the other officers were not happy with him he would leave and he was not working any more. According to Mr Nitu he questioned what he meant by that, given that he was due to work at the shopping centre that day, and he received the response that he would do that work and speak with Mr Ryan on the following Monday. Mr Nitu denied that he dismissed the applicant and said he did not have the authority to do so.

Mr Leiskalns declined to cross examine Mr Nitu.

Barry Thomas Spencer, formerly an employee of the respondent, confirmed he was present at the meeting on 14 January 1997 and also confirmed in essence what Mr Nitu said occurred and was said, a minor difference being that Mr Nitu had said that the applicant should attend on Monday and speak to Mr Ryan and return his uniform.

Mr Leiskalns declined to cross examine Mr Spencer.

There is no evidence that there was a conspiracy for the purpose of securing a conclusion to the employment relationship between the respondent and the applicant. Additionally there is no evidence which causes me to doubt the credibility of Messrs Nitu and Spencer, and hence there is no reason for me to question the veracity of their evidence, none of which the applicant took the opportunity to challenge.

On 18 January 1997, the third day following the meeting with Messrs Nitu and Spencer, the applicant signed the wage record which plainly bore the words "full + final settlement" at that time, and I am satisfied also bore the word "resigned", yet he raised no objection to such representing the true nature of the termination of his employment. Mr Leiskalns has said he was upset at the meeting on 14 January 1997 and I think it probable his recollection of what occurred is not accurate.

The onus was on Mr Leiskalns to prove his allegations that he was unfairly dismissed and he has failed to do that, hence in accordance with my earlier declaration the application will be dismissed.

Appearances: Mr AJ Leiskalns on his own behalf

Mr K. Heitman, of Counsel on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arnold Juris Leiskalns

and

Goldrush Holdings Pty Ltd trading as SecureForce
International.

No. 195 of 1997.

1 March 2000.

Order.

HAVING heard the applicant on his own behalf and Mr K. Heitman, of Counsel on behalf of the respondent the Commission, pursuant to the power conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael McGrath

and

Temkara Pty Ltd t/a Economic Pest Control.

No. 1873 of 1996.

24 February 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: Michael McGrath (the applicant) alleges that he was unfairly dismissed from his employment with Economic Pest Control (the respondent) on 13 December 1996 and that the respondent failed to allow him a benefit he was due under his contract of employment, that being, one week of notice to terminate his employment, or alternatively, the payment of one week's wages in lieu thereof.

The respondent engages in the business of pest control in which the applicant had been employed and bound by the Pest Control Industry Award 1982 (the Award). Further terms and conditions of employment are contained in the form of a letter dated 1 July 1996, signed on behalf of both parties, however none of the terms contained therein are germane to the matter before the Commission.

The applicant submitted in proceedings that the benefit he has not been allowed by the respondent is one which he is entitled to by operation of the Award, and it is plainly correct that entitlements of that nature are prescribed by clause 10. – Contract of Service, of the Award. Section 29 (1)(b)(ii) allows an employee to refer to the Commission a claim that the employee has not been allowed by his employer "..... a benefit, not being a benefit under an award, or order, to which he is entitled under his contract of service" and hence the section does not allow an employee to refer to the Commission a claim for the recovery of a benefit to which the employee has become entitled by the operation of an award. It being the case that Mr McGrath claims his entitlement arises from the award, such is a claim not allowed by s29(1)(b)(ii) of the Act, and is also one which in effect seeks an enforcement of the award, and may not be prosecuted before the Commission.

On the evening of 12 December 1996 the applicant made contact with a foreman of the respondent, a Mr L. Lamp and informed him he would not be available for work the following day because he would be attending to a personal matter. On the morning of 13 December 1996, Mr McGrath, in compliance with a direction from the foreman, visited the premises of the respondent and deposited the information and paperwork he held regarding the work he was scheduled to perform that day, and then he departed the premises. Later that morning Alan Charles Evans, the managing director for the respondent, telephoned the applicant regarding his absence from duty that day. According to Mr McGrath in the telephone conversation he had with Mr Evans he informed him he had received a telephone call from the Eastern States and in consequence of that he had personal matters he needed to deal with that day and therefore he would not be attending for duty. Mr Evans did not accept the explanation given by the applicant and sought to have him explain further the reasons for his absence however when Mr McGrath declined to do so he was not satisfied he had a genuine reason to be absent and decided to dismiss him.

Mr Evans says he took the decision to dismiss the applicant because in the absence of a reasonable explanation he was not satisfied there was a genuine need for Mr McGrath to absent himself from duty. He doubted the genuine need because the applicant would not explain further and had previously misled him regarding his need not to work.

Mr Evans explained that the applicant had had two periods of employment with the respondent, the first, from 1 July 1996 to 14 October 1996 when he resigned, and from 21 October 1996 until the date of his dismissal. It is common ground that in early October 1996 Mr McGrath requested a period of 1 week's leave following upon what he described as an anxiety

attack. According to Mr Evans he ascertained from the applicant that he had visited a doctor however, he had not been provided with a medical certificate nor had the doctor recommended that he take a period of leave. At first he refused to grant Mr McGrath the leave, however the applicant submitted his resignation and that indicated to him the applicant had a definite need and he granted the one week of leave that had been sought. Part way through the day upon which Mr McGrath returned from leave, 14 October 1996, he resigned and is said to have stated an intention not to work further and would remain at home for a period of 12 months. Mr Evans alleges that almost immediately the applicant commenced work with a competitor in the pest control industry where he was employed only for a matter of days before he sought and was granted re-employment with the respondent on 21 October 1996. Although the applicant cross-examined Mr Evans he did not challenge the evidence given by him that he had previously misled Mr Evans into believing he had a need to cease work for a 12 month period but immediately commenced employment with a competitor. Hence I accept that such did occur and provided reasonable cause for Mr Evans to doubt there was some genuine and compelling reason why he ought sanction that Mr McGrath absent himself from work on 13 December 1996.

The applicant had no obligation to provide the respondent with detailed information regarding the personal matters he says required his attention on 13 December 1996. However he did not have an unfettered right to absent himself from his employment. I am satisfied that the conversation which occurred between Mr Evans and Mr McGrath was such that the applicant was not prepared to elaborate in any way and made it plain he intended to remain absent that day. The matter could have been handled in a better manner by Mr Evans however I am not convinced that the right which the respondent exercised to terminate the employment of the applicant was exercised unfairly. The application will therefore be dismissed.

Appearances: Mr M. McGrath on his own behalf

Mr A. Evans on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Michael McGrath

and

Temkara Pty Ltd t/a Economic Pest Control.

No. 1873 of 1996.

1 March 2000.

Order.

HAVING heard Mr M. McGrath on his own behalf and Mr A. Evans 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.) C. B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arun Mukerjee

and

Crommelins Operations Pty Ltd.

No. 2255 of 1997.

21 July 1998.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: The matter before me was commenced by way of an application filed on 4 December 1997 wherein the applicant alleges that he did not receive a benefit under his contract of employment which he was entitled to receive from the respondent. He asks that the Commission order that benefit be paid to him. The Notice of Application asserts that there was a deduction made from the salary due to the applicant for a period between March of 1991 and September of 1992 and that there had been an arrangement made that the total amount of deduction would be repaid to him.

At the commencement of proceedings, the applicant sought and was granted, leave to amend his claim. The claim now prosecuted relates to the period from December 1991 to August 1992, both inclusive, ie 9 months. The applicant seeks to recover the amount of \$233.34 per month for such period which is the undisputed level of deduction made.

It is not in issue that early in 1991 the respondent was suffering financial difficulties and as a consequence of that a number of initiatives were taken in an attempt to ease that difficulty. One such initiative was the reduction of salaries and wages payable to various employees, an arrangement which I understand was implemented by consent.

A memorandum issued to all staff (exhibit 1) including the applicant, addresses the financial problems suffered by the respondent and is that which proposes the imposition of temporary wages and salary reductions. In relation to this proposal there is the statement—

“None of you will be forgotten, we will be keeping a record of your individual contribution and you will be rewarded just as soon as we are in a position to do so. Please be assured of that.”

Later in the memorandum there is the further related statement—

“I say “temporary” because as soon as we can reduce monthly losses, through reducing expenses and increasing income, we will reimburse monies you have temporarily lost through the need for reductions.”

The applicant says that the aforementioned paragraphs convey the message that the reduction in salary was temporary in nature and that at some time he would be reimbursed what he had temporarily lost, the focus being on the term, or the word, “reimburse”. The Commission has not been referred to the dictionary definition of the word however such is well understood to mean “repay”.

Very simply, the argument of the respondent is that the memorandum ought not be read in that way, that it does not constitute an express undertaking to return to Mr Mukerjee the value of salary deducted from him and which he now claims, and that was certainly not what was intended to be conveyed to him. I have not been taken to other parts of the memorandum by either of the parties however the principles of interpretation require that the intention of a written instrument be distilled from a reading of it as a whole.

The memorandum (exhibit 1) speaks of there being a reduction in salary and wages and that was to be a temporary measure (p.2 – 1st full paragraph), and of other initiatives which employees could be expected to contribute, those being, for example, increased productivity and improved attitudes where necessary (p.2 – 2nd full paragraph). Salaried staff are recognised as having already contributed excessive time free and worked long hours at their jobs (p.2 – 3rd full paragraph).

The aforementioned paragraphs are shortly followed by the first of the paragraphs upon which the applicant relies (*supra*) wherein it is said that the respondent "would be keeping a record of your individual contribution and you will be rewarded". Given the matters referred to in the preceding paragraphs include the "contribution" of excessive free time and long hours by salaried staff and that a "contribution" will be sought from wages staff, it is plain that the reference to keeping a record of individual "contribution" is not limited to the salary and wages reduction but includes the range of contributions made to assist the respondent.

In relation to such contribution, it is said that the employee concerned would be "rewarded just as soon as we (the respondent) are (is) in the position to do so". Had these words been in reference to salary or wages alone, and been meant to convey the repayment or reimbursement of a monetary contribution, I would expect more restricted terminology to have been used. It is my opinion that the term "rewarded" is meant to have a far broader meaning ie that something would be done to the benefit of the employee concerned in recognition of the contribution of whatever type it was that were given.

A paragraph with reference to temporary salary and wages reductions (p.3 - 2nd paragraph) immediately precedes the second paragraph upon which the applicant relies (*supra*), and in which the word "temporary" appears in parenthesis. The opening words of the paragraph are "I say 'temporary' because" and plainly it is a reference to having earlier used the term in the immediately preceding paragraph. And, given the structure of the paragraph in which "temporary" appears, it seems also that the parenthesis has been used to emphasise that such is not definitive of how long the salary reduction would continue but that such would be governed by when the business adequately reduced monthly losses. The remaining words of the paragraph state that monies temporarily lost would be "reimbursed".

In August of 1992, the applicant was returned to the salary level that he had enjoyed prior to the reduction referred to, and in February 1993 the applicant was also placed on an incentive scheme based on the recovery of debt for the respondent which afforded him the potential to increase his earnings beyond the prescribed salary.

Further, in August of 1994, the salary of Mr Mukerjje was increased substantially. In September of 1994 the incentives scheme was extended to apply to a person assisting the applicant with the recovery of debts and the sharing of the benefit produced by the scheme reduced the level of incentive payment the applicant might achieve.

Mr Mukerjje has told the Commission that because of his belief of what the memorandum of 14 March 1991 conveyed to him, he saw no reason to question why he had not been reimbursed or repaid the value of the salary deduction he thought was due to him, between September of 1992 and the termination of his employment in December 1997. I find it most strange that the question of reimbursement or repayment was not raised in that period of time given that the circumstances of the respondent had altered and the respondent had increased his salary and level of earnings beyond that which he enjoyed before the reduction occurred.

That signals to me that the employer must have concluded at the various times that its financial situation had improved at least to the extent that it could afford to make those upward adjustments, and as a consequence incur a greater cost. I think that is the only logical conclusion and therefore it is strange that, in the time involved, Mr Mukerjje did not question the payment of what he says he thought was due to him.

The claim before the Commission has been prompted by the employment relationship coming to an end. According to Mr Mukerjje he assumed that he would either be repaid the amount of salary deducted at some time during his employment, or alternatively, whenever the employment relationship came to an end.

Although the material memorandum uses the word "reimburse", I am not convinced that the memorandum is to be read as giving that word the meaning of repayment of the amount by which the salary was reduced, and given that at no time in the five year period which elapsed did the applicant raise with the respondent the belief that he had nor did he seek the repayment now claimed. Furthermore the applicant resigned

from his employment and at that time he did not initially lay claim to the benefit he now claims from the respondent and that leads me to conclude the claim is an afterthought by the applicant.

I am therefore of the view that the applicant is not entitled to the benefit which he claims and accordingly the application will be dismissed.

Appearances: Mr A. Mukherjje on his own behalf

Ms E. Mackey on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arun Mukerjje

and

Crommelins Operations Pty Ltd.

No. 2255 of 1997.

1 March 2000.

Order.

HAVING heard the applicant on his own behalf and Ms E. Mackey on behalf of the respondent, the Commission, pursuant to the power conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dianne Joyce O'Connor

and

Patricia Alma Clarke/ Ian Donald Clarke of Clarke's
Lunch Bar.

No. 1420 of 1999.

COMMISSIONER S WOOD.

3 March 2000.

Reasons for Decision.

THE COMMISSIONER this is a claim for harsh, oppressive or unfair dismissal made pursuant to section 29 of the Industrial Relations Act 1979. The applicant (Ms O'Connor) was employed on 5 August 1998. Her employment terminated on 10 September 1999. She was employed as a Kitchenhand under the Restaurant, Tearoom and Catering Workers Award No R48 of 1978. Her average working hours per week were 17.5 hours at the time of termination. The applicant says that she was employed on a permanent part time basis. The respondent (Mrs Clarke) says that the applicant was employed on a casual basis under the award. The applicant says she was given one weeks notice on 9 September 1999 and on 10 September 1999 she was advised by DOPLAR to give 1 hours notice because she says she was scared to go back to work. The respondent says that the applicant voluntarily resigned from work, by giving one hours notice on Friday 10 September 1999.

It is agreed the applicant was paid in full her contractual entitlements, ie for work up to and including 9 September 1999, inclusive of backpay, gross total being \$450.71.

Both parties agreed that the employment relationship prior to 9 September 1999 was reasonable; albeit the applicant said that the relationship had its ups and down. The respondent says that Ms O'Connor was a good worker.

The dispute centres largely on events that took place on 9 September, 1999 at the respondent's premises. Ms Lorraine Lear and the applicant approached Mrs Clarke on

9 September 1999 and presented her with letters on behalf of Ms Danika Ahec and themselves alleging underpayment of wages. Ms O'Connor had been advised by an officer of the Department of Productivity and Labour Relations that her wage rate should have been \$12.78 per hour as opposed to the \$12 she was being paid (see exhibits 02 and 03).

The applicant says her initial concerns regarding underpayment arose from overhearing a telephone conversation on 2 September, 1999 in which Mrs Clarke discussed wage rates. It would appear also that there was some tension at that time in the lunchbar due to the business being up for sale, and perhaps other factors.

The applicant says that the respondent was upset on presentation of the letters and said that she could no longer employ them. The applicant says that Ms Lear offered to be the first to go as Ms O'Connor was the sole bread-winner in her family. The applicant says that Mrs Clarke stated that it didn't matter who went first and that Ms O'Connor received enough from her social security benefits.

Each of these points, with one exception, are substantiated in evidence by the respondent; in what was clearly a heated exchange. The exception is that, while it is not contradicted by the respondent, it is not clear from her evidence whether she said that she could no longer employ Ms Lear and Ms O'Connor. However, the follow-up conversation makes little sense unless the impression was conveyed, in whatever words, that there would not be ongoing employment for these employees. This is unless the view is taken that the employees, at that point, did not wish to work at the lunchbar any longer. I do not take this view. The applicant's evidence in this regard is credible and Ms Lear at least is still employed at the lunchbar.

Ms O'Connor worked the remainder of her shift and says that at the end of her shift she was asked to sign the wages book. She says she collected her pay and then noticed she had been crossed off the roster for the following day. She then says that as she was leaving Mrs Clarke called out to her to tell her to come to work at 9am on the Monday.

The applicant says that she challenged the respondent about her employment and that the respondent then said that she would give the applicant one week to find another job.

The respondent says that she did tell the applicant she had one week to find another job. She says this was only after the applicant indicated that she wasn't happy working at the lunchbar and that perhaps she should find another job. The respondent also says that she did not cross Ms O'Connor's name off the roster for Friday 10 September.

On each of these points I find the statements of the respondent more compelling. Clearly Mrs Clarke gave Mrs O'Connor one week to find another job prior to the applicant leaving the lunchbar on 9 September, 1999. On the applicant's evidence this appears to have arisen from a discussion just prior to her departure.

Whilst the discussion earlier in the day had been heated and unpleasant, and the atmosphere during the day was generally uncomfortable, at the conclusion of the applicant's work on 9 September, Mrs Clarke requested Ms O'Connor to attend for work on 13 September. Notwithstanding that Mrs Clarke had earlier in the day indicated to Ms Lear and Ms O'Connor, in a heated exchange, that she could no longer employ them.

Whether it be the return of Mr Clarke to the lunchbar or some other reason, by about 1 pm relations had calmed to the extent that Ms O'Connor was asked to work on the Monday and Ms Lear remained employed. In other words the threat in the heat of earlier discussion had not been carried through.

It follows that Ms O'Connor was given one week's notice arising from her discussion with Mrs Clarke at about 1pm on 9 September, 1999 either because she expressed a desire not to work at the lunchbar any longer or because Mrs Clarke terminated her. There is no suggestion from either party that this discussion was in any way heated. I consider given the events of the day, and the following day and having heard both parties that the former reason is more probable.

I consider having assessed the evidence of each party before the Commission that both Ms O'Connor and Mrs Clarke took from the conversation at about 1pm on 9 September that Ms O'Connor did not wish to work at the lunchbar any longer. This was probably because the applicant felt the environment

was unpleasant and felt that her employer had knowingly underpaid her. On this basis Mrs Clarke gave Ms O'Connor one week to find another job.

Therefore while the employee/employer relationship may have been strained; the applicant was not unfairly dismissed and but for her own actions could have continued to work at the lunchbar.

The departure of Ms Ahec would seem at odds with this conclusion. Ms Ahec is clearly no longer employed at the lunchbar and with Ms O'Connor filed a section 29 application for unfair dismissal which she later withdrew. The reason for this is not known to the Commission. In terms of what transpired between Ms Ahec and her employer the Commission has only an account by Ms O'Connor upon which to rely. The Commission has given no weight to this. Further it is difficult to reconcile this with the outcome for Ms Lear who Ms O'Connor acted in concert with on 9 September, 1999.

The applicant says that she spoke to an officer in the Department of Productivity and Labour Relations on 10 September, 1999. She says the officer recommended that she telephone the employer and give the employer one hours notice because she was too scared to return to work. She says she was advised that she would still be able to claim unfair dismissal. She followed this advice and in the afternoon of 10 September she contacted Mrs Clarke and gave her notice that she would not return to work at the lunchbar. At this point she effectively terminated her employment. The applicant subsequently filed a section 29 application on 16 September 1999 alleging unfair dismissal and seeking compensation only.

One final issue that should be dealt with is whether Ms O'Connor was employed as a casual. The question of whether the applicant was unfairly dismissed does not rely on this, however, both parties have sought to convince the Commission of the nature of the employment relationship.

The definition of casual employees under the Restaurant, Tearoom, Catering Workers Award is—

“A casual employee shall mean an employee engaged and paid as such, and whose employment may be terminated by the giving of one hour's notice on either side, or the payment or forfeiture, as the case may be, of one hours pay. Casual employees shall not be engaged for less than two consecutive hours per time.”

Even though there is some dispute and vagueness about this in the reports from both the applicant and the respondent, Ms O'Connor was engaged and paid as a casual employee. The letter she presented in evidence at exhibit O1 was designed to secure a loan by proof of stable employment. However, it is clear by the way in which Ms O'Connor says that she approached her claim for underpayment that both the respondent and the applicant considered the employment to be of a casual nature.

Nevertheless, the actual nature of the employment relationship was different. Ms O'Connor was employed continuously for a period of approximately thirteen months, and except for the events leading up to her termination (or perhaps sale of the business) she would have expected to continue in her employment. During that time there was some reduction in her average weekly hours but her employment maintained a fairly stable pattern, inclusive of commencement and finish times, which were governed by a roster system. The rosters were typically posted weekly. While both parties had the opportunity to vary days or hours according to their circumstances, the flow of business and the actual operation of the rosters dictated a regular engagement.

The definition of part time workers under the Award is—

“A part time worker shall mean a worker who, subject to the provisions of Clause 8. – Hours, regularly works no less than twenty ordinary hours per fortnight nor less than three hours per work period. A part time worker shall receive payment for wages, annual leave, holidays, bereavement leave, and sick leave on a pro rata basis in the same proportion as the number of hours worked each fortnight bears to seventy six hours.”

This more adequately characterised the employment relationship in this matter.

In *Squirrell -v- Bibra Lakes Adventure World Pty Limited trading as Adventure World (64 WAIG 1834 at 1835) Fielding SC* noted—

“The concept of casual employment within the common law of employment, untrammelled by award prescription, is generally taken to connote an employee who works under a series of separate and distinct contracts of employment entered into for a fixed period to meet the exigencies of particular work requirements of an employer, rather than under a single and ongoing contract of indefinite duration.”

The employment of the applicant does not fit this description. The Full Bench in *Serco (Australia) Pty Limited v John Joseph Moreno (76 WAIG 937 at 939)* noted in respect of the definition of a casual employee, that the parties

“... cannot by use of a label render the nature of a contractual relationship something different to what it is (see *Stewart -v- Port Noarlunga Hotel Limited (op cit)* per Haese DPP at pages 5-6). Certain indicia maybe indicative of the nature of the contract but they are not determinative, taken alone. These may include the classifying name given to a worker and initially accepted by the parties, the provisions of the relevant award, the reasonable expectation that work would be available to him, the number of hours worked per week, whether his employment was regular, whether the employee worked in accordance with a roster published in advance, whether there was reasonable mutual expectation of continuity of employment, whether the notice is required by an employee prior to the employee being absent on leave, whether the employer reasonably expected that work would be available, whether the employee had a consistent starting time and set finishing time, and there maybe other indicia.”

Having assessed Ms O'Connor's employment against these indicia I take the view

that she was not a casual employee.

The application will be dismissed.

Appearances: Ms D. O'Connor on her own behalf.

Mrs P. Clarke on her own behalf.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dianne Joyce O'Connor

and

Patricia Alma Clarke/Ian Donald Clarke of
Clarke's Lunch Bar.

No. 1420 of 1999.

COMMISSIONER S WOOD.

3 March 2000.

Order.

Having heard Ms D O'Connor on her own behalf and Mrs P Clarke on her own behalf, 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.) S. WOOD,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Amanda Radwell-Rogers

and

Mr Samuel and Mrs Angela Bailey.

No. 516 of 1999.

COMMISSIONER P E SCOTT.

7 March 2000.

Reasons for Decision.

Extempore

THE COMMISSIONER: This is an application by Amanda Radwell-Rogers against Mr Samuel and Mrs Angela Bailey, claiming that she has been unfairly dismissed by them. The Applicant has given evidence that she was employed by Glennon Holdings Pty Ltd which I understand from the evidence of Mr Bailey was trading as Eddystone Avenue Child Care Centre at the time the Applicant commenced employment at that Centre.

The Applicant commenced that employment in January 1995 as a qualified Child Care Worker. At the end of June 1998, the Applicant went on maternity leave. Initially that was to be for a period of 3 months. However, approximately 2 weeks prior to her scheduled return, the Applicant contacted the Co-ordinator of the Centre and advised her that she was not ready to return but that when she was ready to return she would make contact. The Applicant gave evidence that she left the matter open on that basis.

The evidence is that for at least a couple of months prior to the end of November 1998, the Centre was on the market and negotiations for its sale were proceeding with a Mr Colin Hinckston. The evidence of Mr and Mrs Bailey is that prior to the sale occurring, Mr and Mrs Bailey had advised the proposed new owners of the business, that the Applicant was on maternity leave and would be returning to the Centre. The Commission has received into evidence 2 pieces of correspondence (Exhibits 2 and 3) from Colin and Tracey Hinckston who are referred to as the proprietors of the Child Care Centre. However, one of those documents refers to Tracol Pty Ltd trading as Eddystone Avenue Child Care Centre. In any event, the evidence is that the business was sold and the new owners represented by Mr and Mrs Hinckston took over the business on 30 November 1998.

On a Monday morning, at the end of November 1998, the Applicant received a telephone call from the Co-ordinator of the Centre. She was told that the Centre had been sold and that there would be a meeting with the new owners. There was an arrangement made between the Applicant and the Co-ordinator for the Applicant to come in on the Friday following this conversation and she would have an opportunity to say goodbye to Angela Bailey and to meet the new owners.

I note that Exhibits 2 and 3 are purportedly from Mr Hinckston, in which it is stated that they were not aware that the Applicant was on maternity leave at the time the business was purchased. One of those documents is in the form of a facsimile transmission which is purportedly signed by Colin Hinckston and the other is a document dated 5 October 1999 which is not signed.

In any event, on the Friday following the sale of the business, the Applicant came in to meet the new owners and to say goodbye to Mrs Bailey. She has given evidence that she met with Colin Hinckston. She discussed with him that she was on maternity leave and that when she returned it was intended that she would job share. He asked her questions about her preferences and he told her how he envisaged the work being arranged. She says that she left with the impression that it was understood that she would be returning. In fact, she has given evidence that Mr Hinckston asked her when she wanted to come back and where she would be working when she returned, and she understood that it was open at that stage for her to return. She has given evidence that Mr Hinckston told her that he would be doing the administration and that the job to which she was likely to return would be in the toddlers room on a contact basis. She expressed that she would have preferred to go back into the office but has said that if that was

what was available then she would accept that. The Applicant says that she walked away from that meeting thinking that everything was okay, that there was every indication that the job would be there when she was ready to come back.

The Applicant had no further contact with the business until 1 April 1999 when she telephoned to speak to the new owners about her intended return. She spoke with Tracey Hinckston who suggested to her that she should come in and talk to them about her return on the basis of some confusion that was said to have arisen. A couple of days after 1 April, the Applicant went in to meet with the new owners of the business and at this time was told that her job was no longer available to her. She was told that during the transmission of the business and the changing hands that all staff that had been employed by the business had been given notice and paid out their entitlements. In effect, there was no position for her. The Applicant received no such notice.

I have observed the witnesses as they have given their evidence and I am satisfied that they have truthfully testified to the circumstances as they believe them to be. The Commission must weigh the evidence contained in Exhibits 2 and 3, with the first hand evidence of Mr and Mrs Bailey. I find no reason to disbelieve Mr or Mrs Bailey that the matter of the Applicant being on maternity leave and her intending to return was mentioned to the new owners. I am satisfied that they did advise the new owners that the Applicant was on maternity leave. In any event in a matter of days after the takeover, the Applicant had the discussion with Mr Hinckston referred to earlier. I conclude that at the time of the sale of the business by Glennon Holdings Pty Ltd to another business it was understood that the Applicant was on maternity leave and would be returning to work. There is no indication that at this time her employment had been terminated. The Applicant's status from June 1998 until a few days after 1 April 1999 was that she was on maternity leave. I conclude that her employment was terminated by the new owners of the business a few days after 1 April 1999 when the Applicant met with Colin Hinckston. Her employment had been continued by Mr Hinckston on behalf of the new owners of the business on the basis that when she had met with him in November 1998 there had been a discussion about the circumstances of her being on maternity leave and that she was intending to return. At this time the Applicant was entitled to believe that she had ongoing employment with the new owners of the business and that she would be able to return at the time that her maternity leave was to conclude.

Accordingly, I am not satisfied that Sam and Angela Bailey terminated the Applicant's employment. As her application is made against Mr Samuel and Mrs Angela Bailey in person, that application cannot succeed because there was no termination of employment by those persons of the Applicant's employment.

I also note that the Applicant has not properly named her employer of the time, being Glennon Holdings Pty Ltd. However, even if she had named that company as the Respondent, I am satisfied that neither Mr Samuel and Mrs Angela Bailey nor Glennon Holdings Pty Ltd was the employer who terminated her employment when it was terminated in early April 1999. Accordingly the application will be dismissed.

APPEARANCES: The Applicant appeared on her own behalf

Mr S Bailey appeared on behalf of the Respondents

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Amanda Radwell-Rogers

and

Mr Samuel and Mrs Angela Bailey.

No. 516 of 1999.

COMMISSIONER P E SCOTT.

7 March 2000.

Order:

HAVING heard the Applicant on her own behalf and Mr S Bailey on behalf of the Respondents, 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.

Siriphon Linda Schulze

and

Industrial Personnel Pty Ltd.

Application No. 1716 of 1999.

COMMISSIONER J H SMITH.

9 March 2000.

Order:

HAVING heard Mr A J Doulman as agent for the applicant and Mr P Lloyd for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders—

- (1) THAT the respondent shall provide copies of the application form of employment and terms and conditions of employment to the applicant within seven days of the date of this Order.

(Sgd.) J.H. SMITH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dennis Joseph Shaw

and

Brandrill Limited.

No. 80 of 1995.

1 March 2000.

Reasons for Decision.

COMMISSIONER C.B. PARKS: Brandrill Limited (the respondent) provides a drilling and blasting service to companies in the mining industry throughout Western Australia. In December of 1994 the respondent advertised in the daily newspaper that it sought to employ persons in several occupations associated with drilling and blasting. Dennis Shaw (the applicant) responded to the advertisement by way of forwarding a copy of his written curriculum vitae, together with a support certificate and licence, to the office of the respondent in Pinjarra. On 30 December 1994 a contact with Mr Shaw initiated by the respondent led to a telephone conversation between Mr Shaw and Howard James Branson, the operations manager for the respondent, in which the applicant asserts

he was offered and accepted employment. However, when on 3 January 1995 he reported to the office of the respondent in Pinjarra to undergo an induction process, he was told by Mr Branson that he had no job. The applicant complains that he was engaged as a driller but was unfairly dismissed from that employment and in remedy he seeks an order that he be reinstated in employment with the respondent.

Having heard the parties the Commission determined that the respondent did not engage the applicant upon a contract of employment and their relations did not proceed beyond the selection process and hence there was no dismissal from employment upon which to ground the application before the Commission. That the Commission declared to the parties and announced that the reasons for so finding would subsequently issue in writing and they now follow.

According to Mr Shaw, in the telephone conversation he had with Mr Branson on 30 December 1994, Mr Branson indicated to him that he had read his curriculum vitae and that they had work for him. Mr Branson spoke of the need for a police clearance and questioned whether he would expect to pass a drug and alcohol test to which he responded in the affirmative. Mr Shaw has recollection of Mr Branson mentioning that the employment involved a two-week trial period followed by a three month probationary period. Mr Shaw says he expressly asked if he had obtained the job and Mr Branson responded in the affirmative and said he would be contacted by a Glen Miller who would arrange with him to attend an induction course. The attendance at which, in his experience, did not occur until after employment had commenced and that therefore confirmed to him he had been engaged.

The applicant denies that Mr Branson explained to him the wage rate and several other terms and conditions of employment, or that he said to the effect that, he the applicant, "looked good on paper" and that he should visit Pinjarra and undergo induction and the formal application process.

Mr Branson explained that the work done by the respondent for mining companies meant that their workforce engaged on those contracts often lived in camp accommodations controlled by the mining company, and because drugs, alcohol, and unsocial behaviour caused problems in that environment, and offenders are required to be removed, the respondent does not engage a person as an employee until such time as the appropriate checks on the person have been completed. Hence, he would not engage, and did not engage, Mr Shaw as an employee during their telephone conversation because such checks were required to be done. However it is common practice that when he makes telephone contact with a person who has been shortlisted in the selection process he asks whether the applicant for employment believes he would pass such tests and from their response he assesses whether it is worthwhile continuing the selection process further. It is his recollection that he conveyed to the applicant to the effect that "he looked good on paper", meaning he appeared suitable and hence he should visit Pinjarra to complete the application process and undergo induction. Mr Branson told the Commission that it is common practice with the respondent to have applicants for employment, who have the potential to be engaged, undergo the induction process while at the same time the selection process proceeds and then if there are satisfactory check results and the person is engaged that new employee is able to be directed to the worksite without further delay.

Michael Darren McBeth, an employee of the respondent who commenced such employment after the "Christmas period" of 1994, says he underwent a telephone interview with Mr Branson who remembered him as a previous employee of the respondent and reminded him of the selection process that had to be completed. Mr Branson is said to have expressly mentioned terms and conditions of employment and the need for him to pass drug and alcohol testing after having asked if he, Mr McBeth, thought he would pass those tests. Mr Branson suggested he visit the Pinjarra office to complete the necessary application forms and to undergo an induction process. Mr McBeth says that at the end of the conversation his understanding was that he had to undergo the final part of the selection process and that if he "made the grade" he would then be engaged and that is what ultimately occurred.

Given what Mr Branson has told the Commission is the company practice when engaging employees, and that practice was followed in relation to Mr McBeth who applied for,

and gained employment, around the time the conversation occurred between Mr Branson and the applicant, it is improbable that Mr Branson departed from the practice and engaged Mr Shaw on 30 December 1994. Mr Branson says he did not do so and he indicated no more to Mr Shaw than at that point he appeared suitable but that he was required to complete the remainder of the selection process and undergo induction.

There was evidence before the Commission directed towards establishing whether or not the respondent conducted checks with the referees provided by the applicant, and whether the checks that were done were adequate, however that is not material to the determination of this matter because the Commission is satisfied there was no offer of employment to the applicant, and acceptance by him, on 30 December 1994. It follows there is no industrial matter, nor dismissal, upon which to ground the application before the Commission. Hence it is that the Commission determined the application should be dismissed.

Appearances: Mr TC Crossley on behalf of the applicant
Mr Wilson, of Counsel on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dennis Joseph Shaw

and

Brandrill Limited.

No. 80 of 1995.

1 March 2000.

Order.

HAVING heard Mr TC Crossley on behalf of the applicant and Mr Wilson, 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.

[L.S.] (Sgd.) C. B. PARKS,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Kenneth Simpson

and

Westrac Equipment Pty Ltd.

No. 1799 of 1999.

COMMISSIONER S.J. KENNER.

9 March 2000.

Orders and Directions.

Having heard Mr G Hocking of counsel on behalf of the applicant and Mr D Sproule as agent for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders and directs—

- (1) THAT the notice of application be and is hereby amended in terms of the minutes of proposed directions provided to the respondent and the Commission on 9 March 2000.
- (2) THAT the respondent provide the applicant with copies of the following documents in its possession, custody or power by 19 March 2000—
 - (a) All documents on the applicant's personnel file or similar record.
 - (b) All notes made by Peter Calligero of the interview with the applicant on 3 November 1999.

- (c) All notes made by Rod Hannson of the interview with the applicant on 3 November 1999.
- (d) All notes made by Rick Nardi of the interview with the applicant on 3 November 1999.
- (e) All notes made by Greg Howley of the interview with the applicant on 4 November 1999.
- (f) All notes made by Rod Harmsen of the interview with the applicant on 4 November 1999.
- (g) All notes made by Andrea Vesley of the interview with the applicant on 4 November 1999.
- (h) All documents specifying the duties and/or responsibilities of the applicant as at 1 January 1999 and at 8 November 1999.
- (i) All documents recording and/or reporting any loss, damage, costs or expenses incurred by the respondent or anyone else arising from the preparation, modification, assembly or testing of engines for 240 vault electrical power generation applications since 1 January 1994.
- (j) The respondent's alcohol and drug policy at 14 August 1989.
- (k) The respondent's alcohol and drug policy at 1 January 1999 and the procedures (if any) to be followed—
- (i) prior to requiring an employee to undergo a drug test, including any guidelines applied in making the decision as to whether an employee be required to submit to a drug test;
 - (ii) the drug testing regime/protocol to be used and who is to conduct the test;
 - (iii) if the employee submits to a drug test required by the respondent, any regime/protocol/guidelines used to report the result to the employee and record the result on the employee's personnel or similar file;
 - (iv) if the employee refuses to submit to a drug test required by the respondent, any regime/protocol/guidelines used in taking any further action on the matter.
- (l) The respondent's alcohol and drug policy at 1 July 1999 and the procedures (if any) to be followed—
- (i) prior to requiring an employee to undergo a drug test, including any guidelines applied in making the decision as to whether an employee be required to submit to a drug test;
 - (ii) the drug testing regime/protocol to be used and who is to conduct the test;
 - (iii) if the employee submits to a drug test required by the respondent, any regime/protocol/guidelines used to report the result to the employee and record the result on the employee's personnel or similar file;
 - (iv) if the employee refuses to submit to a drug test required by the respondent, any regime/protocol/guidelines used in taking any further action on the matter.
- (m) The respondent's alcohol and drug policy at 1 November 1999 and the procedures (if any) to be followed—
- (i) prior to requiring an employee to undergo a drug test, including any guidelines applied in making the decision as to whether an employee be required to submit to a drug test;
 - (ii) the drug testing regime/protocol to be used and who is to conduct the test;
 - (iii) if the employee submits to a drug test required by the respondent, any regime/protocol/guidelines used to report the result to the employee and record the result on the employee's personnel or similar file;
 - (iv) if the employee refuses to submit to a drug test required by the respondent, any regime/protocol/guidelines used in taking any further action on the matter.
- (n) All documents signed by the applicant acknowledging acceptance by him of the respondent's alcohol and drug policy and/or any procedures established by the company to deem a refusal to undergo a drug test as a positive result.
- (o) All documents showing or tending to show that the applicant was provided with a copy of the respondent's alcohol and drug policy and/or any procedures established by the company to deem a refusal to undergo a drug test as a positive result.
- (p) All documents relating to the mass random drug testing of the respondent's employees in July 1999, showing a summary of the results of the tests.
- (q) All documents showing the number and details of employees who refused to undergo the mass random drug test carried out by the respondent of its employees in July 1999.
- (r) All documents showing the number and details of those employees who refused the test in July 1999 and were offered a further opportunity or opportunities to undergo a drug test at a later date.
- (s) All documents showing the number and details of employees who after 8 November 1999 have been offered the opportunity of having a saliva test for drugs instead of a blood test.
- (t) All documents showing the number and details of employees who have had their services terminated because of a refusal to undertake a random drug test since 1 January 1999.
- (u) All documents showing that the mass drug test conducted of the respondent's employees in July 1999 did not comply with the requisite Australian Standards concerning such tests.
- (3) 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.
- (4) THAT the parties file and serve upon one another any signed witness statements upon which they intend to rely no later than 7 days prior to the date of hearing.
- (5) 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.
- (6) THAT the applicant and respondent file an agreed statement of facts (if any) no later than 3 days prior to the date of hearing.
- (7) 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.
- (8) THAT the parties have liberty to apply on short notice.

[L.S.]

(Sgd.) S.J. KENNER,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Louise Ann Smyth
and

St John of God Health Car Inc.

No. 1973 of 1998.

COMMISSIONER J F GREGOR.

13 March 2000.

Supplementary Reasons for Decision.

On 24 December 1999, the Commission issued Reasons for Decision in this matter. The Commission found that the applicant had been unfairly dismissed and that reinstatement was not available. As reported in the Reasons the Commission had before it, a schedule of the applicant's loss and damage but there was no evidence called to support the figures. The establishment of loss is a matter of proof (*see Rogers v Leighton Contractors Pty Ltd, Full Bench 1 November 1999 unreported*). The Commission could not assess loss and for the purpose of equipping it with all of the information necessary to properly conclude the question of compensation, the matter was listed to give the applicant the opportunity to produce evidence of loss.

On 10 February 2000, Counsel for the respondent submitted that in effect the Commission had allowed the applicant to reopen her case. To do so was wrong because the respondent was not given the opportunity to be heard in relation to the 'decision to reopen'. The Commission had failed to act upon the evidence as to economic loss which was before it and failed to give proper consideration to matters relevant to the decision to allow the applicant to reopen. This was an offense against the principles of natural justice because the respondent was denied the opportunity to make submissions in relation to decisions which might adversely affect it.

As to this submission, I say that the matter was not reopened, the Commission was not *functus officio*, it has a duty to inform itself in order that it properly disposes of matters before it. Once it has decided to do so, it is obliged by section 26(4) of the Act, to give the parties a right to be heard. This is precisely what happened and was the reason for the matter being relisted for 10 February 2000. The respondent has not been denied the opportunity to put whatever information it wishes before the Commission and in fact, has now done so.

The respondent has drawn to the attention of the Commission the admissions of Counsel for the applicant that she had not suffered any economic loss as a result of her termination. (See Transcript Page 6) It is argued that the Commission is obliged to act on the basis of the admission.

It is correct that the applicant is bound by the submissions of her Counsel, however, by the time the Counsel for the applicant produced its outline of submissions, it had included detailed submissions concerning the amount of compensation it claimed. Those submissions were answered by the respondent during the hearing. I can only conclude that the statements by Counsel for the applicant early in the proceedings were an aberration. It would be a denial of justice to the applicant if those statements barred the Commission from making a proper assessment of compensation.

The applicant submits that prior to termination of her employment she worked 21 hours a week for a remuneration package of \$108,000 gross per annum. She attempted to mitigate her loss and has obtained and holds 2 part-time jobs. The applicant said in the twelve months following the termination of the contract of employment, the gross aggregate remuneration for both jobs was \$82,233.00, but she works an extra 7 hours per week to earn this amount. Therefore, she earned a gross \$25,715.00 per annum less for a 28 hour week than she was earning as an employee of the respondent working 21 hours per week. The applicant claims she would have been employed by the respondent for at least a further twelve months, therefore, her loss for the succeeding twelve months should be taken into account. That loss is projected at \$16,528.00. The third head of claim is compensation for injury and loss of reputation, in particular, humiliation, injury to feelings, mental stress, anxiety and loss of dignity. The

applicant claims she should be awarded \$35,000.00 for injury. In summary it is argued the applicant should be paid a total of \$77,224.00 less \$21,016.50 payment in lieu of notice, making a total of \$56,277.00. The applicant's claim is capped at \$54,000.00 being six months salary at \$108,000 and she seeks orders for compensation of the full amount of \$54,000.

The respondent says that the applicant was employed until 12 January 1999. She was paid in advance for this period on 21 October 1998 the sum of \$26,270.00. She was not required to attend work during that period and she suffered no loss. Further damages should be assessed on the basis that if she had remained with the respondent, her salary would have been reduced from \$108,000.00 to \$90,000.00. The applicant earnings from her work at Inglewood Health Centre for the period 19 October 1998 to 15 October 1999 are \$578.00 per week. The weekly pay from General Pathology Services is \$1,243.00. In total this is \$255.92 less than a weekly package from the respondent, however, if the argument is accepted that the salary should be regarded as being at \$90,000.00 per annum, then she received \$90.00 per week more than she would have received from the respondent. The Commission is therefore, urged to conclude that the applicant has suffered no loss. The respondent also says that during 12 October 1998 to 12 January 1999, the applicant earned \$8,937.00. working at Inglewood Health Centre. These additional earnings should be offset against any diminution. These additional earnings represent 35 weeks of diminished earnings at \$255.92 per week.

The principles which are to be applied in assessing compensation were established in *Gilmour -v- Cecil Bros & Others 1978 WAIG 1000 @ 1103* and have been further explained in *Bogunovich v Bayside Western Australia Pty Ltd*.

"An award of compensation which does not properly compensate the applicant for loss or injury cannot be said to be a sound exercise of discretion, nor can it be said to be an order made in equity, good conscience and on the substantial merits of the case, but an arbitrary award is an error in law".

The respondent argues the amount of loss should be diminished by regarding the earnings of the applicant post the termination date as \$90,000.00 per annum. I cannot accept that argument, the amount of earnings at the time of termination was, \$108,000.00. I have carefully considered the respondent's submissions on the question of deductions and it seems to me that the applicant has taken into account all of those sums of money which should have been regarded as earnings in mitigation; i.e. the amount of money that the applicant was paid during the notice period which she did not work and in addition \$8,937.50 earned while working at the Inglewood Health Centre. These figures are all included in the amended schedule of applicant's loss. I conclude that the applicant's loss over the period which constitutes a similar length of time to the balance of her contract is \$42,243.00. I now turn my attention to the question of compensation for injury for loss of reputation.

In *Ramsay Bogunovich v Bayside Western Australia Pty Ltd (ibid)*, his Honour The President examined claims for injury and loss of reputation. In *Bogunovich (ibid)* the applicant had suffered mental distress, anxiety, loss of dignity and on medical evidence his depressive state was aggravated by an unfair dismissal. At the heart of his injury was the fact that he was dismissed having continued work whilst in pain and having achieved very good results. He was surprised and shocked by his dismissal. The President found there had been a psychological impact upon the applicant because of his dismissal. His self-esteem was closely tied to his work and he experienced feelings of failure and his mood deteriorated. This was the medical evidence. As for loss of reputation. The applicant in *Bogunovich* was able to find appointments through his professional network. The President was not satisfied there was any substantial loss of reputation established. He was satisfied that a pre-existing depressive state was aggravated by the dismissal and the manner of it, that there was humiliation, injury to the feelings of the applicant and he was treated with callousness. The President was satisfied that the dismissal was more than a minor setback to him, given that he was on workers' compensation at the time. Upon this analysis His Honour awarded \$5,000.00. He cited a similar award in *Burazin v*

Blacktown City Guardian Pty Ltd 142 ALR 144 at 156 (IRC of Aust)(FC), as an example.

The evidence before the Commission concerning the affects for injury and loss of reputation in this matter is distinguishable. The decision to dismiss for the applicant came about after a extended period of negotiation, carried out by lawyers. There was considerable warning that a dismissal may occur. That it was unfair when it eventually happened has been dealt with in my original Decision and is not relevant to the assessment the quantum of compensation. The applicant was able to obtain work almost immediately. Her failure to get work as an immuno-pathologist has nothing to do with her competence, it is because work in that very specialized field, described in the proceeding as a 'Super Specialty', is limited in any event. There has been no medical evidence of depressive state suffered by the applicant. In my Reasons for Decision of 24 December 1999, I cited *Rogers v Leighton Contractors Pty Ltd*. In that Decision of the Full Bench, his Honour made an analysis of the injury suffered by the applicant and awarded a sum considerably less than he awarded in *Bogunovich* case because many of the ingredients that contributed to the assessment of injury in *Bogunovich* were absent. Having carefully considered the circumstances in the authorities and compared them with these here, I have decided to award the sum of \$1,500.00 for injury. In total I award the applicant the sum of \$43,743.00.

Appearances: Mr D Vilensky (of Counsel) appeared for the Applicant

Mr S Ellis (of Counsel), appeared for the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Louise Anne Smyth

and

St John of God Health Care Inc.

No. 1973 of 1998.

COMMISSIONER J F GREGOR.

13 March 2000.

Order.

HAVING heard Mr D Vilensky (of Counsel) on behalf of the applicant and Mr S Ellis (of Counsel) on behalf of the respondent, the Commission, pursuant to the powers vested in it under the *Industrial Relations Act 1979*, hereby orders—

- 1) THAT the applicant was unfairly dismissed by the respondent.
- 2) THAT the respondent shall pay the applicant the sum of \$43,743.00 compensation.

(Sgd.) J.F. GREGOR,

[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cherrie Michelle Staphorst

and

Captains Girl MV Pty Ltd T/As Captains Girl MV.

No. 423 of 1999.

COMMISSIONER P E SCOTT.

21 March 2000.

Reasons for Decision.

THE COMMISSIONER: This is an application made pursuant to s.29 of the *Industrial Relations Act 1979* ("the Act") whereby the Applicant claims that she has been unfairly dismissed from her employment with the Respondent.

This matter has been the subject of a number of conferences convened for the purpose of conciliating between the parties. During the course of the discussions between the parties, agreement in principle was reached. However, the agreement was never concluded due to differences between the parties. The Applicant now seeks to have the matter heard and determined.

The matter was listed for hearing for Thursday 2 and Friday, 3 March 2000. A notice of hearing was provided to the parties on 10 December 1999. Due to other commitments of the Commission, and subject to conferring with the parties, the Commission amended the hearing dates to Friday, 3 March and Friday, 10 March 2000. By verbal advice to the Commission, the Respondent's representative indicated that he would be submitting that the application should not proceed in the public interest as the Respondent had ceased to trade and had no assets but had liabilities. On 28 February 2000, a witness statement for Helen Ferry, a director of the Respondent, was filed with the Commission.

By an application lodged with the Commission on 1 March 2000, the Applicant sought to have Helen Ferry, a director of the Respondent, added as a second Respondent pursuant to s.27(j) of the *Industrial Relations Act 1979*. No grounds were stated in this application.

On Thursday 2 March 2000, the Commission convened a conference in Chambers for the purpose of dealing with that application. Prior to the matter of the adding of a Respondent being dealt with, the Applicant raised a number of other preliminary matters. The first was an application that the matter be reallocated on the basis that the Commission as presently constituted had presided over the conciliation proceedings during which offers had been made and accepted but which did not proceed to fruition. It was said for the Applicant that there could be an apprehension of bias because of the Commission's awareness of the details of the negotiations between the parties. The Respondent opposed this application.

I considered this matter and advised the parties of my decision during the conference, that I was aware of the negotiations which had proceeded, however, I was also aware that those negotiations were of a without prejudice nature and that they had failed to resolve the matter. The Act, other than in s.44, which is not relevant to this application, does not require that a member of the Commission who presides over conciliation proceedings be excluded from hearing and determining the matter should agreement not be reached. The circumstances which have been raised by the Applicant are no different from those which arise in the normal course of applications made pursuant to s.29 claims being dealt with by the Commission. There is nothing within those circumstances which is unusual in a matter before a tribunal such as this. Being aware that the negotiations between the parties were on a without prejudice basis and that there are a variety of reasons why parties offer and accept proposals to settle which are put to them, I am not satisfied that there should be any reason why I could not proceed to hear and determine this matter. Accordingly, the application for reallocation is denied.

At the conference on 2 March 2000, the Applicant also requested that the hearing be adjourned for two reasons. The first was that the Applicant was to be married on Saturday, 4 March 2000; and secondly, she wanted more time to consider her position because she was concerned about costs. It was suggested to the Commission that only matters of a preliminary nature be dealt with on Friday, 3 March 2000 and that the merits of the matter be adjourned for a later date. This would allow the Applicant to consider her position and to decide whether she wished to proceed bearing in mind the costs and other circumstances that might arise should she decide to proceed.

The Respondent opposed the matter being adjourned at all. Part of the reason for this was that Ms Ferry, its chief witness, would not be available for some time. Further, the Respondent's representative who has had carriage of this matter to date would be unable to represent the Respondent should it be delayed because of changes to his situation which are to occur in a few weeks and therefore the Respondent would need to brief someone else.

The listing of this matter on Friday, 3 March 2000 was known to the parties in early December 1999. Only the date of Thursday, 2 March was altered, and Friday, 10 March was added.

The Applicant must have known of her wedding date for some weeks. As to the question of her seeking adjournment to allow her to consider the issue of the costs she would incur, the Applicant, represented and advised by a registered agent with many years of experience, ought to have considered this matter before deciding that she wished to proceed to hearing in the first instance. The date of hearing has been known for more than two months. That should have allowed sufficient time for consideration of all issues. The Applicant ought to have taken full account of this in her personal arrangements and has had every opportunity to consider all of the issues associated with pursuing this matter including the question of costs. The Respondent would be liable to suffer real inconvenience should the hearing be adjourned. Its chief witness would be unavailable on the next scheduled hearing date, and soon thereafter, its representative would be unavailable and it would need to instruct a new representative. The balance of convenience is not with the Applicant in having an adjournment. Rather it is with the Respondent.

Further, the Commission's listing of such matters is not done lightly and for the Commission to vacate the hearing date at this point and set it down at a later date would not be an appropriate use of the Commission's resources (*Sali v SPC Limited* (1993) 67 ALJR 841 @ 843 and 849). The application for adjournment of the hearing scheduled for 3 March 2000 was denied. The parties were advised in conference that when the hearing commenced on Friday, 3 March 2000 the Commission intended to proceed to deal with the substance of the claim immediately, should the Respondent's preliminary issue not be successful.

Finally, the Commission considered the application by the Applicant to add Helen Ferry as a second Respondent. The Applicant's reasons for this appear to be simply that Ms Ferry is a director of the Respondent. The Respondent is a proprietary limited company. It was simply submitted that because Helen Ferry was a director, who was involved in the employment of the Applicant and the direction of the operation of the business that she ought be named as a Respondent. The Applicant's representative made some very vague reference to the duties and responsibilities of directors of companies, and that as a director, Ms Ferry was liable for any non-payments by the Respondent. Vague reference was also made to the "Patrick's" dispute "where directors had been named as Respondents" and were held accountable for the actions of the company. A search of various data bases dealing with "Patrick" identifies a number of High Court and Federal Court decisions, which deal with the notorious waterfront dispute in 1998. Those decisions dealt with a multitude of issues including those relating to the Workplace Relations Act 1996; the Corporations Law; the history and actions of a number of companies and their dealings with employees; the jurisdiction of the Federal Court of Australia, and its authority to grant an injunction; the obligations of Administrators under the Corporations Law; to name a few. No similarities between the situation in those cases and this matter were drawn to the Commission's attention by the Applicant, nor was the Commission referred to any matters of principle to be drawn from the unspecified decision. Without further information from the Applicant, it is not for the Commission to undertake the search which would be necessary to ascertain what might be meant and then to sort the wheat from the chaff to find some relationship between the Applicant's reference to "Patrick's" and the matter at hand.

In this case, the Commission is unable to find any particular link between the "Patrick's" decision and the matter at hand such as to warrant the granting of the Applicant's application to add Ms Helen Ferry as a Respondent.

If a situation arises of the Respondent not meeting any of its obligations then the Corporations Law deals with those matters. I am not satisfied that there is any reason to name Ms Ferry as a Respondent.

Accordingly, the application to add Helen Ferry as a second Respondent to this application is denied.

Finally, when the hearing of the matter commenced on Friday, 3 February 2000, the Applicant's agent again requested an adjournment for two reasons. He stated—

"MR CLOHESSY: May I indicate two things: one, that the worker has said that she can't make it today, that she

has taken her mother to hospital, under those circumstances, with my problem, unfortunately, with the medication lapse that I have had this morning, I thought that I could probably see out the preliminary point, but I would then be seeking an adjournment. I would think that next week there will be ample time, under the circumstances, to deal with the whole of the issues. Thank you."

(Transcript page 2)

The Respondent objected to an adjournment saying that there was nothing before the Commission as to who was available to take the Applicant's mother to hospital, or whether alternatives existed. Further, the issue of Ms Ferry's unavailability for the next scheduled hearing date had already been discussed as a result of the application for adjournment raised by the Applicant on the previous day. The Respondent described the Applicant's not being present at the hearing as "convenient".

The Commission sought further information from the Applicant's representative as to the circumstances of her accompanying her mother to hospital. He was unable to provide further information except to say that the Applicant had simply informed him at 7.00am that day "that she was in no way able to attend today". He said that he had apprised her of the consequences.

It is quite reasonable to suggest that there may be scepticism about the application to adjourn and the Applicant's non-attendance in light of the previous day's similar application being rejected.

This matter was set down to commence at 9.00am on 3 March 2000 rather than the customary 10.30am. It was intended that an early start combined with the use of witness statements would see the hearing concluded in one day. It was anticipated that Ms Ferry's evidence would have been concluded and she would not be required for the second scheduled day. The Commission scheduled an additional day to allow for any possible overrun and to hear closing submissions.

The Applicant ought to have been aware, as a result of the previous day's conference that it was the Commission's intention that the hearing proceed as scheduled on 3 March 2000 and that her attendance was necessary. Although she advised her representative of her inability to attend, the Commission had no other information than that she had to accompany her mother to hospital. The Commission was not aware of the circumstances beyond that. Her representative had appropriately advised the Applicant of the possible consequences of her non-attendance, yet she had chosen not to attend and not to provide further information.

At the conclusion of the hearing of the Applicant's second request for an adjournment, the Commission agreed to the Respondent's submission that the application be dismissed. Once again the balance of convenience lay with the Respondent for the same reasons as identified earlier.

Accordingly, the application is dismissed.

APPEARANCES: Mr R Clohessy appeared on behalf of the Applicant

Mr A Mackey (of Counsel) appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cherrie Michelle Staphorst

and

Captains Girl MV Pty Ltd T/As Captains Girl MV.

No. 423 of 1999.

COMMISSIONER P E SCOTT.

21 March 2000.

Order.

HAVING heard Mr R Clohessy on behalf of the Applicant and Mr A Mackey (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.

Andrew James Teller

and

A Exclusive Timber Blinds and Shutters Company.

No. 2009 of 1997.

22 July 1998.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: There is before the Commission an application made pursuant to section 29 of the Industrial Relations Act 1979 wherein the applicant Mr Teller alleges he was unfairly dismissed from his employment in or about September 1997.

As is required of the Commission, an attempt was made to have the parties conciliate upon the matter, and by a letter dated 22 December 1997 both the applicant and the respondent were notified that the Commission had scheduled a conference for that purpose on 13 February 1998. That conference did not subsequently take place for the reason that on 12 February 1998 the applicant made telephone contact with the Commission and indicated that at that time he was in the state of Tasmania, and indicated that he was there as a consequence of a serious illness of his father and he had forgotten about the conference. On that basis, the Commission formally adjourned the conference.

On 17 March 1998 an attempt was made to contact the applicant at the telephone number given by him in Perth, to be informed by a Ms Kylie Russell that he was not at that address and was believed to be in the state of Tasmania. Ms Russell provided the Commission with a mobile telephone number which she said was that of Mr Teller, and she also provided the Commission with another telephone number in Tasmania that she thought might be of assistance to the Commission.

Attempts to contact Mr Teller by telephone resulted in the Commission being advised by a recorded message that the mobile telephone number was no longer connected, and that in relation to the other number, no answer was received on several occasions.

The Commission subsequently, on 28 April 1998, received a handwritten letter dated 20 April 1998 which bears the name and address of Mr Teller, that address being 31 Downing Crescent, Wanneroo, the same address as is contained in his original application. However, that letter is signed by a person named Darren Busscher. In response thereto, Madam Associate wrote to the address given to advise that the person Darren Busscher was unknown to the Commission and that no Warrant to Appear as Agent was on file in that name, and therefore Mr Busscher could not speak on behalf of Mr Teller.

On 5 May 1998 the Commission received a handwritten letter signed by Mr Teller dated 28 April 1998 wherein he requested that his application be brought on for hearing. The address given in that letter is again 31 Downing Crescent, Wanneroo in the state of Western Australia.

Three days later on 8 May 1998, the Commission forwarded a notice of this hearing to the parties involved. That notice, in the case of Mr Teller, was forwarded to the Wanneroo address given.

At the time scheduled for the commencement of this proceeding, there was no appearance on behalf of Mr Teller.

Consequently, I caused Madam Associate to endeavour to make contact with Mr Teller in order to ascertain whether or not he would be represented in the proceedings. Madam Associate telephoned the number held on file which proved to be the address of Ms Kylie Russell, that being 31 Downing Crescent, Wanneroo. Madam Associate was informed that Mr Teller had been residing at that address at the date the notice of hearing was issued by the Commission, and that he subsequently, in June 1998, ceased to reside at that address.

Given the foregoing, I am satisfied that Mr Teller has received the Notice of Hearing in relation to these proceedings, and given the history in relation to this matter, it is apparent that he has given little care and attention to proceeding with his application.

In the circumstances, I am satisfied that both the respondent company and the public purse ought not be put to any further expense in relation to the application made. Accordingly, I will grant the application for dismissal, and an order to that effect will issue.

Appearances: No appearance on behalf of the applicant
Mr S. Palmer on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Andrew James Teller

and

A Exclusive Timber Blinds and Shutters Company.

No. 2009 of 1997.

1 March 2000.

Order.

HAVING heard Mr S. Palmer on behalf of the respondent and there being no appearance on behalf of the applicant, the Commission, pursuant to the power conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jinda Tuinaphiang

and

Industrial Personnel Pty Ltd.

Application No. 1715 of 1999.

COMMISSIONER J H SMITH.

9 March 2000.

Order.

HAVING heard Mr A J Doulman as agent for the applicant and Mr P Lloyd for the respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders—

- (1) THAT the respondent shall provide copies of the application form of employment and terms and conditions of employment to the applicant within seven days of the date of this Order.

(Sgd.) J.H. SMITH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Thomas William Wayne

and

Community Policing Crime Prevention Council of WA
trading as Constable Care Child Safety Project.

No. 387 of 1997.

1 May 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: It is the claim of Mr Wayne (the applicant) that the Community Policing Crime Prevention Council of WA (the CPCPC) unfairly dismissed him from his employment as a Project Coordinator on 31 January 1997 and that he was not allowed benefits due to him under his contract of service, that being an underpayment of wages from 2 to 6 September 1996 and underpayment of commissions. In remedy the applicant seeks compensation and the recovery of the alleged underpayments.

The CPCPC concedes that it dismissed the applicant but denies that it did so unfairly, and further denies that it failed to allow the applicant benefits under his contract of employment.

Prior to September of 1996 the business which traded as Constable Care Child Safety Project had been owned by SMC Media Services Pty Ltd (the SMC) with which the applicant had been employed from January 1996. Between January 1996 and September 1997 the role of Mr Wayne had in essence been telemarketing the Constable Care Child Safety Project and canvassing for corporate financial sponsorship. Mr Wayne was paid commission on the amount of funds he raised for the SMC. The effective date that CPCPC took over from the SMC was 2 September 1996. Mr CR Fraser who had been the principal officer with the SMC became the Chief Executive Officer for the CPCPC and was the person responsible for liaising with the staff, including Mr Wayne, in relation to the transition. According to Mr Fraser on 9 September 1996 he addressed the staff and offered them continued employment on a salary of \$35000.00 per annum and then discussions were subsequently held with the Project Coordinators regarding the commissions which remained owing from their work for the SMC and a payment arrangement was entered into.

Essentially the argument of the applicant is that his dismissal was not warranted, and was therefore unfair, given that the respondent engaged a new employee in the capacity of Corporate Sponsorship Officer to perform a role similar to that which he had occupied, within weeks of his dismissal. The evidence given on behalf of the respondent is that the respondent decided to canvass a selected group of corporations, from which they would seek high levels of sponsorship funding, by means of marketing the business through written presentations. And, in order for that to be successful the person who occupied the role had to be experienced and competent in that form of marketing. It is said that although Mr Wayne had been successful in telephone canvassing for sponsorship he does not have the type of marketing expertise required to produce written presentations nor does he have adequate computer skills to prepare documentation and maintain associated records. Hence the respondent acquired the services of a new employee who is suited to the role, a role which reduced the level of need for telephone canvassing.

I am satisfied from the evidence that the respondent decided to implement a new method of canvassing for financial sponsorship in the manner described to the Commission, and that the applicant did not have the experience or display the competence the respondent required of the employee who would undertake the new role. The restructuring of the operation to include the new role, I am satisfied caused a genuine reduction in the respondent's need for an employee to perform telephone canvassing for sponsorship, and hence I find that the respondent had a valid reason to end the employment of the applicant. It is the finding of the Commission that the applicant was not unfairly dismissed.

The commissions which the applicant claims he is owed are commissions on sponsorship pledges which he obtained for the SMC whilst in the employ thereof, and which he asserts the CPCPC undertook to guarantee the payment of them to him. Mr Fraser told the Commission that sponsorship funds related to pledges of such funds to the SMC are the property of the SMC and hence such funds received by the CPCPC after taking over the business in September 1996 were redirected to the SMC. However initially there had been an arrangement that before such funds were redirected to the SMC, the CPCPC would deduct an adjusted rate of commission and arrange the payment of that to those of its employees who had earned the commission. The CPCPC is said to have ended that arrangement in December of 1996 and thereafter the CPCPC did not act as an intermediary for the SMC and any further commissions which became due and payable thereafter was a matter between the SMC and their former employee. Mr Fraser denies that the CPCPC entered into any arrangement to in effect guarantee the payment of commissions should the SMC default on the payment of commissions.

I am convinced on the evidence of Mr Fraser that the CPCPC did not agree to act as guarantor for the commissions the applicant may have become entitled to for sponsorship funding received by the SMC after 2 September 1996. Furthermore, the CPCPC effectively acted as the agent of the SMC and distributed to Mr Wayne commissions he was due from the funds received on behalf of the SMC, but payable to the SMC, and hence such was an arrangement that did not form part of the contract of employment between the parties before the Commission. Mr Wayne was unable to substantiate the majority of the claims he made for the payment of commission however, the respondent did concede that an error had occurred and in accordance with the arrangement which had been in place he ought have been paid 2 commissions totalling \$118.50. The respondent undertook to pay that to him within 7 days. Given the entitlement to such commission does not arise out of the contract of employment between the applicant and the CPCPC, the payment thereof may not be ordered by the Commission.

The final claim of Mr Wayne is that the respondent failed to pay him his salary of \$35000.00 for the full period of his employment. That salary the respondent commenced to pay to the applicant from 9 September 1996 which is the date the CPCPC asserts that the employment commenced, whereas Mr Wayne asserts that it commenced on 2 September 1996, and hence it is for that period of one week that he claims he was not paid the salary which he was due according to his contract of employment.

In late August 1996 Mr Wayne, while still employed by the SMC, undertook a period of leave and at that stage no employment arrangement had been entered into with CPCPC although all indications were that such would occur. According to Mr Fraser, 2 weeks prior to 2 September 1996 a person from the head office of the SMC in Sydney spoke with the employees in Perth as a group via a telephone conference. That SMC person gave them two weeks' notice that their employment was to terminate. Mr Wayne says he was not present and did not receive such notice. According to the applicant, upon the completion of his period of leave, on 2 September 1996, he reported to the premises where the business operated. It is common ground that, on that date the CPCPC was in the process of packing and preparing to move to different premises, and that Mr Wayne was informed his services were not required but he could assist if he wished. He was told to attend for duty on 9 September 1996. It is on 9 September 1996 that Mr Fraser met with the former employees of the SMC and discussed with them terms and conditions of employment with the CPCPC, and it is at that date he offered the salary of \$35000.00 with the intention it would apply from that date onwards. I have some difficulty discerning from the evidence the date at which employment with the respondent commenced however what is plain is that the salary of \$35000.00 did not exist before 9 September 1996 and the offer did not include a retrospective term of operation. Hence I find the claim for one week's salary at that rate is not justified. There is no alternate claim for payment in that week and there is no evidence that suggests that some different level of

remuneration might have applied to that week. This claim is therefore also dismissed.

Appearances: Mr TW Wayne on his own behalf
Ms C. Crawford on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Thomas William Wayne

and

Community Policing Crime Prevention Council of WA
trading as Constable Care Child Safety Project.

No. 387 of 1997.

1 March 2000.

Order.

HAVING heard the applicant on his own behalf and Ms C. Crawford on behalf of the respondent the Commission, pursuant to the power conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C. B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ben Zoccoli

and

Mercy College.

No. 629 of 1999.

COMMISSIONER J.F. GREGOR.

28 March 2000.

Reasons for Decision.

On 6 May 1999 Ben Zoccoli the applicant applied to the Commission for orders pursuant to Section 29 of the *Industrial Relations Act 1979* (the Act). The applicant in these proceedings was a longstanding employee of Mercy College, the respondent. He had been appointed to the position of Groundsman in November 1992 and continued to work for the respondent until 13 April 1999, when his contract of service came to an end in controversial circumstances. The applicant claims that he was dismissed, whereas the respondent says he resigned on 13 April 1999. Ten days later, following an investigation by the Principal of the College, Mr Harvie, the resignation was confirmed in a letter dated 27 April 1999, which formal parts omitted is as follows—

Re: Resignation

Further to our discussion of 23 April, I am writing to confirm the following.

Your resignation—effective from Tuesday, 13 April. Thank you for handing in your keys and phone on that day.

- 1) Your wages are to the end of April.
- 2) You have been paid for an extra 12 days.
- 3) Your holiday pay allowance is 9 days.
- 4) No claim will be made on the difference of 3 days.
- 5) One months wages will be credited to your account on 15 May, both in recognition of your 6½ years service and to assist you and your family in the coming weeks.

I have enclosed for your use, a Statement of Service. Should you require, both Vicki and myself will be happy to act as a referee for future job applications.

I was pleased to hear of you obtaining work later in the year on the crayfish boats and playing country football.

On behalf of all of us at the College, I wish you every success and happiness in your future ventures.

(Exhibit C3)

Attached to the letter was a Statement of Service which describes the, 'Reason for Finish' as Resignation upon 'Satisfactory Service'.

The applicant disputes that he resigned. He said an incident occurred on 13 April 1999 when he had been allocated work by his supervisor. He did not agree that the work should be done because in his eyes it was a "waste of money and labour". In addition there was a backlog of work to be done. The applicant claims the supervisor addressed him in obscene language to the stage where he had enough. He knew the Principal and the Bursar were away from the school, so he told the supervisor he was walking off. He claims he handed his keys and mobile phone to the supervisor and told him he would see a more senior member of management to sought the matter out. He at no time told the supervisor he was resigning. After he attended a medical practitioner and received a certificate that he was suffering from stress. The applicant said there were numerous occasions before 13 April 1999 when he had arguments with the supervisor over allegations of laziness and work allocation. At no time was the applicant ever counseled concerning his behavior. There were no problems with any more senior persons in the management of the hierarchy of the respondent. In particular he did not receive warnings from either the Bursar or the Principal.

When Mr Harvie returned to the school on 14 April 1999, the applicant was waiting to see him. Mr Harvie asked if there was a problem and the applicant said that there was. The applicant related his version of the events of 13 April 1999. Mr Harvie said he would look into it. There was another meeting on Friday 23 April 1999. The applicant said he was told he would not get his job back, he was of the opinion that he never resigned in any event. The applicant claimed that Mr Harvie told him that other issues had arisen during the investigation. The issues related to allegations of stealing and use of mechanical equipment contrary to policy. The applicant denied the allegations. He had used money from a tin kept by the ground staff in the lunch room but, all of his use was in accordance with the arrangements that existed between the workers and which allowed them to borrow from the tin. When he was asked to return the equipment he borrowed from the school he had done so forthwith. The applicant conceded that he was paid wages until the end of April, that is, he received a month's pay ex gratia.

In support the applicant called evidence from Peter James Worthy, who is a senior groundsman, he had worked with the applicant for four years and explained to the Commission that the use of the money tin was a very loose arrangement. The source of the funds was from cans collected by the workers. Money could be borrowed for purchases such as lunches or birthday. The purpose of the fund was to create a kitty to be used for Christmas parties. Mr Worthy told the Commission that, as long as the supervisor consented small mechanical equipment could be borrowed from the school over the week-end. He had no knowledge of a register. Mr Worthy complained that the supervisor involved had used language towards him that was not appropriate for his position or the school, because of this Mr Worthy reported the matter to Ms Hansen and she dealt with it. Thereafter the supervisor stopped the abusive language but Mr Worthy thought that his attitude did not improve.

Evidence was also taken from Jeffrey Graham, he had worked for the respondent as a groundsman for 7½ years. He confirmed that the money in the tin was used by any of the grounds people who needed it. He was also aware that with permission, small mechanical equipment could be borrowed from the school, but he did not know that he had to sign for it. He had no problems with the ground supervisor.

The respondent through his advocate, Mr Andrew, called evidence to support it's contentions that there was no basis for the claim of the applicant that he had been unfairly

dismissed. The respondent contended that the applicant resigned and if that be the case, issues relating to resignation in the heat of the moment or other forms of duress should not be considered because it has never been conceded by the applicant that he did resign. At all times he has claimed he was dismissed. There were four witnesses for the respondent who would testify that the applicant had told to them that he had resigned. At no time between 13 April 1999 and when he was provided with his Employment Separation certificate did the applicant challenge or raise any issue regarding his resignation. The first time the respondent became aware of the applicant's allegation that he had been dismissed was when he filed his application in the Commission. The respondent had investigated the matter thoroughly. The applicant acknowledged he could not work with his supervisor. He said that if the supervisor was removed from his position, he would consider returning to work. These statements were consistent with the respondent's contention that the applicant had resigned and had not been dismissed. The Catholic Education Commission policies concerning procedural fairness were not invoked in this case because there was a clear resignation. Had there been a dismissal those policies would have come into operation. In any event, the Principal had satisfied himself that there had been a resignation. Whether the applicant's supervisor had adopted an authoritarian managerial style was not the point. There were live issues concerning the applicant removing property from the College and his failure to return it until he was asked. He became annoyed when he was confronted by his supervisor and directed to go home and retrieve property which should not have been in his possession. The applicant also challenged directions given to him, when they were repeated he again challenged the authority of the supervisor to make the directions. He subsequently resigned. This resignation was provided verbally to the supervisor and was accepted. Afterwards the applicant told various work colleagues that he had resigned.

Investigations were instituted by the Principal, Barry Harvie. During these the applicant had told Mr Harvie that he had resigned. On the 16 April 1999 he went to see the College Bursar and told her that he had resigned because he could not work with the supervisor. On 16 April 1999 Mr Harvie told the applicant that his resignation would stand but he would investigate the matter further with the assistance of Ms Hansen. In subsequent conversations the applicant said he would come back to work if the respondent would get rid of the supervisor. This was a clear case where there was conflict between the applicant and the supervisor. The applicant was willing to come back to work if the supervisor's contract of employment was terminated and the respondent declined to do so.

The Principal was also advised that money had been taken by the applicant from the money tin and that he had failed to return the money by the following pay period. The respondent considered whether the applicant should be given employment on the basis that he might have resigned in the heat of the moment. This had to be considered along with the comments of the applicant, that he would not work with his supervisor and more to the point, that he would only come back and work for the College if the supervisor's services were terminated. In those circumstances the respondent had no alternative but to advise the applicant that his resignation stood. The other issues relating to removal of school equipment without approval and the use of money from the money tin, were issues given weight, but they did not provide the basis for maintaining the resignation. From the time of tendering the verbal resignation by the applicant on the 13 April 1999 to when the respondent provided an Employment Separation Certificate, he did not question the fact of his resignation. On the contrary, he requested both the Principal and Bursar to change his resignation to a termination at the instigation of the College, so he could obtain social security benefits. He had a number of opportunities to raise this important issue with the Principal or the Bursar, yet he did not. In the end the respondent paid the applicant far more than it needed to pay on compassionate grounds.

The contentions of the respondent were supported in evidence called from Glen J Pianto. Mr Pianto related that he was present at the school on the 13 April 1999. He heard an argument between the applicant and his supervisor, this was not an unusual event. He described such arguments as "*par*

for the course". The supervisor later approached him and told him that the applicant had given his notice and dropped keys and a mobile telephone in front of him. Mr Pianto was of the opinion that the supervisor was not unhappy about the situation.

Mr Pianto was concerned about the applicant. When he went home, he rang him. The applicant had confirmed what the supervisor had said. He used words to the effect like; "*I've had a gut full and I've told him to shove his f..... job*". Although he did not use the words resignation it was Pianto's clear understanding that is what had happened. Mr Pianto tried to counsel him to come back to work. He suggested the applicant discuss the matter with Ms Hansen when she returned. According to Mr Pianto the applicant had borrowed a sum of \$120 from the money tin. There was no suggestion that he was trying to hide the fact.

Evidence was also taken from Robert Hunt who worked with the applicant for 4½ years. On 13 April 1999 the applicant rang Mr Hunt and told him that he had resigned. Mr Hunt advised him "*not to be an idiot*" and he should "*get to a Doctor*" and "*get a Doctor's note*". He told the applicant to see the Bursar or the Principal as soon as possible to sought the matter out. Mr Hunt related a number of incidents revolving around the applicant borrowing money from the groundsman's money tin. There was an occasion when the applicant did not deny taking money from the tin. He later returned the money.

Vicki Jane Hansen is the Bursar of the both Mercy College and Mercy Primary School and has been for 10 years. She was aware of the working relationship between the applicant and his supervisor. In general terms they got on well together but three or four times a year there would be arguments and Ms Hansen would be called upon to deal with them. The grievances were bought either by the applicant or the supervisor. Ms Hansen had also advised the applicant about both work related and personal issues. These included, amongst other things, his career prospects and a position at the College which would give him more responsibility. On 16 April 1999 Ms Hansen had a face to face discussion with the applicant. She asked him what had happened. He told her that there had been a dispute with the supervisor. There was a discussion about the events during which the applicant had said he had quit his job because he could no longer work with the supervisor. He asked what was going to happen and Ms Hansen told him that she would need to speak to the Principal and interview other ground staff so that she could get a full picture. The applicant gave Ms Hansen a medical certificate for the period between the 19th and 23rd April 1999, more than likely on the 21st April 1999. He was told that the status of his position with the respondent needed to be resolved. If he was still employed he would be covered, if he had resigned then there was no entitlement to sick leave. Ms Hansen recalled that she had another contact with the applicant by telephone in which he asked her to intervene with the Principal to change his resignation to a dismissal to enable him to quickly access social services. She mentioned this to Mr Harvie before his final interview with the applicant. It was the clear recollection of Ms Hansen that during her conversations with the applicant he had said to her, words to the effect, that he will consider coming back to work if the respondent would, in his words, "*get rid of*" the supervisor, which Ms Hansen took to mean to dismiss him. There was a conversation between them about the impracticality of his suggestions. Ms Hansen said, although she had a number of discussions with other ground staff finally the decision was hands of the Principal Mr Harvie.

Barry Sinclair Harvie is the Principal at Mercy College and is a person of considerable experience in senior positions in education. He was Principal at Servite College for 12 years before he took up the appointment at the respondent. Mr Harvie recollected on the 15 April 1999 he returned to work after being away on duty, he noticed the applicant sitting in the foyer, he was not dressed in his work clothes and he asked him if everything was OK, the applicant then told him he had resigned. Mr Harvie had a brief discussion with the applicant and then set about investigating what had happened. He interviewed the supervisor on the following day. He described the incident and claimed that the applicant had thrown his keys and phone at him and left the workplace. This occurred after there had been an altercation arising from a disagreement over borrowed school equipment, this later turned into an

argument about what work the applicant would do on the day.

Mr Harvie admitted there had been concern over the authoritarian style and language of the supervisor but he had been working through the problem with him over some considerable period. The relationship between the supervisor and the applicant was described by Mr Harvie as akin to father/son, but there was volatility. Both men had some difficulty managing their anger. Mr Harvie had tried to address this problem as part of his pastoral obligation, although there were some difficulties in doing so because there was a code by which the groundsmen tried to resolve issues by themselves. Mr Harvie informed himself of the history of what happened between the two men. He found out that there had been a lot of things happening within the team and that the applicant had made an ultimatum that he would not return to work if the supervisor remained. Mr Harvie considered that was significant issue in determining whether the applicant ought to be allowed to rescind his resignation. Mr Harvie had to assess whether the supervisor had carried out appropriate processes in the incident itself and subsequent to that decide whether the applicant could fit back into the team given that the conflict had happened. Against the background of what had happened previously this was complicated by the ultimatum made by the applicant that he would not return unless the supervisor was dismissed. Mr Harvie was aware that while the applicant's resignation stood he still had a need to decide if there were circumstances which might lead to a decision that he be given a job. This was important because he had been working with the applicant and talking to him in a pastoral sense about his future career and where he was going.

After a week of investigation Mr Harvie invited the applicant come and discuss the issues with him. At the end of that discussion Mr Harvie reached a conclusion that the resignation had to stand. He thought that the relationship ended amicably. The respondent decided on compassionate grounds that an ex gratia payment of a month's pay be made. This was not requested by the applicant. Later the applicant approached Mr Harvie and asked him to change the word resignation from the supporting paperwork and insert termination. He declined to do so. Mr Harvie was shocked when he heard that the application had been filed because to do so was completely at odds with what had happened. There was certainty in his mind that the termination was always a resignation, it finished as a resignation and finished amicably.

The proceeding is a sufficient recitation of the evidence before the Commission for the purposes of these reasons for decision.

I have had the opportunity to observe all of the witnesses give their evidence. I have concerns about the quality of the evidence of only one and that is the applicant. There are considerable differences between his evidence in chief of the applicant and what was revealed during his cross examination. There is an inconsistency of chronology of the events and I was left with the impression that the applicant was inclined to make the history suit the circumstances in which he found himself. I had no such difficulties with any other evidence given to the Commission. I conclude that where the evidence of the applicant varies from the evidence given by the witnesses for the respondent I prefer the evidence of the respondent.

The Act gives employees the right to seek relief when they have been harshly, oppressively or unfairly dismissed from employment. That requires there to have been an employment relationship and also that the employee was dismissed from the relationship. The concept of dismissal involves the termination of employment at the initiative of the employer. Not every termination gives rise to a course of action under the Act, it must be a termination by way of dismissal. In most cases where the termination of employment is obviously at the instigation of the employer the fact of the dismissal will not be an issue. To constitute a dismissal in those circumstances there must be a clear and unequivocal indication by the employer that it intends the engagement to conclude.

Difficulties are likely to arise where an employee resigns in circumstances where they claim there has been mistreatment of them by the employer. This type of resignation is frequently described as a constructive dismissal. The concept is a common law one associated with a concept of a fundamental breach

of contract where the employer by conduct has evinced an intention to be no longer bound by the contract. It is not the object of the Act to provide employees with a remedy for a breach of contract but to provide relief where an employee receives less than "a fair go all round". It is therefore, not usually helpful to introduce notions of constructive dismissal. The inquiry should be directed at determining who really terminated the employment [*The Attorney General -v- Western Australian Prison Officers' Union of Workers (1995) 75 WAIG 3166*]. Where an employee claims they were forced to resign, it is not sufficient to focus only on the conduct of the employer. For the resignation to be treated as a dismissal, the employee is required to establish that the resignation was effected as a direct result of the employers conduct. The employee must make it plain that he is resigning because of that conduct. If the conduct was merely a catalyst for resignation, without it being the genuine reason for the resignation, the resignation will not amount to dismissal [*Jeannie Smith -v- Claremont Veterinary Clinic (1997) 77 WAIG 2788*].

The Commission is required to apply the facts of this case to the law as I have explained in the preceding paragraphs and I turn to my findings of fact. I have difficulties with the quality of the evidence of the applicant and it is in that context that I make the findings that follow—

The applicant had an argument with his supervisor on the 13 April 1999 over work that had been allocated to him. It was not unusual in their relationship for them to have altercations. Such altercations had occurred three to four times a year over the preceding few years. As a result of the altercation the applicant told the supervisor that he had quit his job. He passed into the possession of the supervisor his keys and phone. I am unable to find on the evidence that he threw them at the supervisor. He immediately told another worker that he had quit his job, this was in a discussion contemporaneous with the event. Later in the same day he received phone calls from at least two fellow employees; he told them he had resigned and they attempted to counsel him into an alternative course of action. I find on the evidence of Mr Harvie that it was open to the supervisor to accept the resignation on the day because in the absence of Mr Harvie and the Bursar, Ms Hansen he was the most senior person in the hierarchy. Mr Harvie returned to the school on the 15 April 1999 and as a matter of prudent management, even though the resignation had been accepted, commenced upon a new series of investigations to satisfy himself that the resignation should stand. Mr Harvie conducted a thorough inquiry assisted by Ms Hansen. Nothing in that inquiry convinced him that the resignation had been forced in a way which would justify the employee concluding that he was either pushed out of his job or forced to resign solely by the conduct of the employer.

A resignation should not be accepted when given in the heat of the moment. This concept was canvassed by Mr Clarke in his submissions for the applicant. In this case, the circumstances were that, from the 13th through to the 23rd April 1999, the applicant maintained the stance that he had resigned. This is clear from his conversations with Ms Hansen, which in effect amounted to a negotiation with her that he would come back to work if the supervisor was dismissed. These are not the actions of a person who resigned in the heat of the moment and now regrets the action, they are the calculated actions of a person who has an agenda to pursue, in this case, to remove the supervisor with whom he had arguments with over a period of time.

It also might be argued that an employer has a duty to resolve problems between the employees and their immediate supervisors and that a failure to do so could lead to a finding adverse to an employer in a situation where a resignation occurs. There are a number of points to be made about that proposition. First the respondent is a school, it cannot be expected to have the administrative sophistication of a corporation with professional skilled human resources staff to deal with such matters. The matter was dealt with in the context of the school community. The Principal, Mr Harvie, had as part of his pastoral duties attempted to resolve the difficulty between the applicant and the supervisor. Those attempts were in

context of a duty of the Principal for pastoral care of the whole of the school community, which included the applicant. Pastoral solutions to problems do not usually include threatening workers with dismissal because they have relationship problems, be they with other workers or supervisors. It is clear from the evidence which I accept, that the applicant's career prospects had been matters for discussion between himself, Ms Hansen and Mr Harvie. They had tried to assist him and it cannot be said that the respondent as an employer failed to deal with arising issues of conflict between the applicant and his supervisor. Those issues were dealt with in the context in which they occurred and which I have described previously. There can be no criticism of the Principal for dealing with the matters in the way that he did, although such an approach might be out of place in other industries or work contexts.

I find there has been no dismissal in this case. The applicant resigned. The jurisdiction of the Commission under Section 29 (1)(b) (i) does not arise and the application will be dismissed.

Appearances: Mr D Clarke for the applicant.

Mr P Andrews for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ben Zoccoli

and

Mercy College.

No. 629 of 1999.

COMMISSIONER J.F. GREGOR.

28 March 2000.

Order.

HAVING heard Mr D Clarke for the applicant and Mr P Andrews on behalf of the respondent the Commission pursuant to the powers vested in it by the *Industrial Relations Act 1979*; hereby orders—

THAT the application be, and is hereby, dismissed.

(Sgd.) J.F. GREGOR,

[L.S.]

Commissioner.

**CONFERENCES—
Matters arising out of—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cockburn Cement Ltd

and

Automotive, Food, Metals, Engineering,
Printing & Kindred Industries Union of Workers,
WA & Others.

No. C 55 of 2000.

COMMISSIONER S J KENNER.

8 March 2000.

Recommendation.

WHEREAS on 8 March 2000 the applicant applied to the Commission for an urgent conference pursuant to s44 of the *Industrial Relations Act, 1979*;

AND WHEREAS on 8 March 2000 the Commission convened an urgent conference between the parties pursuant to s44 of the *Industrial Relations Act, 1979*;

AND WHEREAS at the conference the Commission was informed that the applicant and the respondents are in dispute in relation to a range of workplace issues including, in particular, the use by the applicant of temporary employees and contractors at its operations;

AND WHEREAS in support of their demands employees of the applicant members of the respondents withdrew their labour commencing on 8 March 2000;

NOW THEREFORE the Commission, having regard for the interests of the parties directly involved and to prevent deterioration of industrial relations in respect of the matters in question, in accordance with the provisions of the *Industrial Relations Act, 1979* hereby recommends—

- (1) THAT each of the employees of the applicant engaged in industrial action concerning matters the subject of these proceedings resume work at the earliest possible time after 0730 hours on 9 March 2000 and thereafter work in accordance with their respective contracts of employment.
- (2) THAT the applicant forthwith provide to the respondents particulars as to those employees presently engaged as temporary employees and those persons engaged as contractors at its operations.
- (3) THAT the parties, on the provision by the applicant to the respondent unions of the particulars referred to in paragraph (2) above, confer as to the employment of temporary employees and the utilisation of contractors generally at its operations.
- (4) THAT the matters the subject of this dispute be listed for a further s 44 compulsory conference in the afternoon of 9 March 2000 at a time to be notified as may be required otherwise at a later date to be listed by the Commission for further conciliation.

(Sgd.) S.J. KENNER,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Cockburn Cement Ltd

and

Automotive, Food, Metals, Engineering,
Printing & Kindred Industries Union of Workers,
WA & Others.

No. C 55 of 2000.

COMMISSIONER S J KENNER.

10 March 2000.

Order.

WHEREAS on 8 March 2000 the applicant applied to the Commission for an urgent conference pursuant to s 44 of the *Industrial Relations Act, 1979*;

AND WHEREAS on 8 March 2000 the Commission convened an urgent 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 respondents are in dispute in relation to a range of workplace issues including, in particular, the use by the applicant of temporary employees and contractors at its operations;

AND WHEREAS in support of their demands employees of the applicant members of the respondents withdrew their labour commencing on 8 March 2000;

AND WHEREAS the Commission issued a Recommendation dated 8 March 2000 to the effect that each of the employees of the applicant engaged in industrial action concerning matters the subject of these proceedings resume work on 9 March 2000 and that the applicant and the respondents confer as to

the engagement by the applicant of temporary employees and those persons engaged as contractors at its operations;

AND WHEREAS the Commission convened a further urgent s 44 compulsory conference on 10 March 2000 at which the Commission was advised that the employees of the applicant who had engaged in industrial action did resume work on 9 March 2000 however the Commission was advised that the employees of the applicant members of the respondent unions had commenced further industrial action from approximately 11.45 am 10 March 2000 for an indefinite period in support of their demands;

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 powers vested in it by the Industrial Relations Act, 1979, hereby orders—

- (1) THAT each of the employees of the applicant members of the respondents engaged in work at the applicant's work sites who are engaged in industrial action concerning matters the subject of these proceedings cease such industrial action to ensure a return to work no later than 8.00 am Saturday 11 March 2000 and thereafter refrain from commencing or taking part in further industrial action in respect of this matter until this order is revoked.
- (2) THAT the respondents and each of their officials shall take all necessary steps to ensure that work resumes in accordance with the terms of paragraph (1) of this order including but without limiting the generality of this obligation to—
 - a) call a meeting of members of the respondent unions for no later than 7.00 am Saturday 11 March 2000;
 - b) advise the employees of the terms of this order; and
 - c) counsel the employees to return to work in accordance with the terms of paragraph (1) of this order and to refrain from engaging in any further industrial action in respect of the matters the subject of these proceedings.
- (3) THAT the application be otherwise adjourned to a further s 44 compulsory conference on Monday 13 March 2000 at a time to be fixed by the Commission;
- (4) THAT the applicant or the respondents 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.

Cockburn Cement Ltd

and

Automotive, Food, Metals, Engineering,
Printing & Kindred Industries Union of Workers,
WA & Others.

No. C 55 of 2000.

COMMISSIONER S J KENNER.

14 March 2000.

Order.

WHEREAS on 8 March 2000 the applicant applied to the Commission for an urgent conference pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS on 8 March 2000 the Commission convened an urgent conference between the parties pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS the Commission convened a further urgent s 44 compulsory conference on 10 March 2000, and at

the conference it was apparent, to the Commission, that all of the proper persons in connection with the proceedings were not parties to the proceedings;

NOW THEREFORE the Commission pursuant to the powers vested in it by the Industrial Relations Act, 1979, hereby orders—

THAT the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Engineering and Electrical Division (WA Branch), the Construction, Mining, Energy, Timberyards, Sawmills and Wood Workers Union of Australia WA Branch and the Merchant Service Guild of Australia, WA Branch Union of Workers be and are hereby joined as respondents to the herein application.

(Sgd.) S.J. KENNER,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jadco Pty Ltd

Stork ICM Australia Pty Ltd

(Applicants)

and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers, WA Branch

(Respondent).

No. C60 of 2000.

COMMISSIONER J H SMITH.

14 March 2000.

Recommendation

WHEREAS on 13 March 2000 Jadco Pty Ltd applied to the Commission for an urgent conference pursuant to s.44 of the Industrial Relations Act 1979;

AND WHEREAS on 14 March 2000 the Commission convened an urgent conference between the parties pursuant to s.44 of the Industrial Relations Act 1979;

AND WHEREAS on 14 March 2000 the Commission issued an order joining Stork ICM Australia Pty Ltd as a party to the Application;

AND WHEREAS the Commission was informed by the Applicants that about 36 members of the Respondent who are employed by the Applicants at the Worsley Alumina site near Collie ("the site") withdrew their labour on 13 March 2000 and 14 March 2000;

AND WHEREAS the Commission was informed by the Respondent that the members withdrew their labours on grounds that it is not safe to work at the site following an incident on 12 March 2000 at the site whereby the expansion joint (a rubber bellows) failed between Flash Vessel V030217 and its matched Entrainment Separator under operating conditions which were well within its design tolerance ("the incident");

AND WHEREAS the Commission has made its own enquiries of officers of the Department of Minerals and Energy ("the Department") who have investigated the incident;

AND WHEREAS the Commission and the parties have been informed by an officer of the Department that officers of the Department have now completed their investigation, and have directed the management of the site by an entry into the Record Book on 14 March 2000 to remove the bellows in area 030 and to shut that area of the site down whilst that work is completed;

AND NOW THEREFORE the Commission pursuant to the powers vested in it by s.44(6) recommends—

1. That the Respondent take steps to convene a meeting of its members employed by the Applicants at 7.00am on 15 March 2000; and

2. That the Respondent discuss at the meeting the Record Book entry made on 14 March 2000 by officers of the Department; and
3. That the Respondent recommend to its members employed by the Applicants that they return to work by 8.00am on 15 March 2000.

(Sgd.) J.H. SMITH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Stork ICM Australia Pty Ltd

(Applicant)

and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers, WA Branch

(Respondent).

No. C60 of 2000.

COMMISSIONER J H SMITH.

14 March 2000

Order.

Having heard Mr David Sproule as agent on behalf of the Applicant and Mr Colin Saunders and Mr Brett Davis as representatives of the Respondent, the Commission, pursuant to the powers conferred on it under section 27(1)(j) of the Industrial Relations Act 1979, hereby orders—

That Stork ICM Australia Pty Ltd be joined as a party to the application.

(Sgd.) J.H. SMITH,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jadscos Pty Ltd
Stork ICM Australia Pty Ltd

(Applicants)

and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers, WA Branch

(Respondent).

No. C60 of 2000.

COMMISSIONER J H SMITH.

15 March 2000.

Order.

WHEREAS on 13 March 2000 Jadscos Pty Ltd applied to the Commission for an urgent conference pursuant to s.44 of the Industrial Relations Act 1979;

AND WHEREAS on 14 March 2000 the Commission convened an urgent conference between the parties pursuant to s.44 of the Industrial Relations Act 1979;

AND WHEREAS on 14 March 2000 the Commission issued an order joining Stork ICM Australia Pty Ltd as a party to the Application;

AND WHEREAS the Commission was informed by the Applicants that about 36 members or persons eligible to be members of the Respondent who are employed by the Applicants to perform maintenance work at the Worsley Alumina site near Collie ("the site") withdrew their labour on 13 March 2000 and 14 March 2000;

AND WHEREAS the Commission was informed by the Respondent that the members withdrew their labour on grounds that it is not safe to work at the site following an incident on

12 March 2000 at the site whereby the expansion joint (a rubber bellows) failed between Flash Vessel V030217 and its matched Entrainment Separator under operating conditions which were well within its design tolerance ("the incident");

AND WHEREAS between 5.10pm and 5.30pm 14 March 2000, the Commission and the parties were informed by an officer of the Department of Minerals and Energy ("the Department") that Inspectors had completed the investigation into the incident on 12 March 2000 at the site;

AND WHEREAS the Applicants and the Respondent advised the Commission at about 5.40pm on 14 March 2000 that they had been informed by an officer of the Department that the Inspectors who inspected the site had formed the view that—

- (a) the only area that was required to be shut down was area 030 whilst all rubber expansion joints being synthetic rubber rings and described as bellows were removed;
- (b) there was no occupational safety or health issue that had arisen in any other area of the site which would expose maintenance employees to injury or harm to health;
- (c) the investigation into the incident that occurred at the site on 12 March 2000 was complete; and
- (d) an entry had been made in the mine Record Book by an Inspector directing the management of the site to remove the bellows in area 030 and to remain shut down whilst that work is completed.

AND WHEREAS on 14 March 2000 the Commission then made a recommendation that—

1. That the Respondent take steps to convene a meeting of its members employed by the Applicants at 7.00am on 15 March 2000; and
2. That the Respondent discuss at the meeting the Record Book entry made on 14 March 2000 by officers of the Department; and
3. That the Respondent recommend to its members employed by the Applicants that they return to work by 8.00am on 15 March 2000.

AND WHEREAS on 15 March 2000 the Commission convened an urgent conference and pursuant to a summons to attend the conference the officer appointed as Mine Manager of the site under the Mines Safety Inspection Act 1994 attended the conference;

AND WHEREAS on 15 March 2000 the Commission was informed by the Respondent that the members of the Respondent employed by the Applicants had rejected the recommendation that they return to work and continued to withdraw their labour at the time of making of this Order;

AND WHEREAS the Respondent advised the Commission that the reason why the members had rejected the recommendation was that there had been a number of recent liquor and caustic spills at the site which caused the workplace to be unsafe;

AND WHEREAS the Respondent advised the Commission that no report of the members' concerns had been made to any Inspector of the Department;

AND WHEREAS the Mine Manager advised the Commission that liquor and caustic spills occur but that procedures are in place at the site to evacuate the areas concerned whereby maintenance employees are not required to work until the clean-up of the affected areas are complete.

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 its powers vested in it by the Industrial Relations Act 1979, and in particular s.44, hereby orders that—

1. The Respondent and its members employed by the Applicants—
 - (a) ensure that normal work resumes by 8.00am on 16 March 2000; and
 - (b) ensure that thereafter the members of the Respondent employed by the Applicants work in accordance with their contracts of

- employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked.
2. The Applicants undertake to take steps to contact all of their employees to advise them that the Respondent will hold a meeting of its members at 7.00am on 16 March 2000 on the site.
 3. The Respondent and each of its officials shall advise each of its members employed by the Applicants the terms of this Order.
 4. With the return to work in accordance with the terms of this Order the Registrar or an officer of the Commission is to attend the site and confer with the Respondent, members of the Respondent employed by the Applicants and members of any appropriate Safety Committee to address any ongoing matters of safety that have been raised in the course of this conference, and referred to in this Order, and that affect the employees of the Applicants.
 5. The Registrar or the officer of the Commission is to report back to the Commission upon completing his or her report.
 6. That the Applicants or the Respondent may, on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside this Order.

[L.S.]

(Sgd.) J.H. SMITH,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Liquor, Hospitality & Miscellaneous Workers
Union, Western Australian Branch

and

Carnarvon Medical Service Aboriginal Corporation.

No. C 43 of 2000.

COMMISSIONER S WOOD.

10 March 2000.

The Commission convened a conference on 10 March 2000, pursuant to section 44 of the Industrial Relations Act 1979, of the abovementioned parties. At the conclusion of the conference, the Commission was informed that the issues in dispute were not resolved. In an effort to resolve the matter and to prevent further deterioration of industrial relations, the Commission makes the following recommendations—

Recommendations.

1. Those employees represented by the ALHMWU return to normal duties on Monday, 13 March 2000.
2. On returning to work the employees shall follow all reasonable and lawful directions from their immediate supervisors.
3. The employer and employees will maintain professional working relationships, including working to existing duty statements and organisational policies and procedures, in a respectful manner.
4. The employer and employees will develop a Disputes Resolution Procedure aimed at—
 - sustaining a professional working relationship
 - the resumption of full service to the community.
5. The Disputes Resolution Procedure should be the vehicle used to resolve all conflicts that may arise in the workplace.
6. The employer will withdraw all letters of dismissal and remove them from relevant personnel files.
7. Any advertisements for the positions of these employees will be withdrawn.

8. The parties will report back to the Commission, including on the terms of the Dispute Resolution Procedure on Wednesday, 15 March 2000

(Sgd.) S. WOOD,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

CSR Building Materials

and

The Australian Liquor, Hospitality and
Miscellaneous Workers' Union, Miscellaneous
Workers' Division, Western Australian Branch.

C 278 of 1999.

COMMISSIONER S J KENNER.

3 April 2000.

Order.

WHEREAS on 29 September 1999 the applicant applied to the Commission for a compulsory conference pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS on 5 October 1999 the Commission convened a compulsory conference pursuant to s 44 of the Industrial Relations Act, 1979;

AND WHEREAS the applicant and respondent were in dispute as to the appropriate rate of payment to be made to the senior hands working in the applicant's Cornice Plant with the respondent contending that the work performed by employees presently in this classification involves duties and responsibilities similar to or the same as those employees of the applicant occupying the position of shift boss who are in receipt of an additional allowance pursuant to clause 9(1)(b) of the Building Materials Manufacture (CSR Limited – Welshpool Works) Award 1982 No. A10 of 1982 ("the Award");

AND WHEREAS the Commission was informed that in support of this claim members of the respondent employed at the applicant's Cornice Plant had taken industrial action from on or about 29 September 1999 in the form of overtime bans and the applicant contended that such overtime bans were seriously affecting the applicant's operations and its ability to introduce a second shift in the Cornice Plant;

AND WHEREAS the Commission issued a recommendation on 5 October 1999 to the effect that the applicant pay to the two employees concerned, as an interim measure, an allowance at the rate of 50% of the current shift boss allowance as prescribed by the Award until such time as the present dispute is finally determined and that the overtime bans be lifted immediately which recommendation was accepted by the parties;

AND WHEREAS the Commission convened further compulsory conferences on 24 March and 3 April 2000 and in the conference on 3 April 2000 the Commission was informed that in support of this claim members of the respondent employed at the applicant's Cornice Plant had taken further industrial action from on or about 31 March 2000 in the form of operational bans and limitations on the production of the applicant's plasterboard and cornice products and the applicant contended that such bans are seriously affecting the applicant's operations;

AND WHEREAS having heard from the applicant and the respondent the Commission has formed the view that the industrial action which is occurring constitutes a breach of either or both of the Award or the CSR Building Materials (WA) Enterprise Agreement 1999 as the case may be;

NOW THEREFORE, the Commission, having regard for the interests of the parties directly involved and to prevent the deterioration of industrial relations in respect of the matter in

question and in accordance with the provisions of the Industrial Relations Act 1979 in particular s 44(5b) hereby orders—

- (1) THAT each of the employees members of the respondent employed by the applicant at the applicant's operations who are engaged in industrial action concerning the matter the subject of these proceedings, cease such industrial action immediately in order for there to be a commencement of the next shift for the work in question on Tuesday 4 April 2000 and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked;
- (2) THAT the respondent and each of its officials take all such reasonable steps as may be necessary to comply with the terms of paragraph (1) of this Order, including, but without limiting the generality of that obligation, the obligation to—
 - (a) Call a meeting of the employees members of the respondent at the applicant's workplace no later than 3.30 pm Tuesday 4 April 2000;
 - (b) Advise the employees of the terms of this Order; and
 - (c) Counsel the employees to cease all industrial action in accordance with the terms of paragraph (1) of this Order and to thereafter refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings;
- (3) THAT the matters the subject of dispute in this application be referred for hearing and determination pursuant to s 44(9) of the Act;
- (4) 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.

West Australian branch, Australasian Meat Industry
Employees' Union, Industrial Union of Workers, Perth

and

Western Australian Meat Marketing
Co-operative Limited
(First Respondent)

Mr Marcus Tion
(Second Respondent).

No. C 40 of 2000.

COMMISSIONER J F GREGOR.

30 March 2000.

Order.

WHEREAS on 24 February 2000, the West Australian Branch, Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth applied to the Commission for an order pursuant to Section 44 of the *Industrial Relations Act 1979*; and

WHEREAS on 28 March 2000, the Commission conducted conciliation proceedings between the parties; and

WHEREAS at that conference the Commission was advised that Mr Marcus Tion was employed by the respondent as a labourer in the Boning Room at the Company's premises in Katanning. On Friday 28 January 2000, Mr Tion was dismissed for failing to notify the employer of his absence on the previous day; and

WHEREAS the Commission was advised that the failure by Mr Tion to notify his absence from work was not an isolated event but was part of pattern of events occurring over a number of years and which had resulted in Mr Tion receiving written 'Notices of Warning' from the employer; and

WHEREAS Mr Tion had been reinstated after representations had been made on his behalf by the Union but he had within three working days breached the undertakings made on his behalf. This last breach leading to his dismissal; and

WHEREAS after discussions between the parties Mr Tion made undertakings to the Commission that he would not in future breach the letter and spirit of the Enterprise Bargaining Agreement and that he accepted an understanding that if he was reinstated for a 6 month trial period, any breach by him of the letter and spirit of the Enterprise Bargaining Agreement would automatically bring his contract of employment with the respondent to an end and that such outcomes and undertakings would be embodied in an order of the Commission; and

WHEREAS the Commission has decided to join Marcus Tion as a party to this order by consent; and

WHEREAS the applicant Union agrees with the undertaking given by Mr Tion and consents to the issue of this order; and

WHEREAS following further negotiations the parties reached agreement that Mr Marcus Tion would be re-employed for a trial period of 6 months and during that time he is to abide by the letter and spirit of the Enterprise Bargaining Agreement and any failure by him to do so, in particular towards absenteeism, will lead to the end of his contract of employment forthwith; and

NOW THEREFORE, the Commission, pursuant to the powers vested in it under the *Industrial Relations Act 1979*, hereby orders, by consent—

THAT

- (1) Mr Marcus Tion will be re-employed by the Western Australian Meat Marketing Co-operative Limited on the basis that he complies with his contract of employment for 6 months. During that time he will abide by the letter and spirit of the Metro Meat International Limited (Katanning) AMIEU Processing Agreement (1999) and failure by him to do so, in particular with absenteeism will lead to the end of this contract forthwith.
- (2) Any breach will result in his job being terminated by the terms of this order.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Police Union of Workers

and

The Hon. Minister for Police.

No. C14 of 2000.

COMMISSIONER J F GREGOR.

28 March 2000.

Order.

WHEREAS pursuant to Section 44 of the *Industrial Relations Act 1979*, the applicant sought a conference to seek the assistance of the Commission in registering an agreement between the parties; and

WHEREAS I, the undersigned Commissioner, on 24 March 2000, presided over a conference between the parties to consider the matters in issue; and

WHEREAS the Commission was advised the matter had been resolved; and

WHEREAS the parties requested the Commission issue an Order pursuant to Section 44(6) of the Act to finalise their agreement.

NOW THEREFORE, the Commission, pursuant to the powers vested in it under the *Industrial Relations Act 1979*, hereby orders by consent—

THAT notwithstanding the provisions of the *Western Australian Police Service Enterprise Agreement for Police Act Employees 1999* No. AG129 of 1998 and the *Aboriginal Police Aides Award* No. 31 of 1979 the same working arrangements and conditions of employment as applied to “country resident officers in charge” (as defined in Clause 6. *Definitions* of Industrial Agreement No. AG 129 of 1998) shall apply to the Senior Aboriginal Police Liaison Officer in Charge of Bidyadanga Police Post or other Senior Aboriginal Police Liaison Officer relieving in such position.

As compensation a rate of pay be established of \$44,054.00 per annum with effect from the date of this agreement, increasing to \$44,935.00 per annum with effect from July 27, 2000. The new salary rate shall include allowance for all duties performed beyond forty (40) hours over the five (5) rostered working days in a week and on weekly leave days other than on “operational duties” (as defined in Clause 6. *Definitions* of the Industrial Agreement No. AG 121 of 1998) on weekly leave days.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Rail, Tram and Bus Industry
Union of Employees, West Australian Branch
and

Western Australian Government Railways Commission.

No. C 335 of 1999.

COMMISSIONER A.R. BEECH.

17 March 2000.

Reasons for Decision.

When The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch and the Western Australian Government Railways Commission met before the Commission at 9.00am to re-commence the negotiations on the Framework Agreement the Commission was told that all depots other than Picton and Collie had either returned to work or were expected to return to work. At Picton and Collie the union’s members had met but decided not to return to work. They are to meet again at 2pm this afternoon. However, the Commission is not certain that the members will decide at 2pm to return to work. The refusal to resume normal work is having a severe impact on Westrail’s clients and has prevented the negotiations from resuming.

The union and Westrail have been negotiating since at least the middle of December 1999. Industrial action taken by the members of the union in Westrail’s Freight Division lead to the issuing of an Order on 14 December 1999. That Order itself provided a framework for negotiations to continue, for the payment of an interim \$15 per week increase and for a return to work whilst this occurred. In particular, the Order prescribed—

(7) The members of the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch participating in the strike resume work in accordance with this Order immediately and thereafter work in accordance with [the terms of AG 21 of 1996] until further Order.

(8) The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch use its best endeavours to ensure that normal work resumes immediately.

The parties have recently been negotiating on a daily basis under the supervision of the Commission with the aim of

concluding their Agreement by 17 March 2000. The recent industrial action has actually delayed that target date.

In order for there to be any conciliated outcome to the negotiations between the parties there must be—

1. An immediate resumption of normal work at all depots, not just the majority.
2. The resumption of negotiations with a date set for a conclusion.

Accordingly, the following further Order is made in order to prevent the deterioration of industrial relations in respect of the Framework Agreement negotiations until conciliation before the Commission has resolved the issue.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Rail, Tram and Bus Industry
Union of Employees, West Australian Branch

and

Western Australian Government Railways Commission.

No. C 335 of 1999.

17 March 2000.

Order.

HAVING heard Mr R. Wells on behalf of The Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch and Mr D. Johnston on behalf of the Western Australian Government Railways Commission, the Commission, pursuant to the powers conferred on it under s.44(5b) and (6) of the Industrial Relations Act, 1979, hereby orders—

1. THAT the members of the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch employed at the Picton and Collie depots resume their normal work immediately and continue to work in accordance with their contracts of employment;
2. THAT the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch take all steps necessary to ensure that its members return to work immediately in accordance with this Order;
3. THAT the Australian Rail, Tram and Bus Industry Union of Employees, West Australian Branch and Westrail attend the Commission to re-commence the negotiations on the Framework Agreement at—
 - (a) 2.30pm today 17 March 2000; and
 - (b) 10.30am Saturday 18 March 2000; or
 - (c) as directed by the Commission to enable the negotiations to be concluded no later than Monday 20 March 2000.
4. THAT there be liberty to either party to apply to vary the terms of this Order.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S.]

CONFERENCES— Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation, Industrial Union of
Workers Perth

and

Diabetes Australia—Western Australia
No. CR 176 of 1997.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)

and

Diabetes Australia—Western Australia.

No. CR 211 of 1997.

27 October 1997.

Reasons for Decision.

(Given extemporaneously at the conclusion of the
submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: Two matters are before the Commission which were not able to be resolved in separate conferences conducted by the Commission on 1 July 1997 and 25 July 1997, pursuant to s44 of the Industrial Relations Act, 1979 (the Act). The two claims have been heard together, and amended from that contained in the memoranda of matters for hearing and determination, by consent of the parties and with leave of the Commission.

The claims made on behalf of Ms Unsworth and Ms K Neylon each of whom the applicants assert is respectively entitled to \$3080.00 and \$2512.00, being a pro-rata payment in lieu of long service leave as an entitlement pursuant to an agreed term of employment applicable to each of them. Ms Unsworth had been employed by the respondent from July 1995 to May 1997 and Ms Neylon from July 1995 to March 1997 and it is asserted that the entitlements which they claim arise from the terms of their contracts of employment originally entered into in 1995, as renegotiated and operative from January 1997. Tendered were separate letters of appointment for Ms Unsworth and Ms Neylon both dated 18 May 1995, and separate documents in respect of each of them titled "Employment Contract", both dated 1 January 1997. Each of the documents tendered express terms and conditions of employment and all contain a provision titled "Long Service Leave" which are expressed in the following terms—

Re: Ms Unsworth

- In the letter of appointment dated 18 May 1995—
"DAWA will provide long service leave of 13 weeks after seven years of service but will not include any qualifying period."
- In the Employment Contract dated 1 January 1997—
"13 weeks after seven years with no qualifying period"

Re: Ms Neylon

- In the letter of appointment dated 18 May 1995—
"DAWA will provide long service leave of 13 weeks after seven years of service but will not include any qualifying period."
- In the Employment Contract dated 1 January 1997—
"13 weeks after seven years with no qualifying period"

It is self evident from the foregoing that the long service leave provisions agreed with Ms Unsworth and Ms Neylon were identical in 1995 and changed in 1997 but remained identical.

The claims made on behalf of Ms Unsworth and Ms Neylon are mounted on the premise that the original common words in the long service leave provision "but will not include any qualifying period", and then the later common words of "with no qualifying period" excludes them from any requirement to serve a qualifying period before becoming entitled to a

pro-rata payment in lieu of long service leave and hence their service between 1995 and 1997 qualifies each of them for such a pro-rata payment.

What meaning is to be given to the material words? According to the rules of interpretation they are to be firstly to be given their ordinary everyday meaning, then be considered in the context of the provision in which they are used, and subsequently in the context of the document as a whole if necessary. The words "no qualifying period" are self explanatory and express the absence of any requirement to achieve a state of qualification by way of a time span. The opening words of the provision ie "13 weeks after seven years", although deficient, are obviously intended to be read as bestowing an entitlement to 13 weeks of paid leave upon the relevant employee completing seven years of service with the respondent. Hence the opening part of the provision bestows the benefit of leave upon completing the specified qualifying period ie seven years service. Connected thereto by the word "with" is what on its face appears to be an exception which, were it in reference to the earlier stated qualifying period, would have the effect of negating it. The words "with no qualifying period" have plainly therefore not been included by the draftsman as an exception to the earlier words of qualification for leave and are intended to serve some different purpose. There is nothing elsewhere in the contract of employment which assists to interpret the meaning of the long service leave provisions.

The material wording in the 1995 letters of employment is marginally different but not so different as to either give it a different meaning to, or to provide assistance in interpreting, the wording which supplanted it. It is common ground that Ms Unsworth and Ms Neylon had been employees of the Health Department of Western Australia and who, for several years prior to commencing employment with the respondent in 1995, had been seconded to work for the respondent, and they then came to be employed by the respondent when the department formally relinquished its involvement in the area of diabetes. At that time Stanley Ronald Layton, now a hotel manager, had been the general manager for the respondent and had negotiated with Ms Unsworth and Ms Neylon the terms contained in their letters of employment in 1995 which he signed on behalf of the respondent. Mr Layton, Ms Unsworth, and Ms Neylon, all say that because the two ladies had been departmental employees who worked for the respondent and were relinquishing their public service employment to become employees of the respondent, it was therefore agreed they ought, because of their earlier service, be granted the additional benefit of an automatic right to the pro rata payment of long service leave without the need to serve a qualifying period notwithstanding they were required to commence a new seven year period to qualify for the taking of long service leave.

It was the contention of the respondent that the long service leave provisions which had applied to Ms Unsworth and Ms Neylon when employed by the department are those prescribed by the Public Service Award 1992, clause 21. – Long Service Leave (73 WAIG 302 at 315), the terms of which bestow a pro-rata entitlement only upon persons covered thereby who elects to retire and is 55 years of age or more. Hence Ms Unsworth and Ms Neylon had not accrued a right to pro-rata long service leave with the department by reason of their length of service with the department, and had such provisions been adopted by the respondent in 1995 such would not have carried with it the right to pro-rata payment as is claimed. Furthermore, the respondent contends that the contracts made with Ms Unsworth and Ms Neylon require the respondent to engage in financial transactions with them which the written constitution of the respondent requires be approved by the Board of Management of the respondent. That approval is said not to have been given and therefore the arrangement executed by the general manager in 1995 was not authorized, and is invalid.

The respondent did not prove the Public Service Award 1992 to have applied to Ms Unsworth and Ms Neylon, however had it done so the agent for the respondent correctly interpreted clause 21. – Long Service Leave thereof as bestowing a limited right to pro-rata long service leave and not an equivalent to that claimed to be reflected in the terms and conditions of employment for Ms Unsworth and Ms Neylon. That I find is

not a relevant consideration. The situation in 1995 was that Mr Layton, the general manager, whether acting on misinformation or a misunderstanding or not, expressly intended that the two employees have included as part of their long service leave entitlements a right to pro-rata long service leave without the precedent condition that they serve some period to qualify for the right.

The letters of appointment, dated 18 May 1995, contain terms and conditions of employment which have been observed by the respondent throughout the period such had force and effect. In January 1997 a written "Employment Contract" was entered into between the respondent and Ms Unsworth (exhibit 4), and with Ms Neylon (exhibit 2) and it is plain from the evidence of Reece Jones, the General Manager for the respondent and the person who executed the agreements on behalf of the respondent, that prior to each of the contracts being executed he had become concerned with the wording of the long service leave provision and such had been brought to the attention of the Board of Management. Mr Jones told the Commission that he had not been involved in negotiating the 1997 contracts of employment and hence he had no direct knowledge of what was intended in relation to long service leave although he had sought and was provided with information from a Mr Brewer who had been involved. That which Mr Brewer is alleged to have said to Mr Jones is hearsay and therefore I take no account of it. Both Ms Unsworth and Ms Neylon say that, in the negotiations leading to their contracts of employment made in January 1997, the respondent had proposed a new long service leave provision which would have increased the qualifying period from 7 years to 10 years, and which also excluded any reference to them not being subject to a qualifying period. This proposal was rejected by both of them and ultimately the respondent agreed to continue what had been their long service leave entitlement from their commencement in 1995.

At the time Mr Jones executed their contracts of employment in January 1997 the terms of the long service leave provisions applicable to Ms Unsworth and Ms Neylon from 1995 were known to the respondent, and it was known that such was interpreted by them to have a particular meaning, and it was known that Ms Unsworth and Ms Neylon objected to a change in what they understood to be their long service leave rights. Against that background the respondent elected to execute contracts of employment which, in relation to the long service leave provisions, are in essentially the same terms, and which I have found to have the same meaning as, the terms Mr Layton had agreed in 1995. The respondent cannot now be heard to say that the agreement made in relation to long service leave is invalid.

Notwithstanding the long service leave provision grants to Ms Unsworth and Ms Neylon the right to accrue pro-rata long service leave without the need to serve a qualifying period, the provision does not deal directly with the subject of pro-rata and hence there is no prescription regarding how such is to be assessed. The Commission is satisfied that the parties to the former employment relationships had been bound by the Long Service Leave Act 1958, save to the extent they had agreed to the lesser qualifying period of seven years, and that no qualifying period was required to be served in order to qualify for a pro-rata payment in lieu of leave. Absent anything express within the contracts of employment regarding the method of calculating a pro-rata payment in lieu of leave it is the Long Service Leave Act 1958 which has application and therefore the pro-rata calculation is to be made in accordance with this statute, ie, the ultimate right to a period of leave accrues in respect of completed years of service, and the right to a pro-rata entitlement is calculated in direct proportion between the number of completed years required to be served to qualify for leave and the number of completed years actually served.

Ms Unsworth completed marginally less than 23 months of employment with the respondent and hence she completed one year of applicable service, and Ms Neylon completed slightly in excess of 20 months of service with the respondent and hence in her case she has also completed one year of service. It is therefore the finding of the Commission that both Ms Unsworth and Ms Neylon are entitled to a pro-rata payment in lieu of long service leave at the rate of 1/7th, that is, the

proportion their one completed year bears to the seven completed years needed to qualify for leave, of the end-entitlement of 13 weeks leave, at the rate of weekly salary applicable to each of them. The parties are requested to confer and endeavour to agree the level of payment due to Ms Unsworth and Ms Neylon in accordance with these reasons for decision.

Appearances: Mr A. Dzieciol on behalf of the ANF
Ms C. Thomas on behalf of the HSOA
Mr M. O'Connor on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Nursing Federation, Industrial Union of
Workers Perth

and

Diabetes Australia—Western Australia.

No. CR 176 of 1997.

1 March 2000.

Order.

HAVING heard Mr A. Dzieciol on behalf of the applicant and Mr M. O'Connor on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the respondent pay to Mrs M. Unsworth pro rata long service leave in the sum of \$1653.15.

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)

and

Diabetes Australia—Western Australia.

No. CR 211 of 1997.

1 March 2000.

Order.

HAVING heard Ms C. Thomas on behalf of the applicant and Mr M. O'Connor on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders—

THAT the respondent pay to Ms K. Neylon pro rata long service leave in the sum of \$1653.15.

(Sgd.) C. B. PARKS,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Railways Union of Workers (WA Branch)
and

Western Australian Government Railways Commission.
No. CR 290 of 1994.

21 October 1994.

Reasons for Decision.

(Given extemporaneously at the conclusion of the submissions, as edited by the Commissioner.)

COMMISSIONER C.B. PARKS: This matter was referred from a conference pursuant to section 44 of the Industrial Relations Act, 1979 before the Commission as constituted. The schedule of the matter for hearing and determination is in the following terms—

“The applicant Union claims that the proposed transfer by Westrail of its employee Mr Gerald William James Capewell, Maintainer Level 3 Freight Operations, Civil Engineering Section, from Picton is unfair and unreasonable in all the circumstances, and that Westrail be restrained from transferring him from Picton.

The respondent objects to the claim on the ground that the claim relates to a matter in which the Commission is prevented from exercising jurisdiction by the operation of section 23(3)(d) of the Industrial Relations Act, 1979; and further, and in the alternative, denies that the transfer is unfair and unreasonable and denies that it should be restrained from effecting the transfer.”

The ARU says that Mr Capewell was unfairly transferred from his employment with Westrail in Picton. A backdrop to which is that Mr Capewell was dismissed by the respondent on or about 22 June 1994, he appealed to the Railways Appeal Board (the Appeal Board), and the decision thereof was that he be reinstated. Upon reinstatement of Mr Capewell, Westrail decided to transfer him from Picton to Kwinana, however that decision has been stayed until the matter referred to the Commission is determined.

The ARU seeks an order directing that Mr Capewell be allowed to remain at Picton.

Westrail submitted that there is no jurisdiction for the Commission to deal with this claim and that accordingly it should be dismissed. The Commission held that s23(3)(d) of the Industrial Relations Act, 1979 (the Act) does not oust the jurisdiction of the Commission as contended by Westrail.

The facts giving rise to the issue in this matter are agreed and are as follows.

Mr Capewell was involved in the unlawful removal of Westrail property, railway sleepers. As he was the most senior member of staff involved in this activity at the time the respondent summarily dismissed Mr Capewell.

Mr Capewell appealed against his dismissal to the Appeal Board (appeal no. 2815) which reinstated him in employment but imposed a penalty and regressed him in classification from a Maintainer – Level 6, to that of Maintainer – Level 3. The future work location of Mr Capewell was a matter which the Appeal Board held was an “operational” matter, and I interpret that to mean it was not seen to be disciplinary, and therefore did not excite the jurisdiction of the Appeal Board. Mr Capewell lodged a subsequent appeal (appeal no. 5245) in which he alleged he had been “transferred by way of punishment”. The Appeal Board upon hearing argument regarding its jurisdiction held that the transfer per se had not been an act of punishment by Westrail however the “imposition of the loss of a transfer allowance” was a punishment and hence there was jurisdiction to deal with that matter. However in that proceeding Westrail announced that Mr Capewell would be paid the transfer allowance and the Appeal Board thereupon held there was no longer an issue to excite its jurisdiction.

The ARU submits that the Commission does have jurisdiction to deal with the claim. It asserts that Westrail’s reliance on the exclusionary provision of s23(3)(d) of the Act is misplaced. The ARU refers the Commission to s7 of the Act in which “industrial matter” is defined and says that clearly the

issue to be determined here is a question going to the privileges, rights or duties, including the wages and allowances payable to an employee. Therefore, the ARU says, there is jurisdiction.

Westrail relies on s23(3)(d) of the Act and ss 73(1), 77 and 83 of the Government Railways Act 1904-1982 for its argument that there is no jurisdiction for the Commission to deal with this claim. It says that what the ARU is really seeking is an interpretation of the decision of the Appeal Board and an enforcement of it.

Section 23 of the Act confers jurisdiction on the Commission. There are exclusions. Section 23(3)(d) provides for one. It is as follows—

“(3) The Commission in the exercise of the jurisdiction conferred on it by this Part shall not—

- (d) regulate the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any employee or any one of a class of employees if there is provision, however expressed, by or under any other Act for or in relation to a matter of that kind and there is provision, however expressed, by or under that other Act for an appeal in a matter of that kind;

The provisions of the Government Railways Act 1904-1982 are said to be relevant. Section 73 enables the Western Australian Government Railways Commission, which is “the Commission” for the purposes of that Act (but “Westrail” for the purposes of these reasons) to take disciplinary action. It is relevantly as follows—

“73. (1) The Commission may appoint, suspend, dismiss, fine, transfer without payment of expenses, or reduce to a lower class or grade, any officer or servant of the Department, and may, without prejudicing or otherwise affecting any other authority the Commission has to act by agents, delegate any of the powers conferred upon the Commission by this section, in such manner, for such period, and subject to such conditions, if any, as the Commission deems fit, and the delegate may exercise the powers in accordance with the delegation, but neither the Commission nor the delegate shall in the exercise of any of those powers, be subject to the Minister except in the cases of such officers and services as shall be prescribed:

But every such officer and servant shall be deemed to be in the service of the Crown.

(2) The Commission may—

- (a) In any case where an officer or servant has for any act or omission been suspended—
 - (i) fine;
 - (ii) reduce to a lower class or grade;
 - (iii) dismiss; or
 - (iv) transfer without payment of transfer expenses,

that officer or servant, notwithstanding and in addition to such suspension; and

- (b) In any case where the Commission considers the circumstances warrant, by way of punishment for an act or omission reduce an officer or servant to a lower class or grade and also transfer him without payment of transfer expenses,

but except as provided in this subsection the Commission shall not inflict on any officer or servant more than one form of punishment for the same offence:

Section 77 provides for an appeal by an employee dealt with by the employer pursuant to section 73. It states—

“77. Any person who, being permanently employed on a Government Railway, is, under section seventy-three of this Act—

- (1) fined; or
- (2) reduced to a lower class or grade; or
- (3) dismissed; or

- (4) suspended from employment in such circumstances as to involve loss of pay; or
 (5) transferred by way of punishment involving loss of transfer expenses,

may, in the prescribed manner, appeal to an Appeal Board constituted as hereinafter provided, except where the person is the occupant of an office prescribed under section seventy-three of this Act as one in respect of which the exercise of any of the powers referred to in that section is subject to the Minister, in which case the person shall not have a right of appeal to an Appeal Board so constituted, but the person may in manner prescribed by the regulations appeal to a Stipendiary Magistrate."

Section 78 of the Act establishes the constitution of the Appeal Board and section 83 relevantly states as follows—

"The Appeal Board may confirm, modify, or reverse any decision appealed against, or make such other order thereon as they think fit, and the decision of the Appeal Board shall be final."

In the matters *Wall v Commissioner of Railways* (7 WALR 206) and *Pomykala v Railways Appeal Board* (54 WALR 9) the Supreme Court held that an appeal to the Appeal Board lies under s77 of the Government Railways Act 1904 – 1982 only where the powers afforded Westrail under s73 of that Act are exercised punitively. It is the decision of the Appeal Board that the transfer of Mr Capewell was not punitive, and in effect, that absent such element the nature of the controversy put it outside the jurisdiction of the Appeal Board.

On my reading of s77 of the Government Railways Act 1904 -1982 a transfer alone does not constitute a ground for appeal and such does not have a punitive character unless a loss of transfer expenses is involved.

It is the conclusion of the Commission that no appeal upon the matter of Mr Capewell's transfer was available under the Government Railways Act 1904 – 1982 and hence the jurisdiction of the Commission is not ousted by s23(3)(d) of the Act on that ground. Furthermore s23(3)(d) may oust the jurisdiction of the Commission only in relation to industrial matters of a limited kind ie "the suspension from duty in, discipline in, dismissal from, termination of, or reinstatement in, employment of any employee" none of which descriptions encompass the subject of transfer per se and such might only be caught by the section if a transfer is effected as an act of discipline.

Hence the Commission determines it has jurisdiction to deal with the matter referred to it.

Appearances: Mr AM Dzieciol on behalf of the applicant
 Mr DF Johnston on behalf of the respondent.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Railways Union of Workers (WA Branch)

and

Western Australian Government Railways Commission.

No. CR 290 of 1994.

3 March 2000.

Order.

WHEREAS the Commission conducted a conference pursuant to s44 of the Industrial Relations Act, 1979 (the Act) wherein the dispute between the parties was unable to be settled by conciliation; and

WHEREAS the aforementioned dispute between the parties regarding a decision by Westrail to transfer Gerald William Capewell was referred to the Commission for arbitration; and

WHEREAS the respondent objected to the matter being referred for arbitration on the ground that the Commission is prevented from exercising jurisdiction by the operation of s23(3)(d) of the Act, and denied that the said transfer was unfair or unreasonable; and

WHEREAS the Commission having heard the parties delivered extempore reasons for decision and held that the jurisdiction of the Commission was not ousted by s23(3)(d) of the Act by the operation of s73, s77, and s83 of the Government Railways Act 1904-1982; and

WHEREAS the Commission having further heard the parties in relation to the substance of the matter referred to it, reserved its decision thereon;

AND WHEREAS the applicant Union has notified the Commission in writing that Gerald William Capewell has ceased to be employed by the respondent;

NOW THEREFORE the Commission, being satisfied a dispute no longer exists between the parties and hence the matter for determination has become moot, pursuant to the power conferred on it under the Act, hereby orders—

THAT this application be and is hereby dismissed.

(Sgd.) C.B. PARKS,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of
 Western Australia (Incorporated)

and

Ministry of Fair Trading.

No. PSA CR 23 of 1999.

COMMISSIONER J F GREGOR.

14 December 1999.

Order.

WHEREAS on 14 June 1999, the Commission issued a Memorandum of Matters for hearing and determination under section 44 of the Industrial Relations Act, 1979, when at the conclusion of a conference held on 27 May 1999, a dispute between the parties had not been resolved; and

WHEREAS the matter was listed for hearing on 9 December 1999; and

WHEREAS the parties have had various meetings and conferences which have resulted in an agreement on the matters which were the subject of the Memorandum of Matters for Hearing and Determination; and

WHEREAS by consent the parties request the Commission issue an Order in the terms of a Memorandum of Agreement made between them as an Agreement between the Ministry of Fair Trading and Mr Emerson to operate in conjunction with the Ministry of Fair Trading Enterprise Agreement 1998, the term of the Order not to exceed the expiry of the Enterprise Bargaining Agreement on 14 January 2001; and

WHEREAS the Commission has decided to make such an Order in satisfaction of the dispute;

NOW THEREFORE the Commission pursuant to the powers vested in it by section 44 of the Act, hereby orders by consent—

1. THAT the dispute between the parties, subject to the Memorandum of Matters for hearing and determination under section 44 of the Industrial Relations Act, issued on 14 June 1999, is resolved in terms of the attached Memorandum of Agreement.
2. THAT the Agreement should be read in conjunction with clause 15—Hours of Work of the Enterprise Agreement and shall operate to the extent of any consistency.
3. THAT this Order has effect to 14 January 2001.

(Sgd.) J.F. GREGOR,

Commissioner.

[L.S.]

MEMORANDUM OF AGREEMENT

PSAC 23 1999

The parties have reached a settlement in relation to the above application in the manner set out in Attachment A.

The Civil Service Association as agent for Mr Emerson undertakes to discontinue the current application.

as agent representing

Ross Emerson

(the employee)

Date: 7 December 1999.

Common Seal

Patrick Walker

(the employer)

ATTACHMENT A

AGREEMENT (CRICKET UMPIRING)

ROSS EMERSON AND MINSITRY OF FAIR TRADING

This Agreement has been made in accordance with Clause 15.8, 15.9 and 15.10 in the Ministry of Fair Trading and CSA Enterprise Agreement 1998 (Enterprise Agreement). It shall be read in conjunction with Clause 15 – Hours of Work of the Enterprise Agreement and shall operate to the extent of any inconsistency.

1. This arrangement is made between Mr Emerson and the Ministry in recognition of his cricket commitments.

2. Consistent with the policy requirements of all employees of the Ministry of Fair Trading in relation to flexitime arrangements, any additional hours worked above 165 hours in a settlement period, will require prior management approval, and that these additional hours will not significantly affect the ability of Mr Emerson to fulfil the requirements of the position.

3. At the end of any settlement period (4 weeks) a maximum of 52.5 hours can be carried over.

4. The employee shall, wherever practicable, make application for leave not less than ten (10) days prior to the event. The employer will not unreasonably deny leave; however, approval is subject to operational requirements.

5. For the purpose of this agreement and clause 4, the employer shall waive the maximum 2 days leave (ADO) within a settlement period.

- a) Up to 4 days of accrued leave (ADO) may be utilized for cricket umpiring;
- b) Other paid or unpaid leave entitlement, except sick leave, may be utilized in conjunction with the ADO; and
- c) A maximum of 2 non cricket related (ADO's) can be accessed in one settlement period.

The total cricket and non cricket related ADO's cannot exceed 4 ADO's in one settlement period.

6. Should the employer reject an application for leave or a request to accrue or carry over hours, the employee may refer that matter through the dispute resolution process of this agreement.

7. Any dispute concerning the application or implementation of this arrangement shall be dealt with as follow—

- a) At first instance Mr Emerson and his Supervisor should attempt to settle the dispute.
- b) If the dispute cannot be settled at the local level it should be referred to a meeting of representatives of the Union and employer for discussion and attempted resolution.
- c) If the dispute is not resolved either party may refer the matter to the Western Australian Industrial Relations Commission.
- d) Whilst these dispute settlement procedures are taking place existing working arrangements shall continue.
- e) Any issue not resolved within 5 days of sub paragraph (a) being invoked may be referred directly to the Western Australian Industrial Commission.

8. This Agreement replaces the relevant flexi-time and banked hours arrangements within the Enterprise Bargaining

Agreement. However, this does not preclude Mr Emerson applying for a flexi day that is non cricket related. The approval of these flexi days must satisfy clause 5(c) of this agreement.

9. This Agreement shall be monitored by the parties during its term and reviewed within one (1) year.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Construction, Mining, Energy,
Timberyards, Sawmills and Woodworkers

Union of Australia—

Western Australian branch & Others

and

RGC Minerals Sands Ltd & Another.

CR 270 and 300 of 1999.

31 March 2000.

Orders and Directions.

WHEREAS the Commission in Court Session has received an interlocutory application from the applicant unions for an order for the provision of information by the respondents; and

WHEREAS the Commission in Court Session is satisfied that the following orders and directions are necessary and expedient for the just hearing and determination of the matter.

NOW THEREFORE having heard Mr D.H. Schapper (of Counsel) on behalf of the applicant unions, and Mr A. Cameron, as agent, on behalf of the respondents, the Commission in Court Session pursuant to the powers vested in it by the *Industrial Relations Act 1979*, hereby orders and directs—

- A. THAT on or before 4pm on Wednesday 5 April 2000, RGC Mineral Sands Ltd and Westralian Sands Ltd provide the following information to the applicant unions—
 - 1) The changes, if any, to the PRR formula between July 1995 and the present time;
 - 2) The changes, if any, to the percentages in respect of which the PRR was applied between July 1995 and the present time;
 - 3) The figures used to calculate the percentage figures for PRR set out in the letter from Australian Mines and Metals Association to Mr Schapper of 23 March 2000;
 - 4) A schedule of what the percentage figures for PRR would have been had the percentages not been changed from a target of 15% to 7.5% in July 1998.
 - 5) The numbers of award-only employees of Iluka Resources Limited at the present time, the site at which they are employed and their classification;
 - 6) The numbers of award-only employees of RGC Mineral Sands Ltd at the present time, the site at which they are employed and their classification; and
 - 7) The numbers of letter-of-offer employees of Iluka Resources and of RGC Mineral Sands Limited at the present time, the sites at which they are employed and their classification.
- B. THAT on or before 4pm on Monday 3 April 2000 the applicant unions—
 - a. file in the Commission and serve upon RGC Mineral Sands Ltd and Westralian Sands Ltd further and better particulars of claims 1(a) and (b) of the matters referred for hearing and determination in application CR270 of 1999; and
 - b. provide to RGC Mineral Sands Ltd and Westralian Sands Ltd a statement confirming

whether or not the unions intend to make application for leave to amend any of the claims currently before the Commission in Court Session in these applications.

(Sgd.) J.F. GREGOR,
[L.S.] By the Commission in Court Session.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers

and

St Michael's School.

No. CR 177 of 1999.

COMMISSIONER A.R. BEECH.

15 March 2000.

Reasons for Decision.

PRELIMINARY POINT—JURISDICTION

The matter referred for hearing and determination pursuant to s.44(9) of the Act is as follows—

“The parties are in dispute over the classification level within the *Independent Schools Administrative and Technical Officers Award 1993* assigned to Mrs Delerine Murray since 2 November 1995 given the nature of the duties undertaken in the performance of Mrs Murray's employment at St Michael's School. The union seeks an order that the appropriate level of classification for Mrs Murray under the *Independent Schools Administrative and Technical Officers Award 1993* since 2 November 1995 is at Level 4 of the award.

The respondent objects to and opposes the claim and seeks an order that the application be dismissed for want of jurisdiction.”

The respondent's argument is straightforward. It sees the order sought as either interpreting or enforcing the award. In the former case, proceedings would need to be brought under s.46 of the Act. In the latter case proceedings would need to be brought before an Industrial Magistrate under s.83. In either case, the present proceedings would not be within the Commission's jurisdiction. The respondent relies particularly on the decision of the Full Bench in *Crewe and Sons v. Amalgamated Metal Workers and Shipwrights Union* (1989) 69 WAIG 2623. In that matter, the matter referred for hearing and determination before the Commission was that the respondent company pay to three employees the annual leave loading prescribed by the *Metal Trades (General) Award, 1966* for the period between 22 December 1988 and 9 January 1989. The Full Bench held that the essential nature of the matter was an enforcement, or an interpretation, of the award and it was not a dispute requiring resolution by conciliation and or arbitration given that s.44 should not be read down (at 2628). The Full Bench emphasised that s.44 should not be read down and its powers are available unless it is “unequivocally apparent” to the Commission that the matter before it is one which should be dealt with under s.46 or s.83 or another special power conferring section of the Act.

The facts of the matter may be shortly stated. The union's member, Mrs Murray is employed by the respondent and classified at Level 3 of the award. That level is defined in clause 13.—Classifications of the Award as follows—

(3) “Officer” Level 3.

- (a) The officer at this level works as a competent skilled autonomous officer and has knowledge, skills and demonstrated capacity to undertake complex tasks. The officer 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 officer; records officer and school secretary.

The union's claim is that order should issue that the appropriate level of classification for Mrs Murray should be Level 4. That level is defined in clause 13.—Classifications of the Award as follows—

(4) “Officer” Level 4.

- (a) The officer at this level, through formal qualification or job responsibility, is fully competent in the performance of the job function.

The officer 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 officers.

- (b) Examples of positions which may appropriately be classified as Level 4.

Assistant bursar and/or registrar, senior finance officer, senior laboratory technician, school and /or principal's secretary in a secondary school and office manager with supervisory duties.

The order that is sought by the union, that it is more appropriate that Mrs Murray be classified as Level 4, cannot be said to amount to enforcing the award in the manner cited by *Crewe and Sons* and as further explained in *J-Corp Pty Ltd v- ABLF* (1993) 73 WAIG 1185 at 1188. It would not of itself require the respondent to comply with its obligations under the award. The union is correct in pointing out that to actually require the respondent to pay Mrs Murray in accordance with Level 4 of the award would require an order in those terms. Such an order is not sought here. Indeed, the union makes it plain that the dispute between the parties is over the duties performed by Mrs Murray and not of itself the rate of pay under the award classification.

Nor does the order sought, of itself, interpret a provision of the award. The union has made it quite plain that it sees the issue as an issue of fact finding of the duties performed by Mrs Murray. Once the facts are found, the Commission may refer to the award in order to decide whether the appropriate level of classification of Mrs Murray is more within Level 4 of the award than Level 3.

If an order issued in the terms sought, it would not compel the employer to do anything. It would not require the respondent to pay Mrs Murray in accordance with the award. It would not require the respondent to reclassify Mrs Murray. It would merely determine the appropriate level of her classification. To that extent, the circumstances before the Commission on this occasion can be contrasted with the circumstances recently before the Commission otherwise constituted in relation to the *Sisters of Mercy Perth (Amalgamated) and Another* (1999) 79 WAIG 3458. In that case the claim was for an order assigning to an employee a certain promotional level and for the allowance for that level to be paid from a given date. The Commission on that occasion, properly in my view, held that essentially the order sought was for the enforcement of an award. The contrast in this case is that no order is sought requiring the respondent to do anything in relation to the award.

It cannot be said that it is “unequivocally apparent” to the Commission that the matter before it is one which should be dealt with under s.46 or s.83 or another special power conferring section of the Act. That is sufficient for the issue of jurisdiction to be determined in favour of the union. The matter will now be returned to the lists for hearing and determination.

Appearances: Mr M. Keogh on behalf of the applicant.

Ms A.M. Britto on behalf of respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Liquor, Hospitality and Miscellaneous Workers
Union, Western Australian Branch

and

Chesterfield Child Care Centre.

No. CR130 of 1999.

COMMISSIONER A.R. BEECH.

10 March 2000.

Reasons for Decision.

The union brings this matter on behalf of its member, Ms Exell, who was employed at the Chesterfield Child Care Centre from 22 February 1999 until 7 or 8 April 1999. The precise date of her dismissal is not of significance.

The respondent states that it dismissed Ms Exell for two reasons. These are set out in her letter of termination dated 7 April (exhibit 3) as being due to the downturn in the number of children enrolled at the Centre and due to a restructuring of staff. It states that her employment was to terminate from 9 April 1999.

The union claims that the dismissal was unfair because it states that the reason given to Ms Exell at the time of her dismissal was that it was because another employee, Ms Sonia Avendano, who previously worked full time but who, for personal reasons, became part time for approximately seven weeks, was to return to her full time position. This issue occupied much of the argument before the Commission and involves the submission of the respondent that it was a term of her contract of employment that Ms Exell was employed for a temporary period of time until the return to full time employment of Ms Avendano. It was the respondent's argument, initially, that this term of her contract of employment permitted the respondent to terminate Ms Exell's employment when Ms Avendano in fact returned to full time employment some seven weeks after Ms Exell commenced. Ms Exell denies that it was a term of her employment that she would be employed only until the return of Ms Avendano. It is therefore necessary to deal firstly with the terms of Ms Exell's contract of employment with the respondent.

When Ms Exell commenced her employment she signed an individual Workplace Agreement. It is agreed that the Workplace Agreement was not registered. By s.27 of the *Workplace Agreements Act, 1993* if an individual workplace agreement is not lodged for registration within a period of 21 days from the day on which it took effect (that is, the day it was signed) it ceases to have effect on the expiration of that period and cannot be lodged for registration.

On the evidence, on 20 March 1999 Mr Shah, a Director of the respondent, gave Ms Exell a single sheet of paper which was an unsigned copy of the last page of the Workplace Agreement and asked her to sign it from that date. Ms Exell did so. Mr Shah then, presumably, attached that sheet of paper to the balance of the original Workplace Agreement and lodged it for registration. However, that Workplace Agreement had not been registered prior to Ms Exell's dismissal and subsequent to her dismissal, Ms Exell informed the Commissioner for Workplace Agreements that she objected to its registration and it, too, was not registered. Although it was not registered it does not cease to exist as a document. It is a document which records what the parties agreed would be the terms of employment. The terms of Ms Exell's employment will be whatever was agreed between her and the respondent to the extent that the terms of the agreement do not conflict with a term of an applicable award.

There is a dispute between Ms Exell and the respondent about whether it was agreed that the duration of Ms Exell's employment would be until the return to full-time employment of Ms Avendano. Ms Exell asserts that she was not informed that the duration of her employment was limited to the return to full-time employment of Ms Avendano. The respondent's argument that it was so limited is not without its difficulties. It is common ground that Ms Exell was interviewed for her position by Mr Narsi Polra, another Director of the respondent and the respondent says that it was at that

interview that the limit on Ms Exell's employment was agreed. The interview is critical to the respondent's argument yet Mr Polra was not called to give evidence of it. I am entitled to conclude from that that his evidence would not have been favourable to the respondent.

To the extent that the respondent relied on the evidence of Mr Shah, and of Ms Heredia, who both gave evidence of what they believed had happened at the interview, I have little difficulty rejecting their evidence in preference to Ms Exell's evidence. Mr Shah and Ms Heredia were simply not present at the interview. They do not know what was, in fact, said at the interview between Mr Polra and Ms Exell. Ms Exell was there, she does know, she gave her evidence consistently and, despite vigorous cross-examination, remained unmoved in her evidence. I accept the evidence of Ms Exell.

It is appropriate to note here that the respondent mounted an attack upon Ms Exell's credibility when she was being cross-examined. The hearing of this matter was set down for one day's duration. During the course of that day, Ms Exell gave her evidence and was rigorously cross-examined. Ms Exell was cross-examined about the circumstances of the termination of her employment at a previous child care centre and her claim then that she had been unfairly dismissed. The respondent then called evidence from Ms Heredia and Mr Dresser and foreshadowed that a number of other witnesses, including Mr Polra, would be called to give evidence against Ms Exell. The respondent foreshadowed calling the proprietor of that other centre to tell the Commission of Ms Exell's "bad character". Indeed, the respondent foreshadowed that it would call evidence to show that Ms Exell was "dishonest and a troublemaker". However, when the proceedings eventually resumed approximately eight weeks later the respondent did not call those witnesses. It called further evidence only from Mr Shah. The respondent was no longer represented by the legal practitioner who had been representing the respondent to that time. Mr Beedham, the agent now representing the respondent, indicated that the respondent now saw no need to call all of the witnesses who were foreshadowed. No explanation for this change in approach by the respondent was given.

Further, although the respondent did call Mr Shah, to the extent that the respondent had foreshadowed on the first day that Mr Shah's evidence would be that documents relating to the operation of the Centre were missing subsequent to Ms Exell's dismissal from the respondent, and that she tried to mislead the respondent by her choice of referees on her curriculum vitae, it is a matter of record that Mr Shah did not advert at all to these matters when he gave his evidence.

The result, therefore, is that the evidence brought by the respondent to attack Ms Exell's credibility consisted only of the evidence of Mr Dresser on the first day of the hearing. Mr Dresser's evidence of his belief regarding Ms Exell's truthfulness was put to her only in general terms when she was cross-examined. For example the evidence of Mr Dresser that he believed Ms Exell lied under oath in an unrelated proceeding was not put to her. I am quite unable to accept that Mr Dresser's belief, quite unsupported by any other evidence, provides a reason why Ms Exell's evidence before me should not be accepted. I found her evidence to be quite credible in the context of the case overall. On the evidence before the Commission, the allegations put to Ms Exell in her cross-examination were scurrilous and reflect poorly on the respondent.

Furthermore, when the proceedings resumed the respondent informed the Commission that it believed that the claim before the Commission is able to be determined by reference to the need of the respondent to reduce staff because of the falling numbers of children enrolled in the respondent's child care centre, and even that Ms Exell was simply made redundant. Therefore, the respondent wasted an inordinate amount of the Commission's time in the cross-examination of Ms Exell, the calling of Mr Dresser and in some, but by no means all, of its questions of Ms Heredia. It is apparent to the Commission in retrospect that the hearing would have been completed in the one day's hearing time allotted had the respondent not embarked upon its ill-judged attack on Ms Exell's credibility. As it was, the hearing had to adjourn and, given the amount of time the respondent foreshadowed it needed for the balance of its case, it could not be conveniently re-listed promptly. That is quite unsatisfactory. I have taken the trouble to put these matters on the record because although the union itself

did not make an issue of the respondent's change of tactic, these matters serve as an illustration of matters that the Commission should guard against permitting in future proceedings.

The respondent's difficulty in asserting that it was a term of Ms Exell's contract of employment that she would be employed only until the return of Ms Avendano do not end merely with the fact that Mr Polra was not called to give evidence of the critical interview. The difficulty continues with the respondent's assertion that on 23 February 1999 Mr Shah gave Ms Exell a letter (exhibit D) which states—

"Your application for a position as a trained Child Carer is accepted for a period, approximately 4—6 weeks, until Mrs Sonia Avendano returns to full time work.

On Mrs Avendano returning to full time work if children's numbers have increased, we are prepared to retain you in the above position. However if the children's numbers have not increased, we have no alternative but to terminate your employment.

Yours sincerely."

Ms Exell denies having seen the letter until proceedings in the Commission. Mr Shah gave evidence that he prepared the document and that he handed it, together with other documents, to Ms Exell on the day it was written. However, he is not sure whether she read the document. I am satisfied that Mr Shah prepared the document and gave it to her because of the evidence of Ms Heredia that, at the time it was written, she was acting as an office manager and she sighted the letter.

The difficulty which the respondent faces, however, is that the letter is inconsistent with the Workplace Agreement document. There is no mention of the temporary nature of Ms Exell's employment in the Workplace Agreement document. There is no term within it which limits her employment to the return of Ms Avendano. In fact it contains terms which indicate employment of far longer duration. It states that it operated from the date of signing (20 February 1999) and that it will operate for two years. It provides for a probationary period of six months and obliges the employer to notify Ms Exell at the end of the probationary period whether her work is of an acceptable standard and whether the contract will continue. It provides for future public holidays up to and including New Year's day, a period well in excess of the estimated four to six weeks' employment duration which the respondent alleges. It provides for the stated rate of pay to be adjusted after one year of employment. It provides for four weeks' paid annual leave (seemingly as at the date the Workplace Agreement took effect, although I suspect it is meant to be after one year's employment). These provisions indicate that the Workplace Agreement, which Mr Shah agrees was binding on both parties immediately it was signed, envisaged Ms Exell's employment continuing for an indefinite period of time.

In cross-examination Mr Shah eventually agreed that if it was a term of Ms Exell's contract of employment that she would be employed only until the return of Ms Avendano the term should have been contained within the Workplace Agreement. His evidence is that the Workplace Agreement draft was drawn up by Mr Polra and not himself. However, the respondent's failure to call Mr Polra meant that it could not satisfactorily explain the omission from the Workplace Agreement draft of the most important part, from the respondent's point of view, of Ms Exell's employment: its limited duration. Its omission strongly suggests that it did not exist.

There is a further complication for the respondent. As Mr Shah conceded, the parties were bound by the Workplace Agreement as soon as it was signed on 20 February. It remained in force for 21 days and then ceased to have effect: s.27 of the *Workplace Agreements Act, 1993*. When Mr Shah gave the letter to Ms Exell on 23 February the Workplace Agreement was in force. The letter would have the effect of varying a term of the Workplace Agreement by limiting Ms Exell's duration of employment. By s.24 of the *Workplace Agreements Act, 1993* the parties to a workplace agreement may, while it is force, agree to change the agreement, but can only do so by a new workplace agreement containing the change. Therefore, even if Mr Shah did give the letter to Ms Exell, it had no valid effect whatsoever because, at that time, the Workplace Agreement was in force and could not be varied other than in accordance with s.24 of the *Workplace Agreements Act, 1999*. Therefore, I find that the letter of

23 February 1999 did not have any effect and is to be disregarded.

In summary, on the evidence before the Commission, or more particularly the absence of it, it was not a term of Ms Exell's employment that it would be only for the period Ms Avendano was expected to be part time. The respondent may well have had an understanding with Ms Avendano that she would be able to return to full time employment but the evidence does not show that the respondent made it a term of Ms Exell's employment that its duration was limited to that time.

I have dealt with this issue in some detail because of the manner this case proceeded before the Commission. However, my finding that it was not a term of Ms Exell's employment that it would be only for the period Ms Avendano was expected to be part time is only relevant to the extent that Ms Exell's employment was terminated because of the return of Ms Avendano to full time employment. In fact, Ms Exell's employment was also terminated due to the downturn in the numbers of children enrolled in the Centre. The letter of termination given to Ms Exell states that her dismissal was due to the "downturn of children at the Centre and due to restructuring of staff" (exhibit 3). Further, Ms Heredia was present when Mr Polra decided to dismiss Ms Exell. Ms Heredia's understanding is that the main reason for Ms Exell's dismissal was that the numbers of children enrolled in the Centre had dropped. I accept Ms Heredia's evidence. The evidence brought by Mr Shah, evidence which to some extent, was not shaken in cross-examination, is that the numbers of children enrolled at the child care centre were indeed steadily declining. The respondent was suffering financially. Mr Shah had to contribute his personal finances to the running of the company. I accept Mr Shah's evidence regarding the respondent's dire financial position. The respondent also restructured at least to the extent that Mr Shah now drove the bus on occasions and had reduced the hours of the cook and that two staff were retrenched, one of whom was Ms Exell. Mr Shah's evidence in this regard was not, in my view, successfully broken down in cross-examination and I accept it. His evidence, at least in this regard, is supported by the evidence of Ms Heredia. I find that the principal reason for Ms Exell's dismissal for redundancy was the respondent's financial situation. The redundancy would have occurred even if the respondent had not believed that the duration of Ms Exell's employment was limited to the return to full time employment of Ms Avendano. Even though the numbers of children attending the centre subsequently increased, that does not remove the respondent's urgent need to act to save the business at the time it did. Ms Exell was dismissed because of the respondent's need to save the business. Hers was one of those positions.

The dismissal of an employee for redundancy involves two steps. Firstly, the employer decides to make the employee's position redundant. Second, the employer decides what is to happen to the employee who worked in that position. For example it may not be necessary to dismiss the employee if part time work was available as an alternative. It is for that reason that Parliament has seen fit to legislate an implied term into an employee's contract of employment that—

- (1) Where an employer has decided to—
 - (a) take action that is likely to have a significant effect on an employee; or
 - (b) make an employee redundant,
 the employee is entitled to be informed by the employer, as soon as reasonably practicable after the decision has been made, of the action or the redundancy, as the case may be, and discuss with the employer the matters mentioned in subsection (2).
- (2) The matters to be discussed are—
 - (a) the likely effects of the action or the redundancy in respect of the employee; and
 - (b) measures that may be taken by the employee or the employer to avoid or minimize a significant effect,
 as the case requires.

(s.41 *Minimum Conditions of Employment Act, 1993*)

Contrary to the belief of Mr Shah, the obligation on the respondent to inform Ms Exell of the respondent's decision and discuss with her the alternatives to dismissal applied even

if Ms Exell had been employed under a registered workplace agreement. However, even if this legislative requirement did not exist, simple fairness towards an employee faced with redundancy suggests that there should be a discussion about alternatives (*Westen v Union des Assurances* 28/8/96 Madgwick J at pp 4/5; *Cannon v LEP International* Kavanagh J NSW IRC (1998) 83 IR 415; *Polkey v A E Dayton Services* [1987] IRLR 503). This discussion did not occur in the case of Ms Exell. Mr Shah admits that this discussion did not occur. The failure to hold a discussion may well constitute a breach of the *Minimum Conditions of Employment Act*, and that is not a matter for these proceedings. Nevertheless, Ms Exell's employment was terminated in breach of a term of her contract of employment that there would be such discussions (*Minimum Conditions of Employment Act* s.5). That is one matter to be considered in the claim that her dismissal was unfair.

Had the failure of the respondent to discuss the likely effects of the redundancy with Ms Exell been the only consideration it may not have been sufficient to lead to the conclusion that Ms Exell's dismissal was unfair. However, the union also points out that at the same time that Ms Exell (and another employee) was dismissed the respondent increased Ms Avendano's hours by a further 18 hours per week making her full time. The union argues that if the respondent had not returned Ms Avendano to full time hours, it could have offered part time hours to Ms Exell. Ms Exell would then not have been dismissed. However, it is not for the Commission to run the respondent's business. Whether the union's suggestion was in fact viable is really a matter for the respondent and Mr Shah's evidence is that merely reducing Ms Exell's hours would not have been viable and that no further staff had since been employed. Mr Shah's evidence was not attacked on this matter and I accept it. The additional 18 hours allocated were not only in the "kindy" section and this raises at least the possibility that it was not unfair of the respondent to decide that the needs of the business were better met by the decision in fact made to make Ms Exell redundant.

The final matter raised before the Commission is that Ms Exell was not given the correct period of notice of the termination of her employment. Ms Exell was called in and given the letter of termination referred to earlier in these Reasons (exhibit 3). The letter effectively gave her two days' notice. According to the conditions of employment set out in the workplace agreement document Ms Exell was to be given two weeks' notice or payment in lieu thereof (Clause 4). It is not suggested that this term is inconsistent with any provision of an applicable award. Although Ms Exell was still within her period of probation the requirement to give notice is only removed if "the Employee's work is found to be unacceptable by the Employer for whatever reasons". Ms Exell's work was not found to be unacceptable at all. In fact Mr Shah stated that Ms Exell was a good worker and there was no dissatisfaction with her work. The union also called evidence from an organiser, Ms Lannon, whose evidence is that, in subsequent negotiations with the respondent in regard to Ms Exell's dismissal, no issue of Ms Exell's performance was raised at all. I accept her evidence. It follows that to validly dismiss Ms Exell the respondent was obliged to give her two weeks' notice or payment in lieu. Its failure to do so means that its dismissal of her was in breach of the contract of employment between them. That is a further factor to be taken into consideration in deciding whether her dismissal is unfair.

Conclusion

Given my finding that the principal reason for Ms Exell's dismissal for redundancy was the respondent's financial situation and that her redundancy would have occurred even if the respondent had not believed that the duration of Ms Exell's employment was limited to the return to full time employment of Ms Avendano the dismissal was not unfair on the union's main argument. However the respondent's belief that was a term of Ms Exell's employment that it would be only for the period Ms Avendano was expected to be part time meant that it dealt rather peremptorily with her. It failed to give her the period of notice, or payment in lieu thereof, it had agreed with her when it employed her. It also failed to discuss with her its decision to make her redundant and with it its reasons why there was no alternative. I find for those reasons that her dismissal was unfair.

Remedy

I also find, on the evidence of both Ms Exell and the respondent, that it is not appropriate that Ms Exell be reinstated in her employment. Indeed, reinstatement would be impracticable.

The Commission is able to order the respondent to pay Ms Exell compensation for the loss or injury caused by her dismissal. As the authorities reveal, compensation is not a large sum where the only reason for unfairness is procedural unfairness: *Nicolson v Heaven and Earth* (1994) 126 ALR 233 at 247 per Wilcox CJ. Ms Exell's loss is not to be estimated according to the wages she would have earned had she not been unfairly dismissed because her position was redundant. That is, even if the dismissal had been carried out fairly towards her, on the evidence she would still have been made redundant at least within a short time of the decision which had been made to restructure the organisation. Her loss is the loss of fair compensation for the redundancy that occurred (*Rogers v Leighton Contractors* (1999) 79 WAIG 3551). Compensation for redundancy involves considerations of compensation for the loss of non-transferable credits and entitlements that have been built up through length of service and for inconvenience and hardship imposed by the termination of employment through no fault of the employee. The calculation of such compensation is not an exact science. Ms Exell had been employed for only 6 weeks. That is not a long period of time although Ms Exell would have accrued some entitlement to sick leave. I take into account her evidence, which was not contradicted, that her dismissal caused some hardship given that she did not find alternative employment immediately. In the circumstances I assess compensation of a sum equal to two weeks' wages as compensation.

On the evidence, Ms Exell had an entitlement to two weeks' wages in lieu of notice and this, also, is ordered to be paid to her pursuant to s.23A(1)(a) of the Act. The evidence that Ms Exell was not paid for a rostered day off is inconclusive and no order is made in that regard.

A Minute of Proposed Order now issues.

Appearances: Mr J. Rosales-Castaneda on behalf of the applicant.

Mr T. Mijatovich (of counsel), and later Mr J. Beedham on behalf of the respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Western Australian Branch

and

Chesterfield Child Care Centre.

No. CR130 of 1999.

5 March 2000.

Order.

HAVING HEARD Mr J. Rosales-Castaneda on behalf of the applicant and Mr T. Mijatovich (of counsel) and later Mr J. Beedham on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act, 1979*, hereby—

DECLARES that the dismissal of M.J. Exell by Chesterfield Child Care Centre was unfair.

ORDERS THAT Chesterfield Child Care Centre pay M.J. Exell—

- (a) Two weeks' wages on or before 7 April 2000 by way of compensation for the dismissal; and
- (b) Two weeks' wages on or before 21 April 2000 by way of entitlement due to her.

(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

Professional Enterprises.

No. CR146 of 1999.

COMMISSIONER J.F. GREGOR.

13 March 2000.

Reasons for Decision.

At the conclusion of a conference held on 18 August 1999, pursuant to Section 44 of the *Industrial Relations Act 1979* (the Act), a disagreement between the parties had not been settled and was referred to hearing and determination. The dispute was delineated in the schedule of the 'Memorandum of Matters for Hearing and Determination' in the following way;

"The Australian Liquor, Hospitality and Miscellaneous Workers Union claims that its member, Juliet Catherine Wells was dismissed from the employment of Professional Enterprises because of the refusal to sign a workplace agreement. It is contended that the dismissal is harsh, oppressive and unfair and the Union seeks orders for reinstatement and compensation

The respondents say that the applicant was dismissed because of poor performance and in face of the warning given to the applicant and her failure to improve, the respondent decided to terminate the contract of employment on 6 May 1999. The respondent contends that there has been no unfairness in its dealings with Ms Wells and says that the Commission should dismiss the claim."

In November 1998, Juliet Wells accepted an offer of employment from the respondent to work as a Commercial Cleaner at the Channel 7 premises in Dianella. According to the Offer of Employment, *Exhibit M1*, an arrangement was made which established principle details of employment which were to apply until a workplace agreement was made between the parties. The applicant was to commence work on 9 November 1998, receive \$10.80 per hour, work 3.5 hours on Sunday and Monday between 11:30pm and 3:00am and Wednesday and Friday between 3:30am and 7:00am. It was to be a probation period of 3 months from the commencement date.

The offer of employment was categorized as an outline of the terms and conditions which would be included in the workplace agreement to be made between the parties. According to the evidence of Ms Wells, the offer of employment was not accompanied by a set of regulations which are issued by Jani-King which was the franchiser from whom the respondent obtained its contract. These regulations were produced in the Commission *Exhibit A1* by the respondent. However, these regulations were for previous employment Ms Wells had with, what might be, a partnership.

Soon after the applicant commenced work she was under the supervision of Jacqueline Stacey, who at the time was involved in her position as Director for the respondent. According to Ms Stacey, the applicant performed her work well and in the few weeks they worked together no issues of any magnitude arose. Ms Stacey claims that prior to the time when her supervision ended, the applicant had advised her that she intended to have surgery on 5 February 1999 and would be absent for 10 days to recuperate.

According to Ms Wells she continued to perform her work at the premises of Channel 7. Other than the normal advices that employees receive from their supervisors, she received nothing which could be interpreted or which she understood as a warning regarding the quality of her work. She abided by all of the respondents rules and regulations. She was sick on three occasions other than the time she was absent following her surgery and on each of those occasions she tried to contact Gordon Stacey, a representative of the respondent.

Notwithstanding her best efforts to do so, she was never able to make contact with him and in lieu she advised the security officers at the premises to pass on information to Mr Stacey. As far as she knew, that occurred. The respondent says that during the period 5 February 1999 to the 15 February 1999 she was absent from work and received no pay. She also says she had no contact with Mr Stacey during that period. Ms Wells denied that she had taken sick leave on the days set out by the respondent in *Exhibit B1* or that she had ever been warned about taking sick leave. She denied that she regularly absented herself on particular days of the week. Ms Wells says when she was dismissed by Mr Stacey, it was a complete surprise and shock to her.

Around this time the respondent had asked Ms Wells to sign a workplace agreement as was foreshadowed in the offer of employment. According to Ms Wells reading of the agreement, there would be terms of employment which would be diminished if she signed the agreement and she sought advice and assistance about how she should deal with the matter. It was her understanding that one of the effects of the agreements would be that she would receive a diminished rate of pay through ordinary time being payable on Saturdays and on Public holidays. She tried to discuss these matters with Mr Stacey but he refused. Ms Wells formed the opinion that as far as the respondent was concerned, she was either required to sign the workplace agreement or alternative action would be taken. This alternative action according to Ms Wells was her dismissal, there being no other reason why the respondent would need to bring the relationship to an end, particularly given that no issue had ever been raised with her about her standard of work or her attendance.

The respondent denies that the dismissal had anything to do with the disagreement between the parties over the form of a workplace agreement to be made between them. It says that on numerous occasions Mr Stacey, had drawn to Ms Wells attention complaints about the standard of her work and she had been warned regarding those standards, such that, she should have been aware that her job was in jeopardy. The respondent claims that it warned Ms Wells on at least 18 separate occasions regarding the quality of her work and in addition, warned her about her absenteeism on 4 occasions. The respondent says that the reasons for the warnings are contained in Mr Stacey's diary but this diary was never produced in the hearing. The contention that there had been complaints was supported by photocopies of 6 memos that had been received from the client concerning problems with the respondents cleaning standards. The respondent claims that there were 18 separate occasions when the applicant was sick during the period of November through to her dismissal on 6 May 1999. You will note in *Exhibit B1* the respondent produces what appears to be photocopies of payments made to the applicant during this period and it is said that these establish the sick leave the respondent claims the applicant took in fact occurred. The respondent denies that the applicant was dismissed because she had queried the contents of a workplace agreement. It was claimed by Mr Stacey that he was open for the applicant to raise issues with him, as he understood this was a requirement of the law. She raised some matters with him but he was unable to agree. As far as he was concerned the question of workplace agreement was unresolved and the applicant was continuing to work under the arrangements made with her in November. The respondent had other employees on workplace agreements, it was not concerned that Ms Wells was not. It was the respondent's contention that the reason that the applicant was dismissed was because of her excessive absenteeism without sufficient proof of illness, coupled with a record of poor performance. Together these entitled the respondent to end the contract.

Before I discuss the law to be applied I need to make findings on witness credibility. I was able to listen to Ms Wells give her evidence. She had good recall of the events. She was staggered by the allegations of absenteeism made to her in cross-examination. She admitted she had been absent on 14 days but 10 of those days were involved in hospitalization following surgery, the other 4 absences were leading up to her hospitalization when she was suffering from the matter which was the subject of medical attention and she had no further absenteeism after that time. She was not shaken from this view in cross-examination. I have no reason to conclude that the

evidence she gave me was incorrect or tainted in any way. Evidence was also heard from Jacqueline Stacey who was a partner with the respondent at the time the applicant started work. She had no problems with the applicant's performance in the first three weeks of her employment. Ms Stacey gave clear evidence that she advised the other partners of the intended absence. I see no reason not to accept her evidence.

Evidence was given on behalf of the respondent from Gordon Stacey. Much of the respondent's case turns around documents which are presented to the Commission in *Exhibit B*. These documents are internally inconsistent. The summaries of absence for instance are made for the purpose of defense of this application and are self serving, so is the information which was presented as part of *Exhibit B*. This too had been prepared for the purpose of briefing the applicants advocate. There is no evidence to support the contention that sick leave occurred on the days Mr Stacey claimed. On the contrary, the Professional Enterprises pay schedule shows that the applicant was paid for the time when she admits she was absent in hospital and for which she received no payment at all and internally inconsistent. I have grave doubts about the quality of his evidence and where it differs from that of the applicant I favour that of the applicant.

Mr Moon who appeared for the respondent directed my attention to *Undercliffe Nursing Home -v-Federated Miscellaneous Workers Union of Australia (1985) 65 WAIG 385*. I agree this is the relevant case for unfair dismissal cases.

"The question to be answered is whether the right of the employer to terminate the employment has been exercised so harshly or oppressively or unfairly against the applicant as to amount to an abuse of the right. A dismissal for a valid reason within the meaning of the Act may still be unfair if, for example, it is effected in a manner which is unfair but if the employment has been terminated in a manner which is procedurally irregular that will not of itself necessarily mean the dismissal is unfair."

The onus of proof in this matter that there has been unfairness lies with the applicant. I have mentioned that I find her to be a truthful witness. I accept her story that she started with the respondent in November 1998 and that she worked with Jacqueline Stacey. I also accept that she told Ms Stacey that she would be requiring leave for a medical condition. I also accept that Ms Stacey passed that on to other principals of the respondent. It is admitted by Ms Wells that she had time off for sickness but I accept that she made efforts to comply with the requirements of the respondent to advise it. I reject the contentions of Mr Stacey that he was readily available to receive notices of sickness.

In so far as the sickness was concerned, I accept that the true history of the sickness suffered by Ms Wells during her employment with the respondent is that given by her. The documents in *Exhibit B* can be said to support the respondent's contentions but they are at odds with the pay records that have been produced as part of the same exhibit. Clearly the record of sick leave was produced for the purpose of preparation for the case. There has been no source data produced to support the contentions set out in the letters to the respondents advocate and Mr Stacey was unconvincing in his viva voce evidence in support of the documentary evidence. I therefore, find that the respondent had no proper grounds to dismiss the applicant for absenteeism.

The respondent says through Mr Stacey that it warned the applicant 18 times. The support for these contentions is said to be in memorandum signed by representatives of the respondent's client. Those memorandums do not identify the applicant as being responsible for any of the deficiencies. The documents indicate that what was being raised with the respondent was standard routine questions one would expect from a client who wants to ensure that the respondent its meeting is contractual obligations. The complaints, if they can be called that, are presented in a benign way. For instance, on 30 December 1998 the document finishes with a New Year greeting and on 12 January 1999 the writer lauds the respondent for the work by expressing that he is very happy with what was being done by the respondent. If these so-called complaints are called in support of the list that has been prepared by Mr Stacey, which again in my view are self serving, they

provide no substance to his allegations at all. Ms Wells concedes that from time to time Mr Stacey asked her to do particular work and gave her instructions as to what he wanted done. She regarded this as purely part of the normal practice between employee and employer. I find that the so-called 'warnings' were not warnings in an industrial sense at all. If they occurred, and it appears that some did, the instructions were no more than part of the normal supervisory process. I reject the contention that the respondent had grounds to dismiss the applicant for poor performance.

The respondent contends there was no unfairness in his dealings with Ms Wells because she was dismissed because of poor performance and her failure to improve. Much emphasis was put on the so-called absenteeism. There is no substance in either of those contentions of the respondent and for that reason the dismissal was unfair. There is no clear evidence which would allow me to find that the applicant was dismissed because she would not sign a workplace agreement. It is noted that the moves to dismiss her came about soon after discussions with Mr Stacey concerning the workplace agreement. Although I have my doubts about Mr Stacey's story relating to the workplace agreement, I am unable to find on the balance of probabilities that the dismissal came about for that reason. Grave doubts linger in my mind, however, concerning the respondent's conduct in that respect.

It is clear that there is animosity between the parties and that reinstatement is not a viable option. The applicant says she has suffered loss. Even though this matter is under Section 44, the authorities that have been established in dealing with compensation matters under Section 23 as set out in *Bogunovich -v- Stateside Holdings* should be applied and I do so. What is required to be done is the applicant should be placed back, in as much as possible, the position she would have been in if she had not been dismissed. It is submitted on her behalf and not challenged by the respondent that she has suffered a loss of \$2,268.00, being 12 weeks at 17½ hours per week at \$10.80 per hour. Orders will issue that Juliet Wells was unfairly dismissed and the respondent should pay her the sum of \$2,268.00 as compensation.

Appearances: Ms D MacTiernan appeared for the applicant.

Mr Moon (Agent) appeared for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Professional Enterprises.

No. CR146 of 1999.

COMMISSIONER J.F. GREGOR.

13 March 2000.

Order.

HAVING heard Ms D MacTiernan on behalf of the applicant and Mr O Moon 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 applicant was unfairly dismissed by the respondent;
- 2) THAT reinstatement would be inappropriate;
- 3) THAT the respondent pay the applicant the sum of \$2,268.00 as compensation.

(Sgd.) J.F. GREGOR,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Media, Entertainment and Arts Alliance of Western
Australia (Union of Employees)

and

Western Australian Sports Centre Trust.

No. PSACR 46 of 1999.

COMMISSIONER A.R. BEECH.

7 April 2000.

Reasons for Decision.

The matter referred for hearing and determination is in the following form—

“The applicant union claims that the decision of the respondent on 19 May 1999 to refuse to pay the shift penalty of 20% to employees proceeding on annual or long service leave is incorrect. The applicant union claims that on a proper interpretation of clause 21.—Annual Leave and clause 22.—Long Service Leave of the *WA Sports Centre Trust Enterprise Bargaining Agreement 1998* No PSA AG 11 of 1998 the shift penalty is payable to employees proceeding on annual or long service leave.

The Union seeks a declaration from the Commission—

1. That upon a true interpretation of Clause 21.—Annual Leave of the Agreement the wages for any period of annual leave include the 20% shift penalty.
2. That upon a true interpretation of Clause 22.—Long Service Leave of the Agreement the wages for any period of long service leave include the 20% shift penalty.

The Western Australian Sports Centre Trust objects to and opposes the claim and states that no entitlement to shift penalties whilst on leave is contained in the Agreement.”

The Commission turns to deal with the first declaration sought. Clause 21.—Annual Leave of the *WA Sports Centre Trust Enterprise Bargaining Agreement 1998* PSA AG 11 of 1998 is as follows—

“21.—ANNUAL LEAVE

- (1) An employee shall be entitled to four weeks annual leave and 17.5% leave loading on four weeks upon completion of 12 months continuous service. Should the employment of this Agreement cease prior to the employee completing 12 months service, the employee shall be entitled to a pro rata portion of four weeks determined by the length of service as against 12 months.
- (2) An employee may accrue annual leave up to a maximum equivalent to two years entitlement. At that time an employee must take at least such annual leave to ensure that the employee at no time has in excess of two years annual leave entitlement. Provided that more than two year’s annual leave entitlement may be accrued by agreement between the parties.
- (3) An employee shall endeavour to give eight (8) weeks notice of commencement of annual leave, unless otherwise agreed between the employee and the Trust.
- (4) Annual leave shall be taken at a time mutually agreed by the Trust and the employee.
- (5) An employee who, as a result of illness or incapacity is unfit during annual leave to perform the employee’s normal duties for at least seven consecutive, and furnishes a satisfactory certificate from a qualified medical practitioner to that effect, shall be entitled to be given and to take substitute leave for a period equivalent to such ordinary working day at a time convenient to the employee and the Trust.

Leave under this subclause shall be subject to the employee having, at the time of such illness or injury, an adequate entitlement to paid sick leave. Under this clause sick leave shall be deducted from the employee’s entitlement for the substituted leave.

- (6) Annual leave shall be given and taken in consecutive weeks or in lesser periods if the Trust and the employee so agree.
- (7) Employees must take a minimum of two (2) weeks annual leave during each period of 12 months commencing from operation of this Agreement, unless approval is granted by the Trust to carry leave over.
- (8) Where an employee’s employment terminates and the employee has become entitled to annual leave, the Trust shall pay to the employee, in addition to all other amounts due to the employee, the wages for the period of leave due plus leave loading as set out in subclause (1) of Clause 19.—Overtime and Shift Loading of this Agreement.
- (9) The process for rostering annual leave will be as detailed below—
 - (a) Where possible annual leave will be taken at times mutually agreed between the employer and the employee and subject to operational requirements.
 - (b) To assist operational requirements a roster for leave will be developed at the beginning of each year. Employees will be able to make an application for leave detailing dates required for such leave and must submit it two weeks prior to the end of the year for the ensuing year. All leave requests will attempt to be accommodated, however, applications for dates will be treated on a first come first served basis. The employer will then post a roster annually showing the names of the employees, and the dates on which leave is to be taken.
 - (c) The employer may require employees to take leave at times other than set out in paragraph (b) above, subject to agreement with the employee concerned.
 - (d) Should an employee need to alter their rostered leave, they shall notify the employer at least four (4) weeks in advance and subject to operational requirements such leave will be granted.
- (10) Employee Funded Extra Leave
 - (a) By agreement between an individual employee and the employer, an employee is entitled to receive 48 or 50 weeks pay spread over a full 52 week period. Employees will be recompensed for the reduction in their pay by an extra four (4) or two (2) weeks leave respectively.
 - (b) The extra four (4) or two (2) weeks leave per year will not accrue and must be taken within the 52 week period. Employee Funded Leave can only be taken in addition to and following the taking of four (4) weeks annual leave within the 52 week period. In the event that the employee does not take the Employee Funded extra leave, his/her salary will be adjusted at the completion of the 52 week period to take account of the time worked during the period that was not included in salary.
 - (c) Superannuation arrangements and taxation effects will be fully discussed between the employee and employer.
 - (d) Higher Duties Allowance is not payable during Employee Funded Leave.
 - (e) Employee Funded Leave can be taken in conjunction with all other leave.”

The issue before the Commission arose following the Trust’s advice that shift penalty payments will not be paid on leave taken after 19 May 1999 (exhibit 2). The shift penalty payment referred to is the loading of 20% prescribed in subclause (2) of Clause 19.—Overtime and Shift Loading for working the regularly rostered shifts mentioned within that clause.

The union is correct when it submits that Clause 21 is silent regarding the rate at which payment is to be paid during annual leave. However, subclause 21(1) does provide that an

employee shall be entitled to receive 17.5% leave loading on four weeks upon completion of 12 months' continuous service. That wording is clear and unambiguous. It is accepted that the proper approach to the interpretation of awards, and industrial agreements, is the same approach as is taken for the interpretation of statutes. The meaning of a provision in an award is to be obtained by considering the terms of the award as a whole. If the terms are clear and unambiguous, it is not permissible to look to extrinsic material to qualify that meaning (*Norwest Beef Industries Limited and Another -v- WA Branch Australian Meat Industry Employees Union* (1984) 64 WAIG 2124 at 2127). Therefore it would not be permissible to go behind the wording of Clause 21(1) to argue that the shift loading of 20% should be paid in lieu of the 17.5% leave loading.

As to the rate at which payment is to be made, I am not persuaded that where an industrial agreement is silent regarding a particular issue, the absence of a provision is taken as being ambiguous. Reading words into legislation is a different matter from resolving which of two or more meanings should be properly preferred. There is a general disinclination to make implications in statutes unless it is strictly necessary to do so (*Dallikavak v Minister for Immigration and Ethnic Affairs* (1985) 61 ALR 471 at 475) and there is nothing in the circumstances before the Commission to hold that there should not be a similar disinclination in an industrial agreement. It does not seem strictly necessary to make implications in this case because the issue brought to the Commission is not so much the classification rate of pay at which payment for annual leave is to be made but whether the shift loading of 20% is paid in addition to it.

Even if it could be said that the silence of the clause regarding the rate at which payment is to be made for annual leave leaves an ambiguity which needs to be resolved, resort to the extrinsic material does not necessarily lead to the declaration which is now sought. The evidence is that the Trust paid employees at the rate they would have been paid had they been working shifts. If that evidence means that employees were paid for annual leave the rate of wage including shift penalty that they would have received had they been at work, subclause 21(1) would then require the 17.5% to be paid in addition to that compound payment. Such a requirement would mean that the employee so paid would be paid both the shift penalty of 20% and the 17.5% annual leave loading. It cannot be said the proper interpretation of subclause 21(1) produces such a result.

If the direct oral evidence before the Commission that the Trust paid employees who proceeded on annual leave at the rate they would have been paid had they been working shifts establishes that the 20% shift penalty was paid in lieu of the 17.5% then such a practice appears to be directly in conflict with the provision in subclause 21(1) that the loading of 17.5% be paid. I accept from the Trust's letter of 18 May 1999 (exhibit 2) that there have been some anomalies in shift penalty payments paid during leave and that there may have been payments of the 20% shift penalty when an employee has proceeded on annual leave. However, it cannot be said that Clause 21.—Annual Leave of the agreement provides for the payment of the 20% shift penalty when an employee proceeds on annual leave. It is not the case that subclause 21(1) is silent on that matter. It positively provides for a 17.5% loading on four weeks upon completion of 12 months' continuous service.

No other wording in Clause 21.—Annual Leave, or elsewhere in the Industrial Agreement provides for the payment for any period of annual leave to include a 20% shift penalty. The wording in subclause 21(1) being clear and unambiguous, the application for a declaration as sought in relation to Clause 21.—Annual Leave is refused.

I now turn to deal with the second declaration sought. Clause 22.—Long Service Leave of the agreement is as follows—

“22.—LONG SERVICE LEAVE

- (1) For each period of seven (7) years of continuous service an employee shall be entitled to thirteen weeks long service leave on full pay. By agreement with the Trust, the employee may take this leave on full pay or half pay or any variation thereof.

- (2) For each subsequent period of seven (7) years service an officer shall be entitled to an additional 13 weeks long service leave.
- (3) Continuous service shall include periods during which the employee is absent on full pay or part pay but does not include periods the employee is on leave without pay, maternity leave or long service leave.
- (4) Accrued long service leave must be cleared within three (3) years from the date that it is credited. If it is not cleared within three years, the employer may direct the employee to clear that portion of accrued long service leave.
- (5) On termination, employees with seven (7) or more years continuous service shall receive a lump sum payment for accrued and pro rata long service leave.”

The union relies on the words “on full pay” in subclause 22(1) to argue that the 20% shift loading is payable when an employee takes long service leave. The words “on full pay” are themselves not defined within the Industrial Agreement. Clause 22.—Long Service Leave itself distinguishes “on full pay” from “half pay or any variation thereof” or “part pay”. The only other occasion in the Industrial Agreement where the words “on full pay” appear is in Clause 27.—Jury Service and Witness Leave which provides in subclause (6) that an employee required to serve on a jury shall be granted leave of absence on full pay. In subclause (3) an employee subpoenaed or called as a witness on behalf of the Crown, not in an official capacity, shall be granted leave with full pay entitlements.

The word “pay”, however, is referred to elsewhere within the agreement. The agreement uses the words “base rate of pay” in relation to the payments to be provided under it (see Clause 13.—Performance and Reward System—Staged Salary Payments). Significantly, Clause 15.—Contract of Employment provides in subclause (3) for “rates of pay”. Rates of pay are to be detailed in the letters of appointment to be received by all full-time and part-time employees. Therefore, within the terms of the agreement itself, provision is made for a rate of “pay”. The conclusion which necessarily follows is that the words “on full pay” in subclause 22(1) mean that the rate of pay in Clause 15.—Contract of Employment is to be paid in full when an employee proceeds on 13 weeks long service leave for each period of 7 years of continuous service. The rate of pay prescribed by the agreement does not include the shift loading. As previously noted, provision for the payment of the shift loading is provided elsewhere in the agreement. The agreement does not make shift loading part of the rate of pay.

This conclusion is not inconsistent with the evidence before the Commission which falls short of establishing that the Trust has previously paid shift loading to employees who have proceeded on long service leave. The conclusion is also not inconsistent with the decision of Birch C in *re Nurses Award—Public Hospitals—State* (1986) QIG 6/9/86 p.14. In that matter Birch C noted that the previous decisions to which he had been referred dealing with the meaning of the words “full pay” and “ordinary pay” as they are used in relation to various leave provisions in awards of the Queensland Commission appeared to indicate that payments such as shift allowances are not included in the standard award provisions applying to leave payments. In the matter directly before him the issue concerned which of the particular rates of pay under the award was applicable to given situations. His interpretation of the words “on full pay” refers to the rate of payment prescribed for a particular classification, not, as in this case, whether it includes a shift penalty. Accordingly, the application for a Declaration that upon a true interpretation of Clause 22.—Long Service Leave of the agreement, the wages for any period of long service leave include the 20% shift penalty is also refused.

I do not overlook the submission of the Union that the Trust's decision that shift penalty payments will not be paid on leave taken after 19 May 1999 is seen by it as reducing its members' entitlements when this was not part of the negotiations leading to the making of the Industrial Agreement. However, the task of the Commission is simply to properly interpret the wording used in the agreement and for the reasons given, it

cannot be said that a proper interpretation of the agreement can result in the declarations sought.

An order now issues which dismisses the application.

Appearances: Ms R. McGinty on behalf of the applicant.

Mr J. Lange on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Media, Entertainment and Arts Alliance of Western
Australia (Union of Employees)

and

Western Australian Sports Centre Trust.

No. PSACR 46 of 1999.

7 April 2000.

Order.

HAVING heard Ms R. McGinty on behalf of the applicant and Mr J. Lange 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 is hereby dismissed.

(Sgd.) A.R. BEECH,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metal and Engineering Workers' Union – Western Australia

and

Skilled Engineering Pty Ltd.

No. CR 59 of 1994.

28 February 2000.

Reasons for Decision.

COMMISSIONER C.B. PARKS: The matter before the Commission is one which the parties were unable to settle at a conference conducted by the Commission differently constituted, pursuant to s44 of the *Industrial Relations Act, 1979* (the Act), the Memorandum of Matters for Hearing and Determination which issued from the conference lists 3 claims, which for reasons that follow I do not describe in detail, the first is that Victoria Dare be reinstated in employment, secondly that the dismissal notice given to Henryk Grzegurko be quashed, and finally a group of 8 laboratory employees, including Ms Dare and Mr Grzegurko, be recognised as a core group.

At the commencement of proceedings the Commission granted leave for the applicant union to withdraw the second and third of the claims, and hence the matter which remains to be determined is the claim for reinstatement of Ms Dare. The respondent in this matter engages in the business of employing labour with various skills and the provision of such labour to businesses in need of persons to perform work functions within their operations. It is common ground that in July 1993 the owner of the Swan Brewery restructured its operations. As part of that restructure the employment of many employees was terminated and the owner entered into a contract arrangement with the respondent for the respondent to provide the necessary labour to perform certain functions. So far as is presently material the respondent contracted with the brewery owner to provide the number of laboratory technicians required by the brewery owner to fulfil the needs of its quality control laboratory and that of the brewing laboratory, which at the time required 10 laboratory technicians, that being the same number of technicians that were terminated from their employment by the brewery owner. The respondent engaged the same 10 laboratory technicians whose services were terminated by the brewery owner, including Ms Dare.

It is also common ground that the brewery owner had announced that as part of the restructure process it was intended that some of the work previously done by laboratory technicians would be transferred to, and become part of the duties of, process workers and that would lead to a reduced need for laboratory technicians. In or about late August 1993 an agreement was reached between the parties to the present matter that the respondent would maintain a "core" number of employees in four separate categories to service the needs of the brewery owner (exhibit H2). The material provision is in the following terms—

"3. DEFINITION OF "CORE"

A complement of trades people, technicians and stores people comprising—

11	MEWU Mechanical
7	AEEFEU Electrical/Instrument
3	Stores People
10 reducing to 8	Laboratory/Quality Control Technicians

All positions in excess of these numbers are non-core and incumbents should have no expectancy of long term employment at Swan site."

A further provision of the agreement material to the tenure of employment is the following—

"9. AGREEMENT

The MEWU and AEEFEU will negotiate an Agreement with Skilled Engineering to include, inter alia—

- A 1.5% increase March 1994.
- A minimum of 1.5% September 1994.
- Detail of performance indicators.
- Stability of employment at Swan site for core complement members based on performance.
- Possibility of Sickness Benefit Scheme.
- Training programmes benefit Skilled Engineering and employees.
- Time span for the agreement the second year of the Agreement.

The engagement of Ms Dare by the respondent in July 1993 was proceeded by an offer of employment in writing, which she accepted and signed, and which contains the following provision regarding the tenure of her employment—

"Period of Involvement: Skilled Engineering have been contracted to maintain the client's plant for a period of five (5) years. No guarantee of employment with Skilled Engineering is given for employment after this period. Your period of involvement will be based on your individual skills, performance and the needs of the client."

Paul Gerrard Lynch, the contract maintenance manager for the respondent in Western Australia, told the Commission that the "core" arrangement as it related to the two separate laboratories was that when the reduction of two in the core number occurred such would only affect the quality control laboratory and no reduction was to be made in the number of laboratory technicians working in the brewing laboratory. That evidence was not contested. Mr Lynch told the Commission that the respondent was instructed by the brewery owner to reduce the "core" number of laboratory technicians and it is that which caused the employment of Ms Dare, and others, to be terminated. Their selection for dismissal is said to have been made by an objective and comparative assessment of the laboratory technicians within the quality control laboratory. Tendered in proceedings are two handwritten documents, the first (exhibit B1) which rates the attitude, computer skills, experience, laboratory skills, leadership skills, instrument skills, training skills, plant/machine skills, team skills, shift work flexibility, brewing laboratory experience/skill, and perspicacity, and the second document (exhibit B2) which gives background information on the laboratory technicians

subject to assessment and contains comments in relation to them. The two laboratory technicians who achieve the highest and second highest point score from the rating process were those retained by the respondent to work in the quality control laboratory and of those whose services were terminated Ms Dare rated the next highest.

The applicant union did not challenge in any way the validity of the selection process and the assessment criteria adopted by the respondent, nor did it attempt to show that the rating of the employees was somehow flawed. Essentially the argument for the applicant is that the intention of the "core" employee arrangement was to ensure that the laboratory technicians who had been employees of the brewery owner who obtained employment with the respondent, save for the reduction in number allowed, would retain that employment in preference to any laboratory technician engaged subsequently by the respondent. Hence the applicant contends that Ms Dare ought have been retained in preference to a Ms Carnegie and Mr Day both of whom were engaged by the respondent subsequent to Ms Dare.

The uncontested evidence before the Commission is that both Ms Carnegie and Mr Day had been employed by the brewery owner for a number of years until shortly prior to the date at which the respondent commenced to provide labour to the brewery owner, and that Ms Carnegie did not work in the quality control laboratory and is more experienced and qualified than Ms Dare, and that Mr Day who had several years experience in both of the laboratories also had experience in training others and he had been chosen to provide training to the process workers.

There was the argument from the applicant that the letter of offer (exhibit H1) which became terms of employment for Ms Dare, conveys that the respondent had been contracted for a period of 5 years and that Ms Dare has no guarantee of employment beyond that period, the express mention of which conveys that the converse in the case is that she could reasonably expect continued employment for that period of 5 years. That however ignores the remaining words of the material paragraph which state that her period of "involvement", meaning the tenure of her work at the brewery depended upon three factors, her skills, her performance, and the needs of the client, the client being the brewery owner. On the plain words of this covenant her involvement in work as a laboratory technician at the brewery was subject to the decisions the brewery owner might make regarding the structuring of its operations and its requirements regarding the number of persons to undertake the work involved. Furthermore, clause 9 of the Agreement (exhibit H2) makes it plain that there remained to be negotiated the matter of "stability of employment" for "core complement members" and hence there was no settled arrangement upon the matter of stable employment for core employees.

Mr Lynch told the Commission that he made inquiries within the management of the respondent to ascertain whether the respondent had alternative employment available for the likes of laboratory technicians, but was informed that there was none, and hence the employment relationship with Ms Dare and the others had to be terminated.

It is trite to say that an employer has the right to terminate the services of an employee and it is well settled that in the exercise of that right the employer may not do so unfairly. The applicant has not shown that the respondent was obligated to retain the services of Ms Dare because she "transferred" from employment with the brewery owner to employment with the respondent, nor has the applicant shown that the selection process applied by the respondent caused her to be wrongly selected for dismissal and hence she was entitled to retain the employment in preference to one of the laboratory technicians who remain employed. The applicant union has not established there was an unfair dismissal and hence the application will be dismissed.

Appearances: Mr TC Hodgson on behalf of the applicant.

Mr MC Borlase on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metal and Engineering Workers' Union—Western Australia
and
Skilled Engineering Pty Ltd.

No. CR 59 of 1994.

28 February 2000.

Order.

HAVING heard Mr TC Hodgson on behalf of the applicant and Mr MC Borlase 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.) C.B. PARKS,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Union of Workers
and

The Hon. Minister for Police and The Commissioner
of Police.

No. CR41 of 2000.

COMMISSIONER J F GREGOR.

7 March 2000.

Order and Direction.

WHEREAS on 22 February 2000, the Western Australian Police Union of Workers applied for an urgent conference pursuant to Section 44 of the *Industrial Relations Act 1979*, in relation to a dispute between the Union and the Hon. Minister for Police and Commissioner of Police as a result of recommendations by the Commissioner of Police to dismiss several officers pursuant to Section 8 of the *Police Act 1892*; and

WHEREAS on 24 February 2000, the Commission conducted a conference between the parties; and

WHEREAS the Commission was told that;

- The Applicant union represents 7 serving Police Officers who variously hold the rank of Commander (Commissioned Officer), Detectives Senior Sergeant (2), Detectives Sergeant (2), Sergeant and Detective Senior Constable.
- Each of the above has been served with a notice purportedly issued pursuant to Section 8 of the *Police Act 1892* and Amendments. The notice advises the recipient that in the absence of being persuaded otherwise, the Commissioner of Police will recommend to the Minister for Police or the Governor, that he approve the removal of the recipient from the Police Force of Western Australia.
- The Applicant says that if its members are to be disciplined, which discipline includes removal from the Police Force, then the Commissioner of Police is obliged to observe the provisions of the *Police Act 1892* and Amendments and its Regulations and particularly Section 23 thereof.
- The Applicant says that the procedure adopted by the Commissioner of Police in issuing the notices he has, is ultra vires the Act and contrary to its intention, which is to discipline officers of the Police Force in the prescribed manner (Section 23).
- The Applicant says that in relation to its members, that as a result of issuing the notices referred to herein, that his conduct is harsh and oppressive and likely to lead to the unfair and unlawful dismissal of its members; and

WHEREAS the Commission was told by Mr Bowler who appeared for the Hon. Minister for Police and Commissioner of Police, that the Commissioner of Police had anticipated the submissions that would be made by the Union and had reviewed the existing policy. As a result of that review it was concluded there was nothing wrong with the procedure and the Commissioner of Police did not intend to change it; and

WHEREAS the Hon. Minister for Police and the Commissioner of Police were unwilling to take part in conciliation proceedings concerning the claim; and

WHEREAS at the conclusion of the conference the Commission requested that the Union prepare a Schedule of Matters for Hearing and Determination for the Commission to consider, following which the conference would be reconvened; and

WHEREAS the conference was reconvened on 7 March 2000, at which time the Commission published to the parties a draft Memorandum of Matters for Hearing and Determination and requested the representative of The Hon. Minister of Police and the Commissioner of Police to advise whether the respondents were prepared to enter into conciliation regarding the claim of the applicant Union; and

WHEREAS the representative of the respondents declined to do so; and

WHEREAS the applicant Union sought orders from the Commission, that until the issue is determined the Commissioner of Police be directed to withdraw the Section 8 notices; and

WHEREAS the Commission may at or in relation to a conference under Section 44, make such suggestions and give such directions as it considers appropriate to direct the parties to confer and give such directions and make such orders which as will in the opinion of the Commission prevent the deterioration of Industrial Relations in respect of the matter in question until conciliation or arbitration has resolved the matter; and

WHEREAS the Commission has decided that the issues at the core of this dispute raise fundamental issues regarding interests of the persons immediately concerned and for the community as a whole; and

WHEREAS the Commission has decided that it should make orders for the purpose of the prevention of deterioration of Industrial Relations and to enable conciliation or arbitration to resolve the matter and has decided that until the issue is determined the Commissioner of Police be ordered to suspend dealing with the Section 8 notices which have been issued to officers of the Western Australian Police Service.

NOW THEREFORE, the Commission, pursuant to the powers vested in it under *the Industrial Relations Act 1979*, hereby orders and directs—

THAT the Commissioner of Police suspend any action arising from Section 8 notices currently issued to members of the Western Australian Police Service.

(Sgd.) J.F. GREGOR,
Commissioner.

[L.S.]

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Richard Weizenbach

and

Anaconda Nickel Ltd.

No. 1392 of 1999.

COMMISSIONER J F GREGOR.

31 March 2000.

Order.

WHEREAS the applicant has made an application for Particulars and Discovery dated 29 March 2000; and

WHEREAS on 31 March 2000, the Commission conducted a proceeding to deal with the application; and

WHEREAS the relevant history for the purposes of this order are that, the application was filed on 9 September 1999 and a Notice of Answer and Counter Proposal was filed and serviced on 4 October 1999, this was followed by a conference pursuant to Section 32 of the *Industrial Relations Act 1979*, held on 1 November 1999; and

WHEREAS on the 27 January 2000, the Substantive Application was listed for hearing on 3 April 2000; and

WHEREAS no request for Particulars, Discovery or other general inquiries about the nature of the respondent's case has been made to the Commission and according to Mr Lucev (of Counsel) who appeared for the respondent, to the respondent between the 1 November 1999 and the 24 March 2000; and

WHEREAS the Commission was told that the parties have been in negotiations with a view to resolving the differences between them that as at the 31 March 2000, those negotiations had been unsuccessful but it was the intention of the parties to continue with them; and

WHEREAS the respondent opposes the order sought on the grounds that the Commission may only make an order for Particulars and Discovery if it is just to do so and that it should not do so in the face of inordinate delay because to do so would be oppressive, in that a court should not order particulars which it is satisfied that a party cannot give, nor should it use compulsion when it is harsh or oppressive to do so; and

WHEREAS the Commission has considered submissions made and in the circumstances accepts the submissions of the respondent, that fairness in the disposition of the application can be achieved through ensuring that the parties have the opportunity to put adequate argument to support their various contentions and that the hearing can be managed to achieve this; and

WHEREAS and the Commission has concluded it is inappropriate to compel the respondent to supply the particulars required at this time and has decided to refuse the applicant's application for Particulars and Discovery.

NOW THEREFORE, the Commission, pursuant to the powers vested in it under *the Industrial Relations Act 1979*, hereby orders—

THAT the application for particulars and discovery, dated 29 March 2000, made by the applicant be, and is hereby, dismissed.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony Patrick Smith

and

David John Morris & Other.

No. 1961 of 1999.

COMMISSIONER J F GREGOR.

20 March 2000.

Order.

WHEREAS an application was made in the Commission pursuant to Regulation 80 of the *Industrial Relations Commission Regulations 1985*; and

WHEREAS the Commission heard from Mr Abdo (of Counsel) on behalf of the applicant and Mr J Scurria on behalf of the respondent in a Direction Hearing held in Chambers in Bunbury on 16 March 2000; and

WHEREAS Counsel consent to mutual discovery of relevant documents; and

NOW THEREFORE, the Commission, pursuant to the powers vested in it under the *Industrial Relations Act 1979*, hereby orders—

THAT the parties produce to each other any document in their possession, custody or power that will be tended at Hearing within 14 days of the date hereof.

(Sgd.) J. F. GREGOR,
Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Alan P. Gilbride

and

Fast Net Publishers Group.

No. 94 of 2000.

COMMISSIONER P E SCOTT.

30 March 2000.

Direction.

WHEREAS this is an application pursuant to Section 29(1)(b)(ii) of the *Industrial Relations Act 1979*; and

WHEREAS on the 27th day of March 2000 the Commission convened a conference for the purpose of conciliating between the parties. However, the Respondent failed to attend the conference and the Applicant sought to have the matter listed for hearing and determination; and

WHEREAS the Commission issued directions for the expeditious hearing of the application;

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 Applicant shall file with the Commission and serve on the Respondent an outline of submissions.
2. THAT no later than 7 days prior to the date of hearing set for this matter the Respondent shall file with the Commission and serve on the Applicant an outline of submissions.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

**JOINDER/CONCURRENCE OF
PARTIES—
Application for—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch

and

Berkeley Challenge Property Services Pty Ltd and Others.

No. 1509 of 1997.

COMMISSIONER P.E. SCOTT.

17 March 2000.

Order.

WHEREAS this is an application for a variation to an award pursuant to the *Industrial Relations Act 1979*; and

WHEREAS by notice filed on the 25th day of November 1999, a number of employers sought to be joined as parties to this application; and

WHEREAS the Applicant consents to this application to join those employers as parties;

NOW THEREFORE, the Commission, pursuant to the powers conferred on it under the *Industrial Relations Act 1979*, by consent, hereby orders—

THAT the following employers are joined as parties to Application No. 1509 of 1997—

Airlite Cleaning Pty Ltd, 60 Roberts Street, Osborne Park, WA 6017;

Intercity Cleaning Services, 16 Howlett Street, North Perth, WA, 6006;

Neatclean Pty Ltd, 192 Moore Road, Millendon, WA, 6056;

Prestige Property Services, 320 Lord Street, East Perth, WA, 6004;

RS Linfoot Investments trading as Linfoot Cleaning Services, 18 Wittenoom Street, East Perth, 6004; and

Spotless Services Australia Ltd, PO Box 98, Mount Hawthorn, WA 6016.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

**NOTICES—
Appointments—**

APPOINTMENT

ADDITIONAL PUBLIC SERVICE ARBITRATOR

I, the undersigned Chief Commissioner of the Western Australian Industrial Relations Commission, acting pursuant to the provisions of section 80D of the *Industrial Relations Act, 1979*, hereby appoint, subject to the provisions of that Act, Commissioner A.R. Beech to be an additional Public Service Arbitrator for a period of one year from 27th March, 2000.

Dated the 17th day of March, 2000.

W.S. COLEMAN,
Chief Commissioner.

NOTICES— Union matters—

FBM 2 OF 2000

NOTICE is given of an application by “The Civil Service Association of Western Australia Incorporated” to the Full Bench of the Western Australian Industrial Relations Commission for an alteration to rule 6 – Membership.

The current rule and the proposed rule showing in distinctive characters the alteration sought are set out below:

Current Rule

6—MEMBERSHIP

- (a) Membership shall be confined to any person who is—
- (1) employed as an officer under and within the meaning of the Public Service Act, 1978-80; or
 - (2) employed under the Forests Act, the Main Roads Act or any Act now in force or hereafter enacted whereby any Board, Commission or other body is constituted to administer any such Act; or
 - (3) otherwise employed in any of the established Branches of the Public Service, including State trading concerns, business undertakings and government institutions controlled by Boards; or
 - (4) employed by the State of Western Australia; or
 - (5) employed by the Crown or by any Minister of the Crown in right of the State of Western Australia; or
 - (6) employed by any statutory body representing the State of Western Australia; or
 - (7) employed by any instrumentality or authority whether corporate or unincorporated acting under the control of or for or on behalf of or in the interest of the State of Western Australia; or
 - (8) employed in either House of Parliament of the State of Western Australia either—
 - (i) under the separate control of the President or Speaker or under their joint control; or
 - (ii) by a Committee appointed pursuant to the Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly.
 - (9) employed by any company or corporation in which issued shares are held by or for or on behalf of or in the interest of the State of Western Australia, or, if there are no issued shares, in which the Governing body by whatever name called includes nominees appointed by or on behalf of or in the interest of the State of Western Australia.
 - (10) a salaried employee (being a professional, administrative, clerical, technical and supervisory employee) employed by the Board of the Western Australian Centre for Pathology and Medical Research and/or any other Western Australian State Government controlled person, enterprise or corporation who is presently or henceforth the employer of employees in the said Western Australian Centre for Pathology and Medical Research.
 - (11) all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the Metropolitan Health Service Board (“Board”) or by any other Western Australian State Government person, enterprise or corporation in the Perth Dental Hospital or any other such entity or unit howsoever described or named (including Perth Dental Hospital and Community Dental Services) which provides any of the services provided by Perth Dental Hospital or the Dental Services Branch of the Health Department of Western Australia as at 6 May 1998.
 - (12) (a) all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the Board in the Graylands Selby—Lemnos and Special Care Health Services (“GSL”) who, as at 6 May 1998 were financial members of the CSA until such time as they resign, retire or are

permanently transferred or redeployed from the GSL or cease to be a member of the CSA.

- (b) Provided that the following persons shall not be eligible for membership: Persons who are employed by an employer bound by an award made or an industrial agreement registered under the Industrial Relations Act 1979 and in force on 1st March, 1985 and to which an organization of employees registered under the aforementioned Act other than The Civil Service Association of Western Australia Incorporated is party, in the callings which on 1st March, 1985 were mentioned in any such award or agreement or in a classification, not specifically mentioned in the award or agreement as at the 1st of March, 1985 the duties of which are the same or substantially similar to any classification which was so mentioned.
 - (bb) Provided further that save and except for the employees referred to in Rule 6(a)(11) and (12) all salaried employees (being professional, administrative, clerical, technical and supervisory employees) (including those listed in Schedule A to the Rules of the Hospital Salaried Officers’ Association of Western Australia (Union of Workers)) employed by the Boards of any public hospital constituted under the Hospital and Health Services Act 1927 (as amended) in such hospitals or for the provision of health services in any district or area in which such board or boards are required or have a duty to provide such services shall not be eligible for membership of the Civil Service Association of Western Australia (Inc).
 - (c) In addition and notwithstanding the provisions of subrule (b) of this rule, membership shall be confined to—
 - (1) salaried officers employed by any University within Western Australia, engaged in professional, administrative, supervisory, technical, or clerical capacities other than—
 - (i) the Vice-Chancellor/s;
 - (ii) persons paid according to academic salary rates and who are substantially engaged in teaching duties or on original research;
 - (iii) persons whose conditions of engagement provide that their salary and status shall be equivalent to those of the academic staff.
 - (d) In addition to and notwithstanding the provisions of subrule (b) of this rule, membership shall be confined to tradesmen who are employed as Foremen Tradesmen or Sub-Foremen Tradesmen by Ministers of the Crown, Government Instrumentalities, Agencies or Trading Concerns, excepting the Western Australian Government Railways Commission, the State Electricity Commission of Western Australia, the Metropolitan (Perth) Passenger Transport Trust and the Government Printing Office.
- Provided that the following persons shall not be eligible for membership—
- (i) Supervisor Shipwrights and Supervisor Dockers employed by the State Shipping Service.
 - (ii) Assistant Dockmaster, South Slipway employed by the Hon. Minister for Works.
- (e) Notwithstanding any of the foregoing, such persons who are employees of the Civil

Service Association of Western Australia (Incorporated) provided that such persons—

- (1) are not eligible to hold the offices of President, Senior Vice-President, Junior Vice-President, Honorary Treasurer or Executive Committee member, and
 - (2) shall not include any persons eligible for membership of the Federated Clerks' Union of Australia Industrial Union of Workers, WA Branch.
- (f) No person under the age of fourteen years shall be a member.

Proposed Rule

6—MEMBERSHIP

- (a) Membership shall be confined to any person who is—
- (1) employed as an officer under and within the meaning of the Public Service Act, 1978-80; or
 - (2) employed under the Forests Act, the Main Roads Act or any Act now in force or hereafter enacted whereby any Board, Commission or other body is constituted to administer any such Act; or
 - (3) otherwise employed in any of the established Branches of the Public Service, including State trading concerns, business undertakings and government institutions controlled by Boards; or
 - (4) employed by the State of Western Australia; or
 - (5) employed by the Crown or by any Minister of the Crown in right of the State of Western Australia; or
 - (6) employed by any statutory body representing the State of Western Australia; or
 - (7) employed by any instrumentality or authority whether corporate or unincorporated acting under the control of or for or on behalf of or in the interest of the State of Western Australia; or
 - (8) employed in either House of Parliament of the State of Western Australia either—
 - (i) under the separate control of the President or Speaker or under their joint control; or
 - (ii) by a Committee appointed pursuant to the Joint Standing Rules and Orders of the Legislative Council and the Legislative Assembly.
 - (9) employed by any company or corporation in which issued shares are held by or for or on behalf of or in the interest of the State of Western Australia, or, if there are no issued shares, in which the Governing body by whatever name called includes nominees appointed by or on behalf of or in the interest of the State of Western Australia.
 - (11) a salaried employee (being a professional, administrative, clerical, technical and supervisory employee) employed by the Board of the Western Australian Centre for Pathology and Medical Research and/or any other Western Australian State Government controlled person, enterprise or corporation who is presently or henceforth the employer of employees in the said Western Australian Centre for Pathology and Medical Research.
 - (11) all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the Metropolitan Health Service Board ("Board") or by any other Western Australian State Government person, enterprise or corporation in the Perth Dental Hospital or any other such entity or unit howsoever described or named (including Perth Dental Hospital and Community Dental Services) which provides any of the services provided by Perth Dental Hospital or the Dental Services Branch of the Health Department of Western Australia as at 6 May 1998.
 - (12) (a) all salaried employees (being professional, administrative, clerical, technical and supervisory employees) employed by the Board in the Graylands Selby—Lemnos and Special Care Health Services ("GSL") who, as at 6 May 1998 were financial members of the CSA

until such time as they resign, retire or are permanently transferred or redeployed from the GSL or cease to be a member of the CSA.

- (b) Provided that the following persons shall not be eligible for membership: Persons who are employed by an employer bound by an award made or an industrial agreement registered under the Industrial Relations Act 1979 and in force on 1st March, 1985 and to which an organization of employees registered under the aforementioned Act other than The Civil Service Association of Western Australia Incorporated is party, in the callings which on 1st March, 1985 were mentioned in any such award or agreement or in a classification, not specifically mentioned in the award or agreement as at the 1st of March, 1985 the duties of which are the same or substantially similar to any classification which was so mentioned.
 - (bb) Provided further that save and except for the employees referred to in Rule 6(a)(11) and (12) all salaried employees (being professional, administrative, clerical, technical and supervisory employees) (including those listed in Schedule A to the Rules of the Hospital Salaried Officers' Association of Western Australia (Union of Workers)) employed by the Boards of any public hospital constituted under the Hospital and Health Services Act 1927 (as amended) in such hospitals or for the provision of health services in any district or area in which such board or boards are required or have a duty to provide such services shall not be eligible for membership of the Civil Service Association of Western Australia (Inc).
 - (c) In addition and notwithstanding the provisions of subrule (b) of this rule, membership shall be confined to—
 - (1) salaried officers employed by any University within Western Australia, engaged in professional, administrative, supervisory, technical, or clerical capacities other than—
 - (i) the Vice-Chancellor/s;
 - (ii) persons paid according to academic salary rates and who are substantially engaged in teaching duties or on original research;
 - (iii) persons whose conditions of engagement provide that their salary and status shall be equivalent to those of the academic staff.
 - (d) In addition to and notwithstanding the provisions of subrule (b) of this rule, membership shall be confined to tradesmen who are employed as Foremen Tradesmen or Sub-Foremen Tradesmen by Ministers of the Crown, Government Instrumentalities, Agencies or Trading Concerns, excepting the Western Australian Government Railways Commission, the State Electricity Commission of Western Australia, the Metropolitan (Perth) Passenger Transport Trust and the Government Printing Office.
- Provided that the following persons shall not be eligible for membership—
- (i) Supervisor Shipwrights and Supervisor Dockers employed by the State Shipping Service.
 - (ii) Assistant Dockmaster, South Slipway employed by the Hon. Minister for Works.
- (e) Notwithstanding any of the foregoing, such persons who are employees of the Civil

Service Association of Western Australia (Incorporated) provided that such persons—

- (1) are not eligible to hold the offices of President, Senior Vice-President, Junior Vice-President, Honorary Treasurer or Executive Committee member, and
 - (2) shall not include any persons employed in Level 1 and Level 2 positions and who are eligible for membership of the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch.
- (f) No person under the age of fourteen years shall be a member.

This matter has been listed before the Full Bench at 10.30am on 29th May 2000.

A copy of the Rules of the organization and the proposed rule amendment may be inspected at my office, 16th Floor, AXA Centre, 111 St George's Terrace, Perth.

Any organization registered under the Industrial Relations Act 1979, or any person who satisfies the Full Bench that he has a sufficient interest or desires to object to the application may do so by filing a notice of objection in accordance with the "Industrial Relations Commission Regulations 1985".

[L.S.]

(Sgd.) R.C. LOVEGROVE,
Deputy Registrar.

