

## **AN160180 – Industrial Spraypainting and Sandblasting Award 1991**

This Fair Work Australia consolidated award reproduces the former State award Industrial Spraypainting and Sandblasting Award 1991 as at 27 March 2006.

Note: This award was terminated on 19 January 2012 (see [PR518977](#)) in accordance with item 3 of Schedule 5 of the *Fair Work (Transitional Provisions and Consequential Amendments Act) 2009*.

### **About this Award:**

Formerly award *IND008* of the Western Australian Industrial Relations Commission.

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### **Disclaimer:**

Please note that this consolidated former State award is believed to be accurate but no warranty of accuracy or reliability is given and no liability is accepted for errors or omissions or loss or damage suffered as a result of a person acting in reliance thereon.

**Industrial Spraypainting and Sandblasting Award 1991  
No. A 33 of 1987**

**1. - TITLE**

This award shall be known as the "Industrial Spraypainting and Sandblasting Award 1991" and shall replace the Operative Painters and Decorators (Marine) Agreement No. 15 of 1979 and the Painters (Shipping) Award No. 32A of 1961.

**1B. - MINIMUM ADULT AWARD WAGE**

- (1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.
- (2) The Minimum Adult Award Wage for full time adult employees is \$484.40 per week payable on and from 7<sup>th</sup> July 2005.
- (3) The Minimum Adult Award Wage of \$484.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.
- (4) Unless otherwise provided in this clause adults employed as casuals, part time employees or pieceworkers 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.
- (5) Juniors 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 of \$484.40 per week.
- (6)
  - (a) 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.
  - (b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.
- (7) Subject to this clause the Minimum Adult Award Wage shall -
  - (a) apply to all work in ordinary hours.
  - (b) 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.
- (8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the 2005 State Wage Case Decision. Any increase arising from the insertion of the minimum adult award 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 adult award wage.

(9) Adult Apprentices

- (a) Notwithstanding the provisions of this clause, an apprentice, 21 years of age or over, shall not be paid less than \$406.70 per week.
- (b) The rate paid in paragraph (a) above is payable on superannuation and during any period of paid leave prescribed by this Award.
- (c) 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.
- (d) Nothing in this clause shall operate to reduce the rate of pay fixed by this award for an adult apprentice in force immediately prior to 5<sup>th</sup> June 2003.

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### **3. - STATE WAGE PRINCIPLES - JUNE 1991**

It is a term of this award that the union undertakes for the duration of the Principles determined by the Commission in Court Session in Application No. 704 of 1991 not to pursue any extra claims, award or overaward, except when consistent with the State Wages Principles.

### **4. - SCOPE**

Subject to subclause (2) hereof this award shall apply to:

- (1) (a) employers employing persons in the classification of painter, spraypainter, sandblaster or shot blaster in the industry of industrial painting or sandblasting; and
- (b) the employees referred to in paragraph (a) hereof; and
- (c) The Construction, Forestry, Mining and Energy Union of Workers.
- (2) this award shall not apply to any employment which is subject to any other award of the Western Australian Industrial Relations Commission as those awards existed at the date of the making of this award, nor to the employment of persons pursuant to the Industrial Blaster/Coater First Year Training Programme Agreement No. AG 2 of 1988 and the Industrial Blaster/Coater Second Year Training Programme Agreement No. AG 3 of 1988.

### **5. - AREA**

This award shall operate throughout the State of Western Australia

### **6. - TERM**

The term of this award shall be for one year from the 27th day of November 1991.

### **7. - DEFINITIONS**

- (1) "Union" means The Construction, Forestry, Mining and Energy Union of Workers.

- (2) "Painter" includes spray painter, sandblaster and shot blaster and means any worker applying paint or its substitutes, or any preparation, by any means, the purpose of which is of a decorative or protective character for residential, commercial or industrial purposes (excluding the application of bitumen or like substances to roads and like surfaces), and shall include the painting of buildings and structures (residential, commercial and industrial) and parts thereof, aircraft, machinery, plant, ships and vessels including prefabricated work on any of the aforementioned, general painting, and any worker engaged in the removal of paint and/or its substitutes and the preparation of all work, surfaces and materials used in the aforementioned work.
- (3) "Casual Employee" means an employee who is employed for a period of less than five days (exclusive of overtime).
- (4) "Construction Work" means -
  - (a) all work "on-site" in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or structures; or
  - (b) all work which the union and the employer concerned agree is construction work but only if the agreement is approved by the Board of Reference; or
  - (c) all work which, in default of an agreement as aforesaid, is declared by the Board of Reference to be construction work.
- (5) "Leading Hand" means an employee who is given by the employer, or his/her agent, the responsibility of directing and/or supervising the work of other persons, or in the case of only one person, the specific responsibility of directing and/or supervising the work of that person.

**8. - RATES OF PAY**

- (1) The weekly rate of pay is as follows:

Painter, Spraypainter, Shotblaster, Sandblaster or employee performing two or more of those functions:

	\$
Base Rate	458.66
First Arbitrated Safety Net Adjustment	8.00
Second Arbitrated Safety Net Adjustment	8.00
Third Arbitrated Safety Net Adjustment	8.00
Fourth Arbitrated Safety Net Adjustment	10.00
Fifth Arbitrated Safety Net Adjustment	14.00
July 1999 Arbitrated Safety Net Adjustment	12.00
August 2000 Arbitrated Safety Net Adjustment	15.00
August 2001 Arbitrated Safety Net Adjustment	15.00
August 2002 Arbitrated Safety Net Adjustment	18.00
5 <sup>th</sup> June 2003 Arbitrated Safety Net Adjustment	17.00
4 <sup>th</sup> June 2004 Arbitrated Safety Net Adjustment	19.00
7th July 2005 Arbitrated Safety Net Adjustment	17.00
Weekly Rate	619.66

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.

(3) Location Allowance

Where applicable location allowances in accordance with Clause 19 will be paid.

(4) Underground Allowance

(a) (i) Subject to paragraph (b) hereof, an employee required to work underground shall be paid an allowance of \$10.17 per week in addition to the allowance prescribed in subclause (3) of this clause and any other amount prescribed for such employee elsewhere in this award.

(ii) Where a shaft is to be sunk to a depth greater than six metres the payment of the allowance shall commence from the surface.

(b) Where an employee is required to work underground for no more than four days or shifts in any ordinary week he/she shall be paid an underground allowance in accordance with the provisions of paragraph (n) of subclause (1) of Clause 9. - Special Rates and Provisions in lieu of the allowance prescribed in paragraph (a) hereof.

(5) Leading Hands

(a) A person specifically appointed to be a leading hand shall be paid at the rate of the undermentioned additional amounts above the rate of the highest classification supervised, or his/her own rate, whichever is the highest, in accordance with the number of persons in his/her charge:-

	Weekly Base Only \$	Rate Per Hour \$
(i) In charge of not more than one person	13.10	0.36
(ii) In charge of two and not more than five persons	29.20	0.80
(iii) In charge of six and not more than ten persons	37.30	1.01
(iv) In charge of more than ten persons	49.50	1.34

(b) The hourly rate prescribed in paragraph (a) hereof is calculated to the nearest cent (less than half a cent to be disregarded) by multiplying the weekly base amount by 52 and dividing the result by 50.4 and by dividing the amount by 38.

(6) Casual Hands

In addition to the rate appropriate for the type of work, a casual hand shall be paid an additional 20 per cent of the rate per hour with a minimum payment as

for three hours employment. The penalty rate herein prescribed shall be deemed to include, inter alia, compensation for annual leave.

## **9. - SPECIAL RATES AND PROVISIONS**

(1) In addition to the rates otherwise prescribed in this Award, the following rates shall be payable to employees covered by the said Award:

(a) Insulation

An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool, limpet fibre, vermiculite or other recognised insulating material of a like nature or working in the immediate vicinity so as to be affected by the use thereof 58 cents per hour or part thereof.

(b) Hot Work

An employee who works in a place where the temperature has been raised by artificial means to between 46 degrees and 54 degrees Celsius - 47 cents per hour or part thereof, exceeding 54 degrees Celsius - 58 cents per hour or part thereof.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this paragraph.

(c) Cold Work

An employee who works in a place where the temperature is lowered by artificial means to less than zero degrees Celsius shall be paid 47 cents per hour.

Where such work continues for more than two hours, the employee shall be entitled to 20 minutes rest after every two hours work without loss of pay, not including the special rate provided by this paragraph.

(d) Confined Space

An employee required to work in a confined space shall be paid 58 cents per hour or part thereof.

("Confined Space" means a place the dimensions or nature of which necessitate working in a cramped position or without sufficient ventilation.)

(e) Swing Scaffold

(i) An employee required to work from any type of swing or any scaffold suspended by rope or cable, bosun's chair, or suspended scaffold requiring use of steel or iron hooks or angle irons shall be paid the appropriate allowance set out below corresponding to the storey level at which the anchors or bracing, from which the stage is suspended, has been erected.

Such allowance shall be paid for minimum of four hours' work or part thereof until construction work (as defined) has been completed.

Height of Bracing	First Four Hours	Each Additional Hour
0-15 storeys	3.40	0.70
16-30 storeys	4.35	0.92
31-45 storeys	5.13	1.05
46-60 storeys	8.44	1.75
Greater than 60 storeys	10.74	2.22

Provided that an apprentice with less than two years' experience shall not use a swing scaffold or bosun's chair, and further provided that solid plasterers when working off a swing scaffold shall receive an additional 15 cents per hour.

(ii) Payments contained in this subclause are in recognition of the disabilities associated with the use of swing scaffolds.

(iii) For the purpose of Clause 9(1)(e)(i) hereof:

"Completed" means the building is fully functioning and all work which was part of the principle contract is complete.

"Storeys" shall be given the same meaning as the storey level in Clause 10(2) of this Award.

(f) Wet Work

An employee working in any place where water is continually dripping on him/her so that clothing and boots become wet, or where there is water underfoot, shall be paid 47 cents per hour whilst so engaged.

(g) Dirty Work

An employee engaged on unusually dirty work shall be paid 47 cents per hour.

(h) Towers Allowance

An employee working on a chimney stack, spire, tower, radio or television mast or tower, air shaft (other than above ground in a multi-storey building), cooling tower or silo, where the construction exceeds fifteen metres in height shall be paid 47 cents per hour for all work above fifteen metres, and 47 cents per hour for work above each further fifteen metres.

Provided that any similarly constructed building, or a building not covered by Clause 10. - Multi-Storey Allowance, which exceeds 15 metres in height may be covered by this subclause, or by that clause by agreement or where agreement is not reached, by determination of the Commission.

(i) Toxic Substances

(i) An employee required to use toxic substances shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.

(ii) Employees using such materials will be provided with and shall use all safeguards as are required by Clause 27. - Protection of Employees and the appropriate Government authority or in the absence of such requirement such safeguards as are defined by a

competent authority or person chosen by the union and the employer.

(iii) Employees using toxic substances or materials of a like nature shall be paid 58 cents per hour. Employees working in close proximity to employees so engaged shall be paid 47 cents per hour.

(iv) For the purpose of this paragraph toxic substances shall include epoxy based materials and all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.

(j) Fumes

An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer; provided that, in default of agreement, the matter may be referred to a Board of Reference for the fixation of a special rate.

Any special rate so fixed shall apply from the date the employer is advised of the claim and thereafter shall be paid as and when the fume condition occurs.

(k) Asbestos

Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) shall be paid 58 cents per hour extra whilst so engaged.

(l) Furnace Work

An employee required to work on the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid \$1.26 per hour. This additional rate shall be regarded as part of the wage rate for all purposes.

(m) Acid Work

An employee required to work on the construction or repairs to acid furnaces, acid stills, acid towers and all other acid resisting brickwork shall be paid \$1.26 per hour. This additional rate shall be regarded as part of the wage rate for all purposes.

(n) Roof Repairs

Employees engaged on repairs to roofs shall be paid 58 cents per hour.

(o) Underground Allowance

(i) An employee required to work underground for no more than four days or shifts in an ordinary week shall be paid \$2.02 a day or shift in addition to any other amount prescribed for such employees elsewhere in this award.

Provided that an employee required to work underground for more than four days or shifts in an ordinary week shall be paid an underground allowance in accordance with the provisions of subclause (3) of Clause 8. - Rates of Pay.

(ii) Where a shaft is to be sunk to a depth greater than six metres the payment of the underground allowance shall commence from the surface.

(iii) This allowance shall not be payable to employees engaged upon "pot and drive" work at a depth of 3.5 metres or less.

(p) First Aid

An employee who is qualified to provide first aid and who is appointed by his/her employer to carry out first aid duties shall be paid \$2.00 per day.

(q) Fireproofing Spray: An employee using a fireproof or composition spray shall be paid an additional 47 cents per hour whilst so engaged.

(r) Height Work: An employee working on any structure at a height of more than nine metres where an adequate fixed support not less than 0.75 metres wide is not provided, shall be paid 44 cents per hour in addition to ordinary rates. This subclause shall not apply to an employee working on a bosun's chair or swinging stage.

This provision shall not apply in addition to the Towers Allowance prescribed in paragraph (h) of this subclause.

(s) Brewery Cylinders - Painters

A painter in brewery cylinders or stout tuns shall be allowed 15 minutes' spell in the fresh air at the end of each hour worked by him/her.

Such 15 minutes shall be counted as working time and shall be paid for as such. The rate for working in brewery cylinders or stout tuns shall be at the rate of time and one-half. When an employee is working overtime and is required to work in brewery cylinders and stout tuns he/she shall, in addition to the overtime rates payable, be paid one half of the ordinary rate payable as provided by Clause 8. - Rates of Pay of this award.

(t) Certificate Allowance

A tradesman who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Industrial Affairs and is required to act on that Certificate whilst engaged on work requiring a certificated person shall be paid an additional 47 cents per hour.

Provided that this allowance shall not be payable cumulative on the allowance for swing scaffolds.

(u) Spray Application - Painters

An employee engaged on all spray applications carried out in other than a properly constructed booth approved by the Department of Industrial Affairs shall be paid 47 cents per hour extra.

- (v) Spray Painting:
  - (i) Lead paint shall not be applied by a spray to the interior of any building and no surface painted with lead paint shall be rubbed down or scraped by a dry process.
  - (ii) All employees (including apprentices) applying paint by spraying shall be provided with full overalls and head covering and respirators by the employer.
  - (iii) Where from the nature of the paint or substance used in spraying a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substances used by an employee in spray painting, the employee shall be paid a special allowance of \$1.32 per day.

(2) Conditions Respecting Special Rates

- (a) The special rates prescribed in this award shall be paid irrespective of the time at which work is performed and shall not be subject to any premium or penalty conditions.

This limitation does not apply to the "All Purpose" special rates prescribed in paragraphs (l) and (m) of subclause (1) of this clause.

- (b) Where more than one of the above rates provides payments for disabilities of substantially the same nature then only the highest of such rates shall be payable.

- (3) (a) The employer shall supply a safety helmet for each of his/her employees requesting one on any job where, pursuant to the regulations made under the Occupational Safety and Health Act 1984, an employee is required to wear such helmet.
- (b) Any helmet so supplied shall remain the property of the employer and during the time it is on issue the employees shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.

(4) Attendants on Ladders

No employee shall work on a ladder at a height of over six metres from the ground when such ladder is standing in any street, way or lane where traffic is passing to and fro, without an assistant on the ground.

(5) Electrical Sanding Equipment

The use of electrical sanding machines for sanding down paint work shall be governed by the following provisions -

- (a) The weight of each such machine shall not exceed six kilograms.
- (b) Every employer operating any such machine shall endeavour to ensure that each such machine, together with all electrical leads and associated equipment, is kept in a safe condition and shall, if requested so to do by any employee, but not more often than once in any four weeks, cause the same to be inspected under the provisions of the Electricity Act and the regulations made thereunder.

- (c) Employers shall provide and supply respirators of a suitable type, to each employee and shall maintain same in an effective and clean state at all times. Where respirators are used by more than one employee, each such respirator shall be sterilised or a new pad inserted after use by each such employee.
  - (d) Employers shall also provide and supply goggles of a suitable type. Provided that goggles with celluloid lenses shall not be regarded as suitable.
  - (e) All employees shall use the protective equipment supplied when using electrical sanding machines of any type.
- (6) Adequate precautions shall be taken by all employers for the safety of employees employed on the retaining walls of dams. Any dispute as to the adequacy of precautions taken shall be referred to the Board of Reference.
- (7) The Secretary or any authorised officer of the union shall have the right to visit any job for the purpose of ascertaining whether work is being performed in accordance with the provisions of the Occupational Safety and Health Act 1984, and any regulations made thereunder.
- Should he/she be of the opinion that the work being carried out is not in accord with those provisions the Secretary or any authorised officer of the union shall inform the employer and the employees concerned accordingly and may report any alleged breach of the Act or the regulations to the Chief Inspector of the Department of Occupational Health, Safety and Welfare.
- (8) Where the employer provides transport to and from the job the conveyance used for such transport shall be provided with suitable and weatherproof covering.
- (9) Any dispute which may arise between the parties in relation to the application of any of the foregoing special rates and provisions may be determined by the Board of Reference.

## **10. - MULTI-STOREY ALLOWANCE**

### **(1) Eligibility**

A multi-storey allowance shall be paid to all employees on site engaged in the construction or renovation of a multi-storey building as defined herein, to compensate for the disabilities experienced in, and which are peculiar to the construction or renovation of a multi-storey building.

Provided that for the purposes of this clause renovation work is work performed on existing multi-storey buildings, (as defined) as such work involves structural alterations which extend to more than two storey levels in a building, and at least part of the work to be performed is above the fourth floor storey level in accordance with the scale of payments appropriate for the highest floor level affected by such work.

### **(2) Definition of Multi-Storey Building**

For the purposes of this award, a multi-storey building is a building which will, when complete, consist of five or more storey levels.

"Complete" means the building is fully functional and all work which was part of the principal contract is complete.

For the purpose of this Clause, a storey level means structurally completed floor, walls, pillars or columns, and ceiling (not being false ceilings) of a building, and shall include basement levels and mezzanine or similar levels (but excluding "half floors" such as toilet blocks or store rooms located between floors).

Provided that any building or structures which do not have regular storey levels but which are not classed as towers, (e.g. grandstands, aircraft hangers, large stores, etc.) and which exceed 15 metres in height may be covered by this subclause, or by Clause 9(1)(i) by agreement. Where no agreement is reached, by determination of the Commission.

Plant Room - Further provided that a plant room situated on the top of a building shall constitute a further storey level if the plant room occupies 25% of the total roof area or an area of 100 square metres whichever is the lesser.

(3) Rates For Multi-Storey Buildings

Except as provided for in subclause (4) of this clause, an allowance in accordance with the following table shall be paid to all employees on the building site. The second and subsequent allowance scales shall, where applicable, commence to apply to all employees when one of the following components of the building - structural steel, re-inforcing steel, boxing or walls, rises above the floor level first designated in each such allowance scale.

"Floor Level" means that stage of construction which in the completed building would constitute the walking surface of the particular floor level referred to in the table of payments.

From commencement of Building to Fifteenth Floor Level - 36 cents per hour extra;

From Sixteenth Floor Level to Thirtieth Floor Level - 46 cents per hour extra;

From Thirty-first Floor Level to Forty-fifth Floor Level - 70 cents per hour extra;

From Forty-sixth Floor Level to Sixtieth Floor Level - 90 cents per hour extra;

From Sixty-first Floor Level Onwards - \$1.11 per hour extra.

The allowance payable at the highest point of the building shall continue until completion of the building.

(4) Service Cores

(a) All employees employed on a Service Core at more than 15 metres above the highest point of the main structure shall be paid the Multi-Storey rate appropriate for the main structure plus the allowance prescribed in paragraph (h) Towers Allowance of subclause (1) of Clause 9. - Special Rates and Provisions calculated from the highest point reached by the main structure to the highest point reached by the Service Core in any one day period (i.e. For this purpose the highest point of the main structure shall be regarded as though it were the ground in calculating the appropriate Towers Allowance).

Employees employed on a Service Core no higher than 15 metres above the main structure shall be paid in accordance with the Multi-Storey Allowance prescribed herein.

- (b) Provided that any section of a Service Core exceeding 15 metres above the highest point of the main structure shall be disregarded for the purpose of calculating the Multi-Storey Allowance applicable to the main structure.

## **11. - HOURS**

- (1) Except as provided elsewhere in this Award the ordinary hours shall be 38 per week to be worked in accordance with the following provisions for a four-week work cycle:

- (a) The ordinary working hours shall be worked in a 20 day four week cycle, Monday to Friday inclusive, with 19 days of eight hours each, between the hours of 7.00 am and 6.00 pm, with 0.4 of one hour on each day worked accruing as an entitlement to take the fourth Monday in each cycle as a day off paid for as though worked including the appropriate fares and travel rates where applicable.

The rostered days shall be in accordance with those set each year between the Building Trades Association of Unions of W.A. and the construction industry employers associations pursuant to Clause 13(1)(a) of the Building Trades (Construction) Award 1978 No. R14 of 1978.

Paid rostered days off shall be accrued by all employees in the following manner:

A rostered days off shall be taken as follows -

On the fourth Monday in each four week cycle, except where it falls on a public holiday, in which case the next working day shall be taken in lieu unless another alternate day in the current or next four week cycle is agreed in writing between the employer and the employee or between the Building Trades Association of Unions of W.A. and the construction industry employer associations to be the rostered day off, or to coincide with the public holiday, pursuant to Clause 13(1) (a) of the Building Trades (Construction) Award 1978.

Provided that by agreement in writing between an employer and his employee(s), an alternate day in the four week cycle may be substituted for the fourth Monday as the day off paid as though worked, and where such agreement is reached all provisions of this Award shall apply as if such day was the prescribed fourth Monday.

Provided where such agreement is reached the following procedures shall apply:

- (i) The employer shall, within 24 hours from when he reaches agreement with his employee(s) notify by letter or telegram, the Union of the decision to vary the rostered day off.
- (ii) A period of five ordinary working days shall be allowed to pass from the day on which the employer informs the Union, before the agreement is implemented.
- (iii) Such an agreement shall be put into effect after the passage of five days period of notice unless a union(s) registered to represent occupation(s) on the site refers the matter to a Board of Reference in which event the agreement will not be implemented until a decision is made by such a Board or a further period of five ordinary working days had passed, whichever is the shorter.

Any arrangement made regarding the substituted day, shall be made at least seven days prior to the date of the rostered day off.

Provided further that 13 rostered days off are taken by an employee for every 12 months continuous service.

- (b) Where such fourth Monday or agreed rostered day prescribed by paragraph (a) above falls on a holiday as prescribed in Clause 15. - Holidays and Holiday Work, the next working day shall be taken in lieu of the rostered day off unless an alternate day in that four-week cycle or the next is agreed in writing between the employer and the employee.
- (c) An employee who has not worked a complete 19-day four week cycle shall receive pro-rata accrued entitlements for each day worked or regarded as having been worked in such cycle payable for the rostered day off or, in the case of termination of employment on termination.
- (d) The accrued rostered day prescribed in paragraphs (a) and (b) shall be taken as a paid day off provided that the day may be worked where that is required by the employer and such work is necessary to allow other employees to be employed productively or to carry out out-of-hours maintenance or because of unforeseen delays to a particular project or a section of it or for other reasons arising from unforeseen or emergency circumstances on a project, in which case, in addition to accrued entitlements, the employee shall be paid penalty rates and provisions as prescribed for Saturday work in Clause 14. - Weekend Work.
- (e) For the purposes of paragraph (a) herein days not worked but taken as paid leave, pursuant to the provisions of Clause 15. - Holidays and Holiday Work, Clause 20. - Annual Leave, Clause 21. - Sick Leave, Clause 23. - Bereavement Leave or Clause 25. - Jury Service, shall be deemed to be days worked during the four week cycle.

(2) Meal Break

There shall be a cessation of work and of working time for the purpose of a meal on each day, of no less than 30 minutes, to be taken between noon and 1.00pm.

(3) Early Start

Provided that by agreement between the employer, his/her employees and the appropriate union the working day may begin at 6.00am or at any other time between that hour and 8.00am and the working time shall then begin to run from the time so fixed, with a consequential adjustment to the meal cessation period.

(4) Variation of Meal Breaks

Provided further that where, because of the area of location of a project, the majority of on-site employees on the said project request, and agreement is reached, the period of the meal break may be extended to not more than 45 minutes with a consequential adjustment to the daily time of cessation of work, subject to the following procedure being observed.

- (a) The employer shall, within 24 hours from when he/she reaches agreement with his/her employees, notify by letter or telegram, the union of the site decision to vary the meal break.
- (b) The employer shall also inform any registered unions of employers to which he/she belongs of this agreement.

- (c) A period of five ordinary working days shall be allowed to pass from the day on which the employer informs the union, before the agreement is implemented.
- (d) Such an agreement shall be put into effect after passage of the five days' period of notice unless the union refers the matter to a Board of Reference (constituted by Clause 43 of this award) in which event the agreement will not be implemented until a decision is made by such a Board or a further period of five ordinary working days has passed, whichever is the shorter.

## **12. - REST PERIODS AND CRIB TIME**

- (1) An employee who has worked continuously (except for meal or crib times allowed by this award) for twenty hours shall not be required to continue at or recommence work for at least 12 hours.
- (2) There shall be allowed, without deduction of pay, a rest period of ten minutes between 9.00a.m. and 11.00a.m.
- (3) When an employee is required to work overtime after the usual ceasing time for the day or shift for two hours or more, he/she shall be allowed to take without deduction of pay, a crib time of 20 minutes in duration immediately after such ceasing time and thereafter, after each four hours of continuous work, he/she shall be allowed to take also, without deduction of pay, a crib time of 30 minutes in duration. In the event of an employee remaining at work after the usual ceasing time without taking the crib time of 20 minutes and continuing at work for a period of two hours or more, he/she shall be regarded as having worked 20 minutes more than the time worked and be paid accordingly.

For the purpose of this subclause "usual ceasing time" is at the end of ordinary hours inclusive of any time worked for accrual purposes as prescribed in Clause 11(1) - Hours or Clause 16(4) - Shift Work.

- (4) Where shift work comprises three continuous and consecutive shifts of eight hours per day, a crib time of 20 minutes in duration shall be allowed without deduction of pay in each shift, such crib time being in lieu of any other rest period or cessation of work elsewhere prescribed by this award.
- (5) The provisions of subclauses (2), (3) and (4) of this clause shall not be applicable to the case of an employee who is allowed the rest periods prescribed in paragraphs (b) and (c) of subclause (1) of Clause 9. - Special Rates and Provisions.

## **13. - OVERTIME**

- (1) All time worked beyond the ordinary time of work inclusive of any time worked for accrual purposes as prescribed in Clause 11(1) - Hours or Clause 16(4) - Shift Work of this award shall be paid for at the rate of one and a half times ordinary rates for the first two hours thereof and at double time thereafter.
- (2) An employee recalled to work overtime after leaving his/her employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of three hours' work at the appropriate rates for each time he/she is so recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full three hours if the job he/she was recalled to perform is completed within a shorter period.

This subclause shall not apply in cases where it is customary for an employee to return to his/her employer's premises to perform a specific job outside his/her ordinary working hours, or where the overtime is continuous (subject to a

reasonable meal break) with the completion or commencement of ordinary working time.

- (3) If an employer requires an employee to work during the time prescribed by Clause 11. - Hours or Clause 16. - Shift Work of this award for cessation of work for the purpose of a meal, he/she shall allow the employee whatever time is necessary to make up the prescribed time of cessation, and the employee shall be paid at the rate of double time for the period worked between the prescribed time of cessation and the beginning of the time allowed in substitution for the prescribed cessation time; provided however, that the employer shall not be bound to pay in addition for the time allowed in substitution for the cessation time; and provided also that if the cessation time is shortened at the request of the employee to the minimum of 30 minutes prescribed in Clause 11. - Hours or Clause 16. - Shift Work of this award or to any other extent (not being less than 30 minutes) the employer shall not be required to pay more than the ordinary rates of pay for the time worked as a result of such shortening, but such time shall form part of the ordinary working time of the day.
- (4) When an employee, after having worked overtime and/or a shift for which he/she has not been regularly rostered, finishes work at a time when reasonable means of transport are not available the employer shall provide him/her with conveyance to his/her home or to the nearest public transport.
- (5) An employee who works so much overtime:
  - (a)
    - (i) between the termination of his/her ordinary work day or shift and the commencement of his/her ordinary work in the next day or shift, that he/she has not at least ten consecutive hours off duty between these times;
    - (ii) or on Saturdays, Sundays and holidays, not being ordinary working days or on a rostered day off, without having had ten consecutive hours off duty in the 24 hours preceding his/her ordinary commencement time on his/her next ordinary day or shift, shall, subject to this subclause, be released after completion of such overtime until he/she has had ten hours off duty without loss of pay for ordinary working time occurring during such absence.
  - (b) If, on the instructions of his/her employer, such employee resumes or continues to work without having had such ten consecutive hours off duty he/she shall be paid at double rates until he/she is released from duty for such period and he/she shall then be entitled to be absent until he/she has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
  - (c) The provisions of this subclause shall apply in the case of shift employees as if eight hours were substituted for ten hours when overtime is worked -
    - (i) for the purpose of changing shift rosters; and
    - (ii) where a shift employee does not report for duty and a day worker or a shift employee is required to replace such shift employees; or
    - (iii) where a shift is worked by arrangement between the workers themselves.
- (6) An employer may require any employee to work reasonable overtime.

#### **14. - WEEKEND WORK**

- (1) Overtime work on Saturday shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided that all overtime worked after 12 noon on Saturday shall be paid for at the rate of double time.
- (2) All time worked on Sundays shall be paid for at the rate of double time.
- (3) An employee required to work overtime on a Saturday or to work on a Sunday shall be afforded at least three hours' work on a Saturday or four hours' work on a Sunday or shall be paid for three hours' work on a Saturday or four hours' work on a Sunday at the appropriate rate.
- (4) An employee working overtime on Saturday, or working on a Sunday, shall be allowed, without deduction of pay, a rest period of ten minutes between 9.00 a.m. and 11.00 a.m.
- (5) An employee working overtime on a Saturday, or working on a Sunday, shall be allowed a paid crib time of 20 minutes after four hours' work, to be paid for at the ordinary rate of pay but this provision shall not prevent any arrangements being made for the taking of a 30 minute meal period, the time in addition to the paid 20 minutes being without pay.

In the event of an employee being required to work in excess of a further four hours, he/she shall be allowed to take a paid crib time of 30 minutes which shall be paid at the ordinary rate of pay.

#### **15. - HOLIDAYS AND HOLIDAY WORK**

- (1) An employee other than a casual employee shall be entitled to the following holidays without deduction of pay. Provided that if any other day be by a State Act of Parliament or State Proclamation substituted for any of the said holidays, the day so substituted shall be observed.

Provided further that when any of the days mentioned in this subclause falls on a Saturday or a Sunday, the holiday shall be observed on the next succeeding Monday, provided that when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

New Year's Day

Australia Day

Good Friday

Easter Monday

Anzac Day

Labour Day

Foundation Day

Union Picnic Day

Christmas Day

Boxing Day

"Union Picnic Day" shall be observed on the day also observed as "Sovereign's Birthday".

- (2) By agreement between any employer and the Union, other days may be substituted for the said days or any of them as to such employer's undertaking.
- (3) Where an additional or substitute holiday is proclaimed by Order in Council or otherwise gazetted by authority of the Australian or State Government under any Act throughout the State or part thereof, such day shall within the defined locality,

be deemed to be a holiday for the purposes of this award; provided that an employee shall not be entitled to the benefit or more than one holiday upon such occasion.

- (4) All work performed on any of the holidays prescribed in this clause or substituted in lieu thereof, shall be paid for at the rate of double time and a half.
- (5)
  - (a) All work performed on the day after Good Friday shall be paid for at the rate of double time and a half.
  - (b) An employee required to work on the Saturday following Good Friday shall be afforded at least four work or paid for four hours at the appropriate rate.
- (6) The provisions of subclauses (2), (3), (4), (5) and (6) of Clause 13. - Overtime shall apply in respect of work on a holiday.
- (7) An employee required to work on a holiday shall be afforded at least four hours work or paid for four hours at the appropriate rate.
- (8) Provided that -
  - (a) An employer who terminates the employment of an employee except for reasons of misconduct or incompetency (proof of which shall lie upon the employer) shall pay the employee a day's ordinary wages for each holiday prescribed in subclause (1) of this clause or each holiday in a group as prescribed in paragraph (b) hereof which falls within ten consecutive days after the day of termination.
  - (b) Where any two or more of the holidays prescribed in this award occur within a seven day span, such holidays shall for the purpose of this award be a group of holidays. If the first day of the group of holidays falls within ten consecutive days after termination, the whole group shall be deemed to fall within the ten consecutive days.

Christmas Day, Boxing Day and New Year's Day shall be regarded as a group.
  - (c) No employee shall be entitled to receive payment from more than one employer in respect of the same public holiday or group of holidays.
  - (d) The employee has worked as required by his/her employer the working day immediately before and the working day immediately after such a holiday or is absent with the permission of his/her employer or is absent with reasonable causes. Absence arising by termination of employment by the worker shall not be reasonable cause.

## **16. - SHIFT WORK**

- (1) For the purposes of this clause:

"Afternoon shift" means a shift finishing at or after 9.00 p.m. and at or before 11.00 p.m.

"Night shift" means a shift finishing after 11.00 p.m. and at or before 7.00 a.m.

"Early morning shift" means a shift finishing after 12.30 p.m. and before 2.00 p.m.

"Early afternoon shift" means a shift finishing after 7.30 p.m. and before 9.00 p.m.

(2) Consultation

Where the employer intends to commence shift work for periods longer than 4 weeks, the union and employees are to be notified 48 hours prior to the commencement of shift work, of intended start and finish dates. Further the penalty rates in this clause may be varied by agreement between the employer and Union officials. Disagreements are to be referred to the Western Australian Industrial Relations Commission.

(3) Other than work on a Saturday, Sunday or holiday, the rate of pay for shift work shall be time and a half, provided that the employee is employed continuously for five shifts Monday to Friday. For any period of continuous shift work exceeding four weeks in length, the rate of pay for the shift work completed after the initial four week period shall become time + 20%. The observance of a holiday in any week shall not be regarded as a break in continuity for the purpose of this subclause.

(4) An employee who is employed for less than five consecutive shifts Monday to Friday shall be paid for each day he/she works the shift work referred to in subclause (3) above at the rate of time and a half for the first two hours and double time thereafter provided that when a job finishes after proceeding on shift work for more than four weeks, or the employee terminates his/her services during the week, he/she shall be paid at the rate specified in subclause (3) of this clause for the time actually worked.

(5) The ordinary hours of shift work shall be eight hours daily inclusive of meal breaks, provided that where shift work comprises three continuous and consecutive shifts of eight hours each per day, a crib time of twenty minutes in duration shall be allowed without deduction of pay in each shift, such crib time being in lieu of any other rest period or cessation of work elsewhere prescribed by this award.

Employees on shift work shall accrue 0.4 of one hour for each eight hour shift worked to allow one complete shift to be taken off as a paid shift for every 20 shift cycle. This 20th shift shall be paid for at the appropriate shift rate as prescribed by this clause.

Except as provided above, employees not working a complete four week cycle shall be paid accrued pro-rata accrued entitlements for each shift worked on the programmed shift off or, in the case of termination of employment, on termination.

The employer and employees shall agree in writing upon arrangements for rostered paid days off during the 20 day cycle or for accumulation of accrued days to be taken at or before the end of the particular contract provided that such accumulation shall be limited to no more than five such accrued days before they are taken as paid days off and when taken, the days shall be regarded as days worked for accrual purposes in the particular 20 shift cycle.

Once such days have been rostered they shall be taken as paid days off provided that where an employer, for emergency reasons requires an employee to work his/her rostered day off, he/she shall be paid, in addition to his/her accrued entitlement, the penalty rates prescribed in subclause (8) of this clause.

For the purpose of this clause an employee shall not be required to work for more than five hours without a meal break.

- (6) The hours for shift employees when fixed, shall not be altered except for breakdowns or other causes beyond the control of the employer, provided that notice of such alteration shall be given to the employee not later than ceasing time of the previous shift.
- (7) For all work performed on a Saturday, Sunday or a holiday the provisions of Clause 13. - Overtime, Clause 14. - Weekend Work and Clause 15. - Holidays and Holiday Work shall be applicable in lieu of the rates prescribed in this clause.
- (8) Work in excess of shift hours, Monday to Friday, other than holidays shall be paid for at double time, provided that these rates shall be based in each case on ordinary rates.
- (9) Shift work hours shall be worked between Monday to Friday inclusive provided that shift work commencing before, and extending beyond midnight Friday, shall be regarded as a Friday shift.

#### **17. - MEAL ALLOWANCE**

An employee required to work overtime for at least one and a half hours after working ordinary hours inclusive of any time worked for accrual purposes as prescribed in Clauses 11(1) or 16(4) shall be paid by his/her employer an amount of \$9.90 to meet the cost of a meal.

Provided that this clause shall not apply to an employee who is provided with reasonable board and lodging or who is receiving a distant work allowance in lieu thereof as provided for in subclause (3) of Clause 18. - Living Away From Home - Distant Work and is provided with a suitable meal.

#### **18. - LIVING AWAY FROM HOME - DISTANCE WORK**

##### (1) Qualification

An employee shall be entitled to the provisions of this clause when employed on a job or construction work at such a distance from his/her usual place of residence that he/she cannot reasonably return to that place each night under the following conditions:

- (a) The employee is not in receipt of Relocation Benefits through the Commonwealth Employment Service; and
- (b) The employee is maintaining a separate place of residence to which it is not reasonable to expect him/her to return each night; and
- (c) The employee on being requested by the employer informs the employer, at the time of engagement, that he/she maintains a separate place of residence from the address recorded on the job application.

Subject to Clause 18(2) an employee is regarded as bound by the Statement of his/her address and no entitlement shall exist if unknowingly to the employer he/she wilfully and without duress made a false statement in relation to the above.

##### (2) Employee's Address

- (a) The employer shall require and the applicant shall provide the employer with the following information, in writing, at the time of engagement:
  - (i) The address of the place of residence at the time of application; and

(ii) The address of the separately maintained residence, if applicable.

Provided, however, that the employer shall not exercise undue influence, for the purpose of avoiding its obligations under the award, in persuading the prospective employee to insert a false address.

- (b) No subsequent change of address shall entitle an employee to the provisions of this clause unless the employer agrees.
- (c) Documentary proof of address such as long service leave registration card or driver's licence may be accepted by an employer as proof of the employee's usual place of residence.
- (d) The address of the employee's usual place of residence and not the place of engagement shall determine the application of this clause.

Any dispute arising in respect of this clause shall be referred to a Board of Reference.

### (3) Entitlement

Where an employee qualifies under subclause (1) of this clause the employer shall either:

- (a) Provide the employee with reasonable board and lodging; or
- (b) Pay an allowance of \$338.60 per week of seven days but such allowance shall not be wages. In the case of broken parts of the week occurring at the beginning or ending of employment on a distant job the allowance shall be \$48.40 per day.

Provided that the foregoing allowances shall be increased if the employee satisfies the employer that he/she reasonably incurred a greater outlay than that prescribed. In the event of disagreement the matter may be referred to a Board of Reference for determination; or

- (c) In circumstances prescribed in subclause (7) of this clause, provide camp accommodation and messing constructed and maintained in accordance with subclause (10) of this clause.

"Reasonable board and lodging" shall mean lodging in a well kept establishment with three adequate meals each day, adequate furnishings, good bedding, good floor coverings, good lighting and heating and with hot and cold running water, in either a single room or a twin room if a single room is not available.

### (4) Travelling Expenses

An employee who is sent by his/her employer or selected or engaged by an employer or agent to go to a job which qualifies him/her to the provision of this clause shall not be entitled to any of the allowances prescribed by the appropriate fares and travel rates where applicable for the period occupied in travelling from his/her usual place of residence to the distant job, but in lieu thereof shall be paid:

- (a) Forward Journey -
  - (i) For the time spent in so travelling, at ordinary rates up to a maximum of eight hours per day for each day of travel (to be calculated as the time taken by rail or the usual travelling facilities).

(ii) For the amount of a fare on the most common method of public transport to the job (bus, economy air, second class rail with sleeping berths if necessary, which may require a first class rail fare), and any excess payment due to transporting his/her tools if such is incurred.

(iii) For any meals incurred while travelling at \$9.90 per meal.

Provided that the employer may deduct the cost of the forward journey fare from an employee who terminates or discontinues his/her employment within two weeks of commencing on the job and who does not forthwith return to his/her place of engagement.

(b) Return Journey: An employee shall, for the return journey receive the same time, fare and meal payments as provided in paragraph (a) of this subclause together with an amount of \$16.10 to cover the cost of transporting himself/herself and his/her tools from the main public transport terminal to his/her usual place of residence.

Provided that the above return journey payments shall not be paid if the employee terminates or discontinues his/her employment within two months of commencing on the job, or is dismissed for misconduct.

(c) Departure Point

For the purposes of this clause, travelling time shall be calculated as the time taken for the journey from the central or regional rail, bus or air terminal nearest the employee's usual place of residence to the locality of the work.

(5) Daily Fares Allowance

An employee engaged on a job which qualifies him/her to the provisions of this clause and who is required to reside elsewhere than on the site (or adjacent to the site and supplied with transport) shall be paid the allowance prescribed by the appropriate fares and travel rates where applicable.

(6) (a) Weekend Return Home: An employee who works as required during the ordinary hours of work on the working day before and the working day after a weekend and who notifies the employer or his/her representative, no later than Tuesday of each week, of his/her intention to return to his/her usual place of residence at the weekend and who returns to his/her usual place of residence for the weekend, shall be paid an allowance of \$27.10 for each occasion.

(b) Paragraph (a) of this subclause shall not apply to an employee who is receiving the payment prescribed in subclause (3) of this clause in lieu of board and lodging being provided by the employer or who is receiving a camping allowance as prescribed in paragraph (b) of subclause (7) of this clause.

(c) When an employee returns to his/her usual place of residence for a weekend or part of a weekend and does not absent himself/herself from the job for any of the ordinary working hours, no reduction of the allowance prescribed in paragraph (b) of subclause (3) of this clause shall be made.

(7) Construction Camps

(a) Camp Accommodation

Where an employee is engaged on the construction of projects which are located in areas where suitable board and lodging as defined in subclause (3) of this clause is not available, or where the size of the workforce is in excess of the available accommodation or where continuous concrete pour requirements of the project or the working shifts necessitate camp accommodation and where, because of these circumstances, it is necessary to house the employees in a camp, such camp shall be constructed and maintained in accordance with subclause (10) of this clause.

(b) Camping Allowance: An employee living in a construction camp where free messing is not provided shall receive a camping allowance of \$135.60 for every complete week he is available for work. If required to be in camp for less than a complete week he/she shall be paid \$19.50 per day including any Saturday or Sunday if he/she is in camp and available for work on the working days immediately preceding and succeeding each Saturday and Sunday. If an employee is absent without the employer's approval on any day, the allowance shall not be payable for that day and if such unauthorised absence occurs on the working day immediately preceding or succeeding a Saturday or Sunday, the allowance shall not be payable for the Saturday or Sunday.

(c) Camp Meal Charges

Where a charge is made for meals in a construction camp, such charge shall be fixed by agreement between the parties.

(8) Rest and Recreation

(a) Rail or Road Travel

An employee who proceeds to a job which qualifies him/her to the provisions of this clause, may, after two months' continuous service thereon and thereafter at three monthly periods of continuous service thereof, return to his/her usual place of residence at the weekend. If he does so, he shall be paid the amount of a bus or second class return railway fare to the bus or railway station nearest his/her usual place of residence on the pay day which immediately follows the date on which he returns to the job; provided no delay not agreed to by the employer takes place in connection with the employee's commencement of work on the morning of the working day following the weekend.

Provided, however, that if the work upon which the employee is engaged will terminate in the ordinary course within a further 28 days after the expiration of any such period of two or three months as here before mentioned, then the provisions of this paragraph shall not be applicable.

(b) Air Travel

(i) Notwithstanding any other provisions contained in paragraph (a) of this subclause and in lieu of such provisions, the following conditions shall apply to an employee who qualifies under subclause (1) of this clause and where such construction work is located north of 26th parallel of south latitude or in any other area to which air transport is the only practicable means of travel, an employee may return home after four months' continuous service and shall in such

circumstances be entitled to two days' leave with pay in addition to the weekend.

Thereafter the employee may return to his/her usual place of residence after each further period of four months' continuous service, and in each case he shall be entitled to two days' leave of which one day shall be paid leave.

Payment for leave and reimbursement for any economy air fare paid by the employee shall be made at the completion of the first pay period commencing after the date of return to the job.

Provided however, that if the work upon which the employee is engaged will terminate in the ordinary course within a further 28 days after the expiration of any such period of four months as hereinbefore mentioned, then the provisions of this paragraph shall not be applicable.

- (ii) Employees shall be entitled in accordance with this subclause to travel to their usual place of residence, or Perth, whichever is the closest to the job and return provided that reimbursement of air fare in no case shall exceed the economy air fare from the job to Perth and return; unless an employee has been sent by his/her employer, or selected or engaged by the employer or agent, to go to such job from a place which is a greater distance from the job than Perth and the employee returns to that place, in which event reimbursement shall include the return air fare for the greater distance.

(c) Limitation of Entitlement

An employee shall be entitled to the provisions of either paragraph (a) or paragraph (b) herein and such option shall be established by agreement as soon as practicable after commencing on distant work. The entitlement shall be availed of as soon as reasonably practical after it becomes due and shall lapse after a period of two months provided that the employee has been notified in writing by the employer in the week prior to such entitlement becoming due of the date of entitlement and that such entitlement will lapse if not taken before the appropriate date two months later. (Proof of such written notice shall lie with the employer).

(d) Service Requirements

For the purpose of this subclause service shall be deemed to be continuous notwithstanding an employee's absence from work as prescribed in this clause or as prescribed in subclause (6) of Clause 20. - Annual Leave.

(e) Variable Return Home

In special circumstances, and by agreement with the employer, the return to the usual place of residence entitlements may be granted earlier or taken later than the prescribed date of accrual without alteration to the employee's accrual entitlements.

(f) Non Payment in Lieu

Payment of fares and leave with pay as provided for in this subclause shall not be made unless availed of by the employee.

(9) Termination

An employee shall be entitled to notice of termination in sufficient time to arrange suitable transport at termination or shall be paid as if employed up to the end of the ordinary working day before transport is available.

(10) Construction Camps Standards

(a) Construction camps, as referred to in subclause (7) of this clause shall comply with the following standards:

(i) The camp shall provide for accommodation in single rooms, of dimensions not less than 14 cubic metres per man and shall have a timber, aluminium or similar floor with floor covering provided. Each room shall be furnished with reasonable sleeping accommodation including a mattress, pillow and blankets together with a table or reasonable substitute therefor, a seat and a wardrobe for each person.

(ii) Each room shall be fitted with a door and movable window of reasonable dimensions fitted with a gauze screen. Each room shall be ceiled and lined. Good artificial lighting shall be provided in each room.

(iii) Except where corridor type barracks are provided a verandah shall be constructed in front of each room. Where reasonably required, provisions shall be made for the heating of rooms or cooling by fan.

(iv) Provision shall be made in the camp for reasonable washing facilities including hot and cold showers. Reasonable provisions shall be made for the washing of clothes. Toilets shall be adequate and sewered where possible situated within reasonable distance from the living quarters, access to which shall be by properly lighted paths.

Provision shall be made for the effluent from the kitchen, laundry and showers to be carried away in closed pipes and dispersed in such a way as to avoid any risk to health. In any such camp messing shall be made available by the employer with provisions for a choice of meals.

(b) Where construction camp accommodation is not provided and the employer provides caravan accommodation the employer and the unions shall confer as to reasonable standards for such accommodation. In the absence of agreement being reached the matter shall be referred to the Western Australian Industrial Relations Commission.

(11) Alternative Paid Day Off Procedure

If the employer and the employee so agree in writing, the paid rostered day as prescribed in Clause 11(1) - Hours, may be taken and paid for in conjunction with and additional to, rest and recreation leave as prescribed in subclause (8) of this clause, or at the end of the project, or on termination, whichever comes first.

**19. - LOCATION ALLOWANCE**

(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	\$17.30
Argyle	\$45.60
Balladonia	\$17.40
Barrow Island	\$29.70
Boulder	\$7.20
Broome	\$27.70
Bullfinch	\$8.20
Carnarvon	\$14.20
Cockatoo Island	\$30.40
Coolgardie	\$7.20
Cue	\$17.70
Dampier	\$24.00
Denham	\$14.20
Derby	\$28.80
Esperance	\$5.20
Eucla	\$19.40
Exmouth	\$25.00
Fitzroy Crossing	\$34.80
Goldsworthy	\$15.40
Halls Creek	\$39.90
Kalbarri	\$6.00
Kalgoorlie	\$7.20
Kambalda	\$7.20
Karratha	\$28.60
Koolan Island	\$30.40
Koolyanobbing	\$8.20
Kununurra	\$45.60
Laverton	\$17.60
Learmonth	\$25.00
Leinster	\$17.30
Leonora	\$17.60
Madura	\$18.40
Marble Bar	\$43.80
Meekatharra	\$15.20
Mount Magnet	\$19.00
Mundrabilla	\$18.90
Newman	\$16.60
Norseman	\$14.90
Nullagine	\$43.70
Onslow	\$29.70
Pannawonica	\$22.40
Paraburdoo	\$22.30
Port Hedland	\$23.90
Ravensthorpe	\$9.20
Roebourne	\$32.90
Sandstone	\$17.30
Shark Bay	\$14.20
Shay Gap	\$15.40
Southern Cross	\$8.20
Telfer	\$40.50
Teutonic Bore	\$17.30
Tom Price	\$22.30
Whim Creek	\$28.40
Wickham	\$27.60
Wiluna	\$17.60
Wittenoom	\$38.70
Wyndham	\$42.90

- (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 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.

## **20. - ANNUAL LEAVE**

### **(1) Period of Leave**

Subject to the provisions of subclause (2),(4) and (5) of this clause a period of 28 consecutive days, exclusive of any holiday occurring during the period shall be given and taken as leave annually to all employees other than casual employees after 12 months' continuous service (less the period of annual leave) with an employer.

### **(2) Method of Taking Leave**

- (a) Either 28 consecutive days, or two separate periods of not less than seven consecutive days in all cases exclusive of any holiday occurring therein, shall be given and taken within six months from the date when the right to annual leave accrued.
- (b) Where an employee requests that leave be allowed in one continuous period such request shall not be unreasonably refused. In the event of lack of agreement between the parties the matter shall be referred to a Board of Reference.
- (c) In circumstances where a holiday falls within one day of a weekend or another holiday the provisions of paragraph (a) hereof may be altered by agreement between the employer and a majority of employees affected under this award to provide that a single day of annual leave entitlement may be granted on the day between the said holiday and/or weekend.
- (d) Where annual leave is proposed to be given and taken in two periods, one of which is to be in conjunction with the Christmas and New Year holidays, representatives of the employers and employees, parties to this award, shall meet not later than the 31st day of July in each year in order to fix the commencing and finishing dates for the following Christmas/New Year period of leave. Where no agreement can be reached between the representatives, the matter shall be referred to the Western Australian Industrial Relations Commission for determination.

### **(3) Leave Allowed Before Due Date**

- (a) An employer may allow an employee to take his/her annual leave prior to the employee's right thereto. In such circumstances the qualifying period of further annual leave shall not commence until the expiration of 12 months in respect of which the leave so allowed was taken.
- (b) Where an employer has allowed an employee to take his/her annual leave pursuant to paragraph (a) hereof and the employee's services are terminated (by whatsoever cause) prior to the employee completing the 12 months' continuous service for which leave was allowed in advance, the employer may for each complete week of the qualifying period of 12 months not served by the employee, deduct from whatever remuneration is payable upon the termination of the employment one fifty-second of the amount of wages paid on account of the annual leave.

(c) Notwithstanding anything contained in this subclause an employee who has worked for 12 months in the industry with a number of different employers without taking annual leave, shall be entitled to take annual leave and be paid one-twelfth of an ordinary week's wages in respect of each completed 38 hours of continuous service with his/her current employer.

(4) Proportionate Leave on Termination

Where an employee has given five working days' or more continuous service, inclusive of any day off as prescribed by Clause 11(1) - Hour or 16(4) - Shift Work (exclusive of overtime), and he/she either leaves his/her employment or his/her employment is terminated by the employer he/she shall be paid a twelfth of a week's wages for each completed five working days of continuous service with his/her current employer for which leave has not been granted or paid for in accordance with this award.

(5) Broken Service

Where an employee breaks his/her continuity of service by an absence from work for any reason other than a reason set out in subclause (6), the amount of leave to which he/she would have been entitled under subclause (1) shall be reduced by one forty-eighth for each week or part thereof during which any such absence occurs and the amount of payment in lieu of leave to which he/she would have been entitled under subclause (3) shall be reduced by one-twelfth of one week's pay for each week or part thereof during which any such absence occurs.

Provided, however, that no reduction shall be made in respect of any absence unless the employer informs the employee in writing of his/her intentions so to do within 14 days of the termination of the absence.

(6) Calculation of Continuous Service

For the purposes of this clause service shall be deemed to be continuous notwithstanding an employee's absence from work for any of the following reasons -

- (a) Illness or accident up to a maximum of four weeks after the expiration of paid sick leave.
- (b) Bereavement leave.
- (c) Jury service.
- (d) Injury received during the course of employment and up to a maximum of 26 weeks for which he/she received workers' compensation.
- (e) Where called up for military service for up to three months in any qualifying period.
- (f) Any reason satisfactory to the employer or in the event of dispute to the appropriate Board of Reference. Provided that the reason shall not be deemed satisfactory unless the employee has informed the employer within twenty-four hours of the time when he/she was due to attend for work or as soon as practicable thereafter of the reason for the absence and the probable duration thereof.

(7) (a) Payment for Period of Leave

Each employee before going on leave, shall be paid in advance the wages which would ordinarily accrue to him/her during the currency of the leave.

(b) Annual Leave loading

In addition to the payment prescribed in paragraph (a) hereof an employee shall receive during a period of annual leave a loading of 17½ per centum calculated on the rates, loadings and allowances prescribed in Clause 8. - Rates of Pay and the leading hand rates prescribed in that clause if applicable. The loading prescribed above shall also apply to proportionate leave on lawful termination.

(8) Service Under Previous Award

Service before the date of operation of this award shall be taken into account for the purpose of calculating annual leave but an employee shall not be entitled to leave or payment in lieu thereof for any period in respect of which leave or a payment in lieu thereof has been allowed or made under any other award superseded by this award.

(9) Annual Close Down

Notwithstanding anything elsewhere contained in the award, an employer giving any leave in conjunction with the Christmas/New Year holidays may, at his/her option, either -

- (a) stand off without pay during the period of leave any employee who has not then qualified under subclause (1) of this clause; or
- (b) stand off for the period of leave any employee who has not then qualified under paragraph (a) hereof and pay him/her pro rata (up to the amount of the leave then given) for the leave for he/she has qualified on the basis of one-twelfth of an ordinary week's wages in respect of each 38 hours of continuous service (exclusive of overtime) during his/her current qualifying 12 monthly period.

Provided that where an employer at his/her option decides to close down his/her establishment at Christmas/New Year period for the purpose of giving the whole of the annual leave due to all or the majority of his/her employees then qualified for such leave, he/she shall give at least two months' notice to his/her employees of his/her intention so to do.

(10) Commencement of Leave - Distant Work

If an employee is still engaged on distant work when annual leave is granted and the employee returns to the place of engagement, or if employed prior to going to country work the employee returns to the place regarded as his/her headquarters by the first reasonable means of transport, his/her annual leave shall commence on the first full working day following his/her return to such place of engagement or headquarters as the case may be.

(11) Prohibition of Alternative Arrangements

An employer shall not make payment to an employee in lieu of his/her annual leave or any part thereof except as is provided for in this clause and no contract, arrangement, or agreement shall annul, vary, or vitiate the provisions of this clause whether entered into before or after the commencement of this award.

**21. - SICK LEAVE**

- (1) An employee other than a casual employee as defined who is absent from his/her work on account of personal illness or on account of injury by accident, other than

that covered by workers' compensation, shall be entitled to leave of absence, without deduction of pay, subject to the following conditions and limitations:

- (a) He/she shall within twenty-four hours of the commencement of such absence inform the employer of his/her inability to attend for duty, and, as far as practicable, state the nature of the injury or illness and the estimated duration of the absence.
- (b) He/she shall prove to the satisfaction of his/her employer (or in the event of dispute a Board of Reference) that he/she was unable on account of such illness or injury to attend for duty on the day or days for which sick leave is claimed.
- (c) An employee during his/her first year of employment shall be entitled to sick leave entitlement at the rate of one day at the beginning of each of the first ten calendar months of this first year of employment.

Provided that an employee who has completed one year of continuous employment shall be credited with a further 80 hours' sick leave entitlement at the beginning of his/her second and each subsequent year, which, subject to subclause (5) shall commence on the anniversary of engagement.

- (2) In the case of an employee who claims to be allowed paid sick leave in accordance with this clause for an absence of one day only such employee if in the year he/she has already been allowed paid sick leave on more than one occasion for one day only, shall not be entitled to payment for the day claimed unless he/she produces to the employer a certificate of a duly qualified medical practitioner that in his/her, the medical practitioner's, opinion, the employee was unable to attend for duty on account of personal illness or injury. Provided that an employer may agree to accept from the employee a statutory declaration, stating that the employee was unable to attend for duty on account of personal illness or injury in lieu of a medical certificate. Nothing in this subclause shall limit the employer's right under paragraph (b) of subclause (1) of this clause.
- (3) Sick leave with an employer shall accumulate from year to year so that any balance of the period specified in paragraphs (c) and (d) of subclause (1) of this clause which in any year has not been allowed to an employee and subject to the conditions herein prescribed shall be allowed by that employer in a subsequent year, without diminution of the sick leave prescribed in respect of that year.

Provided that sick leave which accumulates pursuant to this subclause shall be available to the employee for a period of ten years but for no longer from the end of the year in which it accrues.

- (4) Any sick leave for which any employee may become eligible under this award by reason of service with one employer shall not be cumulative upon sick leave for which the employee may become eligible by reason of subsequent service with another employer.
- (5) If an employee is terminated by his/her employer and re-engaged by the same employer within a period of six months then the employee's unclaimed balance of sick leave shall continue from the date of re-engagement.

In such case the employee's next year of service will commence after a total of 12 months has been served with that employer excluding the period of interruption in service from the date of commencement of the previous period of employment or the anniversary of the commencement of the previous period of employment, as the case may be.

## **22. - ACCIDENT PAY**

- (1) This clause shall apply to all employees covered by this award and the circumstances under which an employee shall qualify for accident pay shall be prescribed hereunder.
- (2) The employer shall pay an employee accident pay where the employee received an injury for which weekly payments or compensation are payable by or on behalf of the employer pursuant to the provisions of the Workers' Compensation and Assistance Act, 1981 as amended from time to time.
- (3) "Accident Pay" means a weekly payment of an amount being the difference between the weekly amount of compensation paid to the employee pursuant to the said Workers' Compensation and Assistance Act and the employee's appropriate 38 hour award rate, or/and accrued entitlements prescribed by Clause 12(1) where the incapacity is for a lesser period than one week, the difference between the amount of compensation and the said award rate for that period.
- (4) An employer shall pay or cause to be paid accident pay as defined in subclause (3) of this clause during the incapacity of the employee arising from any one injury for a total of 26 weeks whether the incapacity is in one continuous period or not.
- (5) The liability of the employer to pay accident pay in accordance with this clause shall arise as at the date of the injury or accident in respect of which compensation is payable under the said Workers' Compensation and Assistance Act and the termination of the employee's employment for any reason during the period of any incapacity shall in no way effect the liability of the employer to pay accident pay as provided in this clause.
- (6) In the event that an employee receives a lump sum in redemption of weekly payments under the said relevant legislation, the liability of the employer to pay accident pay as herein provided shall cease from the date of such redemption.
- (7) An employer may at any time apply to the Western Australian Industrial Relations Commission for exemption from the terms of this clause on the grounds that an accident pay scheme proposed and implemented by that employer contains provisions generally not less favourable to his/her employees than the provisions of this clause.

## **23. - BEREAVEMENT LEAVE**

An employee shall on the death within Australia of a wife, husband, father, mother, brother, sister, child, stepchild, mother-in-law or father-in-law, be entitled on notice to leave up to and including the day of the funeral of such relation, and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days of work.

Proof of such death shall be furnished by the employee to the satisfaction of his/her employer.

Provided that this clause shall have no operation while the period of entitlement to leave under it coincides with any other period of entitlement to leave.

Provided further that, with the consent of the employer, which consent shall not be unreasonably withheld, an employee shall, in addition to this entitlement to paid bereavement leave, be entitled to reasonable unpaid bereavement leave up to ten working days in respect of the death within Australia or overseas of a relation to whom the clause applies, and that any dispute as to the granting of unpaid bereavement leave may be referred to a Board of Reference.

For the purpose of this clause the words "wife" and "husband" shall include a person who lives with the employee as a defacto wife or husband.

## **24. - MATERNITY LEAVE**

### **(1) Eligibility for Maternity Leave**

An employee who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

- (a) An employee shall include a part-time employee but shall not include an employee engaged upon casual or seasonal work.
- (b) Maternity leave shall mean unpaid maternity leave.

### **(2) Period of Leave and Commencement of Leave**

- (a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.
- (b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
- (c) An employee shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
- (d) An 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 her presumed date of confinement.
- (e) An employee shall not be in breach of this order as a consequence of failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.

### **(3) Transfer to a Safe Job**

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the 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 the duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) of this clause.

- (4) Variation of Period of Maternity Leave
- (a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
  - (b) The period of 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.
- (5) Cancellation of Maternity Leave
- (a) 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.
  - (b) 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.
- (6) Special Maternity Leave and Sick Leave
- (a) 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 -
    - (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
    - (ii) 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 entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
  - (b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
  - (c) For the purposes of subclauses (7), (8) and (9) of this clause, maternity leave shall include special maternity leave.
  - (d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3) of this clause, to the position she held immediately before such transfer.  
  
Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) of this clause does not exceed 52 weeks.

- (a) 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 then entitled.
- (b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

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

(9) Termination of Employment

- (a) 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.
- (b) 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.

(10) Return to Work After Maternity Leave

- (a) 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.
- (b) An employee, upon the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (3) of this clause, to the position she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

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

temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement employee.
- (e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months' qualifying period.

## **25. - JURY SERVICE**

Provided that an employee attempts to gain the maximum amount allowable from the Crown Law Department, an employee required to attend for jury service shall be entitled to have his/her pay made up by the employer to equal his/her ordinary pay as for eight hour inclusive of any accrued rights under Clauses 12(1) and 17(4) plus fares whilst meeting this requirement. The employee shall give his/her employer proof of such attendance and the amount received in respect of such jury service.

## **26. - TIME RECORDS**

- (1) In addition to the requirements of the Industrial Relations (General) Regulations 1997, each employer shall keep a record, on a separate page for each employee, from which can be readily ascertained the following:
  - (a) the name of each employee and his/her classification;
  - (b) each day worked, the hours worked each day, including time of starting and finishing work each day, overtime hours worked and meal breaks taken;
  - (c) the gross amount of ordinary wages, overtime wages, special rates and specific allowances paid each pay week;
  - (d) the amount of each deduction and the nature thereof;
  - (e) the net amount of wages and allowances paid each pay week;
  - (f) any relevant records which detail taxation deductions and remittances to the Australian Taxation Office, including those payments made as PAYE tax whether under a Group Employer's Scheme or not;
  - (g) a certificate or other documentation from the Construction Industry Long Service Leave Payments Board which will confirm the employer's registration, the date of the last payment, and the period for which that payment applies;
  - (h) the employer's and the employee's Construction & Building Union Superannuation number or other occupational superannuation number and the contribution returns by the employer to the Construction & Building Union Superannuation or other occupational superannuation schemes on behalf of the employee, where such benefit applies; and
- (2) In addition, the employer shall record the location of the job if it is outside the Perth Metropolitan area.
- (3) The employer shall provide evidence of the employer's current Workers Compensation Policy or other satisfactory proof of insurance such as a renewal certificate.

- (4) Subject to subclause (6) of this clause, all records and documentation referred to in subclauses (1), (2) and (3), or copies thereof, shall be available for inspection by a duly accredited official under the rules of an organisation of employees bound by this Award during the usual office hours, at the employer's office or other convenient place. This is subject to reasonable notice of not less than 24 hours of the intention to inspect the records being given to the employer by the union or duly accredited union official.
- (5) Subject to subclause (6) of this clause, upon request the employer shall within 48 hours make copies available for the union of the record maintained under subclause (1) of this clause if the Secretary of the Union reasonably suspects that a breach of the Award has been committed. If agreed between the parties, copies of the records shall be sent to the union office. Otherwise, the union shall be arrange for copies of the records to be collected.
- (6) The employer may refuse the representative access to the records if the employer:
  - (a) is of the opinion that access to the records by a duly accredited official of the organisation of employees would infringe the privacy of persons who are not members of the union;
  - (b) undertakes to produce the records to an Industrial Inspector within 48 hours of being notified of the requirements to inspect by the Union official; and
  - (c) complies with the undertaking to produce the records to an Industrial Inspector.

## **27. - PROTECTION OF EMPLOYEES**

- (1) The employer shall comply with the provisions of the laws of the State concerning the installation and maintenance of guards for machinery.
- (2) Where electric arc operators are working, suitable screens shall be provided in order to protect employees from flash.
- (3) The employer shall provide gas masks for employees engaged upon work where gas is present.
- (4) An employee shall not raise or lower a swinging scaffold (others than a bonsun's chair) alone and an employer shall not require an employee to raise or lower a swinging scaffold alone.
- (5) An employee shall not be required to carry paint or other materials, the property of the employer, from job to job. By arrangement, brushes may be taken to and from a job by the employee. This provision shall not apply where paint or materials are carried to or from a job in a vehicle belonging to the employer.
- (6) The employer shall provide sufficient facilities for washing and five minutes shall be allowed before lunch and before finishing time to enable employees to wash and put away gear.
- (7) No employee shall be permitted to have a meal in any paint shop or place where paint is stored or used.
- (8) Every employer shall provide hand protective paste for the use of its employees.
- (9) The employer shall observe the following procedures when employees are required to use toxic substances covered by paragraph (i) of subclause (1) of

Clause 9. - Special Rates and Provisions. Where there is an absence of adequate natural ventilation the employer shall provide ventilation by artificial means and supply an approved type of respirator and/or an approved type of hood with airline attached and in addition the employer shall supply protective clothing as approved by the Department of Occupational Health, Safety and Welfare; proper washing facilities together with towels, soap and a plentiful supply of hot water shall be available when required.

Where an employee is using materials of the types mentioned in this subclause and such work continues to his/her meal break, he/she shall be entitled to take washing time of ten minutes immediately prior to his/her meal break. Where this work continues to the ceasing time of the day or is finalised at any time prior to the ceasing time of the day, washing time of ten minutes shall be granted. The washing time break or breaks shall be counted as time worked.

## **28. - AMENITIES**

(1) At any workplace at which employees covered by this award are employed, the employers, the principal contractor or the Project Manager, as the case may be, shall be responsible to ensure that no less than the following amenities are provided -

- (a) A weatherproof amenities room with the windows flyscreened and capable of being opened.
  - (i) Each amenities room shall be of a size not less than one square metre of flooring area for each person.
  - (ii) Each amenities room shall be lined, adequately lit and ventilated (including an extractor fan) and shall have an appropriate washable floor and flystrips on the doorway.
  - (iii) In each amenities room there shall be a non-absorbant washable topped table or tables with seating accommodation at a bench not less than 400mm wide and 450mm long for each person, hooks at least 450mm apart for the purpose of hanging clothes, and on any site where more than 50 persons are employed, flyproof ventilated cupboards with shelves for the storage of food.
  - (iv) No amenities room shall be used for the storage of building or painting materials and/or equipment, and on work where more than ten persons are employed no tools shall be stored in that room.
  - (v) On construction sites where no more than ten persons are employed the amenities room may be used for the dual purpose of an amenities shed and of a site office for the principal contractor or Project Manager.

And the employer, principal contractor or Project Manager shall ensure that each shed is kept in a clean condition and brooms, mops, buckets, and cleaning compounds shall be provided for this purpose.

- (b) Covered garbage bins.
- (c) In a reasonably accessible place, boiling water at meal times and rest periods and cool, clean drinking water at all times.
- (d) A noticeboard or a place where notices may be displayed.

- (e) Toilets which shall be weatherproof and soundly constructed with separate closets and an appropriate washable floor.
  - (i) Each toilet shall be lit by natural or artificial light to a high standard with each closet having a hinged door capable of being closed from both sides.
  - (ii) Should the toilets be sewered there shall be one closet for each 15 persons, if septic tanks or chemical system, one closet for each ten persons and otherwise one closet for each seven persons.
- (f) A supply of toilet paper together with soap and water for washing purposes.
- (2) This clause, other than paragraph (c) of subclause (1) shall not apply to projects on which less than five dwelling units are being constructed, or on projects which have a contracted value of not more than \$276000.

To reflect movements in construction costs the parties to this award shall in December of each year, adjust the monetary figure mentioned in this subclause by reference to ABS Catalogue 8731.5 BUILDING APPROVALS WESTERN AUSTRALIA, using Table 7. Building Approvals by Statistical Local Areas to determine the average cost per new dwelling approved in Western Australia for the month of October which shall be multiplied by 4 and rounded to the nearest \$1000. The parties shall then notify the Commission of the adjusted figure.

- (3) This clause shall be deemed to be complied with if in a partially completed building, facilities of a comparable standard are available to be used.
- (4) Nothing herein contained shall absolve any employer from what is required by the Occupational Health, Safety and Welfare Act 1984, or any relevant legislation.

**29. - FIRST AID EQUIPMENT**

- (1) A first aid kit, such as is required by the law of the State or, if there is no relevant State law, as set out hereunder, shall be provided and maintained by the employer on each job.

- (a) At the places of work where not more than six persons are employed the first aid outfit shall be equipped and maintained to contain at least the following -

Heavy Duty Metal or Plastic Box	1
First Aid Pamphlet/Box	1
Triangular Bandages	2
Primapore 8.3cm x 6cm	2
(Prepared Dressing) or a similarly prepared adhesive dressing that is composed of a non adherent dressing-pad that is attached to hypo-allergic adhesive and is enclosed in a sterilised packet 12 x 8.25cm	3
Eye pad	2
Medi-Prep Antiseptic Swabs or similar disposable tissue that is impregnated with a non sting antiseptic preparation enclosed in sterile sachet	6
Band-aids 25s	1 pkt
Adhesive Tape 2.5cm x 1m	1
Conforming Bandage 5cm	2
Conforming Bandage 7.5cm	1

Eye Wash 10ml	5
Betadine Lotion 100ml	1
Betadine Ointment 25gm	1
Safety Pins	1 pkt
Scissors	1
Tweezers	1
Splinter Probe	1
Panadol 24	1
Burnaid Burn Treatment Gel	1
or similar gel that is easily spread without friction to skin and will melt into a liquid and smooth burnt skin by absorbing the heat of the burnt skin thus preventing secondary infection	
Cotton Wool	1

- (b) At places of work where more than six persons are employed the first aid outfit shall be equipped and maintained to contain at least the following -

Heavy Duty Metal or Plastic Box	1
First Aid Pamphlet/Box	1
Triangular Bandages	3
Primapore 8.3cm x 6cm (Prepared Dressing) or a similarly prepared adhesive dressing that is composed of a non adherent dressing-pad that is attached to hypo-allergic adhesive and is enclosed in a sterilised packet 12 x 8.25cm	2
Crepe Bandages 10cm	3
7.5cm	1
5.0cm	2
2.5cm	2
Combine Dressing 9 x 20cm	2
9 x 20cm	1
20 x 20cm	1
Eye pads Sterile	3
Adhesive Tape 2.5cm	1
Band-aids 25s	1 pkt
Assorted Bandaid Shapes	1 pkt
Medi-Prep Antiseptic Swabs or similar disposable tissue that is impregnated with a non sting antiseptic preparation enclosed in sterile sachet	6
* Wound Closures	5
Eye Wash 10ml	6
Murine Eye Drops	1
Panadol 24	1
Cotton Wool	1
Cotton Tipped Applicators	100
Betadine Lotion 100ml	1
Betadine Ointment 25gm	1
Safety Pins	1 pkt
Eye dust remover	1
Splinter Probe	1
Scissors	1
Tweezers	1
Burnaid Burn Treatment Gel	1
or similar get that is easily spread without friction to skin and will melt into a liquid and smooth burnt skin by absorbing the heat	

of the burn skin thus preventing secondary infection

\* These are only to be used by an industrial nurse or a person holding advanced first-aid qualifications.

- (c) North of 26 degrees parallel first aid outfits shall, in addition to requirements provided for in paragraphs (a) or (b) hereof, contain items specified by the Royal Flying Doctor Service Authority recommendations for first aid outfit requirements for those areas, this provision shall not apply in areas the R.F.D.S. does not extend to.
- (2) If there is no relevant State legislation the employer shall as soon as is reasonably possible supply means, free of charge, to convey to the nearest hospital or doctor at which, or by whom, the employee is to be treated, any employee so seriously injured that it is not reasonably possible for such employee to travel independently of such conveyance.
- (3) A first aid allowance shall only be paid in accordance with Clause 9(1)(p).

### **30. - SPECIAL TOOLS AND PROTECTIVE CLOTHING**

- (1) (a) The employer shall provide safety boots and two sets of protective clothing, including gloves and shall replace these items on a "fair wear and tear" basis. Any dispute on this matter shall be referred to a Board of reference.
  - (b) The employer shall provide all power tools and steel tapes over six metres when required for the work to be performed.
  - (c) An employer shall provide on all construction jobs in towns and cities, and elsewhere where reasonably necessary and practicable, (or if requested by the employee) a suitable and secure waterproof lock-up solely for the purpose of storing employees' tools, and on multi-storey and major project jobs the employer shall provide, where possible, a suitable lock-up for employees' tools within a reasonable distance of the work area of large groups of employees.
- (2) Tools

The employer shall provide all tools in connection with the work of sandblasting and painting, except screw drivers, pliers, scrapers and crescents (up to a max of 30cm).

### **31. - COMPENSATION FOR CLOTHES AND TOOLS**

- (1) An employee whose clothes, spectacles, hearing aids or tools have been accidentally spoilt by acid, sulphur or other deleterious substances, shall be paid such amount to cover the loss thereby suffered by him/her as may be agreed upon between him/her and his/her employer or, in default of agreement, as may be fixed by the appropriate Board of Reference.
- (2) (a) An employee shall be reimbursed by his/her employer to a maximum of \$1283.00 for loss of tools or clothes by fire or breaking and entering whilst securely stored at the employer's direction in a room or building on the employer's premises, job or workshop or in a lock-up as provided in this award or if the tools are lost or stolen during an employee's absence after leaving the job because of injury or illness.

Provided that an employee transporting his/her own tools shall take all reasonable care to protect those tools and prevent theft or loss.

- (b) Where an employee is absent from work because of illness or accident and has advised the employer in accordance with Clause 21. - Sick Leave the employer shall ensure that the employee's tools are securely stored during his/her absence.
- (3) When an employer requires an employee to wear spectacles with toughened glass lenses the employer will pay the cost of the toughening process.
- (4) Provided that for the purposes of this clause -
  - (a) Only tools used by the employee in the course of his/her employment shall be covered by this clause.
  - (b) The employee shall, if requested to do so, furnish the employer with a list of tools so used.
  - (c) Reimbursement shall be at the current replacement value of new tools of the same or comparable quality.
  - (d) The employee shall report any theft to the police prior to making a claim on the employer for replacement of stolen tools.

### **32. - PAYMENT OF WAGES**

#### (1) Pay Day and Methods

- (a) All wages, allowances and other monies shall be paid:-
  - (i) in cash; or
  - (ii) by cheque, bank cheque, bank or similar transfer or any combination thereof, if there is agreement in writing between the employer, the employees and the Union. The consent of the Union shall not be unreasonably withheld.

An employee paid by other than cash shall be allowed reasonable time as agreed between the employer and the employee, to attend the Branch of his/her bank nearest the workplace to cash such cheques or draw upon the accounts during working hours.

Failure to reach agreement on reasonable time shall be referred to a Board of Reference for determination.

Payments shall be paid and available to the employee not later than the cessation of ordinary hours of work on Thursday of each working week.

- (b) Provided that in any week in which a holiday falls on a Friday wages accrued shall be paid on the previous Wednesday and provided further that when a holiday occurs on any Thursday wages accrued may be paid on the following Friday. Nothing shall prevent any alternative mutual arrangement between an employer and an employee.
- (c) The employer shall not keep more than two days' wages in hand.

#### (2) Payment on Termination

When notice is given in accordance with Clause 34. - Termination of Employment, all monies due to the employee shall be paid at the time of termination; where this is not practicable the provisions of subclauses (6) and/or (7) of this clause shall apply.

(3) Waiting Time Penalties

An employee kept waiting for his/her wages on pay day for more than a quarter of an hour after the usual time of ceasing work shall be paid at overtime rates after that quarter hour with a minimum of a quarter of an hour.

(4) Pay Packet Details

Particulars of details of payment to each employee shall be included on the envelope holding the payment, or in a statement handed to the employee at the time such payment is made and shall contain the following information -

- (a) Date of payment.
- (b) Period covered by such payment.
- (c) The amount of wages paid for work at ordinary rates.
- (d) The gross amount of wages and allowances paid.
- (e) The amount of each deduction made and the nature thereof.
- (f) The net amount of wages and allowances paid.

In addition, the following details will also be included in the statement when such payments and benefits apply:

- (g) The number of hours paid at overtime rates and the amount paid therefor.
- (h) The amount of allowances or special rates paid and the nature thereof.
- (i) Annual holiday payments.
- (j) Payment due on termination, including payment for annual leave, rostered day off accumulation, and public holidays.
- (k) The employer and employee's building superannuation number (where such benefits apply).
- (l) The employee's long service leave registration number (where such benefits apply).

(5) Employee Terminating

When an employee gives notice in accordance with Clause 34. - Termination of Employment and monies due are not paid on termination the employer shall have two working days to send monies due by registered post provided that if the monies are not posted within that time then time spent waiting beyond the two working days shall be paid for at ordinary rates, such payment to be at the rate of eight hours' per day up to a week's pay when the right to waiting time shall terminate.

(6) Employer Terminating - Daily Penalties

Where an employer gives notice in accordance with Clause 34. - Termination of Employment all monies due shall be paid at termination; where this is not practicable the employer shall forward the monies due by registered post within two working days of termination and shall pay waiting time up to the time of

posting at the rate of eight hours' ordinary time per day up to a maximum of one week's pay.

### **33. - PRESENTING FOR WORK BUT NOT REQUIRED**

An employee if engaged and presenting for work to commence employment and not being required shall be entitled to at least eight hours' work or payment therefore at ordinary rates, plus the appropriate allowance prescribed by the appropriate fares and travel rates where applicable.

Provided that this clause shall not apply if the services of an employee are not required by reason of inclement weather, in which case the provisions of the Heat Stress Agreement shall apply where applicable.

### **34. - TERMINATION OF EMPLOYMENT**

- (1) One day's notice of the termination of the employment engagement shall be given on either side or one day's pay shall be paid or forfeited in lieu thereof.
- (2) For the purpose of this clause, notice given at or before the usual starting time of any ordinary working day shall be deemed to expire at the completion of that day's work.
- (3) An employee shall be allowed the one hour prior to termination to gather, clean, sharpen, pack and transport his/her tools.
- (4) Nothing in this clause shall affect the right of an employer to dismiss an employee without notice for misconduct or refusing duty.
- (5) This clause shall be read in conjunction with subclauses (3) and (6) of Clause 20. - Annual Leave and subclause (7) of Clause 32. - Payment of Wages.

### **35. - JOB STEWARDS**

- (1) An employee appointed as a Job Steward shall, upon notification by the Union to the employer be recognised as the accredited representative of the Union and he/she shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees he/she represents and further shall be allowed reasonable time during working hours to attend job matters affecting the Union. Provided that the foregoing does not relieve the Job Steward of the obligation imposed upon him/her by his/her employer.

A Job Steward shall notify the employer and where relevant the principal contractor's representative and the Union prior to the calling of any stop work meeting so that the procedures laid down in Clause 42. - Settlement of Disputes - may be observed before any stoppage of work occurs.

- (2) Prior to termination or transfer two days' notice shall be given to any Job Steward and the Union. Payment in lieu of notice shall not be given. In the event of the Union disputing the decision of management to transfer the Job Steward or terminate his/her service, the Union shall notify management within two working days after being informed of the decision of management. The Job Steward shall remain on the job during which time a Board of Reference shall deal with the matter.

The Union shall, within three working days of notifying the management that it disputes the decision to transfer or terminate the job steward, request the Registrar or Deputy Registrar in writing to appoint a Board of Reference to deal with the matter.

The Union and the employer shall do all things necessary to enable the Board to sit within ten working days of the management decision to transfer or terminate the job steward. If the Board cannot sit within ten working days because of the employer's failure to nominate representatives, or their unavailability to sit on the Board, the decision to transfer or terminate the job steward shall be null and void.

If the Board cannot sit within ten working days because of the Union's failure to nominate representatives, or their unavailability to sit on the Board, the job steward's transfer or termination shall automatically take effect at the expiry of the period of ten working days.

Provided that nothing in this subclause shall prevent the parties proceeding by agreement to have the matter settled by the Commission or a Local Disputes Board set up in accord with Clause 42 (3) in lieu of the Board of Reference procedure.

Provided further that nothing shall affect the right of the employer to dismiss a job steward without notice for misconduct or refusing duty.

### **36. - POSTING OF AWARD**

A copy of this award, with all variations thereof, shall be posted and kept posted by the employer in a prominent place on the employer's premises accessible to the employees.

### **37. - POSTING OF NOTICES**

An employer shall not prevent an official of the union authorised in writing in that behalf, from posting on an employer's premises or job a copy of any official notice of the union provided such notice is of reasonable size.

### **38. - RIGHT OF ENTRY**

Consistent with the terms of the Labour Relations Legislation Amendment Act 1997 and S.23(3)(c)(iii) of the Industrial Relations Act a representative of the Union shall not exercise the rights under this clause with respect to entering any part of the premises of the employer unless the employer is the employer, or former employer of a member of the Union.

Subject to the foregoing:

The Secretary or any other duly accredited representative of the Union shall have the right to enter any place or any premises where employees are employed at any time during normal working hours or when overtime is being worked, for the purpose of interviewing employees, checking on wage rates, award breaches or safety conditions or regulations so long as they do not unduly interfere with the work being performed by any employee during working time, and provided that they present themselves, with their authority as prescribed by this Award, to a representative of site management prior to pursuing their union duties on site.

A representative of the union shall be duly accredited representative if he/she is the holder for the time being of a certificate signed by the secretary of that organisation and bearing the seal of that organisation in the following form, or in a form not materially differing therefrom:

Operative Painters and Decorators Union of Australia,  
W.A. Branch, Union of Workers

This is to certify that..... is a duly accredited representative of the abovementioned organisation for all purposes of this award made under the Industrial Relations Act, 1979.

(Seal) Secretary

Specimen signature of Holder .....

(Strictly not transferable)

### **39. - LONG SERVICE LEAVE**

The provisions set out in Volume 71 of the Western Australian Industrial Gazette at pages 1-4, both inclusive, are hereby incorporated in and form part of this award.

The provisions of the Construction Industry Portable Paid Long Service Leave Act, 1985 are hereby incorporated in and form part of this award, for employees engaged upon construction work.

### **40. - STAND DOWNS**

The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of any strike by the union or unions affiliated with it, or by any other association or union, or through the breakdown of the employer's machinery or any stoppage or work by any clause which the employer cannot reasonably prevent.

### **41. - PROHIBITION OF JUNIOR EMPLOYEES**

- (1) Except as provided in subclause (2) hereof, the employment of junior employees (except trainees employed pursuant to the traineeship agreements named in Clause 4 (2)) on any work which, if performed by an adult employee, would be subject to the provisions of this award is prohibited unless the consent of the Union is in each case first obtained. If any junior employee (except a trainee) is so employed such employee shall be paid not less than the rate of pay of an adult performing similar work.
- (2) A junior employee employed on work the subject of this Award, shall be paid not less than the wage prescribed in Clause 8 of this award for an adult employee performing similar work.

### **42. - SETTLEMENT OF DISPUTES**

- (1) Where an employee or the job steward has submitted a request concerning any matter directly connected with employment to a foreman or a more senior representative of management and that request has been refused, the employee may, if he/she so desires, ask the job steward to submit the matter to management and the matter shall then be submitted by the job steward to the appropriate executive of the employer concerned.
- (2) If not settled at this stage, the matter shall be formally submitted by the State secretary of the union to the employer.
- (3) If not settled at this stage, the matter shall then be discussed between such representatives of the union as the union may desire and the employer, who may be accompanied by or represented by such officers or representatives of an association of employers as the employer may desire, including, where agreed, processing the dispute through locally organised boards or committees set up by the parties for this purpose.
- (4) If the matter is still not settled, it shall be submitted to the Commission.

- (5) Where the above procedures are being followed, work shall continue normally, no party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.
- (6) Notwithstanding anything contained herein the respondents shall be free to exercise their rights if the dispute is not finalised within seven days of notification.
- (7) This clause shall not apply to any dispute as to a bona fida safety issue.
- (8) In connection with any dispute concerning a job steward this clause shall be subject to the provisions of subclause (2) of Clause 35. - Job Stewards.

#### **43. - BOARD OF REFERENCE**

- (1) There shall be a Board of Reference consisting of a Chairman and an equal number of employers' and employees' members who shall be appointed pursuant to section 48 of the Industrial Relations Act 1979 and Regulation 16 of the Industrial Relations Commission Regulations 1985.
- (2) The Board of Reference is hereby assigned the function of determining any dispute between the parties in relation to any matter which under this Award may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

#### **44. - NO REDUCTION**

Notwithstanding the provisions contained in this Award, the rates of pay, allowances and conditions of any employee shall not be reduced if that employee, at the date of delivery of this Award, was receiving rates of pay, allowances and conditions in excess of those prescribed in the Award.

#### **45. - AWARD MODERNISATION**

- (1) The parties are committed to modernising the terms of the Award so that it provides for more flexible working arrangements, improves quality of working life, enhances skills and job satisfaction and assists positively in the restructuring process.
- (2) The parties commit themselves to the following principles as part of the structural efficiency process and have agreed to participate in a testing process in accordance with the provisions of this clause.
  - (a) Acceptance in principle that the new Award skill level definitions will be more suitable for the needs of the industry, sometimes more broadly based, in other matters more truly reflective of the different skill levels of the tasks now performed, but which shall incorporate the ability for an employee to perform a wider range of duties where appropriate.
  - (b) The parties will create a genuine career path for employees which allows advancement based on industry accreditation and access to training.
  - (c) Co-operation in the transition from the old structure to the new structure in an ordered manner without creating false expectations or disputation.
- (3) The parties agree that the State Working Party will continue to meet the aim of modernising the Award in accordance with paragraph 5 of Exhibit BTA 1: "Joint Statement by Building Industry Unions and Employer Organisations - 29 March 1990".

#### **46. - STRUCTURAL EFFICIENCY EXERCISE**

- (1)
  - (a) An employer may direct an employee to carry out such duties as are within the limits of the employee's skills, competence and training consistent with the classification structure of this award provided that such duties are not designed to promote de-skilling.
  - (b) Any direction issued by an employer shall be consistent with the employer's responsibilities to provide a safe and healthy working environment.
- (2) The parties to this Award are committed to co-operating positively to increase the efficiency, productivity and international competitiveness of the building and construction industry and to enhance the career opportunities and job security of employees in the industry.
- (3) The parties have established a State Working Party for the testing and/or trialling of various skill levels and to enable proper consultation with both employees and employers in the industry on matters consistent with the objectives of subclause (b) herein. The parties shall process any such matters through that working party.
- (4) Measures raised for consideration consistent with subclause (c) herein shall be related to implementation of a new classification structure, any facilitative provisions contained in his Award and matters concerning training.
- (5) Without limiting the rights of either an employer or a Union to arbitration, any other measure designed to increase flexibility on a site or in an enterprise sought by any party shall be implemented subject to the following requirements:
  - (a) the changes sought shall not effect provisions reflecting National standard;
  - (b) the majority of employees affected by the change at the site or enterprise must genuinely agree to the change;
  - (c) no employee shall lose income as a result of the change;
  - (d) any agreement shall be subject, where appropriate, to approval by the Western Australian Industrial Relations Commission and, if approved, shall operate as a Schedule to this Award and take precedence over any provision of this Award to the extent of any inconsistency;
  - (e) Award restructuring should be given its wider meaning, and Award restructure should not be confined to the restructuring of classifications but may extend to the review of other restrictive provisions which currently operate. To that end, such restrictive provisions will be reviewed on an ongoing basis;
  - (f) The parties to this Award recognise that in order to increase the efficiency, productivity and international competitiveness of industry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
    - (i) developing a more highly skilled work force;
    - (ii) providing employees with career opportunities through appropriate training to acquire additional skills; and
    - (iii) removing barriers to the utilisation of skills acquired.

(g) Any disputes arising in relation to the implementation of this clause shall be subject to the provisions of Clause 42. - Settlement of Disputes.

(6) Structural Efficiency

At each plant or enterprise a consultative mechanism may be established upon request by the employees. The consultative mechanism and procedure shall be appropriate to the size, structure and needs of the plant or enterprise. Measures raised for consideration shall be consistent with subclause (2) of this clause.

**47. - FARES AND TRAVELLING**

(1) Metropolitan Radial Areas

The following fares allowance shall be paid to employees employed under the terms and conditions of this Award for travel patterns and costs peculiar to the industry which include mobility requirements of employees and the nature of employment on industrial painting and sandblasting work.

(2) Perth Metropolitan Radial Area

When employed on work located within a radius of 50 kilometres from the G.P.O. Perth, including work at the premises of the employer, \$13.30 per day.

(3) Other Radial Areas

The allowance defined in subclause (2) of this clause shall be paid for work performed by employees employed on distant work as defined in Clause 18. - Living Away from Home - Distant Work, when the work is carried out away from the place where, with the employer's approval, the employee is accommodated for the distant work, and is within a radius of 50 km from the place of accommodation.

(4) Country Radial Areas

An employer whose business or branch or section thereof is established in any place (other than on a construction site) outside the area mentioned in subclause (2) of this clause for the purpose of engaging in construction work therefrom shall in respect to employees engaged for work for that establishment, pay the allowance therein mentioned for work located within a radius of 50 kilometres from the post office nearest the establishment.

Where the employer has an establishment in more than one such place the establishment nearest the employee's nominated residence shall be the establishment that shall be taken into account, and employees shall be entitled to the provisions of subclause (5) of this clause when travelling to a job outside the radial area of the establishment nearest his/her residence.

(5) Travelling Outside Radial Areas

Where an employee travels daily from inside any radial area mentioned in subclauses (2), (3) or (4) of this clause to a job outside that area, he/she shall be paid:-

(a) the allowance prescribed in subclause (2) of this clause;

(b) in respect of travel from the designated radius to the job and return to that radius -

- (i) the time outside ordinary working hours reasonably spent in such travel calculated at ordinary hourly "on site" rates to the next quarter of an hour with a minimum payment of one-half an hour per day for each return journey;
- (ii) any expenses necessarily incurred in such travel, which shall be 39 cents per kilometre where the employee uses his/her own vehicle.

(6) Residing Outside Radial Areas

An employee whose residence is outside the radial areas prescribed in subclauses (2), (3) or (4) of this clause shall be entitled to the allowance prescribed in subclause (2) of this clause but not to the provisions of paragraph (b) of subclause (5) of this clause.

(7) Travelling Between Radial Areas

The provisions of subclause (5) of this clause shall apply to an employee who is required by the employer to travel daily from one of the areas mentioned in subclauses (2) and (4) of this clause to an area, or another area, mentioned in subclauses (2) and (4) of this clause.

(8) Provision of Transport

The allowance prescribed in this clause, except the additional payment prescribed in paragraph (b) of this subclause (5) and in subclause (8) of this clause shall not be payable on any day which the employer provides or offers to provide transport free of charge from the employee's home to his/her place of work and return; provided that any transport supplied is equipped with suitable seating accommodation and is covered when necessary so as to be weatherproof.

(9) Requirement to Transfer

As required by the employer, employees shall start and cease work on the job at the usual commencing and finishing times within which ordinary hours may be worked and shall transfer from site to site as directed by the employer.

(10) Transfer During Working Hours

An employee transferred from one site to another during working hours shall be paid for the time occupied in travelling and, unless transported by the employer, shall be paid reasonable cost of fares by most convenient public transport between such sites.

Where an employer requests an employee to use his/her own vehicle to effect such a transfer and the employee agrees to do so the employee shall be paid an allowance at the rate of 73 cents per kilometre.

(11) Daily Entitlement

The travelling allowances prescribed in this clause shall not be taken into account in calculating overtime, penalty rates, annual or sick leave, but shall be payable for any day upon which the employee in accordance with the employer's requirements works or reports for work or allocation of work and the paid day off as prescribed by Clause 11 (1) and Clause 16 (4).

(12) The daily fares prescribed in subsection (2) relating to work at the premises of the employer will only apply to workers of employers listed in Appendix C of this award.

#### **48. - LIBERTY TO APPLY**

Liberty to apply is reserved for the Union to apply to vary the Award with respect to:

- (1) Superannuation
- (2) Redundancy

#### **49(A). - REDUNDANCY - ON SITE EMPLOYEES**

##### (1) Definitions

- (a) "Redundancy" means a situation where an employee ceases to be employed by an employer, respondent to this award, other than for reasons of misconduct or refusal of duty.
- (b) "Redundant" has a corresponding meaning.
- (c) "Continuous Service" for the purposes of this clause means all service of the employee with his or her employer and shall include an employee's absence from work for any of the following reasons:
  - (i) Paid sick leave;
  - (ii) Paid annual leave;
  - (iii) Long service leave;
  - (iv) Bereavement leave;
  - (v) Public holidays;
  - (vi) Jury service;
  - (vii) Where called up for military service for up to 3 months in any qualifying 12 month period;
  - (viii) Injury received during the course of employment for and up to a maximum of 26 weeks for which he/she received workers' compensation; and
  - (ix) Any reason satisfactory to the employer. In the event of dispute, the matter may be referred to the Western Australian Industrial Relations Commission.

Provided that 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 paragraph (3) of subclause (2) of the Long Service Leave Provisions published in Volume 73 of the Western Australian Industrial Gazette at pages 1-4 shall also constitute continuous service for the purpose of this clause.

- (d) "Weeks Pay" means the ordinary time rate of pay at the time of termination for the employee concerned.

##### (2) Discussions to Precede Redundancy

Where an employer has decided to make an employee redundant, the employee shall be entitled to be informed, by the employer, as soon as reasonably practicable after the decision has been made to effect the redundancy. The

employee shall be entitled to discuss with the employer the likely effects of the redundancy in respect of him or her.

(3) Redundancy Pay

A redundant employee shall receive redundancy/severance payments, calculated as follows, in respect of all continuous service (as defined in this Clause) with his or her employer provided that any service prior to 8 September 1994 shall not be counted as service for the purposes of this clause.

PERIOD OF CONTINUOUS SERVICE WITH AN EMPLOYER	REDUNDANCY/SEVERANCE PAY
1 year or more but less than 2 years	2.4 weeks pay plus, for all service in excess of 1 year, 1.75 hours pay per completed week of service up to a maximum of 4.8 weeks pay.
2 years or more but less than 3 years	4.8 weeks pay plus, for all service in excess of 2 years, 1.6 hours pay per completed week of service up to a maximum of 7 weeks pay.
3 years or more but less than 4 years	7 weeks pay plus, for all service in excess of 3 years, 0.73 hours pay per completed week of service up to a maximum of 8 weeks pay.
4 years or more	8 weeks pay

Provided that an employee employed for less than twelve (12) months shall be entitled to a redundancy/severance payment of 1.75 hours per completed week of service if, and only if, redundancy is occasioned otherwise than by the employee.

(4) Casuals

Any period of service as a casual (as defined in this award) shall not entitle an employee to accrue service in accordance with this clause for that period.

(5) Fund

An employer bound by this award may utilise a fund to meet all or some of the liabilities created by this clause. Where an employer utilises such a fund:

- (a) payments made by a fund designed to meet an employer's liabilities under this clause, to employees eligible for redundancy/severance pay shall be set off against the liability of the employer under this clause, and the employee shall receive the fund payment or the award benefit whichever is the greater but not both; or
- (b) where a fund, which has been established pursuant to an agreement between unions and employers, does not make payments in accordance with this clause, contributions made by an employer on behalf of an employee to the fund shall, to the extent of those contributions, be set off against the liability of the employer under this clause, and payments to the employee shall be made in accordance with the rules of the fund or any agreement relating thereto and the employee shall be entitled to the fund benefit or the award benefit whichever is the greater but not both.

(6) Employee Leaving During Notice

An employee whose employment is to be terminated in accordance with subclause (1)(a) of this clause may terminate his or her employment during the period of notice and if this occurs, shall be entitled to the provisions of this clause as if the employee remains with the employer until expiry of such notice. Provided that in such circumstances, the employee shall not be entitled to payment in lieu of notice.

(7) Leave for Job Interviews

(a) An employee who has been informed that he or she has been, or will be, made redundant is entitled to paid leave of up to 8 hours for the purpose of being interviewed for further employment.

(b) The 8 hours need not be consecutive.

(c) An employee who claims to be entitled to paid leave under paragraph (a) above is to provide to the employer evidence that would satisfy a reasonable person of the entitlement.

(8) Disputes Settling Procedure

Any dispute in relation to this clause may be referred to the Western Australian Industrial Relations Commission.

**49(B). - REDUNDANCY - FACTORY BASED EMPLOYEES**

(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 that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with their union or unions.

(b) The discussions shall take place as soon as is practicable after the employer has made a definite decision which will invoke the provisions of paragraph (a) of this subclause and shall cover among other things, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to minimise any adverse affect of any terminations on the employees concerned.

(c) For the purpose of such discussion the employer shall provide in writing to the employees concerned and their union or unions, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected and the number of employees normally employed and the period over which the terminations are likely to be carried out. Provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

(2) Severance Pay:

(a) Subject to further order of the Commission, an employee whose employment is terminated by the employer for reasons set out in paragraph (a) of subclause (1) of this clause shall be entitled to the following amount of severance pay in respect of a continuous period of service, provided that any service prior to 1 May 1996 shall not be counted as service for the purposes of this clause.

Period of Continuous Service	Severance Pay
Less than 1 year	Nil
1 year but less than 2 years	4 weeks
2 years but less than 3 years	6 weeks
3 years but less than 4 years	7 weeks
4 years and over	8 weeks

"Weeks Pay" means the ordinary weekly rate of wage for the employee concerned.

Provided that employees employed for less than 12 months on a job specific basis will be entitled to 1.75 hours per week of service when terminated by their employer other than for reason of misconduct or refusal of duty.

- (b) For the purpose of this clause continuity of service shall not be broken on account of:
- (i) any interruption or termination of the employment by the employer if such interruption or termination has been made merely with the intention of avoiding obligations hereunder in respect of leave of absence;
  - (ii) any absence from work on account of personal sickness or accident for which an employee is entitled to claim sick pay as prescribed by this award or on account of leave lawfully granted by the employer; or
  - (iii) any absence with reasonable cause, proof whereof shall be upon the employee;

Provided that in the calculation of continuous service under this subclause any time in respect of which an employee is absent from work shall not count as time worked except for the following:

- (i) paid sick leave;
- (ii) paid annual leave;
- (iii) long service leave;
- (iv) bereavement leave;
- (v) public holidays;
- (vi) jury service;
- (vii) where called up for military service for up to 3 months in any qualifying 12 month period;
- (viii) injury received during the course of employment for and up to a maximum of 26 weeks for which he/she received workers' compensation; and
- (ix) any reasons satisfactory to the employer. In the event of dispute, the matter may be referred to the Western Australian Industrial Relations Commission.

Provided that 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 paragraph (3) of subclause (2) of the Long Service Leave Provisions published in Volume 73 of the Western Australian Industrial Gazette at pages 1-4 shall also constitute continuous service for the purpose of this clause.

(3) Employee Leaving During Notice:

An employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause may terminate employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had the employee 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.

(4) Alternative Employment:

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

(5) Time Off During Notice Period:

(a) During the period of notice of termination of employment given by an employer, an employee whose employment is to be terminated for reasons set out in paragraph (a) of subclause (1) of this clause 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.

(b) The employee shall, at the request of the employer, be required to produce proof of attendance at an interview or the employee shall not receive payment for the time absent. For this purpose a statutory declaration will be sufficient.

(6) Dispute Settling Procedures:

Any dispute under these provisions shall be referred to the Commission.

(7) Employees Exempted:

This clause shall not apply where employment is terminated for reasons of misconduct or refusal of duty or in the case of casual employees.

## **50. - INCLEMENT WEATHER**

### Part 1 - On-site Employees

The following inclement weather provisions shall apply to employees when working on-site:

The parties agree that all necessary steps shall be taken to ensure that a full working understanding of the inclement weather procedure as contained in this awards, is achieved and maintained throughout the industry:

- (1) Should a portion of the project be affected by Inclement Weather, all other employees not so affected shall continue working in accordance with the appropriate Award provisions, regardless that some employees may be entitled to cease work due to Inclement Weather.

(2) Should a portion of the project be affected by Inclement Weather, employees can be transferred to another work location under cover in the site or to another site in accordance with the Award provisions prescribed herein.

(3) Definition - Inclement Weather

“Inclement Weather” shall mean the existence of rain or abnormal climatic conditions (whether they be those of hail, snow, cold, high wind, severe dust storm, extreme high temperature or the like or any combination thereof) by virtue of which it is either not reasonable or not safe for workmen exposed thereto to continue working whilst the same prevail.

(4) Conference requirement and procedure

The employer, or his/her representative, shall when requested by the employees or a representative of the employees, confer (within a reasonable period of time which should not exceed thirty (30) minutes) for the purposes of determining whether or not conditions are inclement. Weather shall not be regarded as inclement unless it is agreed at such conference.

Provided that if the employer or his/her representative refuses to confer within such reasonable period, employees shall be entitled to cease work for the rest of the day and be paid inclement weather.

(5) Restriction of Payments

An employee shall not be entitled to payment for inclement weather as provided for in this clause unless he/she remains on the job until the provisions set out in this clause have been observed.

(6) Entitlement of Payment

An employee shall be entitled to payment by his/her employer for ordinary time lost through inclement weather for up to thirty-two (32) hours in every period of four (4) weeks. For the purpose of this subclause the following conditions shall apply:

- (a) The first period shall be deemed to commence on the 23 December, 1996 and subsequent periods shall commence at four (4) weekly periods thereafter.
- (b) An employee shall be credited with 32 hours at the commencement of each four (4) weekly period.
- (c) The number of hours at the credit of any employee at any time shall not exceed 32 hours.
- (d) If any employee commences employment during a four (4) weekly period he/she shall be credited 32 hours where he/she commences on any working day within the first week; 24 hours where he/she commences on any working day within the second week; 16 hours where he/she commences on any working day within the third week; and 8 hours where he/she commences work on any working day within the fourth week.
- (e) No employee shall be entitled to receive more than 32 hours inclement weather payment in any period of four (4) weeks.
- (f) The number of hours credited to any employee under this clause shall be reduced by the number of hours for which payment is made in respect of lost time through inclement weather.

(g) Payment under this award shall be made weekly.

(7) Transfers

Employees may be transferred from one location on a site where it is unreasonable to work due to inclement weather, to work at another location on the same site or another site, which is not affected by inclement weather subject to the following:

- (a) No employee shall be transferred to an area not affected by inclement weather unless there is work available in his/her trade.
- (b) Employees may be transferred from one location on a site to work in areas which are not affected by conditions of inclement weather even though there may not be work for all employees in such areas.
- (c) Employees may be transferred from one site to another site and the employer provides, where necessary, transport.

(8) Emergency Work

- (a) Except as provided in this subclause an employee shall not work or be required to work in the rain.
- (b) Where emergency work is performed work shall be paid at the rate of double time calculated to the next hour, and in the case of wet weather work shall be provided with adequate wet weather gear.

If an employee's clothes become wet as a result of working in the rain during emergency work he/she shall, unless he/she has a change of clothes available, be allowed to go home without loss of pay.

(9) Cessation and Resumption of Work

- (a) At the time employees cease work due to inclement weather the employer or his/her representative on site and the employee's representative shall agree and note the time of cessation of work.
- (b) After the period of inclement weather has clearly ended the employees shall resumed work and the time shall be similarly agreed and noted.
- (c) Safety

Where an employee is prevented from working at his/her particular function as a result of unsafe conditions caused by inclement weather, he/she may be transferred to other work in his/her trade on site, until the unsafe conditions are rectified. Where such alternative work is not available and until the unsafe conditions are rectified, the employee shall remain on site. He/she shall be paid for such time without reduction of his/her inclement weather entitlement.

(10) Additional Wet Weather Procedure

- (a) Remaining on site:

Where, because of wet weather, the employees are prevented from working:

- (i) for more than an accumulated total of four (4) hours of ordinary time in any one day; or
- (ii) after the meal break, as provided for in Clause 11. - Hours, for more than an accumulated total of 50% of the normal afternoon work time; or
- (iii) during the final two (2) hours of the normal work day for more than an accumulated total of one hour, the employer shall not be entitled to require the employees to remain on site beyond the expiration of any the above circumstances.

Provided that, where by agreement between the employer and/or his/her representative and the employees' representative the persons remain on site beyond the periods specified above, any such additional, wet time shall be paid for but shall not be debited against the employees' hours.

Provided further that wet time occurring during overtime shall not be taken into account for the purposes of this subclause.

(b) Rain at Starting Time -

Where the employees are in the sheds, because they have been rained off, or at starting time, morning tea, or at lunch time, and it is raining, they shall not be required to go to work in a dry area or to be transferred to another site unless:

- (i) the rain stops; or
- (ii) a covered walkway has been provided; or
- (iii) the sheds are under cover and the employees can get to the dry area without going through the rain; or
- (iv) adequate protection is provided.

Protection shall, where necessary, be provided for the employees' tools.

Provided that, for the purpose of the clause, a "dry area" shall mean a work location that has not become saturated by rain or where water would not drip on the employees.

Part 2 - Off Site Factory Employees

Consistent with the Occupational Health and Safety Act the employer and employees working in the factory shall ensure that employees at the factory do not suffer harm to their health from heat stress.

To this end the employer will ensure that:

- (1) all employees at the factory are provided with training on measures to be taken to avoid any harmful effects from conditions which cause heat strain;
- (2) appropriate work place environmental controls, work practices and monitoring are implemented; and
- (3) if appropriate, a programme for monitoring the health of employees at the factory is implemented.

## **APPENDIX - RESOLUTION OF DISPUTES REQUIREMENTS**

- (1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996 (Industrial Relations Legislation Amendment and Repeal Act 1995) and further varied by legislation which came into effect on 23 May 1997 (Labour Relations Legislation Amendment Act 1997).
- (2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.
- (3) With effect from 22 November 1997 the dispute or grievance procedures in this award/industrial agreement is hereby varied to include the requirement that persons involved in the question, dispute or difficulty will confer among themselves and make reasonable attempts to resolve questions, disputes or difficulties before taking those matters to the Commission.

APPENDIX A

NORTH WEST SHELF GAS PROJECT

(1) Liberty to Apply

Liberty to Apply to insert provisions relating to future project is reserved.

## **APPENDIX B**

### **ASBESTOS ERADICATION**

#### **1. - APPLICATION**

This Appendix shall apply to employees engaged in the process of asbestos eradication on the performance of work within the scope of this award.

#### **2. - DEFINITION**

Asbestos eradication is defined as work on or about buildings, involving the removal or any other method of neutralisation of any materials which consist of, or contain asbestos.

#### **3. - CONTROL**

All aspects of asbestos work will meet as a minimum standard the provisions of the National Health and Medical Research Council codes, as varied from time to time, for the safe demolition/removal of asbestos based materials.

Without limiting the effect of the above provision, any person who carries out asbestos eradication work shall do so in accordance with the legislation/regulations prescribed by the appropriate authorities.

#### **4. - OPERATION**

This Appendix shall come into operation from the first pay period commencing on or after the date the award issues.

#### **5. - RATE OF PAY**

In addition to the rates prescribed in this award, an employee engaged in asbestos eradication (as defined) shall receive \$1.54 per hour worked in lieu of Special Rates prescribed in Clause 9(1) of this award with the exception of subclauses (b), (c) and (e).

#### **6. - PROTECTION OF EMPLOYEES**

##### **Respiratory Protection**

Respiratory protective equipment, conforming to the relevant parts of the appropriate Australian Standard (ie 1716 "Specification for Respiratory Protective Devices") shall be worn by all personnel during work involving eradication of asbestos.

#### **7. - OTHER CONDITIONS**

The conditions of employment, rates and allowances, except so far as they are otherwise specified in this Appendix, shall be the conditions of employment, rates and allowances of the award as varied from time to time.

This Appendix shall not apply to employees engaged on the removal of asbestos ceiling insulation and renovation work on houses owned by the United States Navy at Exmouth and who are receiving the allowance prescribed on 23 February by Mr Commissioner Coleman Print F4597.

## **APPENDIX C**

### **FARES AND TRAVELLING - DAILY RATES RESPONDENTS**

Blastworks Pty Ltd  
Egmont Road  
HENDERSON WA 6166

Gardner Bros & Perrott (WA) Pty Ltd  
20 Stack Street  
FREMANTLE WA 6160

Mills Sign and Painting Service  
15 Robert Street  
BELLEVUE WA 6056

Total Corrosion Control Pty Ltd  
424 Office Road  
KWINANA WA 6107

J.M. Best & Sons  
2 Barad Street  
BUNBURY WA 6230

Steelglow  
781 Cockburn Road  
SOUTH COOGEE WA 6166

Suncity Sandblasters  
Lot 14 Fores Road  
GERALDTON WA 6530

## **SCHEDULE A**

### RESPONDENTS

Abrasive Blasting Services Pty Ltd  
38 Landsdown Road  
GOOSEBERRY HILL WA 6076

Blastcoaters Pty Ltd  
58 Dowd Street  
WELSHPOOL WA 6106

Blastworks Pty Ltd  
Egmont Road  
HENDERSON WA 6166

Dalla Riva & Associates Pty Ltd  
31 Cutler Road  
JANDAKOT WA 6164

Dwyers Sandblasting & Industrial Painting  
88 Mantara Street  
KALGOORLIE WA 6430

Feroblast (WA) Pty Ltd  
159 McDowell Street  
KEWDALE WA 6105

Gardner Bros & Perrott (WA) Pty Ltd  
20 Stack Street  
FREMANTLE WA 6160

Masterblasters Mobile Sandblasting  
213 Benara Road  
BEECHBORO WA 6063

Mills Sign and Painting Service  
15 Robert Street  
BELLEVUE WA 6056

Rustproofers (Aust) Pty Ltd  
26 Cutler Road  
JANDAKOT WA 6164

Total Corrosion Control Pty Ltd  
424 Office Road  
KWINANA WA 6107

Zinco (WA) Pty Ltd  
54 Banksia Road  
WELSHPOOL WA 6106

## SCHEDULE B - SUPERANNUATION

Note: The *Superannuation Legislation Amendment (Choice of Superannuation Funds) Act 2005* provides that individual employees generally have the opportunity to choose their own superannuation funds. For further information see the AIRC guidance note – [Choice of Superannuation Funds and Award Provisions](#).

The superannuation provisions contained herein operate subject to the requirements of the hereinafter prescribed provision titled – Compliance, Nomination and Transition.

### 1. Definitions

For the purposes of this clause -

- (a) "Superannuation legislation" means the Federal legislation, as varied from time to time, governing the Superannuation rights and obligations of the parties, which includes 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.
- (b) "Fund" means a complying fund, as defined in the Superannuation legislation.
- (c) "Eligible employee" shall mean an employee who is entitled to receive employer superannuation contributions in accordance with the Superannuation legislation.
- (d) "The relevant fund" means the fund selected in respect of an employee pursuant to subclause 4 hereof.
- (e) "Ordinary time earnings" (which for the purposes of the Superannuation Guarantee (Administration) Act 1992 will operate to provide a notional earnings base) shall mean the actual ordinary rate of pay the employee receives for ordinary hours of work including shift loading, special rates, location allowance and leading hand allowance where applicable. The term includes any regular over-award pay as well as casual rates received, and additional rates and allowances paid for work undertaken during ordinary hours of work including fares and travel allowances payable pursuant to Clauses 47(2), 47(3) and 47(4). Other reimbursement allowances are excluded.

### 2. Contributions

- (a) In accordance with the Superannuation legislation and subject to the Trust Deed of the relevant Fund, an employer shall contribute an amount on behalf of each eligible employee into a relevant superannuation fund, which reflects the employers' liability as prescribed in Part 3 of the Superannuation Guarantee (Administration) Act 1992 (as set out in (b) below).
- (b) The level of contributions required under the Superannuation Guarantee (Administration) Act 1992 are as follows:

Financial Year (1 July - 30 June)	Percentage
1997 -98	6
1998 - 99	7

### 3. Employee Contributions

- (a) Subject to the rules of the Fund, employees who wish to make contributions to the Fund additional to those being paid pursuant to subclause 2 hereof, shall be entitled to do so. Such employees may either forward their own contributions directly to the Fund administrators or, where, it is practicable to do so, 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 in Trust on the employee's behalf and be subject to the following conditions:
  - (i) The amount of contributions shall be expressed in whole dollars.
  - (ii) Employees shall have the right to adjust the level of contribution made on their own behalf from the first of the month following the giving of three months' written notice to the employer. Provided that by agreement with the employer, employees may vary their additional contribution in extenuating circumstances at other times.
  - (iii) Contributions deducted under this clause shall be forwarded to the Fund at the same time as contributions under subclause 2 hereof.

### 4. Superannuation Fund

- (a) The employer shall make superannuation contributions, or improvements pursuant to this clause, to any of the following Funds (that meet the definition set out in 1(b)):
  - (i) C+BUS, the Westscheme Superannuation Scheme, Building Employees Superannuation Trust; or
  - (ii) any fund agreed between the employer and eligible employees, and the Union or Unions, where applicable; or
  - (iii) any other approved occupational superannuation fund to which an employer or eligible employee who is a member of the religious fellowship known as The Exclusive Brethren elects to contribute.
- (b) Provided that an employer shall not be required to contribute to more than one fund in respect of eligible employees employed under his Award.
- (c) Subject to the terms of this clause, where there is a dispute over the choice of fund in respect of one or more employees, the matter shall be referred to the Western Australian Industrial Relations Commission for determination.

### 5. Fund Membership

The employer shall make an eligible employee aware of his/her entitlements under this clause and shall arrange for such eligible employee the opportunity to become a member of the relevant Fund. An eligible employee shall, within a period of 30 days from commencement of employment complete the necessary application forms to become a member of the relevant fund, to the satisfaction of the Trustees of that Fund, in order to be entitled to the contributions prescribed in subclause 2 hereof.

6. Absence from Work

Subject to the Trust Deed to the Fund of which an employee is a member the following provisions shall apply:

(a) Paid Leave

Contributions shall continue whilst a member of a Fund is absent on paid annual leave, sick leave, long service leave, public holidays, jury service, bereavement leave, or other paid leave.

(b) Unpaid Leave

Contributions shall not be required in respect of any period of absence from work without pay of one day or more.

(c) Work Related Injury or Illness

In the event of an eligible employee's absence from work being due to work related injury or work related illness, contributions at the normal rate shall continue for the period of the absence provided that:

- (i) the member of the fund is receiving workers compensation payments or is receiving regular payments directly from the employer in accordance with statutory requirements or the provisions of the Award;
- (ii) the person remains an employee of the employer.

Compliance, Nomination and Transition

Notwithstanding anything contained elsewhere herein which requires that contribution be made to a superannuation fund or scheme in respect of an employee, on and from 30 June 1998 –

- (a) Any such fund or scheme shall no longer be a complying superannuation fund or scheme for the purposes of this clause unless –
  - (i) the fund or scheme is a complying fund or scheme within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and
  - (ii) under the governing rules of the fund or scheme, contributions may be made by or in respect of the employee permitted to nominate a fund or scheme;
- (b) the employee shall be entitled to nominate the complying superannuation fund or scheme to which contributions are to be made by or in respect of the employee;
- (c) The employer shall notify the employee of the entitlement to nominate a complying superannuation fund or scheme as soon as practicable;
- (d) A nomination or notification of the type referred to in paragraphs (b) and (c) of this subclause shall, subject to the requirements of regulations made pursuant to the Industrial Relations Legislation Amendment and Repeal Act 1995, be given in writing to the employer or the employee to whom such is directed;

- (e) The employee and employer shall be bound by the nomination of the employee unless the employee and employer agree to change the complying superannuation fund or scheme to which contributions are to be made;
- (f) The employer shall not unreasonably refuse to agree to a change of complying superannuation fund or scheme requested by a employee;

Provided that on and from 30 June 1998, and until an employee thereafter nominates a complying superannuation fund or scheme –

- (g) if one or more complying superannuation funds or schemes to which contributions may be made be specified herein, the employer is required to make contributions to that fund or scheme, or one of those funds or schemes nominated by the employer;

or

- (h) if no complying superannuation fund or scheme to which contributions may be made be specified herein, the employer is required to make contributions to a complying fund or scheme nominated by the employer.

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