

# The Horticultural (Nursery) Industry Award

## 1. - TITLE

This Award shall be known as "The Horticultural (Nursery) Industry Award", No. 30 of 1980 and it shall replace Award No. 10 of 1959.

## 2. - ARRANGEMENT

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## 3. - AREA AND SCOPE

This Award shall have effect throughout the State of Western Australia and shall apply to all Employees employed by the respondents in the classifications contained in Clause 5 - Wages of this award.

## 4. - TERM

This Award shall now operate until 30<sup>th</sup> September 2004.

## 5. - WAGES

The minimum weekly rate of wages payable to employees under this Award shall be as follows:

(1) Adult Employees

The rates in Column A are effective on date of registration, Column B effective from six months thereafter, Column C effective from an additional 6 months, any safety net adjustments during this time to be incorporated into the rates.

	Column A	Column B	Column C	Column D (effective on and from the commencement of the first pay period on or after 1 July 2007)
	Total RatePer Week\$	Total RatePer Week\$	Total RatePer Week\$	
Trainee (90% of Horticultural Employee Grade 1 rate)	429.66	432.11	432.11	471.71
Horticultural Employee Grade 1	477.40	480.12	480.12	524.12
Horticultural Employee Grade 2	484.10	488.07	488.07	532.07
Horticultural Employee Grade 3	489.70	500.70	504.83	548.83
Horticultural Tradesperson Grade 1	540.30	551.30	561.20	605.20
Horticultural Tradesperson Grade 2	559.00	570.00	581.29	625.29
Horticultural Tradesperson Advanced	579.60	590.60	601.28	645.28

The rates of pay in this award include arbitrated safety net adjustments available since December 1993, under the Arbitrated Safety Net Adjustment Principle.

These arbitrated safety net adjustments may be offset against any equivalent amount in the rate of pay received by employees since 1 November 1991 above the rate prescribed in the Award, except where such absorption is contrary to the terms of an industrial agreement.

Increases in rates of pay otherwise made under the State Wage Case Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

(2) Junior Employees

Junior employees shall be entitled to the following percentage of the Horticultural Employee Grade 1 rate:

	%
Under 16 years of age	40
16 years of age	50
17 years of age	60
18 years of age	70
19 years of age	80
20 years of age	90

(3) Leading Hands

In addition to the appropriate rate prescribed in subclause (1) of this clause, a Leading Hand shall be paid:

	\$
(a) In charge of not less than three employees and not more than 10 other employees	21.50
(b) In charge of more than 10 and not more than 20 other employees	33.10
(c) In charge of more than 20 other employees	41.40

(4) Full Time Apprentices

Full Time Apprentices shall be paid the following percentage of the Horticultural Tradesperson Grade 1 rate: (Rates for adult apprentices cannot be less than the rates set out in subclause (5) Minimum Adult Award Wage paragraph (i) of this Clause).

(a) Four Year Term	%
First year	42
Second year	55
Third year	75
Fourth year	88
(b) Three Year Term	%
First year	55
Second year	75
Third year	88

(5) Minimum Adult Award Wage

- (a) No employee aged 21 or more shall be paid less than the minimum adult award wage unless otherwise provided by this clause.
- (b) The minimum adult award wage for full-time employees aged 21 or more is \$528.40 per week payable on and from the first pay period on or after 1 July 2007.
- (c) The minimum adult award wage is deemed to include all State Wage order adjustments from State Wage Case Decisions.
- (d) Unless otherwise provided in this clause adults employed as casuals, part-time employees or piece workers or employees who are remunerated wholly on the basis of payment by result shall not be paid less than pro rata the minimum adult award wage according to the hours worked.
- (e) Employees under the age of 21 shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision in this award to the minimum adult award wage.
- (f) The minimum adult award wage shall not apply to apprentices, employees engaged on traineeships or Jobskill placements or employed under the Commonwealth Government Supported Wage System or to other categories of employees who by prescription are paid less than the minimum award rate.
- (g) Liberty to apply is reserved in relation to any special category of employees not included here or otherwise in relation to the application of the minimum adult award wage.
- (h) Subject to this clause the minimum adult award wage shall –
  - (i) Apply to all work in ordinary hours.

- (ii) Apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.

(i) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for employees aged 21 or more payable under the 2007 State Wage order. Any increase arising from the insertion of the minimum wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset the minimum wage.

(j) Adult Apprentices

- (i) Notwithstanding the provisions of this clause, an apprentice, 21 years of age or more, shall not be paid less than \$448.65 per week on and from the commencement of the first pay period on or after 1 July 2007 and \$466.65 on and from the commencement of the first pay period on or after 1 September 2007.
- (ii) The rate paid in the paragraph above to an apprentice 21 years of age or more is payable on superannuation and during any period of paid leave prescribed by this award.
- (iii) Where in this award an additional rate is expressed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the actual year of apprenticeship.
- (iv) Nothing in this clause shall operate to reduce the rate of pay fixed by the award for an adult apprentice in force immediately prior to 5 June 2003.

6. - LOCATION ALLOWANCES

- (1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK
Agnew	\$18.10
Argyle	\$47.80
Balladonia	\$18.30
Barrow Island	\$31.10
Boulder	\$7.60
Broome	\$29.00
Bullfinch	\$8.50
Carnarvon	\$14.80
Cockatoo Island	\$31.80
Coolgardie	\$7.60
Cue	\$18.50
Dampier	\$25.20
Denham	\$14.80
Derby	\$30.10
Esperance	\$5.40
Eucla	\$20.30
Exmouth	\$26.30
Fitzroy Crossing	\$36.50

Goldsworthy	\$16.00
Halls Creek	\$41.90
Kalbarri	\$6.30
Kalgoorlie	\$7.60
Kambalda	\$7.60
Karratha	\$30.10
Koolan Island	\$31.80
Koolyanobbing	\$8.50
Kununurra	\$47.80
Laverton	\$18.40
Learmonth	\$26.30
Leinster	\$18.10
Leonora	\$18.40
Madura	\$19.30
Marble Bar	\$46.00
Meekatharra	\$15.90
Mount Magnet	\$19.90
Mundrabilla	\$19.80
Newman	\$17.40
Norseman	\$15.70
Nullagine	\$45.90
Onslow	\$31.10
Pannawonica	\$23.50
Paraburdoo	\$23.40
Port Hedland	\$25.00
Ravensthorpe	\$9.60
Roebourne	\$34.60
Sandstone	\$18.10
Shark Bay	\$14.80
Shay Gap	\$16.00
Southern Cross	\$8.50
Telfer	\$42.50
Teutonic Bore	\$18.10
Tom Price	\$23.40
Whim Creek	\$29.80
Wickham	\$28.90
Wiluna	\$18.40
Wittenoom	\$40.70
Wyndham	\$45.00

(2) Except as provided in subclause (3) of this clause, an employee who has:

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee:

- (a) is provided with board and lodging by his/her employer, free of charge; or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an order or agreement made pursuant to the Act;

Such an employee shall be paid  $66\frac{2}{3}$  per cent of the allowances prescribed in subclause (1) of this clause.

- (4) Subject to subclause (2) of this clause, junior employees, casual employees, part time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.
- (5) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.
- (6) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.
- (7) For the purposes of this clause:
- (a) "Dependant" shall mean -
- (i) a spouse or defacto partner; or
- (ii) a child where there is no spouse or defacto partner;
- who does not receive a location allowance or who, if in receipt of a salary or wage package, receives no consideration for which the location allowance is payable pursuant to the provisions of this clause.
- (b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a location allowance which is less than the location allowance prescribed in subclause (1) of this clause or who, if in receipt of a salary or wage package, receives less than a full consideration for which the location allowance is payable pursuant to the provisions of this clause.
- (8) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission.
- (9) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

## 7. - CONTRACT OF SERVICE

- (1) An employee shall perform such work as the company may from time to time reasonably require.
- (2) Termination of Employment
- (a) Full-time and Part-time employees
- (i) Should an employer wish to terminate a full-time or part-time employee, the following period of notice shall be provided:
- | Period of Continuous Service                | Period of Notice |
|---|------------------|
| Not more than 1 year                        | 1 week           |
| More than 1 year but not more than 3 years  | 2 weeks          |
| More than 3 years but not more than 5 years | 3 weeks          |
| More than 5 years                           | 4 weeks          |

- (ii) Employees over 45 years of age with two or more years' continuous service at the time of termination, shall receive an additional week's notice.
- (iii) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.
- (iv) Payment in lieu of notice shall be calculated using the employee's weekly ordinary time earnings.
- (v) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.
- (vi) Notice of termination by employee. Except in the first three months of service, one week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture or payment of one week's pay by the employee to the employer in lieu of notice. In the first month of service, an employee may give a moment's notice to terminate his or her employment. In the second month's service, an employee may give one day's notice to terminate his or her employment, or the forfeiture of one day's pay by the employee to the employer in lieu of notice.
- (vii) Termination by employer prior to public holiday. An employee whose employment is terminated by the employer on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holiday or holidays. Provided that in the event of Christmas Eve falling on a Saturday or a Sunday any employee whose employment is terminated by the employer on the preceding Friday otherwise than for misconduct, shall be paid for Christmas Day and Boxing Day.

Probation. An employee engaged under the terms of this award may be engaged under probation for an agreed period not exceeding three months. Notwithstanding placitum (i) of paragraph (a) of this subclause, should an employer wish to terminate an employee still on probation, one day's notice shall be provided.

Provided that where the relevant notice period is not provided, the employee shall be entitled to payment in lieu.

(b) Casual Employees

The employment of a casual employee may be terminated by the giving or receiving of one hour's notice.

- (3) Where an employee has given or been given notice he or she shall continue in employment until the date of expiration of such notice. An employee who, having given or been given notice, without reasonable cause (proof whereof shall lie upon the employee) absents himself or herself from work during such period, shall be deemed to have abandoned employment and shall not be entitled to payment for work done within that period.
- (4) Service by the employee with a business which has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with the provisions of Clause 20. - Long Service Leave of this award shall also constitute continuous service for the purpose of this clause.
- (5) Time Off During Notice Period

Where an employer has given notice of termination to an employee who has completed two month's continuous service, that employee shall, for the purpose of seeking other employment be entitled to be absent from work up to a maximum of eight ordinary hours without deduction of pay. The time off shall be taken at times that are convenient to the employee after consultation with the employer.

Provided that this subclause shall not apply to a casual employee.

(6) **Statement of Employment**

The employer shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of employment and the classification or the type of work performed by the employee.

(7) **Absence from Duty**

The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present for duty, except when such absence is due to leave to which the employee is entitled to take and be paid for under the provisions of this award.

(8) **Standing Down of Employees**

(a) The employer is entitled to deduct payment for any day or part of a day upon which an employee cannot be usefully employed because of industrial action by the union party to this award, or by any other association or union.

(b) The provisions of paragraph (a) of this subclause also apply where the employee cannot be usefully employed through any cause which the employer could not reasonably have prevented but only if, and to the extent that, the employer and the union concerned so agree or, in the event of disagreement, the Western Australian Industrial Relations Commission so determines.

(c) Where the stoppage of work has resulted from a breakdown of the employer's machinery the Western Australian Industrial Relations Commission, in determining a dispute under paragraph (b) of this subclause, shall have regard for the duration of the stoppage and the endeavours made by the employer to repair the breakdown.

**7A. - NOTIFICATION OF CHANGE**

(1) **Employer's Duty to Notify**

(a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have "significant effects" on employees, the employer shall notify the employees who may be affected by the proposed changes and their union or unions.

(b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have "significant effects".

(2) **Employer's Duty to Discuss Change**

(a) The employer shall discuss with the employees affected and their union or unions, the introduction of the changes referred to in subclause (1) of this clause among other things, the effects of the changes are likely to have on employees, measures to avoid or minimise the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.

(b) The discussion shall commence as soon as is practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1) paragraph (a) of this clause.



- (c) For the purpose of such discussion, the employer shall provide in writing to the employees concerned and their union or unions, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be unfavourable to the employer's interests.

7B. - REDUNDANCY

(1) Discussions Before Terminations

- (a) Where an employer has made a definite decision that the employer no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with the union.
- (b) The discussions shall take place as soon as is practicable after the employer has made a definite decision that would invoke the provisions of subclause (1) paragraph (a) hereof and shall cover, among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse affect of any terminations on the employees concerned.
- (c) For the purpose of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be unfavourable to the employer's interests.

(2) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (1) hereof, the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if his or her employment had been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(3) Severance Pay

In addition to the period of notice prescribed for ordinary termination in Clause 7. - Contract of Service, subclause (2) paragraph (a), and subject to further order of the Western Australian Industrial Relations Commission, an employee whose employment is terminated for reasons set out in subclause (1) paragraph (a) hereof, shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of Continuous Service	Severance Pay
1 year or less	Nil
1 year and up to the completion of 2 years	4 weeks
2 years and up to the completion of 3 years	6 weeks
3 years and up to the completion of 4 years	7 weeks
4 years and over	8 weeks

“Week's Pay” means the ordinary time rate of pay for the employee concerned. Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(4) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (1) paragraph (a) hereof, may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice.

Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.

(5) Alternative Employment

An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.

(6) Time Off During Notice Period

(a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

(b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

(7) Notice to Commonwealth Employment Service

Where a decision has been made to terminate employees in the circumstances outlined in subclause (1) paragraph (a) hereof, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8) Superannuation Benefit

Subject to an order of the Western Australian Industrial Relations Commission, where an employee who is terminated receives a benefit from a superannuation scheme, he or she shall only receive under subclause (3) hereof, the difference between the severance pay specified in that subclause and the amount of the superannuation benefit he or she receives, that is attributable to employer contributions only.

If the superannuation benefit is equal to, or greater than the amount due under subclause (3) hereof, then he or she shall receive no payment under that subclause.

“Superannuation Scheme” in this subclause, shall mean a scheme other than one implemented solely for purposes of compliance with Clause 25. - Superannuation of this award, or an Order of the Western Australian Industrial Relations Commission.

(9) Transmission of Business

(a) Where, before or after the date of this award, a business is transmitted from an employer (in this subclause called “the transmittor”) to another employer (in this subclause called “the transmittee”), an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee:

(i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and

(ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

- (b) In this subclause “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.

(10) Employees With Less Than One Year’s Service

This clause shall not apply to employees with less than one year’s continuous service and the general obligation on employers should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

(11) Employees Exempted

This clause shall not apply where employment is terminated as a consequence of serious misconduct justifying instant dismissal, or in the case of casual employees, apprentices, or employees engaged for a specific period of time or for a specified task or tasks.

(12) Employers Exempted

Subject to an order of the Western Australian Industrial Relations Commission, in a particular redundancy case, this clause shall not apply to employers who employ less than 15 employees.

(13) Incapacity to Pay

An employer, in a particular redundancy case, may make application to the Western Australian Industrial Relations Commission to have the general severance pay prescription varied on the basis of the employer’s incapacity to pay.

## 8. - CASUAL EMPLOYEES

- (1) A casual employee is one who is engaged and paid as such.
- (2) A casual employee is to be informed that he or she is employed on a casual basis before he or she is engaged.
- (3) The service of a casual employee may be terminated by one hour’s notice, given by either side, on any day.
- (4) A casual employee shall not receive paid leave under the entitlements in this award.
- (5) A casual employee, except as otherwise provided in this award, shall be paid the ordinary hourly rate prescribed for the classification of work performed with the addition of 20 percent.

## 9. - PART TIME EMPLOYEES

- (1) Part-time employees may be employed on a regular basis for less total hours or weeks in a year than full-time employees but for not less than 3 hours on each day and shall be paid for each hour worked in proportion to the rate of wage prescribed in Clause 5. – Wages of this award. Part-time employees shall be entitled to paid leave as prescribed in this award in the same proportion as the number of hours worked bears to the hours prescribed in Clause 10. – Hours of this award.
- (2) A part-time employee may work additional hours of his/her weekly contract of service at ordinary rates, subject only to the normal provisions applying to a full time employee, where the employee has previously indicated a willingness to work extra hours or where the extra hours were arranged prior to the completion of the employee's previous contracted working day. Provided that a part-time employee shall not be required to work an extra day/part day over and above his/her weekly contract of service.

## 10. - HOURS

- (1) The ordinary hours of duty shall be:
  - (a) Thirty eight hours per week or;
  - (b) An average of 38 hours per week with hours actually worked being 40 hours per week or 80 hours per fortnight;
  - (c) Subject to subclause (2) of this clause, the hours of duty shall be at the discretion of the employer and be made known to the employee prior to appointment.
- (2) The ordinary hours of duty shall be worked in five days of not more than 8 hours (excluding a meal break) between the hours of 6.00am and 6.00pm. Provided that the ordinary hours of work performed on any day of late night trading may be worked between 6.00am and 9.00pm. Provided further that the aforementioned spread of hours may be varied by mutual agreement between the employer and employee.
- (3) All time worked during ordinary hours on a Saturday and a Sunday shall be paid for at the rate of time and a half.
- (4) An employee who actually works 40 hours per week shall:
  - (a) Accrue 2 hours of each week worked as an entitlement to a maximum of 12 Accrued Days Off in each 12 month period. The Accrued Day(s) Off shall be taken:
    - (i) in a minimum period of one week made up of five consecutive Accrued Days Off in conjunction with a period of annual leave or;
    - (ii) at a time agreed by the employer and employee.
  - (b) Accrue .4 of an hour per day as an entitlement to take the 20th day in each cycle as an Accrued Day Off in conjunction with other days off.
    - (i) Provided that an employee who has not accrued sufficient hours to enable a full paid day off duty to be taken after the completion of the 20 day cycle will continue to work until sufficient hours have been accrued.
    - (ii) The employer and employee may agree that ordinary hours worked over a 10 day two week cycle may be adjusted to enable 76 hours to be worked over nine and a half days of the cycle; with the other half day taken as an Accrued Half Day Off.
- (5) Up to five Accrued Days Off per year of service, however accrued, may be taken as single days off and such days may be rostered at the employer's discretion subject to at least two days' notice being given to the employee affected.
- (6) The employer and employee may agree to substitute the scheduled Accrued Day Off for another day.
- (7) Payment for Accrued Day(s) Off shall be calculated at the employee's normal rate of pay, excluding penalty rates.
- (8)
  - (a) Each employee shall be rostered off duty for not less than two full days in each week or four full days in each fortnight.
  - (b) A minimum of two days off duty shall be taken consecutively unless otherwise agreed between the employer and employee.

- (9) In addition to subclause (1) of this clause by agreement between the employer and the employee a work cycle of 76 hours per fortnight or any other method agreed may be worked.
- (10) The provisions of this clause apply to a part time employee in the same ratio as the hours normally worked relate to full time employees.

#### 11. - MEAL PERIOD

- (1)
  - (a) The time allowed for a meal shall be one hour except that by agreement between the employer and the employee, the meal period may be reduced to not less than half an hour.
  - (b) An employee shall not be required to work for more than five hours without a break for a meal.
- (2) When an employee is required for duty during any meal period whereby the meal period is postponed for more than one hour, the employee shall be paid at overtime rates until the meal is supplied.
- (3)
  - (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that they will be so required to work shall be supplied with a meal by the employer or paid \$8.05 for a meal.
  - (b) If the amount of overtime required to be worked necessitates a second or subsequent meal, the employer, unless the employer has notified the employee concerned on the previous day or earlier that such second or subsequent meals will also be required, shall provide such meals or pay an amount of \$5.55 for each such second or subsequent meal.
  - (c) No such payments need be made to employees living in the same locality as their place of employment who can reasonably return home for such meals.

\* Based on ABS CPI Index for Food: Meals out and Take-away Food.
- (4) If an employee in consequence of receiving the notification referred to in subclause (3) of this clause has provided themselves with a meal or meals and is not required to work overtime or is required to work less overtime than notified, they shall be paid the amounts prescribed therein in respect of any meal or meals not then required.

#### 12. - OVERTIME

- (1) All time worked in excess of ordinary hours on any day Monday to Friday inclusive shall be paid for at the rate of time and one half for the first two hours and double time thereafter.
- (2) All time worked in excess of ordinary hours on a Saturday before 12.00 noon shall be paid for at the rate of time and one half for the first two hours and double time thereafter and all such time worked on a Saturday after 12.00 noon or on a Sunday shall be paid for at the rate of double time except that if the time is worked on watering duties or preparing stock for transport the payment shall be at the rate of time and one half for a minimum of three hours.
- (3) All time worked on a holiday prescribed in Clause 14. - Public Holidays and Annual Leave shall be paid for at the rate of double time and a half.
- (4) In the computation of overtime, each day shall stand alone.
- (5) When an employee is recalled to work after leaving the job-
  - (a) the employee shall be paid for at least three hours at overtime rates; and
  - (b) time reasonably spent in getting to and from work shall be counted as time worked.

- (6) (a) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.
- (b) An employee (other than a casual employee) who works so much overtime between the termination of his or her ordinary work on one day and the commencement of his or her ordinary work on the next day, that he or she has not at least ten consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (c) If, on the instruction of the employer, such an employee resumes or continues work without having had such ten consecutive hours off duty he or she shall be paid at double time rates until he or she is released from duty for such period and he or she shall then be entitled to be absent until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (d) Where an employee (other than a casual employee) is called in to work on a Sunday or holiday preceding an ordinary working day he or she shall, wherever reasonably practicable, be given ten consecutive hours off duty before his or her usual starting time on the next day. If this is not practicable then the provisions of paragraphs (b) and (c) of this paragraph shall apply with the necessary changes having been made.

Provided that overtime worked as a result of a recall, shall not be regarded as overtime for the purpose of this subclause, when the actual time worked is less than three hours on each such recalls.

### 13. – SICK LEAVE

- (1) (a) Subject as hereinafter provided an employee shall be entitled to payment for non-attendance on the ground of personal ill-health or injury for up to 10 working days or 76 hours, whichever is the lesser, each year accrued on a weekly basis. Part-time employees who are paid a proportion of a full-time employee's pay or paid according to the number of hours worked shall be entitled to the proportion of the number of hours worked each week that the average number of hours worked each week bears to 38, up to 76 hours each year. This clause shall not apply where the employee is entitled to compensation under the Worker's Compensation and Rehabilitation Act 1981.
- (b) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.
- (2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding 10 weeks in any one year of service.
- (3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of his/her illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances, shall be given to the employer within 24 hours of the commencement of the absence.
- (4) The provisions of this clause do not apply to an employee who fails to provide to the employer evidence that would satisfy a reasonable person of the entitlement.

- (5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he/she is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.
- (b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his/her place of residence or a hospital as a result of his/her personal ill health or injury for a period of seven consecutive days or more and he/she produces a certificate from a registered medical practitioner that he/she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he/she is unable to attend for work on the working day next following his/her annual leave.
- (c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he/she proceeded on annual leave and shall not be made with respect to fractions of a day.
- (d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 14. – Public Holidays and Annual Leave of this award.
- (e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 14. – Public Holidays and Annual Leave of this award, shall be deemed to have been paid with respect to the replaced annual leave.
- (6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with the provisions of Clause 20. - Long Service Leave of this award, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.
- (7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation and Rehabilitation Act 1981 nor to employees whose injury or illness is the result of the employee's own serious and wilful misconduct or gross and wilful neglect.
- (8) An employee shall not be entitled to paid sick if the illness or injury occurs on a day when an employee is absent on an Accrued Day Off.
- (9) An employee will continue to accrue an entitlement to an Accrued Day(s) Off whilst on sick leave.
- (10) The provisions of this clause shall not apply to casual employees.

#### 14. – PUBLIC HOLIDAYS AND ANNUAL LEAVE

- (1) (a) The following days, or the days observed in lieu shall subject to Clause 12. – Overtime of this award, be allowed as holidays without deduction of pay, namely - New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in the subclause.
- (b) When any of the days mentioned in paragraph (a) of this subclause falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

In each case the substituted day shall be deemed a holiday without deduction of pay in lieu of the day for which it is substituted.

- (2) On any public holiday not prescribed as a holiday under this award the employer's establishment or place of business may be closed in which case an employee need not present himself for duty and payment may be deducted, but if work be done ordinary rates of pay shall apply.
  - (3) (a) Except as hereinafter provided, a period of four consecutive weeks' leave with payment as prescribed in paragraph (b) hereof shall be allowed annually to an employee by the employer and accrue pro rata on a weekly basis.
    - (b) (i) An employee before going on leave shall be paid the wages he or she would have received in respect of the ordinary time he or she would have worked had he or she not been on leave during the relevant period.
    - (ii) Subject to paragraph (c) hereof an employee shall where applicable, have the amount of wages to be received for annual leave calculated by including the following where applicable:
      - (aa) the rate applicable to the employee as prescribed in Clause 5. - Wages of this award; and
      - (bb) any other rate to which the employee is entitled in accordance with the contract of employment for ordinary hours of work; provided that this provision shall not operate so as to include any payment which is of a similar nature to or is paid in lieu of those payments prescribed by Clause 12. – Overtime of this award, nor any payments which might have become payable to the employee as reimbursement for expenses incurred.
  - (c) (i) During the period of annual leave an employee shall receive a loading calculated on the rate of wage prescribed by paragraph (b) hereof of 17.5 percent.
  - (ii) The annual leave loading provided by this subclause, shall not be payable when annual leave is taken in advance of the entitlement prescribed in subclause 3(a) of this clause. The loading not paid, for the period of leave taken in advance, shall be payable to the employee at the end of the first pay period following the employee being entitled to the leave as provided in subclause (3)(a) of this clause.
- (4) If any prescribed holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.
- (5) (a) If, after one week's continuous service an employee lawfully leaves his or her employment or his or her employment is terminated by the employer through no fault of the employee, the employee shall be paid one thirteenth of a week's pay (or 2.932 hours) at the rate prescribed by paragraph (b) of subclause (3) of this clause for each week of continuous service.
- (b) If an employee's employment terminates in circumstances other than those referred to in paragraph (a) hereof, before he or she has taken the leave prescribed under this award he or she shall be given payment in lieu of that leave or, in a case to which subclause (8) or (9) of this clause applies in lieu of so much of that leave as has been accrued, unless:
  - (i) the employee has been justifiably dismissed for serious misconduct; and
  - (ii) the misconduct for which the employee has been dismissed occurred prior to the completion of that qualifying period.
- (6) Any time in respect of which an employee is absent from work except time for which the employees is entitled to claim paid leave as prescribed by this award shall not count for the purpose of determining the employee's right to annual leave.



- (7) In special circumstances and by mutual consent of the employer, the employee and the Union, annual leave may be taken in not more than two periods.
- (8) Notwithstanding anything else herein contained, an employer who observes a Christmas close-down for the purpose of granting annual leave may require an employee to take his or her annual leave in not more than two periods but neither of such periods shall be less than one week.
- (9)
  - (a) An employee who, at the commencement of his or her annual leave, has an entitlement to payment for non-attendance on the ground of personal ill-health for not less than forty hours under the provisions of Clause 13. – Sick Leave, of this award and who, within seven days of resuming work, produces to the employer evidence that would satisfy a reasonable person that during his or her annual leave the employee was confined to his or her home or to a hospital for a period of at least seven consecutive days for a reason which, if the employee had not been on annual leave, would have entitled him or her to payment under the provisions of Clause 13. – Sick Leave, shall be deemed to be absent from work through sickness for so much of that period as the employee would otherwise have been entitled to payment under that clause.
  - (b) An employee to whom paragraph (a) hereof applies shall take the period deemed to be absence through sickness as annual leave at a time convenient to the employer on ordinary pay, without the loading prescribed in paragraph (c) subclause (3) of this clause.
- (10) The provisions of this clause shall not apply to casual employees.

#### 15. – EMPLOYMENT RECORDS

- (1) Each employer shall keep employment records containing:
  - (a) the employees name, and if the employee is under 21 years of age, his or her date of birth;
  - (b) the date on which the employee commenced employment with the employer;
  - (c) all leave taken by the employee, whether paid, partly paid or unpaid;
  - (d) the information necessary for the calculation of the entitlement to, and payment for long service leave under the Long Service Leave Act 1958, the Construction Industry Portable Long Service Leave Act 1985 or the industrial instrument.
- (2) Industrial instrument means:
  - (a) this award;
  - (b) an Order of the Western Australian Industrial Relations Commission;
  - (c) an industrial agreement.
- (3) The employer shall keep and maintain a time and wages record showing:
  - (a) the name of each employee;
  - (b) for each day:
    - (i) the time at which the employee started and finished work;
    - (ii) the period or periods for which the employee was paid;
    - (iii) details of work breaks, including meal breaks;

- (c) for each pay period:
  - (i) the employees designation;
  - (ii) the total number of hours worked each week;
  - (iii) the allowances paid;
  - (iv) the wages paid, including overtime;
  - (v) the gross and net amounts paid to the employee under the industrial instrument;
  - (vi) all deductions and reasons for them.
- (4) The employer shall on the written request by a relevant person:
  - (a) produce to the person the employment records (including the time and wages record) relating to the employee;
  - (b) let the person inspect the employment records (including the time and wages record);
  - (c) let the relevant person enter the premises of the employer for the purpose of inspecting the records;
  - (d) let the relevant person take copies of or extracts from the records.
- (5) A 'relevant person' means:
  - (a) the employee concerned;
  - (b) if the employee is a represented person, his or her representative;
  - (c) a person authorised in writing by the employee;
  - (d) an officer referred to in section 93 of the Industrial Relations Act (1979) (as amended) authorised in writing by the Registrar.
- (6) An employer shall comply with a written request not later than:
  - (a) at the end of the next pay period after the request is received; or
  - (b) the seventh day after the day on which the request was made to the employer.

#### 16. – REPRESENTATIVE INTERVIEWING EMPLOYEES

- (1) An authorised representative of an organization may enter, during working hours, any premises where relevant employees work, for the purpose of holding discussions at the premises with any relevant employees who wish to participate in those discussions.
- (2) An 'authorised representative' means a person who holds an authority in force under Division 2G of the Industrial Relations Act 1979 (as amended).
- (3) A 'relevant employee' means an employee who is a member of an organization or who is eligible to become a member of the organization.
- (4) The authorised representative shall give at least 24 hours notice to the employer.

#### 17. – RIGHT OF ENTRY

- (1) An authorised representative of an organization may enter, during working hours, any premises where relevant employees work, for the purpose of investigating any suspected breach of the Industrial Relations Act 1979, the Long Service Leave Act 1958, the Minimum Conditions of Employment Act 1993, the Occupational Safety and Health Act 1984, the Mines Safety and Inspection Act 1994 or an award, order, industrial agreement or employer-employee agreement that applies to any such employee.
- (2) ‘Authorised representative’ in this clause has the same meaning as in Clause 16 – Representative interviewing employees, subclause 2.
- (3) An authorised representative is not entitled to require the production of employment records or other documents unless, before exercising the power, the authorised representative has given the employer concerned:
  - (a) if the records or other documents are kept on the employers premises, at least 24 hours written notice; or
  - (b) if the records or other documents are kept elsewhere, at least 48 hours written notice.

#### 18. – SUPPORTED WAGE

- (1) This clause defines the conditions which will apply to employees who because of the effects of a disability are eligible for a supported wage under the terms of this award. In the context of this clause, the following definitions will apply:
  - (a) “Supported Wage System” means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability as documented in “[Supported Wages System: Guidelines and Assessment Process]”.
  - (b) “Accredited Assessor” means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual’s productive capacity within the Supported Wage System.
  - (c) “Disability Support Pension” means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
  - (d) “Assessment Instrument” means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

#### (2) Eligibility Criteria

Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension. (The clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of worker’s compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment).

The clause also does not apply to employers in respect of their facility, programme, undertaking, services or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a Disability Support Pension, except with respect to an organisation which has received recognition under s.10 or s.12A of the Act, or if a part has received recognition, that part.

#### (3) Supported Wage Rates

Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed by this award for the class of work which the person is performing according to the following schedule:

Assessed Capacity (subclause 4)	% of Prescribed Award Rate
10% *	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall be not less than \$56 per week).

\*Where a person's assessed capacity is 10%, they shall receive a high degree of assistance and support.

(4) Assessment of Capacity

For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:

- (a) the employer and the union in consultation with the employee or, if desired by any of these; or
- (b) the employer and an accredited Assessor from a panel agreed by the parties to the award and the employee.

(5) Lodgement of Assessment Instrument

- (a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award, is not a party to the assessment, it shall be referred by the Registrar to the Union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

(6) Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(7) Other Terms and Conditions of Employment

Where an assessment has been made, the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro-rata basis.

(8) Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may

involve re-design of job duties, working time arrangements and work organisation in consultation with other employees in the area.

(9) Trial Period

- (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding 4 weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$56 per week; or, in the case of paid rates award, the amount payable to the employee during the trial period shall be \$56 per week or such greater amount as is agreed from time to time between the parties (taking into account the Centrelink income test free areas for earnings) and inserted into this award.
- (d) Work trials should include induction or training as appropriate to the job being trialed.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause (4) of this clause.

19. - FIRST AID

Each employer shall provide a first aid kit in conformity with the relevant section of the Occupational Safety and Health Regulations 1996, as amended from time to time.

20. - LONG SERVICE LEAVE

Standard Provisions – (As Consolidated at a hearing before the Commission in Court Session on 15 December 1977)\*-

(1) Right to Leave

An employee shall, as herein provided, be entitled to leave with pay in respect of long service.

(2) Long Service

- (a) The long service which shall entitle an employee to such leave shall, subject as herein provided, be continuous service with one and the same employer.
- (b) Such service shall include service prior to 1 April 1958, if it continued until such time but only to the extent of the last 20 completed years of continuous service.
- (c) (i) Where a business has, whether before or after the coming into operation hereof, been transmitted from an employer (herein called "the transmittor") to another employer (herein called "the transmittee") and an employee who at the time of such transmission was an employee of the transmittor in that business becomes an employee of the transmittee the period of the continuous service which the employee has had with the transmittor, (including any such service with any prior transmittor shall be deemed to be service of the employee with the transmittee.
- (ii) In this subclause "transmission" includes transfer, conveyance, assignment or succession whether voluntary or by agreement or by operation of law and "transmitted" has a corresponding meaning.

- (d) Where, over a continuous period, an employee has been employed by two or more companies each of which is a related company within the meaning of section 6 of the Companies Act 1961 the period of the continuous service which the employee has had with each of those companies shall be deemed to be service of the employee with the company by whom he is last employed.

Section 6 reads:-

- (1) For the purposes of this Act, a corporation shall, subject to the provisions of subsection (3) of this section, be deemed to be a subsidiary of another corporation, if,
- (a) that other corporation -
- (i) controls the composition of the board of directors of the first mentioned corporation;
- (ii) controls more than half of the voting power in the first mentioned corporation; or
- (iii) holds more than half of the issued share capital of the first mentioned corporation excluding any part thereof which carries no right to participate beyond a specified amount in a distribution of either profits or capital; or
- (b) the first mentioned corporation is a subsidiary of any corporation which is that other corporation's subsidiary.
- (2) For the purpose of subsection (1) of this section, the composition of a corporation's board of directors shall be deemed to be controlled by another corporation if that other corporation by the exercise of some power exercisable by it without the consent or concurrence of any other person can appoint or remove all or a majority of the directors; for the purposes of this provision that other corporation shall be deemed to have power to make such an appointment if -
- (a) a person cannot be appointed as a director without the exercise in his favour by that other corporation of such power; or
- (b) a person's appointment as a director follows necessarily from his being a director or other officer of that other corporation.
- (3) In determining whether one corporation is a subsidiary of another corporation-
- (a) any shares or power exercisable by that other corporation in a fiduciary capacity shall be treated as not held or exercisable by it;
- (b) subject to paragraphs (c) and (d) of this subsection, any shares held or power exercisable-
- (i) by any person as a nominee for that other corporation (except where that other corporation is concerned only in a fiduciary capacity); or
- (ii) by, or by a nominee for, a subsidiary of that other corporation, not being a subsidiary which is concerned only in a fiduciary capacity;
- (iii) shall be treated as held or exercisable by that other corporation;
- (c) any shares held or power exercisable by any person by virtue of the provisions of any debentures of the first mentioned corporation or of a trust deed for securing any issue of such debentures shall be disregarded; and

- (d) any shares held or power exercisable by, or by a nominee, for that other corporation or its subsidiary (not being held or exercisable as mentioned in paragraph (c) of this subsection) shall be treated as not held or exercisable by that other corporation if the ordinary business of that other corporation or its subsidiary, as the case may be, includes the lending of money and the shares are held or power is so exercisable by way of security only for the purposes of a transaction entered into in the ordinary course of that business.
- (4) A reference in this Act to the holding company of a company or other corporation shall be read as a reference to a corporation of which that last mentioned company or corporation is a subsidiary.
- (5) Where a corporation:
  - (a) is the holding company of another corporation;
  - (b) is a subsidiary of another corporation;
  - (c) is a subsidiary of the holding company of another corporation, that first mentioned corporation and that other corporation shall for the purposes of this Act be deemed to be related to each other.
  - (e) Such service shall include:
    - (i) any period of absence from duty on any annual leave or long service leave;
    - (ii) any period of absence from duty necessitated by sickness or injury to the employee but only to the extent of 15 working days in any year of his employment;
    - (iii) any period following any termination of the employment by the employer if such termination has been made merely with the intention of avoiding obligations hereunder in respect of long service leave or obligations under any award in respect of annual leave;
    - (iv) any period during which the service of the employee was or is interrupted by service –
      - (aa) as a member of the Naval, Military or Air Forces of the Commonwealth of Australia other than as a member of the British Commonwealth Occupation Forces in Japan and other than as a member of the Permanent Forces of the Commonwealth of Australia except in the circumstances referred to in Section 31(2) of the Defence Act 1903-1956, and except in Korea or Malaya after 26 June, 1950;
      - (bb) as a member of the Civil Construction Corps established under the National Security Act, 1939-1946;
      - (cc) in any of the Armed Forces under the National Service Act 1951 (as amended).

Provided that the employee as soon as reasonably practicable on the completion of any such service resumed or resumes employment with the employer by whom he was employed immediately before the commencement of such service.

- (f) Service shall be deemed to be continuous notwithstanding:
- (i) the transmission of a business as referred to in paragraph (c) of this subclause;
  - (ii) the employment with related companies as referred to in paragraph (d) of this subclause;
  - (iii) any interruption of a class referred to in paragraph (e) of this subclause;
  - (iv) any absence from duty authorised by the employer;
  - (v) any standing down of an employee in accordance with the provisions of an award, industrial agreement, order or determination under either Commonwealth or State Law;
  - (vi) any absence from duty arising directly or indirectly from an industrial dispute if the employee returns to work in accordance with the terms of the settlement of the dispute;
  - (vii) any termination of the employment by the employer on any ground other than slackness of trade if the employee be re-employed by the same employer, within a period not exceeding two months from the date of such termination;
  - (viii) any termination of the employment by the employer on the ground of slackness of trade if the employee is re-employed by the same employer within a period not exceeding six months from the date of such termination;
  - (ix) any reasonable absence of the employee on legitimate union business in respect of which he has requested and been refused leave;
  - (x) any absence from duty after the coming into operation of this clause by reason of any cause not specified in this clause unless the employer, during the absence or within 14 days of the termination of the absence notifies the employee in writing that such absence will be regarded as having broken the continuity of service, which notice may be given by delivery to the employee personally or by posting it by registered mail to his last recorded address, in which case it shall be deemed to have reached him in due course of post. Provided that the period of absence from duty or the period of any interruption referred to in placita (iv) to (x) inclusive of this paragraph shall not (except as set out in paragraph (e) of this subclause) count as service.

(3) Period of Leave

- (a) The leave to which an worker shall be entitled or deemed to be entitled shall be as provided in this subclause.
- (b) Subject to the provisions of paragraphs (e) and (f) of this subclause:  
  
Where an employee has completed at least 15 years' service the amount of leave shall be –
  - (i) in respect of 15 years' service so completed - 13 weeks' leave;



- (ii) in respect of each 10 years' service completed after such 15 years-eight and two-thirds weeks' leave;
- (iii) on termination of the employee's employment –
  - (aa) by his death;
  - (bb) in any circumstances otherwise than by his employer for serious misconduct;
    - in respect of the number of years' service with the employer completed since he last became entitled to an amount of long service leave, a proportionate amount on the basis of 13 weeks for 15 years' service.
- (c) Subject to the provisions of paragraph (f) of this subclause, where an employee has completed at least 10 years' service, but less than 15 years' service since its commencement and his employment is terminated -
  - (i) by his death; or
  - (ii) in any circumstances, otherwise than by his employer for serious misconduct; the amount of leave shall be such proportion of 13 weeks' leave as the number of completed years of such service bears to 15 years.
- (d) In the cases to which paragraphs (b)(iii) and (c) of this subclause apply the employee shall be deemed to have been entitled to and to have commenced leave immediately prior to such termination.
- (e) An employee whose service with an employer commenced before 1 October 1964, and whose service would entitle him to long service leave under this clause shall be entitled to leave calculated on the following basis –
  - (i) for each completed year of service commencing before 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service; and
  - (ii) for each completed year of service commencing on or after 1 October 1964, an amount of leave calculated on the basis of 13 weeks leave for 15 years' service.

Provided that such employee shall not be entitled to long service leave until his completed years of service entitled him to the amount of long service leave prescribed in either paragraph (b)(i) or paragraph (b)(ii) of this subclause as the case may be.
- (f) An employee to whom paragraphs (b)(iii) and (c) of this subclause apply whose service with an employer commenced before 1 October 1964, shall be entitled to an amount of long service leave calculated on the following basis:
  - (i) for each completed year of service commencing before 1 October 1964, an amount of leave calculated on the basis of 13 weeks' leave for 20 years' service; and
  - (ii) for each completed year of service commencing on or after 1 October 1964, an amount of leave calculated on the basis of 13 week's leave for 15 years' service.

(4) Payment for Period of Leave

- (a) An employee shall, subject to paragraph (c) of this subclause, be entitled to be paid for each week of leave to which he has become entitled or is deemed to have become entitled the rate of pay applicable to him at the date he commences such leave.
- (b) Such rate of pay shall be the rate applicable to him for the standard weekly hours which are prescribed by this award (or agreement) but in the case of casuals and part-time employees

shall be the rate for the number of hours usually worked up to but not exceeding the prescribed standard.

- (c) Where by agreement between the employer and the employee the commencement of the leave to which the employee is entitled or any portion thereof is postponed to meet the convenience of the employee, the rate of payment for such leave shall be at the rate of pay applicable to him at the date of accrual, or, if so agree, at the rate of pay applicable at the date he commences such leave.
- (d) The rate of pay:
  - (i) shall include any deductions from wages for board and/or lodging or the like which is not provided and taken during the period of leave;
  - (ii) shall not include shift premiums, overtime, penalty rates, special rates, disability allowances, fares and travelling allowances or the like.
- (e) In the case of employees employed on piece or bonus work or any other system of payment by results the rate of pay shall be calculated by averaging the employee's rate of pay for each week over the previous three monthly period.

(5) Taking Leave

- (a) In a case to which placita (i) and (ii) of paragraph (b) of subclause (3) apply:
  - (i) Leave shall be granted and taken as soon as reasonably practicable after the right thereto accrues due or at such time or times as may be agreed between the employer and the employee or in the absence of such agreement at such time or times as may be determined by the Special Board of Reference having regard to the needs of the employer's establishment and the employees' circumstances.
  - (ii) Except where the time for taking leave is agreed to by the employer and the employee or determined by the Special Board of Reference the employer shall give to an employee at least one month's notice of the date from which his leave is to be taken.
  - (iii) Leave may be granted and taken in one continuous period or if the employer and the employee so agree in not more than three separate periods in respect of the first 13 weeks' entitlement and in not more than two separate periods in respect of any subsequent period of entitlement.
  - (iv) Any leave shall be inclusive of any public holidays specified in this award (or agreement) occurring during the period when the leave is taken but shall not be inclusive of any annual leave.
  - (v) Payment shall be made in one of the following ways:
    - (aa) In full before the employee goes on leave;
    - (bb) at the same time as his wages would have been paid to him if the employee had remained at work, in which case payment shall, if the employee in writing so requires, be made by cheque posted to an address specified by the employee; or
    - (cc) in any other way agreed between the employer and the employee.
  - (vi) No employee shall, during any period when he is on leave, engage in any employment for hire or reward in substitution for the employment from which he is on leave, and if an employee breaches this provision he shall thereupon forfeit his right to leave hereunder in respect of the unexpired period of leave upon which he has entered, and the employer shall be entitled to withhold any further payment in respect

of the period and to reclaim any payments already made on account of such period of leave.

- (b) In the case to which paragraph (b)(iii) or paragraph (c) of subclause (3) applies and in any case in which the employment of the employee who has become entitled to leave hereunder is terminated before such leave is taken or fully taken the employer shall, upon termination of his employment otherwise than by death pay to the employee, and upon termination of employment by death pay to the personal representative of the employee upon request by the personal representative, a sum equivalent to the amount which would have been payable in respect of the period of leave to which he is entitled or deemed to have been entitled and which would have been taken but for such termination. Such payment shall be deemed to have satisfied the obligation of the employer in respect of leave hereunder.
- (6) Granting Leave in Advance and Benefits To Be Brought into Account
- (a) Any employer may by agreement with an employee allow leave to such an employee before the right thereto has accrued due, but where leave is taken in such case the employee shall not become entitled to any further leave hereunder in respect of any period until after the expiration of the period in respect of which such leave had been taken before it accrued due.
  - (b) Where leave has been granted to an employee pursuant to the preceding paragraph before the right thereto has accrued due, and the employment subsequently is terminated, the employer may deduct from whatever remuneration is payable upon the termination of the employment such amount as represents payment for any period for which the employee has been granted long service leave to which he was not at the date of termination of his employment or prior thereto entitled.
  - (c) Any leave in the nature of long service leave or payment in lieu thereof under a State Law or a long service leave scheme not under the provisions hereof granted to an employee by his employer in respect of any period of service with the employer shall be taken into account whether the same is granted before or after the coming into operation hereof and shall be deemed to have been leave taken and granted hereunder in the case of leave with pay to the extent of the period of such leave and in the case of payment in lieu thereof to the extent of a period of leave with pay equivalent thereof of the entitlement of the employee hereunder.
- (7) Records to be Kept
- (a) Each employer shall during the employment and for a period of 12 months thereafter, or in the case of termination by death of the employee for a period of three years thereafter, keep a record from which can be readily ascertained the name of each employee, and his occupation, the date of the commencement of his employment and his entitlement to long service leave and any leave which may have been granted to him or in respect of which payment may have been made hereunder.
  - (b) Such record shall be open for inspection in the manner and circumstances prescribed by this Award (or agreement) with respect to the time and wages record.
- (8) Special Board of Reference
- (a) There shall be constituted a Special Board of Reference for the purpose hereof to which all disputes and matters arising hereunder shall be referred and the Board shall determine all such disputes and matters.
  - (b) There shall be assigned to such Board the functions of -
    - (i) the settlement of disputes of any matters arising hereunder;
    - (ii) the determination of such matters as are specifically assigned to it hereunder.

- (c) The Board of Reference shall consist of one representative or substitute therefore nominated from time to time by the Confederation of Western Australian Industry (Incorporated) and one representative or substitute nominated from time to time by the Trades and Labor Council of Western Australia together with a chairman to be mutually agreed upon by the organisations named in this paragraph.

(9) State Law

- (a) The provisions of any State Law to the extent to which they have before the coming into operation hereof conferred an accrued right on an employee to be granted a period of long service leave in respect of a completed period of 15 or more years' service or employment or an accrued right on an employee or his personal representative to payment in respect of long service leave shall not be affected hereby and shall not be deemed to be inconsistent with the provisions hereof.
- (b) The entitlement of any such employee to leave in respect of a period of service with the employer completed after the period in respect of which the long service leave referred to in paragraph (a) of this subclause accrued due shall be in accordance herewith.
- (c) Subject to paragraphs (a) and (b) of this subclause the entitlement to leave hereunder shall be in substitution for and satisfaction of any long service leave to which the employee may be entitled in respect of employment of the employee by the employer.
- (d) An employer who under any State Law with regard to long service leave is exempted from the provisions of that Law as at 1 April 1958, shall in respect of the employees covered by such exemptions be exempt from the provisions hereof.

(10) Exemptions

The Special Board of Reference may subject to such conditions as it thinks fit exempt any employer from the provisions hereof in respect of its employees where there is an existing or prospective long service scheme which in its opinion, is, viewed as a whole, more favourable for the whole of the employees of that employer than the provision hereof.

\*Editor's Note.

The Judgment and General Order as prescribed by section 94A was published in 58 WAIG Part 1 Subpart 2 at Page116.

There was no Schedule of Exemptions.

#### 21. - BEREAVEMENT LEAVE

- (1) An employee shall, on the death of a wife, husband, defacto wife or defacto husband, father, mother, brother, sister, child or stepchild, be entitled, on notice of leave, up to and including the day of the funeral of such relation and such leave without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Evidence of entitlement to bereavement leave that would satisfy a reasonable person is to be furnished to the employer.
- (2) Payment in respect of bereavement leave is to be made, only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty on long service leave, annual leave, sick leave, workers' compensation, leave without pay or on a public holiday.

#### 22. - APPRENTICES

Apprentices may be taken in the ratio of one apprentice for every one or two tradespersons and shall not be taken in excess of that ratio unless-

- (a) the union so agrees; or
- (b) the Commission so determines.

### 23. - GENERAL PROVISIONS

- (1) All tools required in connection with the performance of the employee's duties shall be supplied to such employee by the employer without charge.
- (2)
  - (a) An employee required to use fumigants, fertilizers, hormones or other chemicals, shall be supplied with suitable protective clothing, including suitable face masks or respirators, by the employer. This personal protective equipment shall be as required under the Occupational Safety and Health Act 1984.
  - (b) An employee required to work in the rain or in circumstances when their clothing becomes unduly wet, shall be supplied with suitable water-proof clothing.
- (3) Such equipment, clothing or tools referred to in this clause shall remain the property of the employer and any loss of such equipment, clothing or tools arising out of the neglect or misuse by an employee, shall be a charge against the wages of the employee: Provided that no charge be made in respect of reasonable wear and tear.
- (4) Each employee shall have access to adequate washing and toilet facilities.
- (5) If any dispute arises in respect of any of the provisions in this clause the matter shall be referred to the Western Australian Industrial Relations Commission for determination.

### 24. - PARENTAL LEAVE

(1) Maternity Leave

- (a) Nature of Leave

Maternity leave is unpaid leave

- (b) Definitions

For the purposes of this subclause:

- (i) "Paternity Leave" means leave of the type provided for in subclause (3) of this clause whether prescribed in an award or otherwise.
- (ii) "Child" means a child of the employee under the age of one year.

- (c) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to the employer of the certificate required by paragraph (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave, specified in the relevant statutory declaration.

Subject to paragraphs (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement include a period of six weeks compulsory leave. Notwithstanding the requirement to take compulsory leave, an employee may request to return to work at anytime, subject to the agreement of the employer.

The employee must have had at least 12 months continuous service with the employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the employer:

- (i) A certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- (ii) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

- (i) An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to the employer the certification referred to in subparagraph placitum (i) of paragraph (d) above.
- (ii) An employee shall give not less than four weeks notice in writing to the employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the time, produce to the employer the statutory declaration referred to in placitum (ii) of paragraph (d) above.
- (iii) The employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to the presumed date of confinement.
- (iv) An employee shall not be in breach of this clause as a consequence of failure to give the specified period of notice in accordance with placitum (ii) hereof if such failure is occasioned.
  - (aa) by the confinement occurring earlier than the presumed date, or
  - (bb) due to compelling circumstances, it was not reasonably practicable for the employee to comply; or
  - (cc) by the employee submitting the application as soon as reasonably practicable before, on or after the first day of the leave.

(f) Transfer to a Safe Job

Where in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of paragraphs (j), (k), (l) and (m) hereof.

- (g) Variation of Period of Maternity Leave
- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof:
    - (aa) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
    - (bb) the period may be further lengthened by agreement between the employee and the employer.
  - (ii) The period of maternity leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (h) Cancellation of Maternity Leave
- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
  - (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (i) Special Maternity Leave and Sick Leave
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then:
    - (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, or
    - (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
  - (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under paragraph (c) hereof.
  - (iii) For the purposes of paragraph (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
  - (iv) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f), hereof to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(j) Maternity Leave and Other Leave Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absence (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(k) Effect of Maternity Leave on Employment

Subject to this subclause, irrespective of any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(l) Termination of Employment

- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, she shall be entitled to a position as nearly comparable in status and pay to that of her former position.

(n) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before the employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before the employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.



- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(2) Paternity Leave

(a) Nature of Leave

Paternity leave is unpaid leave

(b) Definitions

For the purposes of this subclause:

- (i) “Maternity Leave” means leave of the type provided for in subclause (1) of this clause and includes special maternity leave whether prescribed in an award or otherwise.
- (ii) “Child” means a child of the employee or the employee’s spouse under the age of one year.
- (iii) “Primary care-giver” means a person who assumes the principal role of providing care and attention to a child.

(c) Eligibility for Paternity Leave

A male employee upon production to the employer of the certification required by paragraph (f) hereof, shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) An unbroken period of up to one week at the time of confinement of his spouse;
- (ii) A further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child’s first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee’s spouse in relation to the same child and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with the employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the employer;

- (i) A certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under placitum (ii) of paragraph (c) hereof, a statutory declaration stating:
  - (aa) He will take that period of paternity leave to become the primary care-giver of a child;
  - (bb) particulars of any period of maternity leave sought or taken by his spouse; and

(cc) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

(i) An employee shall, not less than ten weeks prior to each proposed period of leave, give the employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in paragraph (d) hereof.

(ii) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to:

(aa) The birth occurring earlier than the expected date; or

(bb) the death of the mother of the child; or

(cc) other compelling circumstances.

(iii) The employee shall immediately notify the employer of any change in the information provided pursuant to paragraph (d) hereof.

(f) Variation of Period of Paternity Leave

(i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof:

(aa) The period of paternity leave provided by placitum (ii) of paragraph (c) may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;

(bb) The period may be further lengthened by agreement between the employer and the employee.

(ii) The period of paternity leave taken under placitum (ii) of paragraph (c) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Paternity Leave

(i) Paternity leave, applied for under placitum (ii) of paragraph (c) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.

(ii) Paternity leave shall terminate within four weeks if the employee ceases to be the child's primary care giver, or such other period as agreed between the employee and the employer.

(h) Paternity Leave and Other Leave Entitlements

(i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.

(ii) Paid sick leave or other paid authorised award absence (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.

(i) Effect of Paternity Leave on Employment

Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(j) Termination of Employment

(i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this award.

(ii) An employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(k) Return to Work After Paternity Leave

(i) An employee shall confirm his intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of paternity leave provided by placitum (ii) of paragraph (c) hereof.

(ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by placitum (i) above, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.

(l) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.

(ii) Before the employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

(iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(3) Adoption Leave

(a) Nature of Leave

Adoption leave is unpaid leave.

(b) Definitions

For the purposes of this subclause:

- (i) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) "Relative Adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (iii) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(c) Eligibility

An employee, upon production to the employer of the certification required by paragraph (d) hereof shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:

- (i) an unbroken period of up to three weeks at the time of the placement of the child;
- (ii) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by:
  - (aa) any period of leave taken pursuant to placitum (i) above; and
  - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least 12 months' continuous service with the employer immediately preceding the date upon which he or she proceeds upon such leave in either case.

- (iii) The entitlement to adoption leave must not overlap with any periods of adoption leave taken by the employee's spouse, except an unbroken period of up to three weeks at the time of placement of the child.

(d) Certification

Before taking adoption leave the employee must produce to the employer:

- (i)
  - (aa) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
  - (bb) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (ii) In relation to any period to be taken under placitum (ii) of paragraph (3) hereof, a statutory declaration stating:
  - (aa) the employee is seeking adoption leave to become the primary care-giver of the child;
  - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and

(cc) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(e) Notice Requirements

- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the employer of such approval and within two months of such approval shall further notify the employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (ii) An employee who commences employment with an employer after the date of approval for adoption purposes shall notify the employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months' continuous service with that employer immediately preceding the date upon which he or she proceeds upon such leave.
- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under placitum (i) of paragraph (c) hereof.
- (iv) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under placitum (ii) of paragraph (c) hereof, give notice in writing to the employer of the date of commencing leave and the period of leave to be taken.
- (v) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with placitum (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
- (vi) The employee shall immediately notify the employer of any change in the information provided pursuant to this subclause.

(f) Variation of Period of Adoption Leave

- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (c) hereof:
  - (aa) the period of leave taken under placitum (ii) of paragraph (c) hereof may, be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
  - (bb) the period may be further lengthened by agreement between the employer and employee.
- (ii) The period of adoption leave taken under placitum (ii) of paragraph (c) hereof may, with the consent of the employer, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(g) Cancellation of Adoption Leave

- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.

- (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the employer forthwith and the employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
- (iii) Adoption leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.

(h) Special Leave

The employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the employer may require the employee to take such leave in lieu of special leave.

(i) Adoption Leave and Other Entitlements

- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.

(j) Effect of Adoption Leave on Employment

Subject to this subclause, irrespective of any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.

(k) Termination of Employment

- (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
- (ii) An employer shall not terminate the employment of an employee on the grounds of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

(l) Return to Work After Adoption Leave

- (i) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by placitum (ii) of paragraph (c) hereof.
- (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

(m) Replacement Employees

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (ii) Before an employer engages a replacement employee the employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before an employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under this subclause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(4) Part-Time Work

(a) Definitions

For the purposes of this subclause:

- (i) "Male employee" means an employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.
- (ii) "Female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (iii) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part-time employment under this clause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing, a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

(b) Entitlement

With the agreement of the employer:

- (i) A male employee may work part-time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time employment is, because of the pregnancy, necessary or desirable.
- (iii) A female employee may work part-time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part-time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

- (i) An employee who has had at least 12 months' continuous service with an employer immediately before commencing part-time employment after the birth or placement of a child has, at the expiration of the period of such part-time employment or the first period, if there is more than one, the right to return to his or her former position.

- (ii) Nothing in placitum (i) hereof shall prevent the employer from permitting the employee to return to his or her former position after a second or subsequent period of part-time employment.

(d) Effect of Part-Time Employment on Continuous Service

Commencement on part-time work under this clause, and return from part-time work to full-time work under this clause, shall not break the continuity of service or employment.

(e) Pro Rata Entitlements

Subject to the provisions of this subclause and the matters agreed to in accordance with paragraph (f) hereof, part-time employment shall be in accordance with the provisions of this Award which shall apply pro-rata.

(f) Part-Time Work Agreement

- (i) Before commencing a period of part-time employment under this clause the employee and the employer shall agree:

- (aa) that the employee may work part-time; upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;

- (bb) upon the classification applying to the work to be performed; and

- (cc) upon the period of part-time employment.

- (ii) The terms of this agreement may be varied by consent.

- (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.

- (iv) The terms of this agreement shall apply to the part-time employment.

(g) Termination of Employment

- (i) The employment of a part-time employee under this clause, may be terminated in accordance with the provisions of this Award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or propose to enjoy any benefits arising under this clause.

- (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this clause, or while working full-time after transferring from part-time work under this clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee and all service as a part-time employee on a pro rata basis.

(h) Extension of Hours of Work

An employer may request, but not require, an employee working part-time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (f) hereof.

(i) Nature of Part-Time Work



The work to be performed part-time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.

(j) Inconsistent Award Provisions

An employee may work part-time under this clause irrespective of any other provision of this award which limits or restricts the circumstances in which part-time employment may be worked or the terms upon which it may be worked including provisions prescribing a minimum or maximum number of hours a part-time employee may work.

(k) Replacement Employees

(i) A replacement employee is an employee specifically engaged as a result of an employee working part-time under this subclause.

(ii) A replacement employee may be employed part-time. Subject to this paragraph, paragraphs (e), (f), (g) and (j) of this subclause, apply to the part-time employment of a replacement employee.

(iii) Before an employer engages a replacement employee under this subclause, the employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.

(iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of placitum (v) of paragraph (a) hereof.

(v) Nothing in this subclause shall be construed as requiring an employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

## 25. - SUPERANNUATION

The subject of superannuation is dealt with extensively by legislation including the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992, the Superannuation Industry (Supervision) Act 1993 and the Superannuation (Resolution of Complaints) Act 1993 (collectively the superannuation legislation). This legislation, as varied from time to time, governs the superannuation rights and obligations of the parties

(1) Definitions

For the purposes of this clause:

(a) "Fund" means a complying superannuation fund as that term is used in the superannuation legislation.

(b) "Ordinary time earnings" means the actual ordinary rate of pay the employee receives for ordinary hours of work including, if applicable, tool allowance, industry allowance, trade allowance, shift loading, special rates, qualification allowances (e.g. first aid, laser safety officer), multi-story allowance, district/location allowance, piecework rates, underground allowance, award site allowances, 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 for ordinary hours of work. All other allowances and payment are excluded.

(2) Employer Contributions:

An employer must, in accordance with the governing rules of the relevant Fund, make such superannuation contributions for the benefit of an employee as will avoid the employer being required to pay superannuation guarantee charge under the superannuation legislation with respect to that

employee. For the purposes of the superannuation legislation, an employee's ordinary time earnings are intended to provide that employee's notional earnings base. Employer contributions must be paid quarterly, with the first payment being made at the end of the first quarter following engagement. Contributions must be equal to that required under the superannuation legislation.

(3) Voluntary Employee Contributions

- (a) Subject to the governing rules of the relevant Fund, an employee who wishes to make contributions to the Fund may either forward his or her own contribution directly to the Fund administrators or authorise the employer to pay into the Fund from the employee's wages, amounts specified by the employee.
- (b) Employee contributions to the Fund deducted by the employer at the employee's request shall be held on the employee's behalf and subject to individual agreement shall meet the following conditions:
  - (i) the amount of contributions shall be expressed in whole dollars.
  - (ii) an employee shall have the right to adjust the level of contribution made on his or her own behalf from the first of the month following the giving of three months' written notice to the employer.
  - (iii) contributions deducted under this clause shall be forwarded to the Fund at the same time as contributions under subclause (2).

(4) Superannuation Fund

- (a) An employer must, in accordance with the governing rules of the relevant Fund, make superannuation contributions to any of the following Funds:
  - (i) C+BUS, the AWU Guardian, the Westscheme Superannuation Scheme;

The employer shall notify the employee that they may nominate a superannuation fund or scheme. Furthermore, the employer shall notify the employee that he or she can choose any superannuation fund or scheme and that his/her choice does not need to be approved by the employer.

The employer and the employee are bound by the employee's choice of fund unless there is agreement between them to change the fund. The employer shall not unreasonably refuse a change of fund requested by the employee.

If the employee is a member of a union bound by this award, the employee may be represented by that union in meeting and conferring with the employer about the matter and the employer must give the union a reasonable opportunity to meet and confer about the matter.

Note: the consent of the union is not required to any agreement between the employer and the employee.

The agreement must be recorded in the time and wages records kept by the employer in accordance with Clause 15. – Employment Records of this award.

If a dispute or difficulty arises over the implementation or continued operation of this provision, it must be handled in accordance with the dispute resolution procedure in Clause 31. –Dispute Settlement Procedure of this award.

- (b) An employer is not required to contribute to more than one Fund in respect of an employee employed under this award.

## 26. - DEFINITIONS

"Trainee" shall mean an employee who has had no previous experience in the industry and is appointed as such for a maximum period of three months. Following the satisfactory completion of three months service, or lesser period as agreed, the employee shall be paid in accordance with the wage rate specified for a Horticultural Employee Grade 1.

"Horticultural Employee Grade 1" means an employee whose duties include the potting, packing and setting out of plants, the handling of seedlings, the picking, processing and packing of flowers, the collecting and despatching of stock for orders, the general maintenance of a Nursery and advising and attending to customers as required. Duties may require the operation of tractors, hoes and similar mechanical plant.

"Horticultural Employee Grade 2" means an employee, other than a Qualified Horticultural Tradesperson who is thoroughly conversant with nursery practices and whose duties may require pruning, grafting, budding, layering and seed sowing in addition to any other duties the person may be required to perform (including advising and attending to customers). The person is required to have a minimum of 12 months experience as a Horticultural Employee Grade 1.

"Horticultural Employee Grade 3" means an employee other than a Qualified Horticultural Tradesperson who is thoroughly conversant with nursery practices and who is capable of performing all of the duties required of a Grade 1 and Grade 2 employee and has had a minimum of three years experience in the industry.

"Horticultural Tradesperson Grade 1" means an employee who has successfully completed a recognised apprenticeship in a branch or branches of the Horticulture Trade and who produces proof satisfactory to the employer of such qualification or who has by other means achieved a standard of knowledge deemed by the employer as comparable thereto and is appointed in writing as such by the employer.

"Horticultural Tradesperson Grade 2" means an employee who has satisfied the requirements for a Grade 1 Tradesperson and who has a minimum of three years post apprenticeship experience and demonstrated higher skills in a branch or branches of Horticulture relevant to the employer's business.

"Horticultural Tradesperson (Advanced)" means an employee who has satisfied the requirements for a Grade 2 Tradesperson and who has completed post apprenticeship qualifications in horticultural sciences or management studies relevant to the employer's business, and who is appointed by the employer to such position.

## 27. - PAYMENT OF WAGES

- (1)
  - (a) The employer may elect to pay employees in cash, by cheque or by means of a credit transfer to a bank, building society or credit union account in the name of the employees. The day that the credit transfer is credited to the employee's account shall be deemed to be the date of payment.
  - (b) Payment shall be made within three trading days from the last day of the pay period and if in cash or by cheque shall be made during the employee's ordinary working hours.
  - (c) No employer shall change its method of payment to employees without first giving them at least four weeks' notice of such change.
- (2)
  - (a) The employer shall pay employees weekly or fortnightly in accordance with subclause (1) of this clause, by agreement with the union.
  - (b) The method of introducing a fortnightly pay system shall be by the payment of an additional week's wages in the last weekly pay before the change to fortnightly pays to be repaid by equal fortnightly deductions made from the next and subsequent pays provided the period for repayment shall not be less than 20 weeks or some other method agreed upon by the employer and the employee.
- (3) Employees, who are paid by cash or cheque, whose day off falls on a pay day shall be paid their wages upon request from the employee to the employer, prior to the employee taking the day off.

- (4) An employee who lawfully terminates his employment, or is dismissed for reasons other than misconduct, shall be paid all wages due to him by the employer on the day of termination of his employment or as soon as practicable after the date of termination of his employment.

28. - EFFECT OF 38 HOUR WEEK

(1) Termination:

- (a) An employee subject to the provisions of subclause (1)(ii) of Clause 10. - Hours of this award who has not taken any Accrued Day(s) Off accumulated during a work cycle in which employment is terminated, shall be paid the total of hours accumulated towards the Accrued Day(s) Off for which payment has not already been made.
- (b) An employee who has taken any Accrued Day(s) Off during a work cycle in which employment is terminated shall have the wages due on termination reduced by the total hours for which payment has already been made but for which the employee had no entitlement toward those Accrued Day(s) Off.

(2) Workers' Compensation:

(a) 20 Day Work Cycle

- (i) Where an employee is on workers' compensation for periods for less than one complete 20 days work cycle, such employee will accrue towards and be paid for the succeeding Accrued Day Off following such absence.
- (ii) An employee will not accrue Accrued Day(s) Off for periods of workers' compensation where such period of leave exceeds one or more complete 20 days work cycle.
- (iii) Where an employee is on workers' compensation for less than one complete 20 day work cycle and an Accrued Day Off falls within the period, the employee will not be re-rostered for an additional Accrued Day Off.

(b) 12 Months' Work Cycle

- (i) Where an employee is on workers' compensation for periods for less than a total of 20 consecutive work days in a work cycle such employee will accrue towards and be paid for the succeeding Accrued Day(s) Off following such leave.
- (ii) Where an employee is on workers' compensation for period greater than a total 20 consecutive days in a work cycle such employee will have the period of workers' compensation added to the work cycle.
- (iii) Where an employee is on workers' compensation for greater than 20 consecutive work days and an Accrued Day Off as prescribed in subclause (1) of Clause 10. - Hours of this Award falls within the period the employee shall be re-rostered for another Accrued Day Off on completion of the 20 day work cycle following such absence.

(3) Leave Without Pay:

An employee who is absent on any form of leave without pay shall not accumulate an entitlement to an Accrued Day Off for the period of such leave nor will the employee be entitled to an Accrued Day Off whilst on leave without pay.

(4) Pay Out of Entitlements:

An employee whose hours are worked in accordance with subclause (1)(ii) of Clause 10. - Hours of this Award and who, after 12 months employment, is to take the full four consecutive weeks annual leave prescribed by Clause 14. – Public Holidays and Annual Leave of this award may by mutual written agreement, be paid at the time of taking such annual leave, for any Accrued Day(s) Off then standing to the credit of that employee. Such payment will be in full discharge of any liability on the employer arising pursuant to Clause 10. - Hours of this award. An employee shall not otherwise be paid for Accrued Day(s) Off without actually taking them as days off.

#### 29. - AWARD MODERNISATION/ENTERPRISE AGREEMENTS

- (1) The parties are committed to modernising the terms of the award so that it provides for more flexible working arrangements, improves the quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.
- (2) In conjunction with testing the new award structure the union is prepared to discuss all matters raised by the employers for increased flexibility. As such any discussion with that union must be premised on the understanding that:
  - (a) The majority of employees at each enterprise must genuinely agree;
  - (b) No employee will suffer a reduction in earnings in respect of their ordinary hours of work;
  - (c) The union must be party to the agreement;
  - (d) The union will not unreasonably oppose any agreement; and
  - (e) Agreements will be ratified by The Western Australian Industrial Relations Commission.
- (3) Should an agreement be reached pursuant to this clause at a particular enterprise and that agreement requires award variation, the parties will not oppose that award variation for that particular provision for that particular enterprise.
- (4) The parties agree that under this heading any award matter can be raised for discussion.
- (5) Employees within each grade are to perform a wider range of duties including work which is incidental or peripheral to their main tasks or functions.

#### 30. - TRAINING

- (1) The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
  - (a) Developing a more highly skilled and flexible workforce;
  - (b) Providing employees with career opportunities through appropriate training to acquire additional skills; and
  - (c) Removing barriers to the utilisation of skills required.
- (2) After the insertion of the new classification structure the employer shall review the existing training programme consistent with:
  - (a) The current and future skill needs of the enterprise or industry;
  - (b) the size, structure and nature of the operations of the enterprise;

- (c) the need to develop vocational skills relevant to the enterprise or industry through courses conducted on-the-job or by accredited institutions and providers.
- (3) (a) Where, arising from the training programme developed in accordance with subclause (1) hereof, the employer determines that an employee should undertake additional training, that training may be undertaken either on or off-the-job. Provided that if the training is undertaken during ordinary working hours the employee concerned shall not suffer any loss of ordinary pay.
- (b) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in the employers technical library) incurred in connection with the undertaking of training shall be reimbursed by the employer upon production of evidence of such expenditure. Provided that reimbursement shall also be on annual basis subject to the presentation of reports of satisfactory progress. Provided further that where an employer reimburses an employee for the cost of textbooks, those textbooks shall be retained in the employer's technical library.

### 31. – DISPUTE SETTLEMENT PROCEDURE

Subject to the Industrial Relations Act 1979 (as amended) in the event of a problem, grievance, question, dispute, claim or difficulty that affects one or more employees, or arises from the employees work or contract of employment, the following procedure shall apply:

- (1) At first instance the matter shall be raised at site level with the foreman/supervisor/manager as appropriate.
- (2) In the event that the matter is unresolved it may be raised at the Company level by the individual concerned (or his/her representative), or the shop steward or union official involved.
- (3) If the matter is still not resolved it may be referred to the Western Australian Industrial Relations Commission for determination, and if necessary arbitration.
- (4) The parties will attempt to resolve the matter prior to either party referring the matter to the Western Australian Industrial Relations Commission.

APPENDIX 1. – MAKE UP OF TOTAL WAGE

This appendix shows how the total wages in this award are made up detailing both base wage rates and safety net adjustments as well as the total rate published in clause 5. – Wages of this Award.

The minimum weekly rate of wages payable to employees under this award shall be as follows:

(1) Adult Employees

	Base Rate\$	Arbitrated Safety Adjustments\$	Net Total Rate\$ on and from the commencement of the first pay period on or after 1 July 2007
Trainee(90% of Horticultural Employee Grade 1 rate)	304.31	167.40	471.71
Horticultural Employee Grade 1	338.12	186.00	524.12
Horticultural Employee Grade 2	346.07	186.00	532.07
Horticultural Employee Grade 3	362.83	186.00	548.83
Horticultural Tradesperson Grade 1	417.20	188.00	605.20
Horticultural Tradesperson Grade 2	437.29	188.00	625.29
Horticultural Tradesperson Advanced	457.28	188.00	645.28

SCHEDULE A. – NAMED PARTIES TO THE AWARD

UNION

The Australian Workers' Union,  
West Australian Branch,  
Industrial Union of Workers  
Cnr Moore and Lord Streets  
EAST PERTH WA 6004



SCHEDULE B. – RESPONDENTS TO THE AWARD

Advanced Nursery  
208 Dundobar Road  
WANNEROO 6065

All Palms Nursery  
37 Birnam Road  
CANNING VALE 6155

Benara Nurseries  
71 Vincent Road  
WANNEROO 6065

Bush Berry Farm  
17 Baillie Avenue  
VICTORIA PARK EAST 6101

Dawson Garden Centres WA  
160 Hale Road  
FORRESTFIELD 6058

Garden Harmony Vale Nurseries  
Arlima Pty Ltd  
229 Kalamunda Road  
MAIDA VALE 6057

Nursery Australia Pty Ltd  
PO Box 1345  
SUBIACO 6904

SCHEDULE B. - PARTIES TO THE AWARD

Union Party to the Award

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers

DATED at Perth this 4th day of May, 1983.

VARIATION RECORD

THE HORTICULTURAL (NURSERY) INDUSTRY AWARD NO. A30 OF 1980

Delivered 04/05/83 at 63 WAIG 1409 Section 93(6)  
Consolidation 27/06/88 at 68 WAIG 1655 Section 93(6)  
Consolidation 14/09/94 at 74 WAIG 2552

CLAUSE NO.	EXTENT OF VARIATION	ORDER NO.	OPERATIVE DATE	GAZETTE REFERENCE
1. Title				
	Cl. (award title)	1661/87	9/9/88	68 WAIG 2452
(1A. State Wage Principles)				
	Ins. Cl.	1752/91	31/01/92	72 WAIG 191
	Cl. & Title	1457/93	24/12/93	74 WAIG 198
(1A. State Wage Principles December 1993)				
	Cl. & Title	985/94	30/12/94	75 WAIG 23
(1A. Statement of Principles December 1994)				
	Cl. & Title	1164/95	21/03/96	76 WAIG 911
(1A. Statement of Principles March 1996)				
	Cl & Title	915/96	7/08/96	76 WAIG 3368
(1A Statement of Principles - August 1996)				
	Cl & Title	940/97	14/11/97	77 WAIG 3177
(1A. Statement of Principles - November 1997)				
	Cl. & Title	757/98	12/06/98	78 WAIG 2579
(1A. Statement of Principles - June, 1998)				
	Del. Cl.	609/99	06/07/99	79 WAIG 1847
<b>1B. Minimum Adult Award Wage</b>				
	Ins. 1B	940/97	14/11/97	77 WAIG 3177
	Cl.	583/99	24/06/99	79 WAIG 2019
	Min. Wage & text.	609/99	01/08/99	79 WAIG 1847
	Cl.	654/00	01/08/00	80 WAIG 3379
	Cl	752/01	01/08/01	81 WAIG 1721

Cl	797/02	01/08/02	82 WAIG 1369
Del. Cl.	900/02	11/02/03	83 WAIG 718

## 2. Arrangement

Cl.	1661/87	9/9/88	68 WAIG 2452
Cl.	353/89	19/5/89	69 WAIG 2081
(2A) Deleted	1940/89	8/9/89	69 WAIG 2913
Cl.	733/89	08/09/89	69 WAIG 3342
Ins. 27 & 28	1641/89 & 40/90(R)	15/03/90	70 WAIG 1841
Ins. 1A.	1752/91	31/01/92	72 WAIG 191
Del. Sch. Resp; Ins. Sch. A & Sch. B.	695/93	08/07/93	73 WAIG 2781
Cl.	845/90	17/08/93	73 WAIG 2698
1A. Title	1457/93	24/12/93	74 WAIG 198
1A. Title	985/94	30/12/94	75 WAIG 23
1A. Title	1164/95	21/03/96	76 WAIG 911
Ins. 7A & 7B	527(A)/96	13/06/96	76 WAIG 2425
Ins. Appendix - Resolution...	693/96	16/07/96	76 WAIG 2768
Ins. Appendix - S.49B...	694/96	16/07/96	76 WAIG 2789
1A. Title	915/96	7/08/96	76 WAIG 3368
1A	940/97	14/11/97	77 WAIG 3177
Ins. 1B	940/97	14/11/97	77 WAIG 3177
1A. Title	757/98	12/06/98	78 WAIG 2579
Del. 1A.	609/99	06/07/99	79 WAIG 1847
Ins.Cl.	900/02	11/02/03	83 WAIG 718

### (2A. State Wage Principles - September 1988)

Ins. cl.	353/89	19/5/89	69 WAIG 2081
Del. Cl.	1940/89	8/9/89	69 WAIG 2913

### (2A. State Wage Principles - September 1989)

Ins. Cl.	733/89	08/09/89	69 WAIG 3342
Del. Cl.	845/90	17/08/93	73 WAIG 2698

### 3. Area and Scope

### 4. Term

Ins.Cl.	900/02	11/02/03	83 WAIG 718
Cl	1820/03	9/09/04	84 WAIG 3296

### 5. Wages

(wage index)	461/83Int	13/10/83	63 WAIG 2207
Correction	461/83Int	28/12/83	63 WAIG 2496
(wage index)	461/83	02/03/84	64 WAIG 407
(wage index)	104/84	13/04/84	64 WAIG 847
(wage index)	104/85	10/04/85	65 WAIG 657
(wage index)	821/85Int	27/11/85	66 WAIG 4
(wage index)	261/86	23/07/86	66 WAIG 1139
(wage increase)	1195/86	24/04/87	67 WAIG 435
(wage increase)	1406/87	24/03/88	68 WAIG 949
Cl	1661/87	9/9/88	68 WAIG 2452
Cl	353/89	19/5/89	69 WAIG 2081
Cl	1641/89 & 40/90(R)	15/03/90	70 WAIG 1841
Cl.	845/90	17/08/93	73 WAIG 2698
Cl.	58/94	27/05/94	74 WAIG 1761
Preamble & (1)	527(A)/96	13/06/96	76 WAIG 2425
Rates & Ins. Text	940/97	14/11/97	77 WAIG 3177
Cl.	583/99	24/06/99	79 WAIG 2019
(1) rates & text.	609/99	01/08/99	79 WAIG 1847
Cl.	654/00	01/08/00	80 WAIG 3379
Cl	752/01	01/08/01	81 WAIG 1721
Cl.	797/02	01/08/02	82 WAIG 1369
Cl.	900/02	11/02/03	83 WAIG 718
Cl.	569/03	5/06/03	83 WAIG 1899 & 2297
(5)(9)	1197/03	1/11/03	83 WAIG 3537

Cl	570/04	4/06/04	84 WAIG 1521 & 1817
(1)(2)(3)(4)	1820/03	9/09/04	84 WAIG 3296
(5)	576/05	07/07/05	85 WAIG 2083, 2515
Cl.	957/05	07/07/06	86 WAIG 1631 & 2042
(4)	113/06	13/12/06	86 WAIG 3389
Cl.	1/07	01/07/07	87 WAIG 1487 & 1928

#### **6. Location Allowance**

Cl	397/85	26/06/85	65 WAIG 1349
Cl	409/86	19/06/86	66 WAIG 1149
Cl	603/87	17/06/87	67 WAIG 1094
Cl	1353/87	31/12/87	68 WAIG 996
Cl	517/88	01/07/88	68 WAIG 1686
(1); (13)	834/89	01/07/89	69 WAIG 3217
Cl.	778/90	01/07/90	70 WAIG 2995
(1)	1049/91	01/07/91	71 WAIG 2753
Cl.	851/92	01/07/92	72 WAIG 2498
Cl.	943/93	01/07/93	73 WAIG 1989
Cl.	714/94	01/07/94	74 WAIG 1869
Cl	641/95	01/07/95	75 WAIG 2125
Cl.	911/96	1/07/96	76 WAIG 3365
Cl.	1400/97	01/07/97	77 WAIG 2547
Cl.	975/98	1/07/98	78 WAIG 2999
Cl.	690/99	01/07/99	79 WAIG 1843
Cl.	1050/00	01/08/00	80 WAIG 3153
Cl	718/01	01/08/01	81 WAIG 1559
Cl.	686/02	01/07/02	82 WAIG 1185
Cl.	570/03	01/07/03	83 WAIG 1657
Cl	696/04	01/07/04	84 WAIG 2145
Cl.	458/05	07/07/05	85 WAIG 1893
Cl.	59/06	01/07/06	86 WAIG 1471
Cl.	53/07	01/07/07	87 WAIG 2435

**7. Contract of Service**

Cl	1641/89 & 40/90(R)	15/03/90	70 WAIG 1841
Cl.	845/90	17/08/93	73 WAIG 2698
Ins.Cl.	900/02	11/02/03	83 WAIG 718

**7A. Notification of Change**

Ins. Cl.	527(A)/96	13/06/96	76 WAIG 2425
Ins. Cl.	900/02	11/02/03	83 WAIG 718

**7B. Redundancy**

Ins. Cl.	527(A)/96	13/06/96	76 WAIG 2425
Ins. Cl.	900/02	11/02/03	83 WAIG 718

**8. Casual Employees**

Cl.	845/90	17/08/93	73 WAIG 2698
Ins. Cl.	900/02	11/02/03	83 WAIG 718

**9. Part Time Employees**

Cl.	845/90	17/08/93	73 WAIG 2698
Ins. Cl.	900/02	11/02/03	83 WAIG 718

**10. Hours**

(1)	1641/89 & 40/90(R)	15/03/90	70 WAIG 1841
Cl.	845/90	17/08/93	73 WAIG 2698

**11. Meal Period**

Amount (3)(a)& (b)	845/90	17/08/93	73 WAIG 2698
Ins. Cl.	900/02	11/02/03	83 WAIG 718
(3)	1820/03	9/09/04	84 WAIG 3296

**12. Overtime**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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(13. Breakdowns)

Del.Cl.	900/02	11/02/03	83 WAIG 718
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(14. Absence Through Sickness)

Cl.	845/90	17/08/93	73 WAIG 2698
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Del. Cl.	900/02	11/02/03	83 WAIG 718
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**13. Sick Leave**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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(15. Holidays and Annual Leave)

(3)(c)	845/90	17/08/93	73 WAIG 2698
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Del. Cl	900/02	11/02/03	83 WAIG 718
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**14. Holidays and Annual Leave**

Ins. Cl	900/02	11/02/03	83 WAIG 718
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(16. Record)

Ins text.(2)	491/98	16/04/98	78 WAIG 1471
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Del. Cl.	900/02	11/02/03	83 WAIG 718
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**15. Employment Records**

Ins. Cl	900/02	11/02/03	83 WAIG 718
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(17. Representative Interviewing Employees)

Ins. Text	2053(1)/97	22/11/97	77 WAIG 3138
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Del. Cl.	900/02	11/02/03	83 WAIG 718
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**16. Representative Interviewing Employees**

Ins. Cl	900/02	11/02/03	83 WAIG 718
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**17. Right of Entry**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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(18. Under Rate Employees)

Del. Cl.	900/02	11/02/03	83 WAIG 718
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**18. Supported Wage**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**19. First Aid**

Cl.	900/02	11/02/03	83 WAIG 718
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**20. Long Service Leave**

Del Cl.	900/02	11/02/03	83 WAIG 718
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Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**21. Bereavement Leave**

Cl	1661/87	9/9/88	68 WAIG 2452
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Del. Cl.	900/02	11/02/03	83 WAIG 718
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Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**22. Apprentices**

Del. Cl.	900/02	11/02/03	83 WAIG 718
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Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**23. General Provisions**

Del. Cl.	900/02	11/02/03	83 WAIG 718
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Ins. Cl.	900/02	11/02/03	83 WAIG 718
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(24. Liberty to Apply)

Del. Cl.	900/02	11/02/03	83 WAIG 718
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(25. Maternity Leave)

Ins. Cl.	1661/87	9/9/88	68 WAIG 2452
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(12); Ins. (13)	845/90	17/08/93	73 WAIG 2698
Del Cl.	900/02	11/02/03	83 WAIG 718

#### **24. Parental Leave**

Ins. Cl	900/02	11/02/03	83 WAIG 718
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#### **(26. Superannuation)**

Ins. Cl.	733/89	08/09/89	69 WAIG 3342
Ins. Text	599/98	30/06/98	78 WAIG 2559
Del. Cl	900/02	11/02/03	83 WAIG 718

#### **25. Superannuation**

Ins. Cl	900/02	11/02/03	83 WAIG 718
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#### **(27. Definitions)**

Ins. Cl.	1641/89 & 40/90(R)	15/03/90	70 WAIG 1841
Cl.	845/90	17/08/93	73 WAIG 2698
Del. Cl	900/02	11/02/03	83 WAIG 718

#### **26. Definitions**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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#### **(28. Payment of Wages)**

Ins. cl.	1641/89 & 40/90(R)	15/03/90	70 WAIG 1841
Del. Cl.	900/02	11/02/03	83 WAIG 718

#### **27. Payment of Wages**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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#### **(29. Effect of 38 Hour Week)**

Ins. Cl.	845/90	17/08/93	73 WAIG 2698
Del. Cl.	900/02	11/02/03	83 WAIG 718

**28. Effect of 38 Hour Week**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**(30. Award Modernisation/Enterprise Agreement)**

Ins. Cl.	845/90	17/08/93	73 WAIG 2698
Del. Cl. & Ins. Cl.29	900/02	11/02/03	83 WAIG 718

**29. Award Modernisation/Enterprise Agreements**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**(31. Training)**

Ins. Cl.	845/90	17/08/93	73 WAIG 2698
Del. Cl	900/02	11/02/03	83 WAIG 718

**30. Training**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**31. Dispute Settlement Procedure**

Ins. Cl.	900/02	11/02/03	83 WAIG 718
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**Appendix 1. – Make Up of Total Wage**

Ins. App.	900/02	11/02/03	83 WAIG 718
Cl.	569/03	5/06/03	83 WAIG 1899 & 2297
Cl	570/04	4/06/04	84 WAIG 1521 & 1817
(1)	1820/03	9/09/04	84 WAIG 3296
Appendix	576/05	07/07/05	85 WAIG 2083, 2515
Cl.	957/05	07/07/06	86 WAIG 1631, 2042
Cl.	1/07	01/07/07	87 WAIG 1487 & 1928

NB. In 2002 the Adult Minimum Award Wage was set by the Western Australian Industrial Relations Commission at \$431.40. This minimum was above the rate showing for Horticultural Employee Grades 1 to 3 so in 2002 this Award was varied to, amongst other matters, upgrade this wage rate to the minimum rate. Hence the \$431.40 published in the body of the Award for these

Grades and the higher rate published for a Trainee (\$388.26). This process is made evident by including the fourth column and allows previous relativities to be identified.

**Schedule A. – Named Parties to the Award**

Ins. Sch.	900/02	11/02/03	83 WAIG 718
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**Schedule B. - Respondents to the Award**

Ins. Sch.	900/02	11/02/03	83 WAIG 718
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**Appendix - Resolution of Disputes Requirements**

Ins. Appendix	693/96	16/07/96	76 WAIG 2768
(1),(6), Del. (7)	2053/97	22/11/97	77 WAIG 3079
Del. Cl	900/02	11/02/03	83 WAIG 718

(Schedule of Respondents)

Rename Sch.	695/93	08/07/93	73 WAIG 2781
Del. Cl.	900/02	11/02/03	83 WAIG 718

**Schedule A. - Respondents**

Cl.	527(A)/96	13/06/96	76 WAIG 2425
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**Schedule B. - Parties to the Award**

Ins. Sch.	695/93	08/07/93	73 WAIG 2781
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**Appendix - S.49B - Inspection Of Records Requirements**

Ins. App.	694/96	16/07/96	76 WAIG 2789
Ins. Text	2053(1)/97	22/11/97	77 WAIG 3138
App.	491/98	16/04/98	78 WAIG 1471
Del. Cl	900/02	11/02/03	83 WAIG 718