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INDUSTRIAL GAZETTE

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CONTENTS

Vol. 360, Part 2

28 July 2006

Pages 264 - 443

		Page
Awards and Determinations -		
Awards Made or Varied -		
Armaguard NSW Road Crew Enterprise Award 2005 - 2008	(OIRC)	437
Boral Emu Plains Quarry Transition to Closure (State)	(AIRC)	353
Boral Prospect Quarry (State)	(AIRC)	314
Boral Prospect Quarry Transition to Closure (State)	(AIRC)	362
Butter, Cheese & Other Dairy Products (State)	(VSW)	398
Crown Employees (Education Employees Department of Corrective Services) Consent Award 2006	(AIRC)	371
Crown Employees (Independent Pricing and Regulatory Tribunal 2006)	(AIRC)	264
Crown Employees (Institute Managers in TAFE) Salaries and Conditions Award 2006	(AIRC)	384
Crown Employees (School Administrative and Support Staff)	(VIRC)	416
Electrical, Electronic and Communications Contracting Industry (State)	(VIRC)	400
Health Employees' Conditions of Employment (State)	(ERR)	438
Inala Disability Services (State)	(VIRC)	406
Macquarie Generation Employees (State) Award 2005	(VIRC)	434
Refinery Operators Shell Refining (Australia) Pty Ltd Award 2006	(AIRC)	281
Wholesale Fruit and Vegetable Employees' (State)	(VIRC)	431
Enterprise Agreements Approved by the Industrial Relations Commission		440

CROWN EMPLOYEES (INDEPENDENT PRICING AND REGULATORY TRIBUNAL 2006) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Independent Pricing and Regulatory Tribunal of New South Wales.

(No. IRC 3136 of 2005)

Before Commissioner Murphy

27 June 2006

AWARD

PART A

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Title
3.	Definitions
4.	Consultative Arrangements
5.	Parties
6.	Work Environment
7.	Salaries
8.	Salaries - Restrictions within Levels
9.	Appointment and Promotion
10.	Salary Progression
11.	Salary Sacrifice and Packaging
12.	Hours of Work - Staff, Levels 1 to 4 and IPART Officer A to G
13.	Hours of Work - Staff, Level 5 and IPART Officer H and I
14.	Overtime
15.	Allowances
16.	Training and Development
17.	Reimbursement of Fees
18.	Recreation Leave
19.	Sick Leave
20.	Family and Community Service Leave
21.	Salary Trade Off for Additional Leave
22.	Leave Without Pay
23.	Extended Leave
24.	Military Leave
25.	Parental Leave
26.	Religious Or Cultural Observations
27.	Special Leave
28.	Study Leave
29.	Study Time
30.	Annual Leave Loading
31.	Public Holidays
32.	Part-Time Work
33.	Work from Home
34.	Part-Time Leave Without Pay
35.	Part-Year Employment

36. Job Sharing
37. Discipline Procedures and Termination of Employment
38. Grievance and Dispute Settling Procedures
39. Managing Displaced Staff
40. Trade Union Activities
41. Deduction of Association Membership Fees
42. Secure Employment - Casual Conversion
43. Secure Employment - Occupational Health & Safety
44. Anti-Discrimination
45. No Extra Claims
46. Savings of Rights
47. Relationship to Other Awards
48. Area, Incidence and Duration
49. Table 1 - Salaries (Staff appointed prior to making of award)
50. Table 2 - Salaries (Staff appointed after making of the award)

2. Title

This award shall be known as the Crown Employees (Independent Pricing and Regulatory Tribunal 2006) Award.

3. Definitions

"Act" means the *Independent Pricing and Regulatory Tribunal Act 1992*.

"At the convenience of" means the operational requirements to permit the staff member's release from duty or that satisfactory arrangements can be made for the performance of the staff member's duties during the absence.

"Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.

"Chief Executive Officer" means the Chief Executive Officer of the Independent Pricing and Regulatory Tribunal who has been delegated particular power(s) under the Act.

"Contract Executive" is a person employed in a position by the Tribunal under section 8 (2) of the Act whose terms and conditions of employment are governed by an employment contract.

"Contractor/Consultant" is a person or company engaged by the Tribunal under section 9 (4) of the Act to assist it in the exercise of its functions.

"JCC" means the IPART Joint Consultative Committee established by this award and its predecessors.

"Memorandum of Understanding" means the document signed between IPART and the Association that reflects the agreements made during the negotiations for this award. This document contains the conditions for staff who elect to transfer to the new Table 2 salaries in this award.

"Nominee" means a person who has been delegated particular power(s) of the Chief Executive Officer.

"Normal work" means the method of carrying out work functions that were established practice prior to the onset of a dispute or grievance, in terms of the Grievance and Dispute Settling Procedures clause in this Award.

"Position" means a position, either full time or part time, at the Tribunal.

"Salary Rates" means the ordinary time rate of pay for the Staff member's grading excluding allowances and penalties not regarded as salary.

"Service" means continuous period of employment for salary purposes.

"Staff" means and includes all persons who are permanently or temporarily employed under section 8(2) of the *Independent Pricing and Regulatory Tribunal Act 1992*, excluding contract executives.

"Supervisor" means the immediate supervisor of the area in which a staff member is employed or any other staff member authorised by the Chief Executive Officer to fulfil the role of a supervisor, other than a person employed as a consultant or contractor.

"Tribunal" means the Independent Pricing and Regulatory Tribunal.

"Workplace" means the whole organisation or, as the case may be, a branch or section of the organisation that staff are employed in.

4. Consultative Arrangements

- (i) The parties to this award shall through the established Joint Consultative Committee (JCC) encourage and facilitate workplace reform and equitable, innovative and productive workplace relations.

5. Parties

- (i) The parties to this award are IPART and the Association.

6. Work Environment

- (i) Occupational Health and Safety

Through the JCC, the parties to this award shall develop appropriate strategies to achieve and maintain an accident free and healthy workplace in accordance with the Occupational Health and Safety Act 2000 and Regulations.

- (ii) Equity in Employment

Through the JCC, the parties to this award shall review existing and new work practices and policies to achieve and maintain employment equity.

- (iii) Harassment-Free Workplace

The parties to this award shall refrain from, and not be party to, any form of harassment in the workplace.

7. Salaries

- (i) The salary ranges prescribed by this award are as set out in Table 1 and Table 2 - Salaries, of Part B, Monetary Rates.

- (a) Table 1 - Salaries only applies to staff permanently appointed to positions on that Salary Table as at the date of the commencement of this award.

- (b) Table 2 - Salaries applies to new staff permanently appointed after the date of the commencement of this award, or current staff who elect to transfer or are promoted to positions on the Salary Table.

- (ii) Subject to the provisions of the Salary Progression clause in this Award, and the subclause dealing with staff employed by the Tribunal in specified positions prior to June 30 1996, staff covered by this award shall have access to annual incremental progression to all of the salary points within the levels as set out in the said Table 1 and Table 2 as applicable.

(iii) The award shall in both Table 1 and Table 2 provide salary increases as follows:

- (a) 4% from the first full pay period on or after 1 July 2005;
- (b) 4% from the first full pay period on or after 1 July 2006;
- (c) 4% from the first full pay period on or after 1 July 2007.

8. Salaries - Restrictions Within Levels

This clause applies to those staff who elect to remain on the salaries as set out in Table 1.

(i) The maximum salary points available for annual incremental progression for the following administrative positions are:

(a) Client Service Officer	Level 1	Salary point 7
(b) Communications Support Officer	Level 2	Salary point 7
(c) Team Support Officer	Level 2	Salary point 7
(d) Executive Assistant	Level 2	Salary point 7
(e) Assistant Technical Officer	Level 2	Salary point 7
(f) Administrative Assistant	Level 2	Salary point 7
(g) IT Manager	Level 3	Salary Point 5
(h) Manager Human Resources	Level 3	Salary Point 5
(i) Office Services Manager	Level 3	Salary Point 5

- (ii) The provisions restricting progression for administrative positions shall not apply to staff employed by the Tribunal in any of the positions referred to in the restrictive provisions subclause prior to June 30, 1996.
- (iii) The maximum salary payable for administrative positions may be set and/or reviewed by the Chief Executive Officer at any point, having regard to work value and maximum salaries payable for similar work done outside the Tribunal.

9. Appointment and Promotion

- (i) The Chief Executive Officer or nominee may appoint or promote a person to any salary that is within the salary range.
- (ii) In determining commencing salary regard shall be given to:
 - (a) The person's skills, experience and qualifications;
 - (b) The rate required to attract the person; and
 - (c) The remuneration of existing staff performing similar work.
- (iii) On appointment or promotion, a staff member shall be advised of his/her commencing salary rate and of any salary increments to which he/she may have access.
- (iv) New staff appointed to positions at the Tribunal shall be in the first instance appointed on a probationary basis for a period up to 6 months.
- (v) The probation period may be varied or waived at the discretion of the Chief Executive Officer or nominee.

10. Salary Progression

- (i) Performance Enhancement System
 - (a) Formal appraisal under the Tribunal's Performance Enhancement System (PES) shall be used to assess incremental progression to the next salary point within each level.
 - (b) The salary and performance of each staff member shall normally be reviewed annually on the anniversary of the appointment to their current position.
 - (c) In special circumstances, additional formal appraisals may be completed within the annual cycle.
- (ii) Accelerated Progression

A staff member who performs exceptionally (as determined by PES appraisals) may be recommended to the Chief Executive Officer for accelerated progression through the salary points within the Levels as set out in Table 1 and Table 2 - Salaries, of Part B, Monetary Rates.

11. Salary Sacrifice and Packaging

The Chief Executive Officer may enter into agreements with staff for salary sacrifice for superannuation and/or other agreed benefits within NSW Government Policy.

Salary Sacrifice to Superannuation

- (i) An employee may elect, subject to the agreement of the Tribunal, to sacrifice a portion of the salary payable under Clause 7 to additional employer superannuation contributions. Such election must be made prior to the commencement of the period of service to which the earnings relate. The amount sacrificed must not exceed fifty (50) percent of the salary payable under Clause 7 or fifty (50) percent of the current applicable superannuable salary, whichever is the lesser. In this clause "superannuable salary" means the employee's salary as notified from time to time, to the NSW public sector superannuation trustee corporations.
- (ii) Where the employee has elected to sacrifice a portion of that payable salary to additional employer superannuation contributions:
 - (a) subject to Australian Taxation law, the sacrificed portion of salary will reduce the salary subject to appropriate PAYG taxation deductions by the amount of that sacrificed portion, and
 - (b) any allowance, penalty rate, payment for unused entitlements, weekly worker's compensation or other payment, other than any payments for leave taken in service, to which an employee is entitled under this award or any applicable award, Act or statute which is expressed to be determined by reference to an employee's salary, shall be calculated by reference to the salary which would have applied to the employee under Clause 7 of this award in the absence of any salary sacrifice to superannuation made under this award.
- (iii) The employee may elect to have the portion of payable salary which is sacrificed to additional employer superannuation contributions:
 - (a) Paid into the superannuation scheme established under the *First State Superannuation Act 1992* as optional employer contributions, or
 - (b) Subject to the Tribunal's agreement, paid into a private sector complying superannuation scheme as employer superannuation contributions.
- (iv) Where an employee elects to salary sacrifice in terms of subclause (iii) above, the Tribunal will pay the sacrificed amount into the relevant superannuation fund.

- (v) Where the employee is a member of a superannuation scheme established under:
 - (a) The *Police Regulation (Superannuation) Act 1906*;
 - (b) The *Superannuation Act 1916*;
 - (c) The *State Authorities (Superannuation) Act 1987*;
 - (d) The *State Authorities Non-contributory Superannuation Act 1987*; or
 - (e) The *First State Superannuation Act 1992*.

The Tribunal must ensure that the amount of any additional employer superannuation contributions specified in subclause (i) above is included in the employee's superannuable salary which is notified to the NSW public sector superannuation trustee corporations.

- (vi) Where, prior to electing to sacrifice a portion of his/her salary to superannuation, an employee had entered into an agreement with the Tribunal to have superannuation contributions made to a superannuation fund other than a fund established under legislation listed in subclause (v) above, the Tribunal will continue to base contributions to that fund on the salary payable under subclause (iv) to the same extent as applied before the employee sacrificed portion of that salary to superannuation. This clause applies even though the superannuation contributions made by the Tribunal may be in excess of superannuation guarantee requirements after the salary sacrifice is implemented.

12. Hours of Work - Staff, Levels 1 to 4 and IPART Officer A to G

- (i) The business hours of the Tribunal are from 8.30 a.m. to 5.00 p.m., Monday to Friday.
- (ii) Standard hours are 35 hours per week between 9.00 a.m. and 5.00 p.m., Monday to Friday.
- (iii) The ordinary hours of work are 35 hours per week averaged over a 12 week period.
- (iv) The Tribunal may require a staff member to perform duty beyond the hours determined under this clause but only if it is reasonable for the staff member to be required to do so. A staff member may refuse to work additional hours in circumstances where the working of such hours would result in the staff member working unreasonable hours. In determining what is unreasonable the following factors shall be taken into account:
 - (a) the staff member's prior commitments outside the workplace, particularly the staff member's family and carer responsibilities, community obligations or study arrangements;
 - (b) any risk to staff member health and safety;
 - (c) the urgency of the work required to be performed during additional hours, the impact on the operational commitments of the organisation and the effect on client services;
 - (d) the notice (if any) given by the Tribunal regarding the working of the additional hours, and by the staff member of their intention to refuse the working of additional hours or;
 - (e) any other relevant matter.

13. Hours of Work - Staff, Level 5 and IPART Officer H and I

- (i) The ordinary hours of work are 35 hours per week averaged over a 12 week period.
- (ii) Level 5 and IPART Officer H and I staff shall not normally work more than ten hours in one day.
- (iii) If a Level 5 or IPART Officer H and I staff member works for an extended period they may take an appropriate period of time off with the Supervisor's prior approval.

14. Overtime

- (i) The overtime provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply, however:
 - (a) Staff directed to work overtime, up to and including Level 4 and up to and including IPART Officer G, shall be paid overtime at their current salary, or salary and allowance in the nature of salary.
 - (b) Such overtime shall be approved in advance by the Chief Executive Officer or nominee.
 - (c) The payment of overtime shall not apply to Level 5 or IPART Officer H and I staff.

15. Allowances

- (i) Meal Allowances

The meal allowances provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

- (ii) Higher Duties Allowance

Staff directed to perform the duties of a higher position for at least five (5) consecutive working days shall be paid an allowance. The Chief Executive Officer or nominee shall determine the amount of the allowance.

- (iii) Travel Allowances - Conditions

- (a) The travel allowances provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.
- (b) The applicable sections cover: Travelling Compensation, Excess Travelling Time, Waiting Time, Payment, Meal Allowances, Accommodation, etc. Allowances (Non Government Accommodation), Accommodation, etc. Allowances (Government Accommodation), Adjustment of Allowances, Production of Receipts, Travel Allowances - Monetary Rates.

- (iv) First Aid Allowance

- (a) The first aid allowance provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.
- (b) Adequate first aid outfits shall be provided, maintained and placed under the control of nominated staff possessing first aid qualifications.

- (v) Recruitment and Retention Allowance

- (a) The Chief Executive Officer may pay a recruitment and retention allowance to eligible Level 5 or IPART Officer H and I staff.
 - (1) The allowance plus salary shall not exceed the maximum of the equivalent salary of a Grade 3 Year 2 Senior Officer as set out in the Crown Employees (Senior Officers Salaries) Award as varied and subject to the operation of subparagraph (a) (2) below.
 - (2) Where it is deemed appropriate, the Chief Executive Officer shall consult to the point of agreement with the Director-General, Premier's Department, before approving payment of a higher allowance than that prescribed in subparagraph (a) (1) above.
- (b) The Chief Executive Officer may pay a recruitment and retention allowance to eligible Level 4 staff or IPART Officer G.

- (1) The allowance plus salary shall not exceed the maximum of the equivalent salary of IPART Office H Year 1 as set out in Table 2 Salaries of this award as varied.

16. Training and Development

The provisions relating to staff development and training activities as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

17. Reimbursement of Fees

Staff undertaking approved part-time study or training shall be eligible for reimbursement of all or part of the fees (including HECS) and/or other compulsory charges.

18. Recreation Leave

The recreation leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

19. Sick Leave

The sick leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply. Further:

- (i) Staff absent from duty because of illness or incapacity shall, where possible, report the absence not later than one hour after their normal commencing time.
- (ii) In exceptional circumstances and on a case by case basis, the Chief Executive Officer or nominee, may grant staff paid special sick leave or allow the leave to be taken on a half pay basis, including leave to be taken on half pay during extended periods of absence.

20. Family and Community Service Leave

The Family and Community Service Leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply. The personal carer's leave provisions are contained in this clause and also in the Sick Leave clause of this award.

21. Salary Trade Off for Additional Leave

The Chief Executive Officer or nominee may approve an application by a staff member for the salary trade-off for additional leave in accordance with the Tribunal's policy.

22. Leave Without Pay

The leave without pay provisions as set in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

23. Extended Leave

The extended leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

24. Military Leave

The military leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

25. Parental Leave

Parental leave provisions include Maternity leave and Adoption Leave. The parental leave provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

26. Religious Or Cultural Observations

The observance of essential religious or cultural obligations shall be in accordance with provisions in the Crown Employees (Public Service Conditions of Employment) Award as varied.

27. Special Leave

- (i) Special leave is paid leave which applies to activities not regarded as being on duty and which are not covered by other forms of leave. The Chief Executive Officer or nominee may grant special leave in accordance with the provisions in the Crown Employees (Public Service Conditions of Employment) Award as varied, in the following situations:
 - (a) Jury service.
 - (b) Witness at court - official capacity.
 - (c) Witness at court - other than in official capacity - Crown witness.
 - (d) Called as a witness in a private capacity.
 - (e) Examinations.
 - (f) Association activities.
 - (g) Return home when temporarily living away from home.
 - (h) Return home when transferred to new location.
- (ii) In addition to the provisions in the Crown Employees (Public Service Conditions of Employment) Award as varied, special leave may be granted for the following situations:
 - (a) Volunteers of recognised organisations (five days in any period of 12 months).
 - (b) First aid training and retraining.
 - (c) Attend retirement preparation seminars (two days).
 - (d) Meetings for financial members of professional or learned societies (up to five days).
 - (e) Competitors or officials at the Commonwealth or Olympic/Paralympic Games (up to four weeks).
- (iii) Any other circumstance applied for by staff as special leave, that is not covered by this clause may be granted by the Chief Executive Officer or nominee on a case by case basis.

28. Study Leave

- (i) Study leave for full-time may be granted to assist staff who win scholarships/fellowships/awards or who wish to undertake full-time study and/or study tours.
- (ii) Study leave may be granted for studies at any level, including undergraduate study.

- (iii) The grant for study leave is entirely at the discretion of the Chief Executive Officer or nominee and is dependent on the availability of Tribunal funds and the relevance and value of the studies to the Tribunal.

29. Study Time

Study time is available to develop the skills and versatility of staff and may be granted at the discretion of Chief Executive Officer or nominee.

30. Annual Leave Loading

The annual leave loading provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply, however, no restrictions on salary paid to staff shall apply.

31. Public Holidays

The public holidays provisions as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, shall apply.

32. Part Time Work

Staff engaged on a part-time basis shall be granted leave and other entitlements on a pro-rata basis in accordance with the requirements of the *Industrial Relations Act 1996*.

33. Work from Home

- (i) The Chief Executive Officer or nominee may approve applications by staff to work from home on a temporary, fixed term, or regular basis.
- (ii) Approval may be granted where a family member requires care or where a project or report requires urgent completion that would be assisted by working from home.
- (iii) Generally, working from home shall be granted where the Chief Executive Officer or nominee and staff are in agreement that:
- (a) appropriate work is available that can be done at home efficiently without supervision and without liaison with other staff;
 - (b) the absence does not adversely affect the performance of the work group or the provision of necessary support services to others;
 - (c) the home environment or circumstances will not prevent staff from completing an amount of work equivalent to what would normally be completed in the office environment; and
 - (d) staff are available for telephone consultation and where possible available to return to the office at short notice.
- (iv) All work from home approvals shall ensure adequate consideration of, and compliance with occupational health and safety, confidentiality and security provisions.
- (v) Where appropriate, facilities and equipment shall be provided to enable staff to work at home.

34. Part Time Leave Without Pay

The Chief Executive Officer or nominee may approve part time leave without pay (LWOP) for full-time staff for a limited period of time.

35. Part Year Employment

- (i) The Chief Executive Officer or nominee may grant staff part-year employment by approving a number of weeks unpaid leave per year under current LWOP provisions.
- (ii) This allows staff to work an agreed number of weeks per year, with an agreed number of weeks unpaid leave and annual leave on a pro-rata basis.

36. Job Sharing

- (i) The Chief Executive Officer or nominee may approve implementation of job-sharing arrangements.
- (ii) Job sharing is a voluntary arrangement in which one job is shared amongst staff working on a part-time basis.
- (iii) Job sharers may be employed on a part-time basis or may be full-time staff on part-time leave without pay.

37. Discipline Procedures and Termination of Employment

- (i) The Tribunal shall give two weeks notice or payment in lieu of notice to staff prior to termination of employment.
- (ii) In cases of serious or wilful misconduct the Chief Executive Officer or nominee may waive notice and no payment in lieu shall be due to staff.

38. Grievance and Dispute Settling Procedures

- (i) All grievances and disputes relating to the provisions of this award shall initially be dealt with as close to the source as possible, with graduated steps for further attempts at resolution at higher levels of authority, if required.
- (ii) A staff member is required to notify in writing their immediate manager, as to the substance of the grievance, dispute or difficulty, request a meeting to discuss the matter, and if possible, state the remedy sought.
- (iii) Where the grievance or dispute involves confidential or other sensitive material (including issues of harassment or discrimination under the Anti Discrimination Act, 1977) that makes it impractical for the staff member to advise their immediate manager the notification may occur to the next appropriate level of management, including where required, to the Department Head or delegate.
- (iv) The immediate manager shall convene a meeting in order to resolve the grievance, dispute or difficulty within two (2) working days, or as soon as practicable, of the matter being brought to attention.
- (v) If the matter remains unresolved with the immediate manager, the staff member may request to meet the appropriate person at the next level of management in order to resolve the matter. This manager shall respond within two (2) working days, or as soon as practicable. This sequence of reference to successive levels of management may be pursued by the staff member until the matter is referred to the Chief Executive Officer.
- (vi) The Chief Executive Officer or the Association may refer the matter to mediation.
- (vii) If the matter remains unresolved, the Chief Executive Officer shall provide a written response to the staff member and any other party involved in the grievance, dispute or difficulty, concerning action to be taken, or the reason for not taking action, in relation to the matter.
- (viii) A staff member, at any stage, may request to be represented by their Association.

- (ix) The staff member or the Association on their behalf or the Chief Executive Officer may refer the matter to the New South Wales Industrial Relations Commission if the matter is unresolved following the use of these procedures.
- (x) The staff member, the Association and Tribunal shall agree to be bound by any order or determination by the New South Wales Industrial Relations Commission in relation to the dispute.
- (xi) Whilst the procedures outlined in subclauses (i) to (x) of this clause are being followed, normal work undertaken prior to notification of the dispute or difficulty shall continue unless otherwise agreed between the parties. In a case involving occupational health and safety, if practicable, normal work shall proceed in a manner which avoids any risk to the health and safety of any staff member or member of the public.

39. Managing Displaced Staff

Where changes result in staff becoming displaced, the arrangements for managing such staff shall be in accordance with the NSW Government public sector "Managing Displaced Employees" policy and based on professional management practice, systematic restructuring process as well as merit and equity principles.

40. Trade Union Activities

The provisions for trade union activities as set out in the Crown Employees (Public Service Conditions of Employment) Award as varied, including consultation and technological change and union deductions, shall apply.

41. Deduction of Association Membership Fees

- (i) The Association shall provide the Tribunal with a schedule setting out Association fortnightly membership fees payable by members of the Association in accordance with the Association's rules.
- (ii) The Association shall advise the Tribunal of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Association fortnightly membership fees payable shall be provided to the Tribunal at least one month in advance of the variation taking effect.
- (iii) Subject to (i) and (ii) above, the Tribunal shall deduct Association fortnightly membership fees from the pay of any employee who is a member of the Association in accordance with the Association's rules, provided that the employee has authorised the Tribunal to make such deductions.
- (iv) Monies so deducted from employee's pay shall be forwarded regularly to the Association together with all necessary information to enable the Association to reconcile and credit subscriptions to employees' Association membership accounts.
- (v) Unless other arrangements are agreed to by the Tribunal and the Association, all Association membership fees shall be deducted on a fortnightly basis.
- (vi) Where an employee has already authorised the deduction of Association membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

42. Secure Employment - Casual Conversion

- (i) The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

(ii) Casual Conversion

- (a) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this clause.
- (b) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this clause if the employer fails to comply with this notice requirement.
- (c) Any casual employee who has a right to elect under paragraph (ii)(a), upon receiving notice under paragraph (ii)(b) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (d) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (e) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (f) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (ii)(c), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (ii)(c), discuss and agree upon:
 - (1) whether the employee will convert to full-time or part-time employment; and
 - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (g) Following an agreement being reached pursuant to paragraph (ii)(f), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (h) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this clause.

43. Secure Employment - Occupational Health & Safety

- (i) For the purposes of this clause, the following definitions shall apply:
- (a) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
 - (b) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
- (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
- (a) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
 - (b) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
 - (c) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
 - (d) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this clause is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (iv) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (v) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.

44. Anti-Discrimination

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent

with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

- (3) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (4) Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this award from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.
 - (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
 - (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

45. No Extra Claims

- (i) This award provides pay increases of 4% with effect from the first pay period to commence on or after 1 July 2005, a further increase of 4% with effect from the first pay period to commence on or after 1 July 2006; a further increase of 4% with effect from the first pay period to commence on or after 1 July 2007.
- (ii) These increases arise from the agreement of the parties contained in the Memorandum of Understanding between the IPART and the Association entered into in June 2006.
- (iii) The pay increases under this award are provided on the basis that there shall be no further claims for changes to salaries, rates of pay or allowances during the term of the June 2006 Memorandum of Understanding, between IPART and the Association.

46. Savings of Rights

No staff member covered by this award shall suffer a reduction in the rate of pay or any loss or diminution of any conditions of employment as a consequence of the making of this award.

47. Relationship to Other Awards

- (i) This award shall be varied to give effect to any salary increase or other benefits received by the public service as a result of a variation to the Crown Employees (Public Sector - Salaries 2004) Award or an award replacing it.
- (ii) This award shall be promptly reviewed in light of any variation to the Crown Employees (Public Service Conditions of Employment) Award, or an award replacing it, in so far as it may affect clauses referred to in that award by this award.
- (iii) Where there may be inconsistencies between this award and the Crown Employees (Public Service Conditions of Employment) Award as varied, the arrangements in this award shall prevail.

48. Area, Incidence and Duration

- (i) This award rescinds and replaces the Crown Employees (Independent Pricing and Regulatory Tribunal 2004) Award published 18 February 2005 (348 I.G. 573) and all variations thereof.
- (ii) The award shall come into effect from 1 July 2005 and remain in force until 30 June 2008 unless otherwise varied or rescinded.

PART B**MONETARY RATES****49. Table 1 - Salaries (Staff Appointed Prior to Making of Award)**

Salary level	Salary point (Increments)	FPP on or after 1 Jul 2004 per annum \$	FPP on or after 1 Jul 2005 per annum \$	FPP on or after 1 Jul 2006 per annum \$	FPP on or after 1 Jul 2007 per annum \$
Level 1	Salary point 1	31,778	33,049	34,371	35,746
	Salary point 2	33,701	35,049	36,451	37,909
	Salary point 3	35,625	37,050	38,532	40,074
	Salary point 4	37,549	39,051	40,613	42,238
	Salary point 5	39,476	41,055	42,698	44,405
	Salary point 6	41,398	43,054	44,776	46,567
	Salary point 7	43,323	45,056	46,858	48,733
	Salary point 8	44,366	46,141	47,987	49,906
	Salary point 9	47,170	49,057	51,019	53,060
	Salary point 10	49,096	51,060	53,103	55,227
	Salary point 11	51,017	53,058	55,180	57,387
	Salary point 12	52,943	55,061	57,263	59,554
	Salary point 13	54,866	57,061	59,343	61,717
	Salary point 14	56,793	59,065	61,428	63,885
Level 2	Salary point 1	47,663	49,570	51,553	53,615
	Salary point 2	50,204	52,212	54,301	56,473
	Salary point 3	52,744	54,853	57,047	59,329
	Salary point 4	55,279	57,490	59,790	62,181
	Salary point 5	57,817	60,129	62,535	65,036
	Salary point 6	60,357	62,772	65,283	67,894
	Salary point 7	62,895	65,411	68,027	70,748
	Salary point 8	65,433	68,050	70,772	73,603
	Salary point 9	67,971	70,690	73,518	76,458
	Salary point 10	70,509	73,329	76,262	79,313
	Salary point 11	73,045	75,967	79,006	82,166
Level 3	Salary point 1	63,553	66,095	68,739	71,489
	Salary point 2	66,959	69,638	72,423	75,320
	Salary point 3	70,368	73,183	76,111	79,155
	Salary point 4	73,774	76,725	79,794	82,986
	Salary point 5	77,182	80,269	83,480	86,819
	Salary point 6	80,585	83,809	87,161	90,648
	Salary point 7	83,995	87,354	90,849	94,482
	Salary point 8	87,402	90,898	94,534	98,315
	Salary point 9	90,809	94,441	98,219	102,147
Level 4	Salary point 1	89,102	92,666	96,373	100,228
	Salary point 2	93,819	97,572	101,475	105,534
	Salary point 3	98,537	102,478	106,577	110,841

Level 5	Salary point 1	107,970	112,288	116,780	121,451
	Salary point 2	112,688	117,196	121,884	126,759
	Salary point 3	117,405	122,101	126,985	132,064

50. Table 2 - Salaries (Staff Appointed After Making of the Award)

		Base salary per annum \$	FPP on or after 1 July 2005 per annum \$	FPP on or after 1 July 2006 per annum \$	FPP on or after 1 July 2007 per annum \$
IPART Officer A	Year 1	36,000	37,440	38,938	40,495
	Year 2	38,500	40,040	41,642	43,307
	Year 3	41,000	42,640	44,346	46,119
IPART Officer B	Year 1	44,000	45,760	47,590	49,494
	Year 2	46,500	48,360	50,294	52,306
	Year 3	49,000	50,960	52,996	55,118
IPART Officer C	Year 1	52,500	54,600	56,784	59,055
	Year 2	55,000	57,200	59,488	61,868
	Year 3	57,500	59,800	62,192	64,680
IPART Officer D	Year 1	61,500	63,960	66,516	69,179
	Year 2	64,000	66,560	69,222	71,991
	Year 3	66,500	69,160	71,926	74,803
IPART Officer E	Year 1	71,000	73,840	76,794	79,865
	Year 2	73,500	76,440	79,498	82,678
	Year 3	76,000	79,040	82,202	85,490
IPART Officer F	Year 1	81,000	84,240	87,610	91,114
	Year 2	83,500	86,840	90,314	93,926
	Year 3	86,000	89,440	93,018	96,738
IPART Officer G	Year 1	91,500	95,160	98,966	102,925
	Year 2	94,000	97,760	101,670	105,737
	Year 3	96,500	102,478	106,577	110,841
IPART Officer H	Year 1	102,500	106,600	110,864	115,299
	Year 2	105,000	109,200	113,568	118,111
	Year 3	107,500	111,800	116,272	120,923
IPART Officer I	Year 1	114,000	118,560	123,302	128,234
	Year 2	116,500	121,160	126,006	131,047
	Year 3	119,000	123,760	128,710	133,859

J. P. MURPHY, Commissioner

**REFINERY OPERATORS SHELL REFINING (AUSTRALIA) PTY LTD
AWARD 2006**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Shell Refining Australia Pty Limited.

(No. IRC 993 of 2006)

Before The Honourable Justice Marks

10 March 2006

AWARD

Scheme of Arrangement

PART 1

APPLICATION AND OPERATION OF AWARD

- 1.1 Definitions
- 1.2 Coverage of Award
- 1.3 Commencement Date and Term of Award
- 1.4 Review of Award
- 1.5 Anti-Discrimination

PART 2

CONSULTATION, CONTINUOUS IMPROVEMENT AND DISPUTE RESOLUTION

- 2.1 Ongoing consultations with the Refinery Operators Group on matters of mutual interest
- 2.2 Continuous Improvement
- 2.3 Dispute and Grievance Procedure

PART 3

EMPLOYMENT RELATIONSHIP AND DUTIES

- 3.1 Contract of Employment
- 3.2 Process Maintenance and Associated Matters
- 3.3 Operator Classifications
- 3.4 Acting Up
- 3.5 Operator Job Training
- 3.6 Category Structure

PART 4

ANNUALISED SALARY AND RELATED MATTERS

- 4.1 Annualised Salary (Wages)
- 4.2 Superannuation Treatment of Annualised Salary
- 4.3 Payment of Wages
- 4.4 Overtime
- 4.5 Flexible Hours Allowance
- 4.6 Clyde Miscellaneous Allowance
- 4.7 First Intervention Team Allowance

- 4.8 Mixed Functions
- 4.9 Transport Of Employees
- 4.10 Day Shiftworkers

PART 5

HOURS OF WORK

- 5.1 Standard Hours
- 5.2 Rosters
- 5.3 Day Shiftworker
- 5.4 Rest Periods (Ten Hour Break)

PART 6

LEAVE

- 6.1 Annual Leave
- 6.2 Sick Leave
- 6.3 Long Service Leave
- 6.4 Bereavement Leave
- 6.5 Parental Leave
- 6.6 Personal/Carer's Leave
- 6.7 Jury Service
- 6.8 Public Holidays

PART 7

UNION MATTERS

- 7.1 Right Of Entry
- 7.2 Union Delegate
- 7.3 Notice Board
- 7.4 Union Business
- 7.5 Union Training
- 7.6 Time in lieu
- 7.7 Payroll Deductions

PART 8

GORE BAY TERMINAL OPERATIONS

- 8.1 Boiler Operation
- 8.2 Ship Connections and Disconnections
- 8.3 Fourth Operator
- 8.4 Wharf Watch
- 8.5 Shore Officers
- 8.6 Gore Bay Day Liaison Operator

PART 9

LEAVE RESERVED

Gore Bay
Operator Establishment including Sparring (Clause 5.2.2)

PART 1

APPLICATION AND OPERATION OF AWARD

1.1. Definitions

"Company" means Shell Refining (Australia) Pty Ltd at Clyde Refinery, Granville and at Gore Bay Terminal.

"Continuous shift worker" means an employee engaged under this Award on a continuous shift roster.

"Day shift worker" is an employee employed under this Award engaged on a nine day fortnight basis attracting shift penalties and other entitlements as if a continuous shift worker.

"Employee" means an employee of the Company who is engaged within one of the classifications contained within clause 3.3 Operator Classifications of this Award.

"First Intervention Team (FIT) member" means an employee engaged under this Award who volunteers to participate in emergency responses for the term of this Award.

"Operator" means employees employed as Refinery and Gore Bay Terminal Operators.

"Parties" means Shell Refining (Australia) Pty Ltd and the Construction, Forestry, Mining and Energy Union (NSW Branch).

"Plant Controller" is a day staff position not subject to this Award.

"ROG" means Refinery Operator Group represented by duly elected delegates of the union.

"Shift Controller" is a shift staff position not subject to this Award.

"Shore Officer" is a shift staff position at the Gore Bay Terminal.

"Union" means the Construction, Forestry, Mining and Energy Union (NSW Branch).

1.2. Coverage of Award

This Award binds Shell Refining (Australia) Pty Ltd, the Construction, Forestry, Mining and Energy Union (NSW Branch) and employees of Shell Refining (Australia) Pty Ltd employed at the Clyde Refinery and Gore Bay Terminal as Refinery Operators:

- (a) who are members or eligible to be members of the CFMEU; and
- (b) who are covered by the classifications set out in clauses 3.3 and 6 of this Award.

1.3. Commencement Date and Term of Award

1.3.1 This Award rescinds and replaces the Refinery Operators Shell Refining (Australia) Pty Ltd Award 2004 published 19 August 2005 (353 I.G. 160) and all variations thereof.

1.3.2 It shall take effect from 1 February 2006 and shall remain in force thereafter until 31 January 2009.

1.3.3 It is a term of this Award that the parties shall make no extra claims unless pursued under the mechanisms provided for within this Award.

1.4. Review of Award

1.4.1 Not later than 30 October 2008 negotiations will commence for the renewal or otherwise of this Award.

1.5. Anti-Discrimination

- 1.5.1 It is the intention of the parties bound by this Award to seek to achieve the objects of the relevant legislation to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 1.5.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.
- 1.5.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 1.5.4 Nothing in this clause is to be taken to affect:
- (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this Award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- 1.5.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTES

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

PART 2

CONSULTATION, CONTINUOUS IMPROVEMENT AND DISPUTE RESOLUTION

2.1. Ongoing Consultation With the Refinery Operators Group on Matters of Mutual Interest

With the object of strengthening relationships and improving outcomes in the workplace, the following provisions on recognition, communication and consultation have been agreed to.

The CFMEU Refinery Operators Group (ROG) Committee, comprising a maximum of twelve delegates, is recognised as representatives of the Refinery Operators. The ROG Committee will meet the Company on a needs basis (normally monthly). Meetings will be held in an efficient way, due regard being had to all the demands on the parties' time.

Compensation to Delegates for attending these meetings, who are not rostered at the time of the meeting, will be in accordance with Clause 7.6 Time in Lieu of this Award. Delegates who are rostered on at the time of scheduled meetings will be released to enable attendance where suitable coverage is achieved and shall not be entitled to Time in Lieu.

At the meetings (and in other forums if the parties agree that this would be appropriate), the parties will consult on matters of mutual interest such as -

- work organisation;
- manning issues for minor and major turnarounds;
- continuous improvement;
- work-life balance issues;
- the introduction and operation of new plant and equipment;
- the site's Operator People Plan;
- any unresolved industrial issues;
- any other changes to the business that will have a significant direct impact on the workforce.

In respect of the Operator People Plan, the parties will discuss approximately every six months the sparing requirements for the site, taking into account the following:

- leave balances and needs (annual, sick, and/or long service leave);
- long term illness cases;
- imminent departures (including resignation or retirement);
- age and experience profiles;
- special assignments or Company initiatives;
- overtime levels; and
- succession planning.

Information will also be shared and discussions held on strategic issues including but not limited to:

- future directions of the Company;
- Company results;
- forthcoming projects;
- Refinery Management Team (RMT) matters;
- CFMEU matters; and
- Matters arising from Australasian Refinery Operatives Committee (AROC).

2.1.1 Consultation process

The Parties will -

- aim to achieve consensus on matters over which consultation occurs;
- share where practical information relevant to the matter under discussion, subject to commercial confidentiality and privacy considerations;

allow each other the opportunity to express their views and to contribute in a timely fashion to the resolution of workplace change matters;

be prepared to put forward considered views in respect of desired improvements and alternatives as to how such improvements could be achieved;

assess issues against criteria such as SELL i.e. "Is it safe, efficient, logical and legal (SELL)?";
and

allow the views of all to be valued and taken into account.

2.1.2 Reservation of rights

The consultation process provided for here is not intended to alter or diminish any rights or conditions of service that a party enjoys under the Award, unless the parties consent to such a change and the Award is duly varied.

The parties' rights under Clause 2.2 Dispute and Grievance Procedure of this Award in the event of any dispute that may arise in the course of consultations are reserved.

2.2 Continuous Improvement

2.2.1 The parties and employees recognise that the continuous improvement of the technology, plant, scope of work and responsibilities for Operators, is a key factor in securing Shell Clyde Refinery and Gore Bay Terminal's future.

2.2.2 The parties and employees will seek to mutually agree and implement ways of continuous improvement.

2.3. Dispute and Grievance Procedure

Subject to the *Industrial Relations Act* 1996 or any Act replacing that Act, any dispute or claim (whether any such dispute or claim arises out of the operation of this Award or not) as to the wages and/or conditions of employment of any employee with regard to whom the Company is bound by this Award and/or as to any other industrial matter pertaining to the relations of the Company (to whom this Award applies) with employees (with regard to whom the Company is so bound) shall be settled in the undermentioned manner:

2.3.1 The matter shall be first discussed between the employee concerned and the immediate supervisor.

2.3.2 If not settled within a reasonable period of time, for example, 7 days, the matter shall be further discussed between the employee, the Union delegate and the employee's immediate supervisor.

2.3.3 If not settled the matter shall be further discussed between the Union delegate and the Human Resources Department representative of the Company. For matters of a serious nature, a Refinery Operators Group (ROG) meeting may be convened by either party within seven days of settlement not being reached.

2.3.4 If not settled, the matter shall be further discussed between the Union official, the ROG and the Company.

2.3.5 If the matter is still not settled, it shall be submitted to the Industrial Relations Commission of New South Wales and its decision shall be final and shall be accepted by the parties.

It is the intention of the parties that when the disputes procedure is invoked the matter in dispute will be dealt with expeditiously and until the matter is determined, work shall continue normally. Where it is agreed between the parties that there is an existing custom, work shall continue in accordance with that custom, but where there is no agreement as to custom, the Company's direction shall be accepted. No party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

PART 3

EMPLOYMENT RELATIONSHIP AND DUTIES

3.1. Contract of Employment

- 3.1.1 To become entitled to payment in accordance with this Award an employee shall perform such work as the Company shall, from time to time, require on the days and during the hours usually worked by the class of employees affected.
- 3.1.2 An employee not attending for duty shall lose pay for the actual time of such non-attendance except where such absence is authorised.
- 3.1.3 Employment shall be terminated by a month's notice on either side, given at any time during the month, or by the payment or forfeiture of a month's wages, as the case may be. This shall not affect the right of the Company to dismiss any employee without notice for neglect of duty or misconduct, and in such cases wages shall be paid up to the time of dismissal only.
- 3.1.4 It is a term and condition of employment and of the obligations and rights accruing under this Award that an employee shall:
- (a) comply with the orders of the Company to work reasonable overtime at any time during the seven days of the week at the appropriate remuneration prescribed herein, provided that the question of what is reasonable overtime shall be determined in relation to the individual employee concerned, having regard to the particular circumstances at the time of the order by the Company;
 - (b) use the appropriate protective clothing and equipment provided by the Company for specific circumstances;
 - (c) comply with the Company's directions to carry out work required for the safety of personnel, equipment and product;
 - (d) become and remain the holder of any certificates at Company expense which are required by law to be held by a person performing the duties which the Company allocates to the employee from time to time;
 - (e) undertake responsibilities associated with first aid and emergency response activities as agreed between the parties which are fully comprehended in the wage rates provided in Table 1 of the Award. All Operators will maintain current first aid qualifications at Company expense.

3.1.5 Probation Period

A new employee shall be regarded as probationary for the first three months of their engagement. After an assessment of the employee by the Company during the three months, the employee may be:

- (a) required to complete the probationary period and then confirmed in the position for which the employee was engaged;
- (b) confirmed in the position for which the employee was engaged;
- (c) given notice of termination of service in accordance with Clause 3.1.3;
- (d) prior to any notice being given to a probationary employee the Company shall discuss the matter with the employee and if he or she requires a ROG/CFMEU representative and determine whether a further period of probation is appropriate.

3.1.6 Refinery/Gore Bay Terminal Operator Statement of Principle

Assignment by supervisors of tasks not associated with the prime operating job in any particular circumstances will be limited naturally by the following criteria:

- (a) they will be associated with the process to which the Operator is engaged;
- (b) they will be capable of being completed within a relatively short time or of being interrupted or left unattended so as not to distract the Operator from their prime functions;
- (c) if tools are involved, these will be simple in their utilisation and the task will be relatively simple and within the ability of the Operator;
- (d) in the assignment of these tasks, an attempt will be made to achieve what is reasonable and a common sense attitude should prevail. Factors requiring consideration would include, for example:
 - (i) the time available for the performance of the task;
 - (ii) the Operator's ability to perform the tasks;
 - (iii) the availability of the equipment appropriate to the performance of the task.

3.2. Process Maintenance and Associated Matters

3.2.1 Process Maintenance

The functions and responsibilities of all operators include the clean, safe and effective operation at all times of refining plant and associated equipment; the evaluation of equipment performance and process conditions; the execution of running adjustments and minor repairs consistent with safe and effective operation; the preparation (including the proper isolation) of equipment for maintenance; the use of hand tools (such as spanners, wheel keys, wrenches and screw drivers) and of appliances (such as gas testing and laboratory testing equipment, portable thermometers) as may be necessary or incidental to the performance of operating functions.

Without limiting the generality of the foregoing, repairs and adjustments involving use of hand tools, will include the following:

- (a) remove and replace small valves, plugs and fittings as used for bleeds, drains, vents and sample connections. (Spades not included);
- (b) connect/disconnect flexible hoses for use in cleaning, smothering leaks and heating lines;
- (c) connect/disconnect fittings to educt chemicals from containers;
- (d) connect/disconnect hoses on lube oil dispensing bars;
- (e) remove insulation to expose leaks, drains where easily accessible and removable;
- (f) remove and replace pressure gauges;
- (g) monitor, drain and change oil in equipment as required;
- (h) adjust and lubricate glands on valves, cocks;
- (i) connect/disconnect screwed piping and standard fittings for temporary situations such as venting, draining and steaming out arrangements. Dismantle simple screwed piping. (Operators will not thread pipe);

- (j) open, clean and/or replace filters and screens in pipelines and equipment, up to 4" diameter. Replace filters in lines greater than 4" diameter, where fitted with V-lok closures;
- (k) tighten swagelok fittings on pipelines and equipment;
- (l) isolate streams and/or equipment by removing/replacing caps, plugs and blanks on equipment and piping of diameters of up to and including 4";
- (m) connect/disconnect gas cylinder to manifolds;
- (n) in an emergency, take reasonable action necessary to protect personnel, plant, equipment and product (eg. fit pipe clamps on leaks); and
- (o) perform any other similar task not involving the application of the general trade experience of recognised tradesmen.

3.2.2 Illustrative Examples of Associated Tasks

- (a) Use chemical, mechanical or steam cleaning devices as necessary.
- (b) Install stick-on signs or stencil information on pipelines and equipment.
- (c) Operate assigned vehicles and mobile equipment.
- (d) Connect/disconnect hoses to equipment (eg. pumps, compressors) and delivery vehicles.
- (e) Rack up all types of hoses used in the performance of associated tasks.
- (f) Connect portable electric leads as required.
- (g) Attend to all equipment lubrication and lubricating devices, grease valves and cocks, clean lube oil centrifuges, filters.
- (h) Clean plugged or fouled pipelines, drains by:
 - (i) wrapping with steam hoses;
 - (ii) adding detergent or chemicals; and
 - (iii) mechanical rodding in simple cases.
- (i) Where easily accessible and on a "first aid" basis, apply "band aid" devices to leaks.
- (j) After appropriate training, use explosimeters as an additional safety aid and as supplementary to existing procedures.
- (k) Generally taking such reasonable action as may be necessary to make a plant area safe, eg. erecting a simple barrier.
- (l) On plant plots, handle and store materials and/or chemicals.
- (m) Use installed or other lifting devices as are available to aid the performance of a Refinery Operator's duties.

3.2.3 Team Concept of Operation

- (a) It is accepted that an operator(s) on shift will assist outside their assigned area of designated responsibility (workload permitting) if they have the knowledge, ability and experience of the plant in question, however, the following guidelines will apply:

the operators primary responsibility is to the plant area they have been assigned to;

that the particular jobs that are assigned to them outside their designated area (plant) can be left at any time to return to their designated area (plant), should the operational need arise;

Senior Operators will allocate operators to areas (plants) as required. This will require judgement by the Senior Operator as to priorities, planning and the use of available resources; and

where a call in may be required, the Senior Operator should consult with the Shift Controller to ensure that both the Shift Controller and the Senior Operator have all the required information to make an optimum decision with respect to resource allocation.

- (b) Laboratory Testing - Operators to perform testing on plants in addition to tests performed currently:

Distillation;

Specific Gravity;

Boiler Chemistry;

Cloud Point;

Colour;

Viscosity;

RSH;

Titration.

3.3 Refinery Operator Classifications

3.3.1 General Description

- (a) Senior Operator

An employee appointed as such by the Company who is qualified, capable and willing to perform all operator duties on an assigned complex and is responsible for safely and efficiently controlling such complex under the general supervision of a Shift Controller.

- (b) Operator Trainer

An employee appointed as such by the Company to assist in the assessment, management and implementation of training and competence plans in designated areas of responsibility.

The Operator Trainer will primarily work a 9-day fortnight, however it is foreseeable that situations may arise where it is appropriate that they spend time on shift. For example

to train others;

to maintain the currency of their own competencies;

conduct training on new equipment that needs to be carried out within certain time constraints;

short periods as part of the Operating Shift team (including but not limited to emergency situations, major complex start-up/shutdown.

(c) Relief Senior Operator

An employee appointed as such by the Company who is qualified, capable and willing to perform safely and efficiently any duties associated with the process or equipment on an assigned complex as required by a Senior Operator or Shift Controller under general supervision as necessary.

The Relief Senior Operator is to relieve the Senior Operator as required.

(d) Rover

An employee appointed as such by the Company who is qualified, capable and willing to perform safely and efficiently any duties associated with the process or equipment on an assigned complex as required by a Senior Operator or Shift Controller under general supervision as necessary.

(e) Panel Operator

An employee appointed as such by the Company to the position who is qualified and capable of carrying out the operation of a panel/s within the section.

e.g.	Process West	Panel 1 (utilities)
		Panel 2 (CDU)
	Process East	Panel (CCU)
		Day Panel

(f) Day Liaison Operator (DLO)

The DLO provides extra resources during day work hours in the nominated Plant areas/complex.

The DLO will be required to handle the maintenance co-ordination and priority setting for day-to-day maintenance work, in conjunction with the Senior Operator, Shift Controller and/or Plant Controller in addition to performing operational duties.

The DLO will work a 9-day fortnight and follow the pattern of maintenance crews on particular plants. The DLO will not provide absentee coverage for shift crews except at the discretion of the Shift Controller in emergency situations

The appointed DLO will be a minimum category level 5 position as per clause 3.6 Category Structure of this Award i.e. they must be accredited in all outside operating positions on applicable Plant areas/complex. DLO's appointed by the Company will attract a permanent category increase to the next populated level of the category structure as per clause 3.6 Category Structure of this Award.

The DLO will be required to rotate with other positions with an incumbent performing this role for approximately 6 - 18 months or another mutually agreed period. Nominations for the position will be called for; if no nominations are forthcoming the position will be filled by selection of the Company on a roster arrangement.

(g) Panel Component Operator

An employee working under the supervision of a Shift Controller, Senior Operator or Rover, who is qualified, capable and willing to perform safely and efficiently such duties as are required by the Company associated with the process or equipment on an assigned complex.

(h) Plant Operator

An employee who is qualified, capable and willing to perform safely and efficiently any duties associated with the process or equipment on an assigned complex as required by a Senior Operator or Shift Controller under general supervision as necessary

(i) Trainee Operator

An employee undergoing the necessary orientation and training to enable safe and efficient performance as an operator.

(j) Other Operator Roles

During the term of this Award other Operator roles may be introduced by the Company subject to Operational requirements for a defined period. These roles may typically be additional to the normal shift complement and may deal with specific aspects of the plant; technology; operational and/or planning process; Operator work practices, roles, responsibilities and/or structures. Examples of such roles include:

Operational Focal Points;

Special Projects Operators.

Payment of the relevant position will be determined by the Company on a case-by-case scenario in accordance with a category level specified in clause 3.6 Category Structure of this Award. Hours of work will be determined by the Company on a case-by-case scenario in accordance with Part 5 - Hours of Work of this Award.

3.3.2 Duties and Responsibilities

The following lists summarise the duties and responsibilities of operators. These duties and responsibilities include but are not limited to the items listed.

(a) Common Duties & Responsibilities:

- (i) Safe, clean and effective operation at all times of refining plant and associated equipment and according to instructions issued by the Company through its supervisors.
- (ii) Evaluation and reporting (verbally, written and through computer) of equipment performance and process conditions.
- (iii) Execution of running adjustments and minor repairs consistent with safe and effective operation.
- (iv) The preparation and isolation of equipment for maintenance.
- (v) The use of hand tools and equipment as necessary or incidental to the proper performance of operating functions. This will include spanners, wheel keys, wrenches and screw drivers, motor vehicles, forklift trucks, gas testing and laboratory testing equipment, portable thermometers. The repairs and adjustments which operators, using hand tools may make are set out in 3.2.1 above. For guidance, illustrative examples of associated tasks are set out in 3.2.2 above.
- (vi) Is required to be familiar with all manuals, instructions and schedules associated with safety, operating and training relevant to the complex.
- (vii) Is responsible for ensuring the safe operation of the assigned area including the conduct of visitors to the plant and contractors working in the area.

- (viii) Is required to relieve in lower category jobs commensurate with knowledge, ability and experience and expected to undertake training as necessary to perform the duties as assigned by the Company commensurate with knowledge, ability and experience.
- (ix) Perform sampling and testing of process variables and equipment.
- (x) Minor administration tasks related to the job will be carried out as necessary.
- (xi) Write, review and amend procedures where appropriate.

Operators will carry out these duties in accordance with the guidelines agreed by the parties.

NOTE: Procedure writing by "special duties" Operators (as the sparing ratio allows) should not cause shift Operators to cover this position with unreasonable levels of overtime.

- (xii) Operators will obtain the necessary WorkCover tickets stipulated in WorkCover regulations and as required by the Company.

For the term of the Award all refinery F.I.T. members can obtain a Heavy Rigid Truck Licence (NSW RTA). Gore Bay operators will obtain a Limited Coxswains ticket.

- (xiii) Laboratory testing will be carried out and the team support concept of operation will apply as specified in Clause 3.2.3(b)above.
- (xiv) Write, review and issue increased hazard permits.
- (xv) Actively participate on shift in

Job Safety Analysis (JSA);

Hazardous Operability Study (HAZOP);

Pre Incident Plans (PIP) (primarily on FIT training);

Asset Improvement Team (AIT); and

Walk and Talks (including an Operator specific Walk and Talk programme).

(b) Plant Operator:

- (i) Is responsible to the senior operator on the complex for all aspects of the operation of the plant to which the operator is assigned. Carries out the instructions of Senior Operator and Rover as required.
- (ii) Liaises closely with panel operators on all aspects of the control of the process/plant as required.
- (iii) Performs process monitoring and process stream sampling as required.
- (iv) Is required to have full knowledge of and be willing to relieve in all lower category jobs on the complex.
- (v) Is aware of the requirement to operate to maximise yields and minimise fuel costs within the constraints of product specification.

- (vi) Participates in and trains other operators and trainees, commensurate with knowledge, ability and experience.
- (c) Panel Component Operator:
 - (i) Carries out the instructions of senior operators or panel operators as required.
 - (ii) Is required to have full knowledge of and be willing to relieve in all lower category jobs on the complex.
 - (iii) Participates in and trains other operators, and trainees, commensurate with knowledge ability and experience.
 - (iv) Monitors performance/operation of equipment via the ICS screens, and liaise with the panel operator or senior operator as required.
- (d) Panel Operator:
 - (i) Co-ordinates the work of other operators on the complex.
 - (ii) Controls the process through such means as are provided to produce products within specification limits whilst maximising yields and minimising fuel costs.
 - (iii) Carries out the instructions of Senior Operators as required.
 - (iv) Is required to have full knowledge of and be willing to relieve in all lower category jobs on the complex.
 - (v) Participates in and trains other operators, and trainees, commensurate with knowledge ability and experience.
- (e) Rover:
 - (i) Co-ordinates the work of other operators on the complex.
 - (ii) Controls the process through such means as are provided to produce products within specification limits whilst maximising yields and minimising fuel costs.
 - (iii) Carries out the instructions of Senior Operators as required.
 - (iv) Is required to have full knowledge of and be willing to relieve in all lower category jobs on the complex.
 - (v) Participates in and trains other operators, and trainees, commensurate with knowledge ability and experience.
- (f) Relief Senior Operator:
 - (i) Co-ordinates the work of other operators on the complex.
 - (ii) Controls the process through such means as are provided to produce products within specification limits whilst maximising yields and minimising fuel costs.
 - (iii) Carries out the instructions of Senior Operators as required.
 - (iv) Is required to have full knowledge of and be willing to relieve in all lower category jobs on the complex.

- (v) Participates in and trains other operators, and trainees, commensurate with knowledge ability and experience.
- (vi) Relieve the appointed Senior Operator when required.
- (g) Senior Operator:
 - (i) Directs and coordinates the work of other operators on the complex.
 - (ii) Interprets, comments on and carries out the instructions of the Shift Controller.
 - (iii) Monitors the safety and efficiency of operation, quality of products and ensures reporting and sampling are carried out as required.
 - (iv) Administers operator overtime and leave.
 - (v) Liaises with other units and complexes as required.
 - (vi) Is required to follow and to have full knowledge of all manuals, instructions and schedules associated with safety, operating and training relevant to the complex.
 - (vii) Ensures that the operators on the shift are fully trained by administering training and reporting to the appropriate staff supervisor the future requirements of the shift.
 - (viii) Requisitions and accounts for all necessary process, operational and administrative materials as required.
 - (ix) Ensures that plant and flare surveys are carried out as required.
 - (x) Provides assistance, advice and support to operators on the shift as necessary.
 - (xi) Ensures that plant safety equipment is checked regularly and any repairs, reordering or maintenance is performed.
 - (xii) Assists in the co-ordination and planning of plant safety meetings.
 - (xiii) Is expected to attend senior operator meetings for the complex.

3.4 Acting Up

3.4.1 The parties and employees recognise that there may be, subject to Operational requirements, defined periods when Operators are required to act in a classified staff position i.e. those not covered by clause 1.2 Coverage of Award of this Award.

Examples of such classified staff positions include and are not limited to:

- Shift Controller;
- Plant Controller;
- Scheduler;
- Operations Safety Compliance Advisor;
- Shore Officer.

3.4.2 In fulfilling the position the Operator will undertake the position's normal duties, roles, responsibilities and work patterns.

3.4.3 The parties and employees recognise that the objectives in Acting Up include and are not limited to:

- The development and enhancement of career path opportunities for Operators;
- Providing Operators' increased job satisfaction;
- Increased operational flexibility.

3.4.4 The positions will be filled on the basis of Company appointment.

3.4.5 In recognition of increased responsibilities, disruption to normal work patterns etc. Operators appointed to such positions will be paid a suitable additional payment for the term of their appointment as defined in clause 4.1.2 Allowances of this Award.

3.5 Operator Job Training

3.5.1 Aim

To provide an Operator training in the skills and knowledge necessary to safely, competently and efficiently operate a section of the Refinery with little to no assistance or supervision.

The parties agree that the training of Operators requires continuous improvement during the life of the Award. Changes to the Operator Training system will be implemented after the parties reach agreement.

3.5.2 Scope

The Operator job training will consist of a combination of theory and practical skills. The theoretical training will consist of a number of modules on general topics e.g. H2S safety, HF acid, distillation and those which are specifically job related e.g. pollution control, emergency procedures etc. The theoretical and practical job training will be structured in that the operator will be required to demonstrate and complete a number of tasks under supervision. Many of the tasks associated with a particular job will be developed "on the job" by peer training.

3.5.3 Training

The practical training will be carried out on shift and be conducted by an experienced Operator on shift under the general supervision of the Shift Senior Operator. The Operator conducting the training on shift must have completed a job assessment in the position for which the training is being conducted. The scope of the job being learnt and the experience of the Trainee will determine the period of being doubled up with the Operator training him/her. An operator must successfully complete job assessment in one job before moving on to another.

3.5.4 Time frame for Training

In most cases it will be 168 hours doubled up although this may be extended dependant on individual requirements. It is important that during the 168 hours that continuity of training be maintained as far as possible but could be broken if needed to cover some short absence. However that time would be added onto the Operator's time of training.

A further period of consolidation of up to 560 hours where the Operator will carry out the duties of the job under the supervision of the Senior Operator only (This period will be referred to as going "solo"). During this period the Operator will be progressively assessed in all tasks and skills related to the position. This latter period is discretionary and is dependant on the experience, ability and confidence of the Operator.

3.5.5 Process

The shift Senior Operator should nominate the Operator/s for training and should prepare a 12 month plan and discuss the shift training with the Shift Controller and the Plant Controller. Prospective Trainee's should be made aware of future training plans relating to themselves.

3.5.6 Job Knowledge Assessment

At the completion of the going "solo" period the Operator should have signed each page of the Tasks and Skills booklet indicating that they consider themselves able to perform the duties relevant to the job competently and safely. The Senior Operator will discuss and agree or not that they are satisfied with the operators knowledge or whether further training is required by going through the Tasks and Skills book. In order to ensure equivalent standards are applied across all shifts, the Plant Controller will carry out a final assessment. The final assessment is not expected to be an in-depth evaluation of the Operator's knowledge but rather confirmation that the training and evaluation process has achieved its aims. When the assessment has been successful the Plant Controller will initiate the relevant paperwork and forward it to the Pay Office and the Shift Controller.

3.6 Category Structure

PROCESS EAST	PROCESS WEST	MOVEMENTS	GORE BAY	LEVEL
Senior Operator Day Trainer	Senior Operator Day Trainer	Senior Operator Day Trainer	Senior Operator Day Trainer	9
				8
Relief Senior Operator	Relief Senior Operator	Relief Senior Operator	Relief Senior Operator	7
				6
Rover/CCU Panel	Rover/CDU/Utes Panel Operator		Rover	5
Panel Component	Plat. 3 Outside Position + 1 additional Process Outside Position	Panel Component		4
1 additional Process Outside Job	1 Additional Process Outside Job	1 Additional Movements Outside Job	Term Operator/ Boilers	3
2 Process Outside Jobs	2 Process Outside Job	1 Movements Outside job	Shipping/Wharf	2
Trainee	Trainee	Trainee	Trainee	1

The requirements for progression through the classification structure shall be:

LEVEL	PROGRESSION EAST	PROGRESSION WEST	PROGRESSION MOVEMENTS	PROGRESSION GORE BAY
1	Commencement	Commencement	Commencement	Commencement
2	Must complete job assessment on two PE outside positions.	Must complete job assessment on two PW outside positions.	Must complete job assessment on one Movements outside position.	Must complete job assessment on Shipping/Wharf position.

3	Must complete job assessment on three PE outside positions A two year minimum experience applies. Note: Job assessment on Alkylation outside position must be completed before Panel Component training can commence.	Must complete job assessment on three PW outside positions. A two year minimum experience applies.	Must complete job assessment on two Movements outside positions. A two year minimum experience applies. Note: Job assessment on all Movements outside positions must be completed before Panel Component assessment can commence.	Must complete job assessment for Terminal Operator/Boilers position.
4	Must complete job assessment on all PE outside positions, and Panel Component position.	Must complete job assessment on all PW outside positions,	Must complete job assessment on all Movements outside positions, & Panel Component position.	Must complete job assessment for Rover position.
5	BY APPOINTMENT Must complete job assessment on all PE outside positions, Panel Component position and CCU Panel position. A four year minimum experience applies.	BY APPOINTMENT Must complete job assessment on all PW outside positions, and one Panel position (CDU or Utes). A four year minimum experience applies.		
6/7/8/9	BY APPOINTMENT Must complete job assessment on all lower level position and acting Senior Operator position.	BY APPOINTMENT Must complete job assessment on all lower level position and acting Senior Operator position.	BY APPOINTMENT Must complete job assessment on all lower level position and acting Senior Operator position.	BY APPOINTMENT Must complete job assessment on all lower level position and acting Senior Operator position.

NOTE: The above category structure and requirements for progression may also be varied via the Operator Establishment Levels & Category Structure Review provided for in Part 9 Leave Reserved of this Award.

EXPLANATORY NOTES

1. The nominated Senior Operator will be expected to fulfil the duties of the Senior Operator at all times other than when absent from the shift eg. annual leave, sickness, etc, refresher training on the panel or when a training acting senior operator is consolidating in the position. During the nominated Senior Operators absence any relief senior operator acting in the Senior Operator position will be paid at acting senior operator rates.

Senior Operators will be offered the opportunity of obtaining Certificate IV Workplace Training and Assessment training at the Company's expense for the life of the Award.

2. Where there is more than one relief Senior Operator on a given shift, the relief senior operator who covers the majority of the incumbent senior operator's rostered absence (i.e. annual leave, refresher training) will be paid acting Senior Operator rates for their own annual leave in that calendar year.
3. Only one relief Senior Operator on any given plant/shift will be paid acting Senior Operator rates on their annual leave in any given calendar year.
4. Operators move upwards in category level based on all job assessments completed at present level, experience level and first job completed at higher level. Once operators move to a higher level they must complete training/job assessment in all jobs at the new level.

5. Progression through refinery outside positions, i.e. level 2 and level 3, does not require jobs to be learnt in any specific order, as number of jobs learnt and experience determines level movement, not what jobs are learnt.

CCU - alkylation position must be learnt before panel component

Movements - Movements outside jobs must be completed before panel component. assessment.

6. Appointment to the positions of panel operator on the process plants and relief senior operator on all plants will be at the discretion of management premised on a needs basis.

These positions will be advertised.

The Company commits to a minimum of two (2) Relief Senior Operators on each shift at Gore Bay and Movements and three (3) Relief Senior Operators on Process East and West per shift, provided:

- (a) those operators to be trained have the necessary capabilities and competencies as set out in Clause 3.3 of this Award; and
 - (b) Where a Relief Senior Operator is appointed by the Company as the DLO on a plant/complex, this shall be counted as a Relief Senior Operator for the above purposes
7. The minimum experience guideline may in certain cases be put aside at the discretion of the Company.
8. An Operator shall be eligible for appointment to the next designated position on the plant to which the employee is assigned:
- (a) when the operator has demonstrated to the satisfaction of the Company that the employee has the ability, knowledge, skills and qualifications and is willing to perform all operator jobs on the assigned plant or complex;
 - (b) has obtained the knowledge, skills and qualifications necessary to perform the next designated position;
 - (c) is willing, commensurate with ability, to obtain the knowledge, skills and qualifications necessary to be eligible for appointment to all higher category positions.

PART 4

Annualised Salary and Related Matters

4.1 Annualised Salary (Wages)

Any employee of a classification as set out in Clause 3.6 of this Award, shall be paid per month the wage assigned to that classification contained in Table 1 of this Award. The rates of pay recognise the total scope of work performed by operators (including first aid, emergency response, and fire control activities) at the making of this Award. The annualised salary is defined to include the following components:

Base Rate - standard pay for a 35 hour week.

Shift penalty - 41.86% of base rate (incorporating a public holiday allowance of 7.1%).

Flexible Hours Allowance - 3 hours per week at overtime (double time) rates (see Clause 4.5 below).

Clyde Miscellaneous Allowance - replacing previously paid allowances for meals, telephone, travel time and use of own car (except for Gore Bay operators required to travel between Gore Bay and Clyde Refinery). See Clause 4.1.2 Allowances and 4.6 Clyde Miscellaneous Allowance below.

First Intervention Team Allowance (if applicable) - See Clause 4.7 First Intervention Team Allowance below.

4.1.1 Wage Rates

The base wage rates (\$ per annum) to be paid under this Award are listed in Table 1 below.

TABLE - 1

CATEGORY/DATE	1 SEPTEMBER 2006	1 FEBRUARY 2007	1 FEBRUARY 2008
1	\$40,788	\$ 42,420	\$ 44,116
2	\$53,038	\$ 55,160	\$ 57,366
3	\$56,117	\$ 58,362	\$ 60,696
4	\$57,485	\$ 59,784	\$ 62,176
5	\$61,934	\$ 64,411	\$ 66,988
6	\$63,440	\$ 65,978	\$ 68,617
7	\$64,330	\$ 66,903	\$ 69,579
8	\$67,135	\$ 69,820	\$ 72,613
9	\$68,572	\$ 71,315	\$ 74,167

4.1.2 Allowances

Change of shift allowance - Twelve (12) hours at single time.

Shift Premium (including Public Holiday premia) - 41.86% of base wage.

Clyde Miscellaneous Allowance - will be paid at the rate of \$2278; \$2369 effective as of 1 September 2006; \$2464 effective 1 February 2007; \$2562 effective 1 February 2008 and will be increased by the same percentage movements as the base wage thereafter.

Flexible Hours Allowance - 3 hours per week at overtime (double time) rate.

First Intervention Team (FIT) Allowance - \$3000 per annum see 4.7 First Intervention Team Allowance below.

Acting Up Payment - \$40.00 per 8 hour shift worked or \$60.00 per 12 hour shift worked. The Acting Up Payment is not an "all purpose" allowance and will not increase during the term of this Award.

4.2 Superannuation Treatment of Annualised Salary

The annualised salary will be treated in the following manner for superannuation purposes:

Base salary - retrospectively pensionable;

Shift penalty - prospectively pensionable;

Flexible Hours Allowance - prospectively pensionable;

Clyde Miscellaneous Allowance - retrospectively pensionable;

Overtime Payments - not pensionable;

FIT Allowance (if applicable) - not pensionable;

Acting Up Payment - prospectively pensionable.

For the purposes of this clause "retrospectively pensionable" means commencing from the date the employee joined the superannuation fund and for any periods of service bought back by the employee.

For the purposes of this clause "prospectively pensionable" means for all periods that the relevant allowance was paid to the employee.

4.3 Payment Of Wages

4.3.1 Wages and allowances shall be paid monthly by electronic funds transfer into a bank account nominated by the employee. In the event of a failure in the banking system causing late lodgement of payment to an employee's financial institution account, payment will be effected by cash, cheque or electronic funds transfer in accordance with arrangements made locally.

4.3.2 Upon termination of employment, wages due to an employee shall be paid to the employee on the day of such termination or forwarded to the employee by post on the next working day.

4.3.3 It shall be a full discharge of the obligations and rights accruing from week to week under Clause 5.2, Rosters, to average over a full shift cycle the payments accruing from shift work to a shift worker. This provision shall apply even if a shift worker fails for any reason to work a full shift cycle.

4.3.4 During the term of this Award the Company undertakes to continue payment of wages on the 20th of each month.

4.4 Overtime

All overtime will be paid at the rate of double time.

Overtime will be for a minimum of six hours.

Overtime worked on designated public holidays will be paid at the rate of triple time.

4.5 Flexible Hours Allowance

The Flexible Hours Allowance (FHA) is set at three (3) hours per week at overtime rates. The FHA is not to be viewed as a bank of hours which has to be all worked.

The FHA covers the following items:

those agreed items in Table 2 below;

casual absences of up to and including four (4) consecutive 12 hour shifts due to illness, injury, jury duty, bereavement leave, personal/carers leave and parental leave; and

plant restarts of up to and including four (4) consecutive 12 hour shifts.

If a casual absence continues for a period of over four shifts on consecutive days all operators involved in using FHA will be paid overtime back to the start of the absence.

"Consecutive" is defined as including an absence that extends across a shift break where that absence is covered by medical certificate/s.

If a plant restart continues for a period of over 48 consecutive hours all operators involved in using FHA will be paid overtime back to the start of the plant restart period.

The operation of the FHA will be reviewed by a Monitoring Committee on a monthly basis for the term of this Award.

Overtime hours should be used in the following circumstances:

- (a) shortfalls in the roster that are the result of Company agreed annual leave, long service leave or Operators assigned to special projects;
- (b) shortfalls in the roster that are the result of training necessary for restructuring or Company initiated category progression training;
- (c) light duties (inability to fulfil any normal duties);
- (d) study leave (for current students) and where such leave is granted by the Company in the future;
- (e) defence training;
- (f) bush fire brigade (voluntary) absences for fire fighting;
- (g) sporting leave (including the Zaaire Cup). This leave is not often used and will be granted at the discretion of the Company and if agreed overtime will be paid;
- (h) sickness that results in continuous on/off absence from work or for regular ongoing treatment; and
- (i) restricted duties (i.e. time or function limited duties).

Table 2 - Agreed Items under the Clyde Flexible Hours Allowance (FHA)

	INCLUDED	EXCLUDED
All Areas	Operator caught back awaiting relief on shift Short term operational tasks previously requiring an extra man	Minor and major programmed shutdowns Special Projects Union time defined as Pre-ROG meetings, Company/ROG meetings and relevant Award provisions Time in Lieu OH &S defined as monthly HSE meetings Company initiated meetings
Process East	Poly reactors loading CCU Catalyst unloading to tankers SRU startups "Golden" valves Trip checks	Skid tanker (HF)
Process West	T/A's HVU/Panel on startups "Golden" valves	
Gore Bay	Hose changes (shipping) Meal relief after hours (Amorena) Tank dipping (enraf failure)	Shipping wharf cover Shipping hookups Company initiated medicals
Movements*	Process water tank drainage OMOSS System	EBARA pumps Pollution control Retention basin (subject to EPA determination) Diesel pump Tank water draining other than process water Flow on work from shutdowns Tank coming "OOS"

*It is agreed by the parties to this Award that every endeavour must be made to complete tasks with normal shift crewing. Additional operators to carry out tasks can only be authorised by the Shift Controller in conjunction with the Senior Operator and when this occurs overtime will be paid (refer Clause 3.2.3 above).

4.6 Clyde Miscellaneous Allowance

The Clyde Miscellaneous Allowance will be paid at the rate specified in clause 4.1.2 Allowances of this Award.

A meal money provision of \$603.20 (65 Meals x \$9.28) per annum is incorporated in this allowance.

4.7 First Intervention Team Allowance

A First Intervention Team (FIT) Allowance of \$3000 per annum will be paid for eligible employees.

All Gore Bay Operators will be members of the FIT except where special personal circumstances exist.

The FIT will be established on the following basis:

At all times the FIT complement is to be a minimum of 60 Operators. It is a condition of employment that all Operators employed on or after 1st October 2004 can be directed by the Company to be on the FIT;

The Shift Controller will ensure that a minimum of 6 FIT members will be available from the shift to respond to emergencies at the Clyde site at all times;

Day shiftworkers who are suitably accredited FIT members will be available as additional FIT members at the discretion of the Incident Commander. Day shift workers who are FIT qualified will report to the Shift Controller at the start of every shift and notify them of their day's roster.

all FIT members are required to have current medicals;

FIT members will be required to remain part of the FIT for the term of this Award;

The parties agree that FIT members will not be required to respond to confined space rescues;

FIT members will respond to pipeline emergencies and oil spill responses; and

For the life of the Award training for FIT members will be on the basis of a minimum 2 x 12 hour days at overtime rates during the year of attendance at the Advanced Fire training course. The alternate year will consist of a minimum of 3 x 12 hour days at overtime rates. The Shift Controller will ensure that each FIT member undertakes the appropriate training. Training should be arranged in consultation with the shift's FIT.

4.8 Mixed Functions

An employee engaged on any shift, on work carrying a higher rate than the employee's ordinary classification shall be paid the higher rate for the whole of the employee's ordinary working hours on that day or shift.

4.9 Transport Of Employees

When an employee, after having worked overtime, or a shift for which the employee has not been rostered, finishes work at a time when the employee's normal means of transport or reasonable means of public transport are not available, the Company shall provide the employee with transport to the employee's home and return, or pay the employee at the employee's ordinary-time rates for the time reasonably occupied in reaching his/her home.

4.10 Day Shiftworkers

A Day Shiftworker (including new Operators undertaking their initial training) shall be paid shift penalties and other entitlements as if a continuous shiftworker (see 5.3 below).

PART 5

Hours of Work

5.1 Standard Hours

Subject to 5.2 below the ordinary hours of work for Operators employed under this Award will be an average of 35 hours per week worked in accordance with the Standard Hours (Oil Companies) Award 2003 (being an Award of the Australian Industrial Relations Commission).

5.2 Rosters

5.2.1 Twelve (12) hour shifts

- (a) The Company will require employees under this Award to work in accordance with a twelve (12) hour five (5) panel shift roster.
- (b) This clause shall apply to shift work arranged for continuous and successive shifts throughout a week of 168 working hours. The ordinary hours of such shift workers shall be in accordance with clause 4.1 and sub-clause 5.4 of the Standard Hours (Oil Companies) Award 2003 provided however that subparagraphs 5.4.2 of the Standard Hours (Oil Companies) Award 2003 shall not apply.
- (c) No employee under this Award is to work beyond 14 hours at a time on a single shift.

5.2.2 Operator Establishment including Sparing

It is agreed that the operator establishment complement including sparing will be as follows:

Table 3 - Operator Establishment levels including sparing

	PROCESS EAST	PROCESS WEST	MOVEMENTS	GORE BAY	TOTAL
Shift Positions	30	45	15	15	105
Spares*	7	10	4	5	26
Day shift workers	2	2	2	1	7
Total	39	57	21	21	138

NOTE (1): As per the People Planning provision of clause 2.1 Ongoing consultations with the Refinery Operators Group on matters of mutual interest of this Award the number of Spares may be varied by the parties through the consultation process.

NOTE (2): The above Operator Establishment Levels may be varied via the Operator Establishment Levels & Category Structure Review provided for in Part 9 Leave Reserved of this Award.

5.2.3 Recruitment

Upon an employee providing written advice of resignation of employment the recruitment process will be initiated when the establishment number of Operators falls below 138 during the term of this Award unless the number of Operators exceeds 138 at the time of that resignation.

5.2.4 Time Owed from Roster

The 72.8 hours which arises as a function of the shift roster shortfall in hours below an average of 35 hours per week during each roster cycle will be absorbed into the roster as additional shifts and/or training time.

Time owed from the roster will be dealt with on the following basis:

four (4) twelve (12) hour training days will be rostered for each shift throughout the year for generic training

two (2) additional days of twelve hours duration will be rostered each year. Employees may elect to offset these hours against annual leave, long service leave or carry 24 hours over into the next calendar year.

5.2.5 Standby Roster

Standby rosters will be established for the coverage of FHA and overtime.

5.2.6 Hours

(a) An average of 35 hours per week shall be worked over the complete shift cycle.

(b) The ordinary hours of such shift workers shall not exceed twelve (12) in any day, inclusive of crib time.

(c) Shift Transfers:

Until the expiration of 5 days notice of the specified shift on which the employee is to work, an employee shall, for all time worked on that specified shift be paid at the rate of double time.

(d) Day and Night Shift Spread of Hours:

(i) "Day Shift" means any shift commencing after 6.00 a.m. and finishing at or before 7.00 p.m., where such shift forms part of a rotating or alternating shift work pattern.

(ii) "Night shift" means any shift commencing on or before 7.00p.m. and finishing before 8 a.m.

(e) Sunday Work:

The minimum rate to be paid to a shift worker for work performed on a shift the major portion of which falls between midnight on Saturday and midnight on Sunday shall be double time.

(f) Extra Rates not Cumulative:

The rates provided in paragraph (e) of this subclause shall be in substitution for and not cumulative upon the shift allowance prescribed in Clause 4.1 of this Award.

(g) Overtime:

Shift workers for all time worked in excess of or outside the ordinary working hours prescribed by this Award shall be paid at the rate of double time; provided that no continuous shift worker shall be paid for overtime worked at any time at a lesser rate than is payable to an employee performing their normal shift at such time.

(h) Meal Interval:

Twenty minutes shall be allowed to all shift workers each shift for crib which shall be counted as time worked. An employee shall not be required to work for more than five hours without a break for a meal.

(i) Calculation of Working Times:

The hours of work shall commence and finish at the plant or facilities where work is to be performed.

(j) Cancellation of Overtime:

(i) If notice cancelling the instruction is sent or telephoned to the employee's registered address before the employee would normally have left to commence work, the employee shall be paid a minimum of six hours at the employee's ordinary-time rate of pay in the case of overtime scheduled on a day on which an employee is not rostered to work an ordinary shift.

Provided that an additional penalty shall not be payable if the employee is not at the registered address when notice of cancellation is delivered or telephoned and the employee subsequently reports for work.

(ii) For the purpose of this clause registered address shall mean the address recorded by the employer.

5.3 Day Shiftworker Roster and Hours

Continuous shift workers who from time to time may be assigned to Day Shiftworker duties only shall be rostered to work an eight (8) hour day shift on a nine (9) day fortnight basis. Meal breaks shall be in accordance with those of continuous shift workers and shall be counted as time worked.

5.4 Rest Periods (Ten Hour Break)

The Union and the Company agree that appropriate rest periods should be taken between successive work periods.

Accordingly, the Union, their members and the Company will cooperate in establishing work arrangements which will provide for rest periods of at least 10 hours for shift workers without loss of pay during such absence.

If on the instructions of the Company an employee resumes or continues work without having a 10 hour break the employee shall be paid overtime until being released from duty and the employee shall be entitled to 10 consecutive hours off duty without loss of pay during such absence.

PART 6

LEAVE

6.1 Annual Leave

The underlying entitlement of employees under this Award is the Annual Holidays Act 1944, as amended.

6.1.1 In addition to the leave hereinbefore prescribed, seven-day shift workers, that is shift workers who are rostered to work regularly on Sundays and holidays, shall be allowed seven consecutive days leave including non-working days.

6.1.2 Where an employee with twelve months' service is engaged for part of the twelve-month period as a seven-day shift worker, the employee shall be entitled to have the period of leave prescribed in sub-clause 6.1.1 of this clause increased by half a day for each month the employee is engaged continuously, as aforesaid.

6.1.3 Shift workers on continuous shift shall, during their absence or annual leave, be paid as if at work. The shift penalty (see 4.1 above) is in lieu of a 22½ % annual leave loading.

6.1.4 Local arrangements provide for 248 hours annual leave per annum for continuous shift workers.

6.1.5 Public holidays will be credited if they fall during the leave period, and the leave will be extended by one day for each Public holiday.

6.2 Sick Leave

6.2.1 An employee who is absent from work on account of personal illness or incapacity shall be entitled to leave of absence without deduction of pay subject to the following conditions and limitations:

- (a) The employee shall not be entitled to paid leave of absence for any period in respect of which the employee is entitled to worker's compensation.
- (b) Where practicable the employee shall notify the nominated representative of the Company prior to the commencement of the employee's next period of work, and in any case the employee shall within 24 hours of the commencement of such absence inform the Company of the employee's inability to attend for duty and, as far as practicable, state the nature of the illness or incapacity and the estimated duration of the absence.
- (c) The employee shall prove on account of such illness or incapacity that the employee was unable to attend for duty on the day or days for which sick leave is claimed.
- (d) The employee shall not be entitled in respect of any year of service with the Company to leave in excess of five (5) days in the first year of service and ten (10) days in any subsequent year of service. Provided that sick leave shall accumulate from year to year so that any balance of the period specified herein which has in any year not been allowed to an employee by the Company as paid sick leave may be claimed by the employee and subject to the conditions hereinbefore prescribed shall be allowed by that Company in a subsequent year without diminution of the sick leave prescribed in respect of the year. Provided further that sick leave which accumulates pursuant to this subclause shall be available to the employee for a period of 10 years but no longer from the end of the year in which it accrues.

6.2.2 An employee is not entitled to sick leave for more than two absences each of a single day in any one year of service without the production (if requested by the Company) of a certificate, from a qualified medical practitioner. Nothing in this subclause shall limit the Company's rights under paragraph (c) of subclause 6.2.1 hereof.

6.3 Long Service Leave

Employees accrue long service leave at the rate of 520 hours for each ten (10) years of service.

The provisions of the Oil Industry (Long Service Leave) Award 2000 are deemed to regulate long service leave for the purposes of this Award, and in so far as that Award and the *Long Service Leave Act* 1955 are inconsistent, the Oil Industry (Long Service Leave) Award 2000 shall prevail.

6.3.1 Long Service Leave Key Entitlements

6.3.1.1 Amount of Leave: After 1 Jan 1985

- (a) The amount of long service leave entitlement for an employee who has completed at least ten years service with the Company from 1 January 1985, will be:
 - (i) thirteen consecutive weeks' leave for ten years so completed;
 - (ii) thirteen consecutive weeks' leave in respect of each ten years' service since the previous long service leave entitlement; and

- (iii) on the termination of the employee's employment, a proportionate amount calculated on the basis of thirteen consecutive weeks' leave for ten years' service, for the number of years served since the previous long service leave entitlement.
- (b) In the case of an employee who has completed at least five years' service with the Company, and who is terminated for any cause other than serious or wilful misconduct, the entitlement is based on a proportionate amount of thirteen consecutive weeks' leave for ten years' service.
- (c) For continuous shift workers, the entitlement to long service leave is granted in working shifts and not calendar weeks. Therefore the ten year service entitlement to long service leave is not thirteen calendar weeks, but 43.3 12 hour shifts (520 hours).

6.3.1.2 Amount of Leave: Prior 1 January 1985

For an employee who commenced employment prior to 1 January 1985, the amount of long service leave entitlement is the sum of the following:

- (a) for service prior to 1 April 1963, thirteen weeks consecutive weeks leave after twenty years' continuous service;
- (b) for service between 1 April 1963 and 31 December 1984, thirteen consecutive weeks' leave after fifteen years' continuous service.

6.3.1.3 Payment for Period of Leave or Upon Termination of Employment

Payment on long service leave will be made at the employee's ordinary rate of pay and will include:

- Basic Rate;
- Shift premia (including Public Holiday Allowance);
- Clyde Miscellaneous Allowance;
- Flexible Hours Allowance (FHA);
- FIT Allowance (if applicable).

6.3.1.4 Taking of Leave

Accrued long service leave may be taken as soon as practicable after the accrual date, having regards to the needs of the Company, or at such times as agreed between the Company and the employee.

Public holidays will be credited if they fall during the leave period, and the leave will be extended by one day for each Public holiday.

6.3.1.5 Granting Leave in Advance

In special circumstances, provided that an employee has completed at least five years' service, the Company may grant long service leave before it has accrued. No further leave entitlement will occur until the next accrued date. If the employee leaves the Company before the leave has accrued, the Company will deduct from final pay the value of any excess leave taken.

6.3.1.6 Payments on Leaving the Company

On the termination of service, any long service leave to which the employee was entitled but has not been taken, shall be paid in line with the Oil Industry (Long Service Leave) Award 2000.

Upon termination of service with the Company long service leave will be paid out as if the employee were at work.

6.4 Bereavement Leave

An employee shall be entitled to a maximum of three days' leave without loss of pay on each occasion and on the production of satisfactory evidence of the death of the employees' husband, wife, father, mother, sister, brother, child, step-child or parents-in-law, grandparents or grandchildren. For the purpose of this clause the words "wife" and "husband" shall include de facto wife or husband or life partner, and the words "father" and "mother" shall include foster father and mother.

6.5 Parental Leave

An employee shall be entitled to Parental Leave as defined in the relevant legislation, and granted as per Company Policy documented in the Personnel Policy Manual.

6.6 Personal/Carer's Leave

The provisions as determined by the State Personal/Carer's Leave Case - August 1996 (68 IR 308) and the State Personal/Carer's Case 1998 (Unreported 10 December 1998) are deemed to regulate Personal/carer's leave for the purposes of this Award.

6.7 Jury Service

Subject to the production of satisfactory evidence, an employee required to be absent from work due to jury service will be reimbursed by the Company for any loss of wages.

Employees are not expected to attend work on weekends during a period of continuous jury duty where that jury duty bridges any weekend.

6.8 Public Holidays

6.8.1 Unless the employee is required to work by the Company, an employee shall be entitled to the following public holidays without deduction of pay: New Year's Day, Australia Day, Good Friday, Easter Monday, Easter Tuesday, Anzac Day, the Queen's Birthday, August Bank Holiday, Eight-hour Day, Christmas Day, Boxing Day, and any other additional day proclaimed as a holiday throughout the State.

6.8.2 When Anzac Day falls on a Saturday or a Sunday, the following Monday or the day gazetted by State Government of New South Wales to be observed as the Anzac Day holiday shall be substituted for Anzac Day.

6.8.3 An employee called upon to work overtime on any of the holidays above shall be notified the day before and shall be paid triple time for all time worked with a minimum payment of six hours.

6.8.4 The rates hereinbefore prescribed in this sub-clause shall, in the case of all shift work, be deemed to include all shift allowances prescribed in Table 1 of this Award.

6.8.5 An employee notified to attend for work on a holiday which is not so worked shall be paid at holiday rates for six hours. Provided that this subclause shall not apply where an employee who has already been notified to attend for work is given a minimum of 24 hours' notice that the attendance is not so required.

- 6.8.6 When an employee is absent from work on the working day before or the working day after a public holiday without reasonable excuse or without the consent of the employer, the employee shall not be entitled to payment for such holiday.

PART 7

Union Matters

The parties to this Award recognise that Union membership and employee involvement through their Union provides a positive contribution to effective and productive performance.

The Company recognises the role of the Union in representing employees as well as the need to develop and maintain effective communications.

7.1 Right Of Entry

See Chapter 5, Part 7 of the *Industrial Relations Act* 1996.

7.2 Union Delegate

An employee appointed Union Delegate shall upon proper notification by the Union to the Company, be recognised as the accredited representative of the Union and shall be allowed the necessary time during working hours to interview the Company or the Company's representative on matters affecting the employees whom the delegate represents, but the employee must first obtain permission from the supervisor to leave the employee's place of work.

7.3 Notice Board

The Company shall permit the Union to display on notice boards any notice dealing with legitimate Union business, provided that such notice is authenticated by the signature of an accredited representative of the Union.

7.4 Union Business

The ROG will be allowed paid time on 20 working days per annum to attend to union business including but not limited to:

- (a) CFMEU Board of Management and Executive;
- (b) Australasian Refinery Operatives Committee (AROC);
- (c) Trade Union Training Authority (TUTA or its successors) training.

7.5 Union Training

The Company shall provide access to authorised CFMEU training by agreement with the ROG.

7.6 Time in lieu

Time in Lieu is granted to continuous shift operators (including ROG members) who are rostered off but are required by the Company to attend activities outlined in Table 2 of clause 4.5 of this Award.

Time in lieu will be granted by the Company in six or twelve hour blocks.

7.7 Payroll Deductions

The Company shall, with the employee's consent, deduct union dues from the employees monthly pay and remit such deductions to the Union.

PART 8

Gore Bay Terminal Operations

8.1 Boiler Operation

The boiler will be operated with remote attendance by any ticketed operator from the panel room, and as required, from the boiler house. The current boiler operator will be assigned the following duties:

- routine attendance of the boiler (unattended for up to 20 minutes);
- logging of the boilers and the air compressor;
- water testing;
- loading of the Amorena of normal loads;
- loading of tugs, FSI road wagon or drums;
- tank gauging checks;
- assist the shift in normal operation when required.

8.2 Ship Connections and Disconnections

Ship connections and disconnections employees will be completed by operators within the current crew numbers. An accreditation program to ensure that all operators are fully aware of the requirements for ship connections/disconnections will be required.

8.3 Fourth Operator

The fourth operator, when not covering annual leave, long service leave and training, will cover the following duties:

- casual absences;
- loading navy gas oil to Amorena;
- forming part of the hook-up crew when lube oil bunkers are required;
- checking the fire system i.e. Base foam system with the ESO's, base;
- foam valves and pump circulation, and fire boxes;
- project work;
- wharf watch (refer 8.4 below).

8.4 Wharf Watch

Use of Fourth Operator: whenever possible, wharf watch is to be covered by the fourth operator on shift. This will need to be balanced by other demands on the use of the fourth operator.

Relief Management: to provide relief for the assigned wharf watch operator, an extra operator will be provided for a single six-hour period during day shift. Relief is otherwise to be provided by the on-shift crew, or if a necessarily deemed requirement, an extra operator may be arranged at the Senior Operator's discretion.

Example: if the Amorena requires loading during afternoon shift, it is anticipated that the Senior Operator may arrange an extra operator.

8.5 Shore Officers

Number of Reliefs: three operators will be appointed to provide Shore Officer relief.

Method of Selection: applications will be sought from all current Gore Bay Terminal operators and selected candidates will undergo an interview process. The successful applicants will be chosen on the basis of merit.

Availability: it is expected that the appointees will cover planned absences and those casual absences of 3 days or more, as required.

A minimum of two weeks acting in the Shore Officer role will be essential to ensure the maintenance of necessary skills. The Company will ensure each appointee has appropriate opportunity to fulfil this requirement.

8.6 Gore Bay Day Liaison Operator

The duties for the Gore Bay DLO will essentially be the same as that of the Refinery DLO. It is specifically agreed by the parties that the DLO will also be available to undertake (but not limited to) the following tasks (where appropriate and at the direction of the Gore Bay Senior Operator):

- Ship connections and disconnections;
- Cover for Wharf Watch meal relief; and
- Attend tank maintenance meetings (time permitting).

PART 9

Leave Reserved

The parties to this Award agree that the following matters will be subject to further discussion, and where agreed, implementation during the term of this Award in accordance with the processes provided for below:

- Gore Bay

Opportunities for Gore Bay employees engaged under this Award to undertake work currently undertaken by Shore Officers will be jointly reviewed by the Union and the Company during the term of this Award.

- Operator Establishment including Sparing (Clause 5.2.2)

(a) Operator Establishment Levels and Category Structure Review

The parties and employees commit to conduct during the nominal term of the Award an Operator Establishment Levels and category structure review post major projects and competency improvement programme.

(b) Process West - BRU

Operator consultation, involvement and training will take place in the development and planning of the Benzene Reduction Unit ("BRU") plant commissioning, construction and operation.

The parties agree to review the operation of the shift position on Process West that combines the "Platformer" and the BRU no more than 6 months after its implementation, and its effect on other positions directly involved.

(c) Process East - Operator Establishment levels

The parties agree to a review of the current Clyde CCU Operator establishment levels ("the review") during the term of this Award.

The parties agree Shell Global Solutions (SGSi) and an agreed and appropriately independent and expert person (should one be sourced) will conduct the review.

The review will include:

1. Assess the ease of operability of the current process control facilities of the CCU complex through:
 - a. The performance of the baselayer control loops;
 - b. Advanced Process Control;
 - c. Instrumentation performance;
 - d. Overall automation platform performance; and
 - e. Any other item agreed by the consultants.
2. Determine whether the current Operator establishment levels are appropriate for the CCU complement given the assessment in point 1. above. This includes current panel backup measures in place during plant upsets; and
3. Identify other control performance improvement opportunities.

The review will be supplied with access to the appropriate people, resources and information that is required to adequately complete the review.

The review will be undertaken within 6 months of the date of certification of this Award.

If, as a result of the review, a trial of Operator establishment levels on Process East is required, both parties will conduct the trial without any artificial barriers over an agreed timeframe.

Any changes to the Operator establishment levels on the CCU will be implemented after the parties reach agreement.

F. MARKS *J*

BORAL PROSPECT QUARRY (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Boral Construction Materials Group Limited.

(No. IRC 1243 of 2006)

Before The Honourable Justice Walton, Vice-President

15 March 2006

AWARD

1.1. Arrangement

PART A

Clause No. Subject Matter

PART 1

PRELIMINARY

- 1.1 Arrangement
- 1.2 Purpose
- 1.3 Anti-Discrimination
- 1.4 Award Display
- 1.5 Definitions

PART 2

CONTRACT OF EMPLOYMENT, ETC.

- 2.1 Contract of Employment
- 2.2 Consultation
- 2.3 Utilisation of Skills
- 2.4 Training
- 2.5 Redundancy
- 2.6 Workplace Conflict
- 2.7 Counselling

PART 3

CLASSIFICATIONS, WAGES AND ALLOWANCES, ETC.

- 3.1 Classification of Wages
- 3.2 Payment of Wages
- 3.3 Tools
- 3.4 First-aid
- 3.5 Travel, Board, Lodging and Vehicle Usage
- 3.6 Wages Sacrifice in Return for Increased Employer Funded Superannuation

PART 4

HOURS OF WORK, ETC.

- 4.1 Hours of Work - Day Workers
- 4.2 Working of a 38-Hour Week
- 4.3 Shift Work
- 4.4 Meal Breaks
- 4.5 Rest Breaks
- 4.6 Sundays and Holidays
- 4.7 Overtime

PART 5

LEAVE, ETC.

- 5.1 Annual Leave
- 5.2 Annual Leave Loading
- 5.3 Long Service Leave
- 5.4 Parental Leave
- 5.5 Bereavement Leave
- 5.6 Jury Service
- 5.7 Sick Leave
- 5.8 State Personal/Carer's Leave Case - August 1996

PART 6

MISCELLANEOUS

- 6.1 Delegates
- 6.2 Protective Clothing
- 6.3 Personal Protective Equipment
- 6.4 Right of Entry
- 6.5 Recognised Industrial Organisations of Employees
- 6.6 Miscellaneous Provisions
- 6.7 Deduction of Union Membership Fees

PART 7

REMUNERATION

- 7.1 Adjustment Mechanism

PART 8

AREA, INCIDENCE AND DURATION

- 8.1 Application and Term

PART B

MONETARY RATES

Table 1 - Wages

Table 2 - Other Rates and Allowances

Schedule 1 - Employees with a Span of hours of 7.00 am. to
6.00 pm
Schedule 2 - Wages Sacrifice Form

1.2. Purpose

This award is designed to cater for the needs of the Prospect Quarry and its workforce. It provides consistent and fair conditions of employment.

The quarry is in the process of substantial structural change. The estate upon which the quarry is situated is undergoing a complete redevelopment leading to the anticipated close of the quarry some time between 2005 and 2008.

The parties to this award are committed to using this award as the base from which ongoing discussions will be held about the closure of the quarry and how best Boral can reasonably assist employees and in turn they assist in preparing for that closure and redevelopment.

1.3. Anti-Discrimination

- (1) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity and age and responsibilities as a carer.
- (2) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award that, by its terms or operation, has a direct or indirect discriminatory effect.
- (3) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (4) Nothing in this clause is to be taken to affect:
 - (a) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (b) offering or providing junior rates of pay to persons under 21 years of age;
 - (c) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (d) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (5) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

Notation:

- (a) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (b) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

1.4. Award Display

A copy of this award shall be exhibited and kept exhibited in the quarry so as to be legible by the employee

1.5. Definitions

- (1) "Quarry" means the Prospect quarry operated by Boral Resources (NSW) Pty Limited.
- (2) "Accredited competency based training" means competency based training contextualised to the quarry.
- (3) "Operator in charge of Plant" - An employee shall be deemed to be in charge of an item of plant where -
 - (a) Two or more operators are employed on a unit of plant at the same time and the employee is the operator specifically entrusted with the supervision and responsibility.
 - (b)
 - (i) An operator is instructed by the supervisor of the work that their duties are to include repairs to their unit of plant in addition to the work of operating the plant but not when they merely assist a fitter or engineer to do such work.
 - (ii) Where it is sought to introduce this provision, the site consultative committee shall be consulted prior to any implementation.
- (4) "Boral" shall mean Boral Construction Materials Group Limited.
- (5) "Driver Class 1, 2, 3" means a driver so defined in the *Traffic Act 1909* and Regulations.
- (6) "Leading Hand" means an employee who is required to supervise or direct or be in charge of other employees. There is no requirement to appoint leading hands merely because groups of employees work together. Leading hand is an appointment at the absolute discretion of management.
- (7) "Confined Space" means a compartment or space (access to which is through a manhole or similar opening) or a place the dimensions of which necessitate an employees working in a stooped or otherwise cramped position or without proper ventilation.
- (8) "Ordinary time weekly rate of pay" means the weekly rate of pay for working ordinary hours of work inclusive of any all purpose allowances.
- (9) "Act" means the *Industrial Relations Act 1996*.
- (10) "Federal Act" means the *Workplace Relations Act 1996*.
- (11) "Assessor" is an employee appointed as such by Boral in its complete discretion after having obtained the competencies relevant to the role - NMITAB units 7 workplace trainer and 8 workplace assessor.
- (12) "External auditor" means a reputable and qualified auditor who is not an employee of Boral or a company related to Boral within the meaning of the Corporations Law.
- (13) "Salaried employees" means any employee (who has actually worked as a salaried employee within the Metropolitan Division for the majority of the preceding 12 months) who does not have their terms of employment covered by an award and is not remunerated on a 'total cost' basis.
- (14) "Metropolitan Division" means the operations of Boral Resources (NSW) Pty Ltd comprising the Emu Plains, Prospect, Peat's Ridge and Dunmore quarries and any other quarry or similar site operated by Boral Resources (NSW) Pty Ltd from time to time and the Drill and Blast Team.
- (15) "Percentage salary increase" means the percentage before being adjusted to take into account a salaried employee's 'compa ratio' (and excluding any re-grading variations).

- (16) "An award" means an award of the Australian Industrial Relations Commission or the Industrial Relations Commission of New South Wales.
- (17) "Gross earnings" means the total amount earned exclusive of any expense related allowances.
- (18) "General wage increase" means any increase granted by the Industrial Relations Commission of New South Wales in accordance with section 50 or 51 of the Act.

PART 2

CONTRACT OF EMPLOYMENT, ETC.

2.1. Contract of Employment

- (1) Except as hereinafter provided, employment shall be by the week. Any employee not specifically engaged as a casual employee shall be deemed to be employed by the week.
- (2) All new employees shall be on probation for the first three months of engagement. There shall be appropriate procedures for the proper induction of new employees (including Occupational Health and Safety matters, a description of the classification the employee will be employed in when commencing work and an outline of work practices and methods in the quarry etc).
- (3) Termination of employment of weekly employees - Employment shall be terminated:
- (a) by an employee with one week's notice or by forfeiture of a week's wages; or
 - (b) by Boral in accordance with the Federal Act.

Notation:

The Federal Act provides for the following periods of notice:

Serious Misconduct	Immediate
Not more than 1 year	1 week
More than 1 but no more than 3 years	2 weeks
More than 3 years but no more than 5 years	3 weeks
More than 5 years	4 weeks

If the employee is over 45 years of age and has 2 or more continuous years of service add 1 week for all notice except for serious misconduct.

- (4) Part-time Employment -
- (a) An employee may be engaged by the week to work on a part-time basis for a constant number of hours which, having regard to the various ways of arranging ordinary hours, shall average less than 38 but not less than 16 hours per week.
 - (b) An employee so engaged shall be paid per hour one thirty-eighth of the weekly rate prescribed by clause 3.2 Payment of Wages, of Part 3, Classifications, Wages and Allowances, etc., for the classification in which the employee is engaged.
 - (c) An employee engaged on a part-time basis shall be entitled to payments in respect of annual leave, public holidays and sick leave arising under this award on a proportionate basis.
 - (d) No existing employee engaged full-time shall be forced to reduce to part-time employment because of this provision.

- (e) Employees under this clause shall not commence work prior to their fixed starting time unless such time is paid at overtime rates.
 - (f) The number of part-time employees shall not exceed 20 per cent of employees at the quarry unless agreed to by the majority of employees at the quarry.
 - (g) Prior to the introduction of any part-time employment, Boral should consult with the employees at the quarry by utilising the site consultative mechanism and procedures established in accordance with clause 2.2, Consultation.
- (5) Casual Employment -
- (a) A casual employee is one engaged and paid as such. A casual employee for working ordinary time shall be paid per hour one thirty-eighth of the weekly rate prescribed by this award for the work that they perform, plus 15 percent.
 - (b) If after having been engaged by Boral at the quarry for a period of 12 months a casual employee requests to be made permanent Boral shall make the employee a permanent employee.
 - (c) To avoid any doubt the following clauses do not apply to casual employees: 2.1 (1), (2), (3) and (4), 2.5, 2.7, 4.6 (1), (2) and (3), 5.2, 5.4, 5.5, 5.7 and 5.8.
 - (d) A casual employee may have their employment terminated upon one hour's notice.
- (6) Late Comers - Notwithstanding anything elsewhere contained in this award, Boral shall utilise for timekeeping purposes the decimal proportion 0.1 of an hour and shall apply such proportion in the calculation of the working time of the employees. When an employee without reasonable cause, promptly communicated to Boral reports for duty after their appointed starting time or ceases duty before their appointed finishing times, Boral may pay the employee only for the time so worked. If Boral adopts a proportion for the aforesaid purposes they shall apply the same proportion for the calculation of overtime.

2.2. Consultation

- (1) The parties to this award are committed to co-operating positively to increase the efficiency, productivity and competitiveness of the quarry and to enhance the career opportunities and job security for the employees.
- (2) The quarry operates a consultative mechanism and procedure suitable to its size and structure (which the relevant unions endorse and participate in as required) and this will continue.
- (3) For the purpose of this clause, "Relevant Union" shall mean a union which is a party to this award and has members at the quarry.

2.3. Utilisation of Skills

- (1) Employees shall be employed to carry out such duties as may be directed by Boral from time to time, subject to the limits of their skill and competence.
- (2) Any employee may at any time carry out such duties and use such tools and equipment as may be directed by Boral, provided that the employee is competent to do so.

2.4. Training

- (1) The parties to this award recognise that in order to increase the efficiency, productivity and competitiveness of the quarry, a greater commitment to training and skill development is required. Accordingly, the parties commit themselves to:
 - (a) developing a more highly skilled and flexible workforce;

- (b) providing employees with career opportunities through appropriate training to acquire additional skills; and
 - (c) removing barriers to the utilisation of skills acquired.
- (2) Unless otherwise agreed with an employee, Boral shall develop a training program with each employee consistent with:
- (a) the current and future needs of the quarry;
 - (b) the size, structure and nature of the operation of the quarry.
 - (c) the need to develop competencies relevant to the quarry.
- (3)
- (a) Where it is agreed that additional training in accordance with the program developed pursuant to subclause (2) of this clause should be undertaken by an employee, that training may be undertaken either on or off the job. Provided that, if the training is undertaken during ordinary working hours, the employee concerned shall not suffer any loss of pay.
 - (b) Any costs associated with standard fees for prescribed courses and prescribed textbooks (excluding those textbooks which are available in Boral's technical library) incurred in connection with the undertaking of training shall be reimbursed by Boral upon production of evidence of such expenditure. Provided that reimbursement shall also be on an annual basis, subject to the presentation of reports of satisfactory progress.
 - (c) Travel costs incurred by an employee undertaking training in accordance with this clause which exceed those normally incurred in travelling to and from work shall be reimbursed by the Boral.

2.5. Redundancy

- (1) Commitment -
- (a) Preservation of Employment -
 - (i) Where practicable, and having regard to the needs of the quarry, Boral and their employees will co-operate to preserve existing employment and enhance future employment opportunities generally.
 - (ii) This is best achieved when Boral and its employees co-operate to ensure that what can be done is done to produce sustainable improvements in the competitive performance of the quarry.
 - (b) Selection - When redundancies are to occur, those to be made redundant should be selected by reference to the skills, experience, training and performance of individuals compared to the current and future needs of the business concerned. Having undertaken such an assessment, if it is necessary to make redundant individuals that are comparatively equal in terms of the said assessment, unless some other pressing domestic issue is raised by the individuals concerned, the employee or employees with the shortest period of service should be retrenched first.
- (2) Introduction of Change -
- (a) Boral's Duty to Notify -
 - (i) Where Boral has made a definite decision to introduce major changes in production program, organisation, structure or technology that are likely to have significant effects on employees, Boral shall notify the employees who may be affected by the proposed changes and the relevant union set out in clause 6.5.

- (ii) "Significant effects" include termination of employment, major changes in the composition, operation or size of Boral's workforce or in the skills required, the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and the restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein, an alteration shall be deemed not to have significant effect.
- (b) Boral's Duty to Discuss Change -
 - (i) Boral shall discuss with the employees affected, inter alia, the introduction of the changes referred to in paragraph (a) of this subclause, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.
 - (ii) The discussions shall commence as early as practicable after a definite decision has been made by Boral to make the changes referred to in the said paragraph (a) and should utilise the consultative structure established at the quarry in accordance with clause 2.2, Consultation, of this part.
 - (iii) For the purposes of such discussion, Boral shall provide in writing to the employees concerned and their union, if any, all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees, provided that Boral shall not be required to disclose confidential information the disclosure of which would be inimical to Boral's interests.
- (3) Redundancy -
 - (a) Discussions Before Terminations -
 - (i) Where Boral has made a definite decision that it no longer wishes the job the employee has been doing done by anyone and this is not due to the ordinary and customary turnover of labour, and that decision may lead to termination of employment, Boral shall hold discussions with the employees directly affected.
 - (ii) The discussions shall take place as soon as is practicable after Boral has made a definite decision which will invoke the provisions of subparagraph (i) of this paragraph and shall cover, inter alia, any reasons for the proposed terminations, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned. The discussions should utilise the consultative structure established at the quarry in accordance with clause 2.2, Consultation.
 - (iii) For the purposes of the discussion Boral shall, as soon as practicable, provide in writing to the employees concerned and their union, if any, all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, the number of workers normally employed and the period over which the terminations are likely to be carried out. Provided that Boral shall not be required to disclose confidential information the disclosure of which would be inimical to Boral's interests.
 - (b) Transfer to Lower Paid Duties - Where an employee is transferred to lower-paid duties for reasons set out in subparagraph (i) of paragraph (a) of this subclause, the employee shall be entitled to the same period of notice of transfer as he or she would have been entitled to if his or her employment had been terminated, and Boral may, at Boral's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary-time rate of pay and the new lower ordinary-time rates for the number of weeks of notice still owing.

- (c) Severance Pay - In addition to the period of notice prescribed for termination, an employee whose employment is terminated for reasons set out in the said subparagraph (i) shall be entitled to the following amount of severance pay in respect of a continuous period of service:

Period of continuous service	Severance pay
Less than 1 year's service	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	7 weeks' pay
3 years and less than 4 years	10 weeks' pay
4 years and less than 5 years	12 weeks' pay
5 years and less than 6 years	14 weeks' pay
6 years or more	16 weeks' pay

and thereafter two weeks pay per year of service up to a maximum payment of 52 weeks' pay.

"Weeks' pay" means the ordinary-time weekly rate of pay for the employee concerned.

An employee retrenched having attained the age of 45 years shall be paid at the rate of 1.25 weeks for every week of entitlement according to the payments above.

- (d) Employee Leaving During Notice - An employee whose employment is terminated for reasons set out in subparagraph (i) of paragraph (a) of this subclause may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with Boral until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice.
- (e) Alternative Employment - Boral, in a particular redundancy case, may make application to the Industrial Relations Commission of New South Wales to have the general severance pay prescription varied if Boral obtains acceptable alternative employment for an employee.
- (f) Time Off During Notice Period -
- (i) During the period of notice of termination given by Boral an employee shall be allowed up to one day's time off (one day off without loss of pay during each week of notice for the purpose of seeking other employment).
- (ii) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of Boral, be required to produce proof of attendance at an interview or he or she shall not receive payment for the time absent.
- For this purpose a statutory declaration shall be sufficient.
- (g) Statement of Employment - Boral shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee a written statement specifying the period of his or her employment and the classification of or the type of work performed by the employee.
- (h) Employees With Less Than One Year's Service - This clause shall not apply to employees with less than one year's continuous service and the general obligation on Boral should be no more than to give relevant employees an indication of the impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.
- (i) Notice Other Than Technological Change- if an employee is made redundant for a reason other than technological change then they shall be given the relevant period of notice ascertained from clause 2.1 (3).

- (j) Notice Technological Change - if an employee is made redundant for reason of technological change they shall be given three months notice of termination or payment in lieu of such notice or part notice and part payment.

Notation: This period of notice shall be deemed as service for the purposes of the *Long Service Leave Act 1955* and the *Annual Holidays Act 1944*.

- (k) Notice to Centre Link

Where a decision has been made to terminate employees, Boral shall notify Centre Link thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

- (l) Centre Link Employment Separation Certificate

Boral shall, upon receipt of a request from an employee whose employment has been terminated, provide to the employee an "employment separation certificate" in the form required by Centre Link.

2.6. Avoidance of Workforce Conflict

- (1) Subject to the Act the procedure in subclause (3) shall apply in the quarry for the avoidance of conflict in and with the workforce.
- (2) The objectives of the procedure is be to promote the resolution of conflict by measures based on consultation, co-operation and discussion to reduce the level of conflict within and with the workforce and to avoid interruption to the performance of work and the consequential loss of production and wages.
- (3)
- (a) Procedures relating to individual employees -
- (i) The employee is required to notify (in writing or otherwise) Boral as to the substance of the grievance, request a meeting with Boral for bilateral discussions and state the remedy sought.
- (ii) A grievance must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- (iii) Reasonable time limits must be allowed for discussion at each level of authority.
- (iv) At the conclusion of the discussion, Boral must provide a response to the employee's grievance, if the matter has not been resolved, including reasons for not implementing any proposed remedy.
- (v) While a procedure is being followed, normal work must continue.
- (b) Procedures relating to conflict involving the workforce:
- (i) The conflict must initially be dealt with as close to its source as possible, with graduated steps for further discussion and resolution at higher levels of authority.
- (ii) Reasonable time limits must be allowed for discussion at each level of authority.
- (iii) While a procedure is being followed, normal work must continue.

- (4) Boral may be represented by an industrial organisation of employers and the employees may be represented by an industrial organisation of employees for the purposes of each procedure.

2.7. Counselling

Upon Boral becoming aware that an employee's conduct and/or work performance was/is unsatisfactory they should:

- (a) undertake an investigation of the matter;
- (b) put the matter to the employee with any relevant supporting information Boral is aware of and allow them to respond;
- (c) consider the employee's response;
- (d) conclude whether or not the employee's conduct behaviour and/or work performance was/is unsatisfactory;
- (e) explain why the conclusion reached has been arrived at; and then
- (f) take appropriate action.

PART 3

CLASSIFICATIONS, WAGES AND ALLOWANCES, ETC.

3.1. Classifications and Wages

- (1) Employees covered by this award shall be classified into one of the grades/levels set out below (and for pay purposes may be classified into a sub-grade/level of a grade/level as agreed and set out in Table 1):

- (a) Grade 1 - Trainee - A Grade 1 Trainee is an employee who, upon entering the production work force of the quarry, will undertake up to three months of induction and skills training. That training will include information on the enterprise, conditions of employment, introduction to quarry personnel, training and career opportunities, quarry layout, work and documentation procedures and specific occupational health and safety equipment appreciation and quality control training.

Duties - Indicative of the tasks an employee at this level may perform are the following:

general labouring;

cleaning;

higher grade tasks for training purposes.

Responsibility - An employee at this level will perform routine tasks, using minimal judgement, under direct supervision, to the level of their skill and training.

Qualification - The qualification required for an entry by the employee will be determined by Boral. Basic literacy and numeracy skills will be desirable. Use and understanding of English is also desirable.

Training - In accordance with clause 2.4, Training, of Part 2, Contract of Employment, etc., an employee at this level will be provided with a period of up to 3 months of structured induction and skills training in order to competently perform the duties of a Quarry Worker Grade 2.

Progression - An employee may progress from Grade 1 to higher grades after 3 months service and on being able to competently perform the duties at a higher grade.

Translation From Old Structure to New - Old classifications that are to be translated to this grade include:

no comparable old classification.

- (b) Grade 2 - Attendant - A Grade 2 Attendant has successfully completed up to three months structured training so as to enable the employee to perform competently the work within the scope of this level.

Duties - Indicative of the tasks an employee at this level may perform are the following:

attend to, maintain and service fixed and mobile plant; assist with the repair and maintenance of fixed and mobile plant;

apply basic quality control and assurance procedures;

use Class 1 motor vehicles;

maintain simple records; and

higher grade tasks for training purposes.

Responsibility - An employee at this level works under direct supervision, either individually or in a team environment.

Qualification - A Grade 2 Attendant will have successfully completed the entry level induction and skills training and have demonstrated competence in performing the duties at this level.

Training - In accordance with clause 2.4, Training, of Part 2, Contract of Employment, etc., an employee at this level may be provided with structured training to allow him/her to perform the wider range of duties at this level.

An employee may also, over time, be provided with a structured program of training that will allow them to competently perform work at higher grades.

Progression - An employee may progress to a higher grade on the basis of being able to competently perform the skills to work at the higher grade and on being selected for a position when a position at that level becomes available.

When accredited competency based training and assessment becomes available for higher grades, successful completion of this training and assessment will be required for progression to a higher grade.

Translation From Old Structure to New - Old classifications that are to be translated to this grade include:

Labourer, Pick and Shovel;

Driver, Motor Vehicle Class 1;

Fixed Plant Attendant.

- (c) Grade 3 - Advanced Attendant - A Grade 3 (Advanced Attendant) has demonstrated the competency, and is required to undertake work at this level.

Duties - Indicative of the tasks an employee at this level may perform are the following:

operate at least one item of Group A plant;

maintain quarry plant and equipment;
carry out basic product sampling and quality testing;
operate a weighbridge;
carry out clerical tasks and maintain simple records;
receive, issue and maintain quarry stores;
assist in one-the-job training; and
higher grade tasks for training purposes.

Responsibility - An employee at this level will be responsible for the quality of their own work, subject to routine supervision, and exercise discretion to the level of their skill and training.

Qualification - A Grade 3 will have successfully completed the entry level induction and skills training and have demonstrated competence in performing the duties at this level.

When accredited competency based training and assessment becomes available for Grade 3 occupations, successful completion of this training and assessment will be required qualification for this grade.

Training - In accordance with clause 2.4, Training, an employee at this level may be provided with structured training to allow him/her to perform the wider range of duties at this level.

An employee may also, over time, be provided with a structured program of training that will allow them to competently perform work at higher grades.

Progression - An employee may progress to a higher grade on the basis of being able to competently perform the skills to work at the higher grade and on being selected for a position when a position at that level becomes available.

When accredited competency-based training and assessment becomes available for higher grades, successful completion of this training and assessment will be required for progression to a higher grade.

Translation from Old Structure to New - Old classifications that are to be translated to this grade include:

Driver Motor Vehicle Class 3A;

Driver Motor Vehicle Class 3B;

Control Room Operator C;

Weighbridge Operator B;

Storesperson.

- (d) **Grade 4 - Operator** - A Grade 4 Operator has demonstrated the competency, and is required to undertake work at this level.

Duties - Indicative of the tasks an employee at this level may perform are the following:

fault find problems and make adjustments to plant;

understand and interpret quality assurance procedures and perform analytical tests and ascertain conformity;

operate at least one item of Group B plant;

operate a weighbridge and allocate trucks;

assist in on-the-job training; and

higher grade tasks for training purposes.

Responsibility - An employee at this level will be responsible for the quality of their work, subject to routine supervision, and exercise discretion to the level of their skill and training.

Qualification - A Grade 4 will have successfully completed the entry level induction and skills training and have demonstrated competence in performing the duties at this level.

When accredited competency based training and assessment becomes available for Grade 4 occupations, successful completion of this training and assessment will be required qualification for this grade.

Training - In accordance with clause 2.4, Training, of Part 2, Contract of Employment, etc., an employee at this level may be provided with structured training to allow him/her to perform the wider range of duties at this level.

An employee may also, over time, be provided with a structured program of training that will allow them to competently perform work at higher grades.

Progression - An employee may progress to a higher grade on the basis of being able to competently perform the skills to work at the higher grade and on being selected for a position when a position at that level becomes available.

When accredited competency based training and assessment becomes available for higher grades, successful completion of this training and assessment will be required for progression to the higher grade.

Translation From Old Structure to New - Old classifications that are to be translated to this grade include:

Operator Remote Control - B;

Operator Tractor 295 bhp @ wf;

Operator Dumper 15-20t

Operator Pneu. Drill 600 bhp;

Operator Navvy 3.0-5.3m;

Operator Dumper > 75t;

Operator Navvy > 5.3m.

- (e) Quarry Worker Grade 5 Skilled Operator - A Quarry Worker Grade 5 (Skilled Operator) has demonstrated competency and is required to undertake work at this level.

Duties - Indicative of the tasks an employee at this level may perform are the following:

carry out routine mechanical repairs;

operate at least one item of Group C plant;

operate multiple weighbridges and carry out computerised allocation of trucks;

higher grade tasks for training purposes.

Responsibility - An employee at this level will be responsible for the quality of their own work, subject to general supervision, and exercise discretion to the level of their skill and training.

Qualification - A Quarry Worker Grade 5 will have successfully completed the entry level induction and skills training and have demonstrated competence in performing the duties at this level.

When accredited competency-based training and assessment becomes available for Grade 5 occupations, successful completion of this training and assessment will be a required qualification for this grade.

Training - In accordance with clause 2.4, Training, of Part 2 - Contract of Employment, etc., an employee at this level may be provided with structured training to allow him/her to perform the wider range of duties at this level.

An employee may also, over time, be provided with a structured program of training that will allow them to competently perform work at higher grades.

Progression - An employee may progress to a higher grade on the basis of being able to competently perform the skills to work at the higher grade and on being selected for a position when a position at that level becomes available.

When accredited competency-based training and assessment becomes available for higher grades, successful completion of this training and assessment will be required for progression to the higher grade.

Translation from Old Structure to New - Old classifications that are to be translated to this grade include:

Operator Remote Control - A;

Operator Navvy 0.6-1.5m³;

Operator Dumper 12-15t;

Operator Tractor > 295 bhp @ wf;

Operator Dumper 15-20t

Operator Pneumatic Drill < 750 cfm;

Operator Hydraulic Drill <95 kW;

Transport Clerk Special Class;

Operator Dumper 20-25t;

Operator Navvy 1.5-3.0m³.

- (f) Quarry Worker Grade 6 Advanced Operator - A Quarry Worker Grade 6 (Advanced Operator) has demonstrated the competency, and/or holds the qualification and is required to undertake work at this level.

Duties - Indicative of the tasks an employee at this level may perform are the following:

operate at least one item of Group D plant;

supervise, plan and control clerical and weighbridge operations;

prepare and initiate quarry blasts;

higher grade tasks for training purposes.

Responsibility - An employee at this level will be responsible for the quality of their own work, subject to general supervision, and exercise discretion to the level of their skill and training.

Qualification - A Quarry Worker Grade 6 will have successfully completed the entry level induction and skills training and have demonstrated competence in performing the duties at this level.

When accredited competency-based training and assessment becomes available for Grade 6 occupations, successful completion of this training and assessment will be a required qualification for this grade.

Training - In accordance with clause 2.4, Training, of Part 2 - Contract of Employment, etc., an employee at this level may be provided with structured training to allow him/her to perform the wider range of duties at this level.

An employee may also, over time, be provided with a structured program of training that will allow them to competently perform work at higher grades.

Progression - An employee may progress to a higher grade on the basis of being able to competently perform the skills to work at the higher grade and on being selected for a position when a position at that level becomes available.

When accredited competency-based training and assessment becomes available for higher grades, successful completion of this training and assessment will be required for progression to the higher grade.

Translation from Old Structure to New - Old classifications that are to be translated to this grade include:

Operator Tractor 295-600 bhp;

Operator Tractor 450-600 bhp;

Operator Dumper 25-30t;

Tradesperson;

Shot Firer;

Operator Hydraulic Drill 95+kW;

Operator Dumper 30-50t;

Supervisor Clerk;

Operator Dumper 50-75t.

- (g) Quarry Worker Grade 7 Special Class Operator - A Quarry Worker Grade 7 (Special Class Operator) has demonstrated competency and is required to undertake work at this level.

Duties - Indicative of the tasks an employee at this level may perform are the following:

operate at least one item of Group E plant.

Responsibility - An employee at this level will be responsible for the quality of their own work, subject to general supervision, and exercise discretion to the level of their skill and training.

Qualification - A Quarry Worker Grade 7 will have successfully completed the entry level induction and skills training and have demonstrated competence in performing the duties at this level.

When accredited competency-based training and assessment becomes available for Grade 7 occupations, successful completion of this training and assessment will be a required qualification for this grade.

Training - In accordance with clause 2.4, Training, of Part 2 - Contract of Employment, etc., an employee at this level may be provided with structured training to allow him/her to perform the wider range of duties at this level.

An employee may also, over time, be provided with a structured program of training that will allow them to competently perform work at higher grades.

Progression - An employee may progress to a higher grade on the basis of being able to competently perform the skills to work at the higher grade and on being selected for a position when a position at that level becomes available.

When accredited competency-based training and assessment becomes available for higher grades, successful completion of this training and assessment will be required for progression to the higher grade.

Translation from Old Structure to New - Old classifications that are to be translated to this grade include:

Operator Tractor > 600 bhp;

Operator Navvy 3.0-5.3m³;

Operator Dumper > 75t;

Operator Navvy > 5.3m³.

(h) Tradesperson Level 1 - Mechanical - A Tradesperson

A Tradesperson Level 1 - Mechanical, is a tradesperson of one or more of the following classes: Mechanical fitter, pipe fitter on refrigeration work and/or high pressure work, which includes live steam and hydraulic press work, points and crossings fitter and window frame fitter; or a tradesperson who is partly or wholly engaged in setting up and operating the following machines: Lathe, boring machine, milling machine, planing machine, shaping machine, slotting machine, precision grinding machine, and a drilling machine where the operator uses the same precision tools as fitters and turners; or a tradesperson engaged repairing, altering, overhauling, assembling or testing metal of the engine or chassis of motor cars, motor cycles or other motor vehicles; or engaged in repairing and/or overhauling wheeled or track type mobile equipment associated with (a) construction equipment, (b) earthmoving equipment or agricultural and diesel mobile equipment such as petrol and/or diesel engines, chassis, transmission, hydraulics, electrical system and ancillary equipment; or a tradesperson using electric arc and/or oxy-acetylene blow pipe and/or coal gas cutting plant who is required to apply general trade experience as a welder.

Responsibility - An employee at this level will be responsible for the quality of their own work, subject to general supervision, and exercise discretion to the level of their skill and training.

Qualifications - A Tradesperson Level 1 will have successfully completed a recognised trade certificate course.

Training - In accordance with clause 2.4, Training, of Part 2, Contract of Employment, etc., an employee may, over time, be provided with a structured program of training that will allow them to competently perform work at higher levels.

Progression - An employee at this level will be responsible for the quality of their own work, subject to general supervision, and exercise discretion to the level of their skill and training.

Translation From Old Structure to New - Old classifications that are to be translated to this grade include:

Tradesperson

- (i) Tradesperson Level 2 - Mechanical (Experienced) A Tradesperson Level 2 - Mechanical, is a tradesperson of one or more of the following classes: Mechanical fitter, pipe fitter on refrigeration work and/or high pressure work which includes live steam and hydraulic press work, points and crossings fitter and window frame fitter; or a tradesperson who is partly or wholly engaged in setting up and operating the following machines: Lathe, boring machine, milling machine, planing machine, shaping machine, slotting machine, precision grinding machine, and a drilling machine where the operator uses the same precision tools as fitters and turners; or a tradesperson engaged in repairing, altering, overhauling, assembling or testing metal of the engine or chassis of motor cars, motor cycles or other motor vehicles; or engaged in repairing and/or overhauling wheeled or track type mobile equipment associated with (a) construction equipment, (b) earthmoving equipment or agricultural and diesel mobile equipment such as petrol and/or diesel engines, chassis, transmission, hydraulics, electrical system and ancillary equipment; or a tradesperson using electric arc and/or oxy-acetylene blow pipe and/or coal gas cutting plant who is required to apply general trade experience as a welder.

Responsibility - An employee at this level will work autonomously, be responsible for quality control of their own work and may exercise supervision of others in related or similar work.

Qualification - A Tradesperson Level 2 will have successfully completed a recognised trade certificate course.

Training - In accordance with clause 2.4, Training, of Part 2, Contract of Employment, etc., an employee may also, over time, be provided with a structured program of training that will allow them to competently perform work at higher grades.

Progression - A Tradesperson Level 1 will progress to this level after having been employed in the quarrying industry for eighteen months.

An employee may progress to a higher grade on the basis of being able to competently perform the skills to work at the higher grade and on being selected for a position when a position at that level becomes available.

Translation From Old Structure to New - Old classifications that are to be translated to this grade include:

Tradesperson Experienced

- (j) Tradesperson Level 3 - Special Class - A Tradesperson Level 3 is a:

Tradesperson Level 1 - Mechanical who is engaged regularly over a period or intermittently during a week in any combination of installing, repairing and maintaining, testing, modifying, commissioning of fault finding on complex machinery and equipment which utilises hydraulic and/or pneumatic principles and who, in the course of such work, is required to read and understand hydraulic and/or pneumatic circuitry that controls fluid power systems; or

Responsibility - An employee at this level will work autonomously, be responsible for quality control of their own work and may exercise supervision of others in related or similar work.

Qualification - A Tradesperson Level 3 will have had a minimum of two years on-the-job experience as a tradesperson working predominantly on fluid power systems as will enable the tradesperson to perform such work under minimum supervision and technical guidance; and satisfactorily completed a prescribed post-trades course or the achievement to the satisfaction of Boral of a comparable standard of skill and knowledge by other means, including in-plant training or on-the-job experience referred to above; or a Tradesperson Level 3 will have had not

less than two years on-the-job experience as a tradesperson working mainly on such complex or intricate circuitry work as will enable the tradesperson to perform such work unsupervised where necessary and practicable; and having, by virtue of either the satisfactory completion of a prescribed post-trades course in industrial electronics or the achievement of a comparable standard of knowledge by other means, including the on-the-job experience referred to above, gained a sufficient comprehension of such complex or intricate circuitry work as will enable the tradesperson to examine, diagnose and modify systems comprising inter-connected circuits.

Training - In accordance with clause 2.4, Training, of Part 2, Contract of Employment, etc., an employee may, over time, be provided with a structured program of training that will allow them to competently perform work at higher levels.

Progression - An employee may progress to a higher level on the basis of being able to competently perform the skills to work at the higher level and on being selected for a position when a position at that level becomes available.

Translation From Old Structure to New - Old classifications that are to be translated to this grade include:

Tradesperson Special Class

- (k) Tradesperson Level 4 - Special Class (Experienced) - A Tradesperson Level 4 is a:

Tradesperson Level 2 - Mechanical, who is engaged regularly over a period or intermittently during a week in any combination of installing, repairing and maintaining, testing, modifying, commissioning of fault finding on complex machinery and equipment which utilises hydraulic and/or pneumatic principles and who, in the course of such work, is required to read and understand hydraulic and/or pneumatic circuitry which controls fluid power systems; or

Responsibility - An employee at this level will work autonomously, be responsible for quality control of their own work and may exercise supervision of others in related or similar work.

Qualification - A Tradesperson Level 4 will have had a minimum of two years on-the-job experience as a tradesperson working predominantly on fluid power systems as will enable the tradesperson to perform such work under minimum supervision and technical guidance; and satisfactorily completed a prescribed post-trades course or the achievement to the satisfaction of Boral of a comparable standard of skill and knowledge by other means, including in-plant training or the on-the-job experience referred to above; or

A Tradesperson Level 4 will have had not less than two years' on-the-job experience as a tradesperson working mainly on such complex or intricate circuitry work as will enable the tradesperson to perform such work unsupervised where necessary and practicable; and having, by virtue of either the satisfactory completion of a prescribed post-trades course in industrial electronics or the achievement of a comparable standard of knowledge by other means, including the on-the-job experience referred to above, gained a sufficient comprehension of such complex or intricate circuitry work as will enable the tradesperson to examine, diagnose and modify systems comprising inter-connected circuits.

Training - In accordance with clause 2.4, Training, an employee may, over time, be provided with a structured program of training that will allow them to competently perform work at higher levels.

Progression - A Tradesperson Level 3 will progress to this level after having been employed in the quarrying industry for eighteen months.

An employee may progress to a higher level on the basis of being able to competently perform the skills to work at the higher level and on being selected for a position when a position at that level becomes available.

Translation From Old Structure to New - Old classifications that are to be translated to this grade include:

Tradesperson Special Class Experienced

(2) For the purposes of this clause, the following words shall bear the stated meaning:

- (a) "Attend to": includes monitoring, inspection and basic operation of fixed plant items such as crushers and conveyors.
- (b) "Maintain": includes cleaning up, adjustments and re-tensioning, using selected hand tools and simple butt and spot welding and oxy-acetylene cutting.
- (c) "Service": includes greasing, changing oil, adjusting pressures, changing filters, changing tyres.
- (d) "Routine mechanical includes replacement of V repairs": - belts, conveyor idlers, crusher manganese, screen cloths, pump impellers and liners and pipe sections.
- (e) "Simple processing a simple fixed or portable plant": processing plant is operated by an operator who relies on automatic and/or semi-automatic controls and remote indicators to monitor and control the plant's output.

The operator is required to perform the major and substantial portion of his/her function within a control room but will, from time to time, perform functions outside the control room.

- (f) "Complex processing plant": a complex processing plant is operated by a plant operator who is required to monitor and control the complete plants operation by such means as remote indicators and automatic and/or semi-automatic controls.

In addition to the system, the operator must have the responsibility of monitoring and controlling at least one further function, such as tipping control, loading out facilities, stock-pilling control or similar functions. The operation is such that the control room cannot generally be left unattended.

- (g) "Sophisticated", a sophisticated, computer managed processing plant computer managed contains a sophisticated computer system that processing plant": controls most of the operation of the plant. The operator is required to control, adjust and monitor the operation of the plant using the computer system and to troubleshoot production problems by utilising the computer's capabilities.

(3) For the purpose of this clause, the "Plant Groupings" are:

- (a) Group A -

Simple Processing Plant;

Motor Vehicle Class 3A and 3B.

- (b) Group B -

Wheel and Tracked Loaders up to and including 220 kW;

Tracked Dozers up to and including 220 kW;

Motor Graders;

Mobile Cranes;

Dredges;

- Complex fixed or portable processing plant.
- (c) Group C -
- Excavator up to and including 3.0 m;
 - Face shovel up to and including 3.0 m;
 - Dragline up to and including 3.0 m;
 - Dump Truck over 12 t and up to and including 25-t capacity;
 - Motor Scraper over 12 t and up to and including 25-t capacity;
 - Off Highway Water Carts;
 - Wheel or tracked Loader over 220 kW and up to and including 450 kW (not employed at a hard rock face);
 - Tracked dozer over 220 kW and up to and including 450 kW (not employed at a hard rock face);
 - Air Drill;
 - Hydraulic drill up to and including 95 kW;
 - Sophisticated, computer managed processing plant.
- (d) Group D -
- Wheel and Tracked Loaders over 220 kW and up to and including 450 kW (employed at a hard rock face);
 - Track Dozer over 220 kW and up to and including 450 kW (employed at a hard rock face);
 - Dump Truck over 25-t and up to and including 75-t capacity;
 - Motor Scraper over 25-t and up to and including 75-t capacity;
 - Hydraulic Drill over 95 kW.
- (e) Group E -
- Excavators over 3.0 m;
 - Face Shovels over 3.0 m;
 - Dragline over 3.0 m;
 - Dump Truck over 75-t capacity;
 - Wheel loaders over 450 kW;
 - Tracked Dozers over 450 kW.
- (4) The rates of pay to be paid to employees as classified in subclause (1) of this clause are set out in Table 1 - Wages, of Part B, Monetary Rates.

- (5) Additions to Wage Rates - The allowances prescribed in paragraphs (a), (b), (c) and (d) of this subclause shall be treated as part of the employee's ordinary wage for all purposes of the award.
- (a) In Charge of Plant Allowance (as defined) - the amount per week set out in Item 1 of Table 2, Other Rates and Allowances of Part B.
- (b) Leading Hand Allowance (as defined), in charge of:
- 2-5 - the amount set out in Item 2 of Table 2.
- 6-10 - the amount set out in Item 3 of Table 2.
- 11-20 - the amount set out in Item 4 of Table 2.
- More than 20 - the amount set out in Item 5 of Table 2.
- (c) Competency Assessment Allowance - for undertaking and then successfully completing competency based assessments for the work performed by an employee from time to time the amount per week set out in Item 13 of Table 2, Other Rates and Allowances of Part B.
- (d) Assessor Skill - An employee appointed as an assessor shall be paid the amount per week set out in Item 14 of Table 2, Other Rates and Allowances of Part B.
- (6) Confined Spaces Allowance - Quarry Maintenance Personnel - For working in confined spaces (as defined) an employee shall be paid the amount set out in Item 6 of Table 2.

3.2. Payment of Wages

- (1) Wages shall be paid weekly by means of electronic funds transfer.
- (2)
- (a) One day of each period shall be recognised as payday for each job. It shall not be later than the same day in each pay period. The pay period shall close not more than three working days before the recognised pay day.
- (b) Employees shall be paid during ordinary working hours. If they are paid during the usual meal time such time so occupied shall be added to the actual meal time.
- (c) When employees are terminated, except for misconduct, they shall be paid all wages due to them at the time of their termination. In the case of termination for misconduct or of resignation they shall be paid all wages due to them within twenty-four hours after termination.
- (d) Where an employee is required by Boral to wait at the quarry beyond the ordinary ceasing time of the employee for payment of wages for a period of more than 15 minutes, they shall be paid at overtime rates for the period during which they are so required to wait.
- (3) An employee who, upon the termination of his/her employment is entitled to long service leave under the *Long Service Leave Act 1955*, shall be paid any such entitlement that he/she may have under this Act by Boral within fourteen days of the termination of his/her employment.
- (4) In the event that a scheduled day off falls on pay day, Boral may pay wages to the employee or employees concerned the next following working day. However, subject to Boral being able to make suitable arrangements, the wages may be paid on the working day preceding the scheduled day off. Provided further that where the scheduled day off falls on a pay day which is a Friday, Boral shall pay wages on the working day preceding this scheduled day off.
- (5) In the case of termination of employment of an employee, in addition to the entitlement due and payable under the *Annual Holidays Act 1944*, and the *Long Service Leave Act 1955*, such employee shall be

entitled to payment for that period of rostered time off to which he/she would have become entitled had he/she continued in employment. For the purpose of calculation, this subclause shall refer to that period of leave which the employee would have become entitled to under the relevant Act at the date of termination had his/her employment not terminated.

3.3. Tools

- (1) Tools - Tradesperson Level 1-4 inclusive shall be paid an allowance per week as set out in Item 7 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for supplying and maintaining tools ordinarily required in the performance of their work as tradespersons.
- (2) All tools required by Grades 1-7 inclusive shall be provided free of charge by Boral.

3.4. First-Aid

- (1) An employee holding a first-aid certificate and appointed by Boral to perform first-aid duties shall be paid an allowance per day as set out in Item 8 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, in addition to their ordinary rate.

3.5. Travel, Board, Lodging and Vehicle Usage

- (1) Employees temporarily transferred from the quarry to another location shall be paid at ordinary-time rates for all time in excess of that usually spent in travelling to their place of employment and when required to use their private vehicle shall be paid an allowance as set out in subclause (7) of this clause for all distance travelled in excess of that usually travelled to their place of employment. This allowance shall be payable in addition to any payment made under subclause (8) of this clause.
- (2) An employee -
 - (a) engaged in one locality to work in another; or
 - (b) sent other than at their own request from their usual locality to another for employment which can reasonably be regarded as permanent, involving a change of residence, shall be paid travelling time whilst necessarily travelling between such localities and expenses for a period not exceeding three months or, in cases where the employee is in the process of buying a place of residence in the new locality, for a period not exceeding six months. Provided that such expenses shall cease after they have taken up permanent residence or abode at the new location.
- (3) An employee sent from their usual locality to another (in circumstances other than those prescribed in subclause (2) of this clause) and required to remain away from their usual place of abode shall be paid travelling time whilst necessarily travelling between such localities, and expenses whilst so absent from their usual locality.
- (4) The rate of pay for travelling time shall be ordinary rates, except on Sundays and holidays when it shall be time and a half.
- (5) The maximum travelling time to be paid for shall be twelve hours out of every twenty-four or, when a sleeping berth is provided by Boral for all-night travel, eight hours out of every twenty-four.
- (6) "Expenses", for the purpose of this clause, means:
 - (a) all fares reasonably incurred;
 - (b) reasonable expenses incurred whilst travelling, including the amount as set out in Item 9 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for each meal taken;
 - (c) the provision of reasonable board and lodging or a reasonable allowance to cover the cost incurred for board and lodging, not exceeding the amount set out in Item 10 of Table 2 per week.

- (7) Where employees during working hours are directed by Boral to use their private motor vehicle for any purpose they shall be paid an allowance as set out in Item 11 of Table 2 per kilometre travelled. This allowance shall be payable in addition to any payment made under subclause (8) of this clause.
- (8) Where public transport is not available at a suitable time, employees shall be paid an allowance as set out in Item 12) of Table 2 per day (which is assessed by reference to each kilometre travelled at the notional distance of ten kilometres) in recognition of the necessity to drive their own car to work.

3.6 Wages Sacrifice In Return For Increased Employer Funded Superannuation

- (1) A permanent employee may elect to forgo receiving part of their weekly ordinary time rate of pay in return for increased employer funded superannuation by completing the election form set out in Schedule A of this award.
- (2) Having made a wages sacrifice election in accordance with this clause an employee shall have their weekly ordinary time rate of pay reduced by the relevant elected amount except when:
 - (a) overtime is worked in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the payment for overtime;
 - (b) calculating allowances arising from Part B - Table 2, in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the said allowances;
 - (c) calculating annual leave loading, in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the said allowances;
 - (d) calculating payments upon termination of employment (pay in lieu of notice, accrued annual and long service leave entitlements and redundancy pay) in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the payment those payment upon termination; or
 - (e) calculating an employee's minimum statutory Superannuation Guarantee contribution, in which case the relevant pre election weekly ordinary time rate of pay shall apply for the purposes of calculating the said contribution.
- (3) If an employee has made an election in accordance with this clause Boral shall provide the employee with employer funded superannuation contributions in the amount elected in addition to any statutory contributions.
- (4) Having made an election in accordance with this clause an employee may cease or vary their election by completing a further election form as set out in Schedule 2 of this award to have prospective effect on and only on 1 January or 1 July each year.
- (5) Despite anything else in this clause, if an employee makes an election in accordance with this clause:
 - (a) should any laws governing taxation or superannuation change at any time so as to impose any additional cost or tax upon Boral than those applicable at the commencement of the operation of this clause then Boral may serve a notice upon the employee of their intention to cease the wages sacrifice for the employee and upon the first full pay period to commence on or after the service of the notice the employee's wages sacrifice election shall cease to operate;
 - (b) the employee enters a period of leave without pay the employee's wages sacrifice election shall be suspended for the period of such leave;
 - (c) during any period when the employee is injured or incapacitated and in receipt of workers' compensation payments, Boral will continue to provide the employee with employer funded superannuation contributions in the amount elected while the employee is still employed by Boral, up to a maximum of 26 weeks within any continuous period of 52 weeks from the date of the employee's injury or incapacitation; or

- (d) the employee must not make a sacrifice election of a percentage that when added to the minimum Superannuation Guarantee Contribution exceeds the age-based contribution limit provided for by sections 82AAC to 82AAF of the *Income Tax Assessment Act 1946* (Cth).

PART 4

HOURS OF WORK, ETC.

4.1. Hours of Work - Day Workers

- (1) Subject to clause 4.2, Working of a 38-Hour Week, the ordinary hours of work shall be an average of 38 per week.
- (2) Subject to Schedule 1, the ordinary hours of work prescribed herein may be worked Monday to Friday inclusive worked continuously, except for meal breaks, at Boral's discretion between the spread of hours of 6.30 a.m. and 6.00 p.m.

Provided that the spread of hours may be further altered by mutual agreement between Boral and the majority of employees concerned.

- (3) The ordinary hours of work prescribed herein shall not exceed ten on any day. Provided that in any arrangement of ordinary hours where the ordinary working hours are to exceed eight on any day, the arrangement of hours shall be subject to agreement between the Boral and the majority of employees concerned in the quarry.

4.2. Working of a 38-Hour Week

- (1) The method of working the 38-hour week shall be any one of the following:
- (a) By Boral fixing one work day in the 4th week of a 4-week work cycle as a leisure day on which all employees at the quarry will be off work; or
- (b) by Boral fixing two rostered work days on which employees may be rostered off for two half days during a particular 4-week work cycle; or
- (c) by Boral rostering employees off on various days of the week during a particular work cycle so that each employee has one day off during a 4-week work cycle; or
- (2) Provided that, where Boral has not fixed a rostered day or half day off as above then, by agreement with the employee concerned, an employee may work less than eight ordinary hours on any one day or more days each week.
- (3) Rostered days off may be accumulated to a maximum of five days by agreement between Boral and the individual employee concerned.
- (4) Where such rostered work day as prescribed by paragraphs (a), (b) and (c) of subclause (1) of this clause falls on a public holiday as prescribed in clause 4.6, Sundays and Holidays, the next working day shall be taken in lieu of the rostered day off unless an alternative day in that four-week cycle or the next is agreed upon in writing between Boral and the employee(s).
- (5) Each day of paid leave taken and any public holiday occurring during any cycle of four weeks shall be regarded as a day worked for accrual purposes.
- (6) An employee who has not worked, or is not regarded by reason of the said paragraph (a) as having 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.

- (7) The accrued rostered day prescribed in paragraphs (a), (b) and (c) of subclause (1) of this clause shall be taken as a paid day off, provided that the day may be worked where that is required by Boral and such work is necessary to allow other employees to be employed productively or to carry 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 the employee shall take another day off at their discretion within the next seven days.

4.3. Shift Work

- (1) Definitions: For the purposes of this clause -

"Afternoon Shift" means any shift finishing after 6.00 p.m. and at or before midnight.

"Night Shift" means any shift finishing subsequent to midnight and at or before 8.00 a.m.

"Rostered Shift" means any shift of which the employee concerned has at least forty-eight hours' notice.

"Continuous work" means work carried on with consecutive shifts of employees throughout the twenty-four hours of each of at least six consecutive days without interruption except during breakdowns or meal breaks or due to unavoidable causes beyond the control of Boral.

- (2) Shift Work -

(a) Subject to clause 4.2, Working of a 38-Hour Week, the ordinary hours of work shall be an average of 38 per week.

(b) The ordinary hours shall be worked continuously each day except for meal breaks at the discretion of Boral. Subject to the provisions of clause 4.4, Meal Breaks, an employee shall not be required to work for more than five ordinary hours without a break for a meal. Except at regular changeover of shifts an employee shall not be required to work more than one shift in each 24 hours.

(c) Provided that the ordinary hours of work prescribed herein shall not exceed ten hours on any day. In any arrangement of ordinary working hours, where the ordinary working hours are to exceed eight on any shift the arrangement of hours shall be subject to agreement between Boral and the majority of employees concerned in the quarry.

- (3) Roster: Shift rosters shall specify the commencing and finishing times of ordinary working hours of the respective shifts.

- (4) Variation by Agreement: Notwithstanding anything elsewhere contained in this award, the method of working shifts may in any case be varied by agreement between Boral and the accredited representative(s) of the employees to suit the circumstances of the quarry. The time of commencing and finishing shifts, once having been determined, may be varied by agreement between the employee concerned and Boral to suit the circumstances of the quarry or shift work may rotate weekly or fortnightly with day work. In the absence of agreement, by seven days' notice of alteration given by Boral to the employees.

- (5) Afternoon or Night Shift Allowances -

(a) A shift worker whilst on afternoon or night shift shall be paid for such shift 33.33 per cent more than their ordinary rate.

- (6) The minimum rate to be paid to a shift worker for ordinary hours of work performed between midnight on Friday and midnight on Saturday shall be time and a half for the first two hours and double time thereafter. Such extra rate shall be in substitution for and not cumulative upon the shift premiums prescribed in subclause (5) of this clause.

- (7) Shift workers for all time worked by shift workers in excess of or outside their ordinary working hours, or on a shift other than a rostered shift, shall:
- (a) if employed on continuous work, be paid at the rate of double time; or
 - (b) if employed on other shift work, at the rate of time and a half for the first two hours and double time thereafter, except in each case when the time is worked:
 - (i) by arrangement between the employees themselves; or
 - (ii) for the purpose of effecting the customary rotation of shifts.

Provided that when not less than eight hours' notice has been given to Boral by a relief person that they will be absent from work and the employee whom they should relieve is not relieved and is required to continue to work on their rostered day off, the unrelieved employee shall be paid double time.

- (8) Boral may require any employee to work reasonable overtime at overtime rates.
- (9) Sundays and Holidays - For all time worked by shift workers on a Sunday or holiday they shall be paid at the rates prescribed by clause 4.6, Sundays and Holidays. Where shifts commence between 11.00 p.m. and midnight on a Sunday or holiday, the time so worked before midnight shall not entitle the employee to the Sunday or holiday rate; provided that the time worked by an employee on a shift commencing before midnight on the day preceding a Sunday or holiday and extending into a Sunday or holiday shall be regarded as time worked on each Sunday or holiday.

Where a shift falls partly on a holiday, the major portion of the shift that falls on a holiday shall be regarded as the holiday shift.

- (10) Notwithstanding the provisions of this clause, employees on shift work shall be allowed a thirty-minute paid meal break during each shift, which shall be counted as time worked.

4.4. Meal Breaks

- (1) An employee shall not be required to work for more than five ordinary hours of work without a break for a meal.

Provided that by agreement between Boral and the employee concerned, an employee may be required to work in excess of five ordinary hours but not more than six ordinary hours at ordinary rates of pay without a meal break.

- (2) The time of taking a scheduled meal break by one or more employees may be altered by Boral if it is necessary to do so in order to meet a requirement for continuity of operations.
- (3) Boral may stagger the time of taking a meal break to meet operational requirements.
- (4) Subject to the provision of subclause (1) of this clause, an employee employed as a regular maintenance person shall work during meal breaks at ordinary rates of pay whenever instructed to do so for the purpose of making good breakdown of plant or upon routine maintenance of plant which can only be done while such plant is idle.
- (5) Except as provided in subclauses (1) (2) and (4) of this clause, time and a half rates shall be paid for all work done during meal hours and thereafter until a meal break is taken.

4.5. Rest Breaks

- (1) An employee shall be given a rest break of ten minutes each day.
- (2) Boral may stagger the time of taking a rest break to meet operational requirements.

- (3) The time of taking a scheduled rest break by one or more employees may be altered by Boral if it is necessary to do so in order to meet a requirement for continuance of operations.
- (4) In the case of shift workers, this paid rest break may be combined with the paid meal break so as to enable a thirty-minute paid meal break.

4.6. Sundays and Holidays

- (1) New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Eight-hour Day, Christmas Day, Boxing Day and an additional day's holiday to be observed pursuant to subclause (2) of this clause and any other day gazetted as a public holiday for the State shall be holidays for the purposes of this award and shall be granted without loss of pay.
- (2) In accordance with subclause (1) of this clause, an employee shall be entitled to one additional day as holiday (picnic day) in each calendar year. Such additional holiday shall be observed on the first Monday in December unless otherwise agreed with an employee. The additional holiday is not cumulative and must be taken within each calendar year.
- (3) Where an employee is absent from employment on the working day before or the working day after a holiday, without reasonable excuse or without the consent of Boral, the employee shall not be entitled to payment for such holiday.
- (4) For work done on any of the holidays referred to in subclause (1) of this clause, double time and one-half shall be paid, with a minimum payment for four hours' work.
- (5) For work done on a Sunday, double time with a minimum payment for four hours' work shall be paid.

4.7. Overtime

- (1) Payment for Working Overtime - For all work done outside of and/or in excess of ordinary hours the rate of pay shall be time and one-half for the first two hours and double-time thereafter, such double time to continue until the completion of the overtime work. Except as provided in subclause (2) of this clause, in computing overtime, each day's work shall stand-alone. The hourly rate, when computing overtime, shall be determined by dividing the appropriate weekly rate by 38.
- (2) Rest Period After Overtime - When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that the employees have at least ten consecutive hours off duty between the work of successive days. An employee (other than a casual employee) who works so much overtime between the termination of their ordinary work on one day and the commencement of their ordinary work on the next day that they have not had at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

If, on Boral's instruction, such employee resumes or continues work without having had such ten consecutive hours off duty, they shall be paid at double rates until they are released from duty for such period and they shall then be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. The provisions of this subclause shall apply in the case of shift workers who rotate from one shift to another as if eight hours were substituted for ten hours when overtime is worked:

- (a) for the purpose of changing shift rosters; or
 - (b) where a shift worker does not report for duty; or
 - (c) where a shift is worked by arrangement between the employees themselves.
- (3) Call Back and Standing By - An employee recalled to work overtime after leaving the quarry (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work or, where the employee has been paid for standing by, shall be paid for a minimum of three hours' work at the

appropriate rate for each time they are recalled; provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work for the full three or four hours, as the case may be, if the job they were 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 Boral's premises to perform a specific job outside their ordinary working hours, or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time. Overtime worked in the circumstances specified in this subclause shall not be regarded as overtime for the purpose of subclause (4) of this clause when the actual time worked is less than three hours on such recall or on each of such recalls. Subject to any custom now prevailing under which employees are required regularly to hold themselves in readiness for a call back, an employee required to hold themselves in readiness to work after ordinary hours shall, until released, be paid standing-by time at ordinary rates from the time from which they are to hold themselves in readiness.

(4) Cribs -

- (a) An employee who is required to work overtime for 2 hours or more after the normal ceasing time shall be allowed, at the expiration of the said 2 hours, 30 minutes for a meal or crib and thereafter a similar time allowance after every 4 hours of overtime worked. Time for meals or crib shall be paid at the applicable overtime rate.
- (b) Where overtime is worked on a Saturday or Sunday, a paid break for a meal of 30 minutes shall be allowed between 12 noon and 1.00 p.m. at the applicable overtime rate.

(5)

- (a) Meal Allowance - An employee required to work overtime for more than one and a half hours after the ordinary ceasing time on any day without being notified on the previous day or earlier shall be provided with a meal or paid the amount set out in Item 9 of Table 2 - Other Rates and Allowances, of Part B, Monetary Rates, for such meal, and the said amount set out in Item 9 for each subsequent meal after such further four hours overtime; provided that an employee shall have the option of returning home for a meal, in which case the employee shall not be entitled to payment of a meal allowance.
- (b) An employee who has been notified of the intention to work overtime but who is not called upon to work such overtime shall be paid an amount as set out in Item 9 of Table 2.

(6) Saturday Work - An employee required to work overtime on a Saturday shall be afforded at least four hours' work or paid for four hours at the appropriate rate, except where such overtime is continuous with ordinary time or overtime commenced on the previous day.

(7) Reasonable Overtime

- (a) Subject to (b) below, Boral may require an employee to work reasonable overtime at overtime rates or as otherwise provided for in this award.
- (b) An employee may refuse to work overtime in circumstances where the working of such overtime would result in the employee working hours which are unreasonable.
- (c) For the purposes of (b) what is unreasonable or otherwise will be determined having regard to:
 - (i) any risks to employee health and safety;
 - (ii) the employee's personal circumstances including any family and carer responsibilities;
 - (iii) the needs of the quarry;
 - (iv) the notice (if any) given by Boral of the overtime and by the employee of their intention to refuse it; and

- (v) any other relevant matters.

PART 5

LEAVE, ETC.

5.1. Annual Leave

- (1) Employees, other than seven-day shift workers, see *Annual Holidays Act 1944*.
- (2) In addition to the leave provided for by subclause (1) of this clause, seven-day shift workers who are rostered to work regularly on Sundays and holidays shall be allowed an additional one week's leave; provided that, if during the year of employment an employee has served for only a portion of it as a seven-day shift worker, the additional leave shall be one day for every thirty-six ordinary shifts worked as a seven-day shift worker.

In this subclause, reference to one week and one day shall include holidays and non-working days.

5.2. Annual Leave Loading

- (1) In this clause the *Annual Holidays Act 1944* is referred to as "the Act".
- (2) Before an employee is given or takes their annual leave or, where by agreement between Boral and employee the annual leave is given and taken in more than one separate period, then before each of such separate periods Boral shall pay the employee a loading determined in accordance with this clause. (Note: The obligation to pay in advance does not apply where an employee takes annual leave wholly or partly in advance.)
- (3) The loading is payable in addition to the pay for the period of leave given and taken and due to the employee under the Act and this award.
- (4) The loading is to be calculated in relation to any period of annual leave to which the employee becomes entitled under the Act and this award or, where such leave is given in separate periods, then in relation to each period.
- (5) The loading is the amount payable for the period or the separate period, as the case may be, stated in subclause (4) at the rate per week of 17.5 per cent of the appropriate ordinary weekly time rate of pay prescribed by this award for the classification in which the employee was employed immediately before commencing annual leave, excluding any other allowances, penalty rates, shift allowances, overtime or any other payments prescribed by this award.
- (6) No loading is payable to an employee who takes annual leave wholly or partly in advance; provided that, if the employment of such an employee continues until the day when they would have become entitled under the Act to annual leave, the loading then becomes payable in respect of the period of such leave and is to be calculated in accordance with subclause (5) of this clause, applying the award rates of wages payable on that day.
- (7) Where, in accordance with the Act, the quarry or part of it is temporarily closed down for the purpose of giving annual leave or leave without pay to the employees concerned -
- (a) An employee who is entitled under the Act to annual leave and who is given and takes such leave shall be paid the loading calculated in accordance with subclause (5) of this clause.
- (b) An employee who is not entitled under the Act to annual leave and who is given and takes leave without pay shall be paid, in addition to the amount payable to them under the Act, such proportion of the loading that would have been payable to them under this clause if they had become entitled to an annual holiday prior to the closedown as their qualifying period of employment in completed weeks bears to 52.

- (8)
- (a) Where the employment of an employee is terminated for a cause other than misconduct and at the time of the termination the employee has not been given and has not taken the whole of the annual leave to which they became entitled, they shall be paid a loading calculated in accordance with subclause (6) of this clause for the period not taken.
 - (b) Except as provided by paragraph (a) of this subclause, no loading is payable on the termination of an employee's employment.
- (9) This clause extends to an employee who is given and takes annual leave and who would have worked as a shift worker if they had not been on leave; provided that, if the amount to which the employees would have been entitled by way of shift work allowances and/or weekend penalty rates for the ordinary time (not including time on a public holiday) which the employee would have worked during the period of the leave exceeds the loading calculated in accordance with this clause, then that amount shall be paid to the employee in lieu of the loading.

5.3. Long Service Leave

- (1) See *Long Service Leave Act 1955*.

5.4. Parental Leave

- (1) See the Act.

5.5. Bereavement Leave

- (1) An employee other than a casual employee shall be entitled to a maximum of three days' leave without loss of pay on each occasion of the death of the person prescribed for the purposes of clause 5.8 (1) (c) (ii).
- (2) The employee must notify Boral as soon as practicable of the intention to take bereavement leave and will, if required by Boral, provide to the satisfaction of Boral proof of the death.
- (3) Bereavement leave shall be available to the employee in respect of the death of a person prescribed for the purposes of clause 5.8(1)(c)(ii), provided that for the purposes of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (4) An employee shall not be entitled to bereavement leave under this clause during any period in respect of which the employee has been granted other leave.
- (5) Bereavement leave may be taken in conjunction with other leave available under clause 5.8.

5.6. Jury Service

- (1) An employee on weekly hiring required to attend for jury service during their ordinary working hours shall be reimbursed by Boral an amount equal to the difference between the amount paid in respect of their attendance for such jury service and the amount of wages they would have received in respect of the ordinary time they would have worked had they not been on jury service.
- (2) An employee shall notify Boral as soon as possible of the date upon which they are required to attend for jury service. Further, the employee shall give Boral proof of their attendance, the duration of such attendance and the amount received in respect of such jury service.

5.7. Sick Leave

- (1) Weekly employees shall, subject to the production of a medical certificate or other evidence satisfactory to Boral (which may include a statutory declaration) be entitled to ten days' sick leave during the first

and subsequent years of service on full pay: provided that a statutory declaration shall be sufficient proof of sickness in respect of the first two single days' absence of an employee in any year.

- (2) The employee shall, unless it is not reasonably practicable to do so (proof whereof shall be on the employee) make every effort to notify Boral of their absence prior to their normal starting time on the same day of their absence, but in any circumstances within 24 hours of their normal starting time.
- (3) The payment for any absence on sick leave in accordance with this clause during the first three months of employment of any employee may be withheld by Boral until the employee completes such three months of employment, at which time the payment shall be made.
- (4) An employee shall not be entitled to sick leave for any period in respect of which such employee is entitled to workers' compensation.
- (5) If the full period of sick leave is not taken in any year, the whole or any untaken portion shall be cumulative from year to year.
- (6) If an award holiday occurs during an employee's absence on sick leave, then such award holiday shall not be counted as sick leave.
- (7) Service with Boral before the date of coming into force of this award shall be counted as service for the purpose of qualifying thereunder.
- (8) Where an employee is ill or incapacitated within the meaning of this clause on their rostered day or shift off, they shall not be entitled to sick pay on that day nor shall their sick leave entitlement be reduced as a result of such illness or incapacity.

5.8. State Personal/Carer's Leave Case - August 1996

- (1) Use of Sick Leave
 - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of paragraph (c), who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for in clause 5.7, Sick Leave, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
 - (b) The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
 - (c) The entitlement to use sick leave in accordance with this subclause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - (a) a spouse of the employee; or
 - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (e) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:
 - 1. "relative" means a person related by blood, marriage or affinity;
 - 2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
 - 3. "household" means a family group living in the same domestic dwelling.
 - (d) An employee shall, wherever practicable, give Boral notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify Boral by telephone of such absence at the first opportunity on the day of absence.
- (2) Unpaid Leave for Family Purpose
- (a) An employee may elect, with the consent of Boral, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) who is ill.
- (3) Annual Leave
- (a) An employee may elect with the consent of Boral, subject to the *Annual Holidays Act 1944*, to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
 - (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this award.
 - (c) An employee and Boral may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (4) Time Off in Lieu of Payment for Overtime
- (a) An employee may elect, with the consent of Boral, to take time off in lieu of payment for overtime at a time or times agreed with Boral within 12 months of the said election.
 - (b) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate that is an hour for each hour worked.
 - (c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
 - (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time
- (a) An employee may elect, with the consent of Boral, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

- (b) An employee on shift work may elect, with the consent of Boral, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.
- (6) Rostered Days Off
- (a) An employee may elect, with the consent of Boral, to take a rostered day off at any time.
 - (b) An employee may elect, with the consent of Boral, to take rostered days off in part day amounts.
 - (c) An employee may elect, with the consent of Boral, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between Boral and employee, or subject to reasonable notice by the employee or Boral.
 - (d) This subclause is subject to Boral informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

PART 6

MISCELLANEOUS

6.1. Delegates

- (1) An employee appointed delegate in a quarry in which they are employed shall, upon notification thereof to Boral, be recognised as the accredited representative of the union to which they belong. An accredited delegate shall be allowed reasonable time during working hours to interview Boral or their representative on matters affecting employees whom they represent.
- (2) Subject to the prior approval of Boral, an accredited delegate shall be allowed a reasonable period of time during working hours to interview a duly accredited union official of the union to which they belong on legitimate union business.
- (3) Notice Board: Boral shall permit a notice board of reasonable dimensions to be erected in a prominent position in the quarry so that it will be reasonably accessible to all employees working under the award. Accredited union representatives shall be permitted to put on the notice board or boards union notices, signed or countersigned by the representative posting it. Any notice posted on such board not so signed or countersigned may be removed by an accredited union representative or by Boral.

6.2. Protective Clothing

- (1) Each employee shall be provided with two pairs of appropriate overalls or trousers/shirt or shorts/shirt combinations per annum free of charge.
- (2) Each employee shall be provided with a maximum of two pairs of safety boots/shoes per annum on a one pair for one pair replacement basis.
- (3) Any other article of protective clothing that is required shall be provided by Boral and shall be worn.
- (4) The articles so supplied in subclause (1), (2) and (3) of this clause shall remain the property of Boral.

6.3. Personal Protective Equipment

- (1) All personal protective equipment that is required shall be provided by Boral and shall be worn.
- (2) All articles of personal protective equipment shall remain the property of Boral.

- (3) Boral shall replace such articles when, in the opinion of Boral, they are no longer in a serviceable condition, but no employee shall be entitled to a replacement unless they return the corresponding article issued to them or, if the article is lost or misplaced by the employee to whom it was issued, they shall pay a reasonable price for the article.

6.4. Right of Entry

- (1) Subject to subclause (2) and (3), the right of entry to the quarry by an officer of a recognised industrial organisation of employees shall be in accordance with the Act.
- (2) Any officer of a recognised industrial organisation of employees shall only be granted access to the quarry if they are duly authorised to do so by their Secretary.
- (3) Prior to entering the quarry in accordance with subclause (1) and (2) the officer must first report to the quarry manager.

6.5. Recognised Industrial Organisations of Employees

- (1) The following industrial organisations of employees are recognised, within the limits of their constitution rule, to be the relevant industrial organisations of employees in the quarry industry:
 1. The Australian Workers' Union, New South Wales;
 2. New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union.
- (2) Nothing stated above is to be construed to confer a right of preference of employment in favour of a member of an industrial organisation of employees over a person who is not a member of an industrial organisation of employees.

6.6. Miscellaneous Provisions

- (1) Damage to clothing, spectacles, hearing aids and tools - Compensation to the extent of the damage sustained shall be made where, in the course of the work clothing, spectacles, hearing aids or tools are damaged or destroyed by fire or molten metal or through the use of corrosive substances. Provided that Boral's liability in respect of tools shall be limited to such tools of trade as are ordinarily required for the performance of the employee's duties; provided further, that this paragraph shall not apply when an employee is entitled to workers' compensation in respect of the damage.
- (2) Case hardened prescription lenses - If Boral requires an employee to have their prescription lenses case hardened they shall pay for the cost of such case hardening.

6.7. Deduction of Union Membership Fees

- (1) Boral shall deduct union membership fees (not including fines and levies) from the pay of an employee, provided that:
 - (a) the employee has authorised Boral to make such deductions in accordance with sub clause (2) herein;
 - (b) the union shall advise Boral of the amount to be deducted for each pay period and any changes to that amount;
 - (c) deduction of fees shall occur in each pay period in which payment has or is to be made to an employee; and
 - (d) there shall be no requirement to make deductions for casual employees with less than two month's service (continuous or otherwise).

- (2) The employee's authorisation shall be in writing and shall authorise the deduction of an amount of union fees (including any variation in that fee affected in accordance with the union's rules) that the union advises Boral to deduct.
- (3) Monies so deducted from employees' pay shall be remitted to the union on either a weekly, fortnightly, monthly, or quarterly basis at Boral's election together with all necessary information to enable reconciliation and crediting of subscriptions to employees' membership accounts, provided that:
 - (a) where Boral has elected to remit on a weekly or fortnightly basis they shall be entitled to retain up to 5 per cent (plus any GST) of the monies deducted; and
 - (b) where Boral has elected to remit on a monthly or quarterly basis they shall be entitled to retain up to 2.5 per cent (plus any GST) of the monies deducted.
- (4) Nothing in this clause requires an employee who has already authorised the deduction of fees in writing from their pay prior to this clause operating re-authorising such deduction.
- (5) The union shall give Boral a minimum of two months notice of any change to the amount of membership fee to be deducted.
- (6) An employee may at any time revoke in writing an authorisation given to Boral.

PART 7

REMUNERATION

7.1. Adjustment Mechanism

- (1) On the first full pay period to commence on or after 1 November each year the rates set out in Table 1 - Wages and the allowances set out in Table 2 - Other Rates and Allowances shall increased by the greater of the average percentage salary increase given that year to salaried employees employed in:
 - (a) the Metropolitan Division; or
 - (b) the Prospect quarry.

Notation: A salaried employee will be taken to be employed in the Prospect quarry if they have worked in the quarry for the majority of the preceding 12 months.

- (2) On the first full pay period to commence on or after 1 November each year each employee shall be paid an amount of money equivalent to the greater of the average percentage bonus paid to salaried employees employed in:
 - (a) the Metropolitan Division; or
 - (b) the Prospect quarry,

applied to their gross earnings for the preceding twelve months.

Notation: A salaried employee will be taken to be employed in the Prospect quarry if they have worked in the quarry for the majority of the preceding 12 months.

- (3) If requested to do so by the majority of you, Boral shall at its expense have an external auditor validate the:
 - (a) average salary increase determined for the purposes of clause 7.1 (1); and/or
 - (b) average percentage bonus determined for the purposes of clause 7.1 (2).

- (4) Should Boral at any time alter the method by which they remunerate the salaried employees relevant to this award they shall confer with you and the union about those changes and whether any variation to this award is necessary to ensure that the original purpose of this award is maintained.
- (5) Despite any thing else in his award, the wage increase paid in accordance with clause 7.1 (1) shall not be less than any general wage increase granted in that year.

PART 8

AREA, INCIDENCE AND DURATION

8.1. Application and Term

- (1) This award shall apply to all employees of Boral employed in the quarry within the classifications set out in clause 3.1.
- (2) This award rescinds and replaces the Boral Prospect Quarry (State) Award published 23 April 2004 (344 I.G. 160).
- (3) This award shall operate on and from the first full pay period to commence on or after 15 March 2006 and have a nominal term of three years.
- (4) The terms of this award accord with section 19 (6) of the Act and Principle 26 of the Principles for Review of Awards made by the Industrial Relations Commission of NSW on 18 December 1998 (308 I.G. 307).

PART B

MONETARY RATES

Table 1 - Wages

Grade/Level	Sub-grade/Level	Description	Weekly Wage \$
2	1	Labourer Pick & Shovel	671.18
2	2	Fixed Plant Attendant	673.67
3	3	Driver Class 3A	689.17
3	4	RCRO "C"	704.57
3	5	Lab Assistant	
3		Weighbridge Clerk	732.42
4	6	RCRO "B"	
4		Tractor 35-70	754.10
4	7	Crane Op. 10-20 Tonnes	768.29
4		RCRO "A"	
4		Clerk A Grade 2	
4	8	Tractor Op. 130-295	774.47
5	9	Plant Op. 12-15 Tonnes	782.39
5	10	Tractor Op. 295-450 not HRQF	790.19
5		Clerk Grade 3	
5	11	Navvy Op. 1.5 m to 3.00m	797.99
5		Tractor Op. 450-600 bhp	
6	12	Plant Op. 30-50 Tonne	804.71
6		Clerk Grade 4	
6	13	Laboratory Technician	810.67
6		Plant Operator 50-70 Tonne	
7	14	Plant Operator 50-70 Tonne + Operator > 5.3 m bucket	816.85

1		Tradesperson - Mechanical	820.20
2		Tradesperson - Mechanical (experienced)	853.37
3		Tradesperson - Special Class	858.24
4		Tradesperson - Special Class (experienced)	891.31

Notation:

The rates in Table (1) above include and consume the "Industry Disability" allowance and the "Inclement Weather" allowance. Accordingly, the rates in Table (1) above compensate employees for the matters previously dealt with by the said allowances.

Table 2 - Other Rates and Allowances

Item No.	Clause	Description	Amount \$
1	3.1(5)(a)	In charge of plant	14.31 per week
2	3.1(5)(b)	Leading hand 2-5	21.04 per week
3	3.1(5)(b)	Leading hand 6-10	29.94 per week
4	3.1(5)(b)	Leading hand 11-20	42.41 per week
5	3.1(5)(b)	Leading hand 20+	54.08 per week
6	3.1(6)	Confined space	0.63 per hour
7	3.3(1)	Tools	15.35 per week
8	3.4(1)	First aid	2.12 per day
9	3.5(6) & 4.7	Meals	12.79 per meal
10	3.5(6)	Board and lodging	330.00 per week
11	3.5(7)	Motor use	0.60 per km
12	3.5(8)	No transport	6.97 per day
13	3.1(5)(c)	Competency	5.81 per week
14	3.1(5)(d)	Assessor	27.14 per week

SCHEDULE 1

EMPLOYEES WITH A SPAN OF HOURS OF 7.00 AM TO 6.00 PM

In accordance with previous savings undertakings the following employees who were employed prior to the 9th November 1990 and at that time regularly worked before 7.00 am each day Monday to Friday shall have their ordinary hours of work commence at 7.00 am Monday to Friday inclusive:

Emp #	Employee Name	Start Date
00400	Abela Vincent	14/01/57
00509	Filippin Antonio	05/03/86
00105	Duck Gerard Michael	01/07/83
00609	Mizzi Tony	02/06/86
00610	Shepherd Douglas Francis	19/06/87

SCHEDULE 2

WAGES SACRIFICE' ELECTION FORM

Having taken my own independent financial and taxation advice on the matter, I (insert employee name) classified on Level (insert level) elect in accordance with clause 3.6 of the Boral Prospect Quarry (State) Award elect to forgo:

- 1%,
- 3%
- 5%
- 7%
- 10%
- 15%; or
- 20% (circle percentage elected)

of my weekly ordinary time rate of pay in return for increased employer funded superannuation contributions equal to this amount.

Having taken my own independent financial and taxation advice on the matter, I (insert employee name) classified on Level (insert level) elect in accordance with clause 3.6 of the Boral Quarry (State) Award to forgo any annual cash bonus falling due after this election in return for increased employer funded superannuation contributions equal to this amount.

In making this election, the elected percentage when added to the minimum Superannuation Guarantee Contribution does not exceed the age-based contribution limit provided for by sections 82AAC to 82AAF of the *Income Tax Assessment Act 1946* (Cth).

Notation:

For the 2004/2005 tax year these were:

Under 35 Years of age	35 to 49 Years of age	Over 50 Years of age
\$13,934	\$38,702	\$95,980

Signed by (insert employee name)

Confirmed by Boral (insert name)

Date

M. J. WALTON J, *Vice-President*

Printed by the authority of the Industrial Registrar.

BORAL EMU PLAINS QUARRY TRANSITION TO CLOSURE (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Boral Construction Materials Group Limited.

(No. IRC 1244 of 2006)

Before The Honourable Justice Walton, Vice-President

15 March 2006

AWARD

Contents

Preamble

PART 1

The Pre Transition Period

1.1 Early Retirement

PART 2

The Transition Period

2.1 Early Retirement

PART 3

The Transition Period & Closure Period

3.1 Alternative Employment

3.2 WorkCover Tickets

3.3 Retraining

3.4 Outplacement Services

3.5 Relocation

3.6 Multi Skilling and Discontinuance of Primary Skill

PART 4

The Closure Period

4.1 Use of Contractors

4.2 Supervision of Contractors

4.3 Selection and Labour Retention

4.4 Retention Redundancy Bonus

4.5 Continuity of Quarrying Operations

4.6 Media

PART 5

The Post Closure Period

- 5.1 New Business

PART 6

General

- 6.1 No Further Claims
6.2 No Precedent
6.3 Indexation of Monetary Amounts
6.4 Set Off
6.5 Relationship to Parent Award
6.6 Disputes Procedure
6.7 Anti-Discrimination
6.8 Dictionary
6.9 Area, Incidence and Duration

Preamble

Boral's Emu Plains Quarry draws its raw feed from the Penrith Lakes Development Scheme. The Scheme is drawing to finality and it is anticipated that the Scheme will cease to provide raw feed in 2011.

As such the Emu Plains Quarry will cease to operate.

The Scheme is a unique process where the removal of raw feed from the Scheme is part of the redevelopment of the Scheme's lands for final use as residential and recreational lands.

As the Scheme draws to finalization, it will require a level of co-operation and flexibility from Boral Quarries and its employees not usually required in a standard quarrying operation and a recognition that all employment at the Emu Plains Quarry will come to an end.

For their part many employees will see the finalization of the Scheme as a threat to historically secure employment others will see it as a convenient opportunity to end working life or pursue other career opportunities.

Boral Quarries recognizes this and understands that employees will be effected differently.

Some will:

- (a) retire form working life;
- (b) seek further employment with Boral Quarries;
- (c) seek further employment with Boral; or
- (d) seek further employment elsewhere.

This award is designed to address all of these circumstances in balance with the needs of Boral Quarries.

There are four distinct periods that this award relates to the:

- (1) Pre Transition Period (2003 to 2008);
- (2) Transition Period (2009);
- (3) Closure Period (2010 to ending of quarrying activities); and

- (4) Post Closure Period (after the current quarrying activities have ceased).

PART 1

The Pre Transition Period

Part 1 - applies during the Pre Transition Period only.

1.1. Early Retirement

A number of employees may already be considering and planning for retirement from working life. For some employees this may coincide conveniently with the finalization of quarrying activities. For others the timing may be less convenient and they may wish to retire before the finalization of quarrying activities. To assist and facilitate this during the Pre Transition Period, Boral Quarries will allow any employee who is fifty five years of age or more with twenty or more years of service to elect to take a retirement redundancy package of 26 weeks pay for the purposes of retiring from working life (replacing them initially with labour hire if required).

To avoid any doubt the:

- (a) RRP will not apply to any employee taking up this option; and
- (b) Redundancy provisions of the Parent Award do not apply to an employee electing to take a retirement redundancy package.

PART 2

The Transition Period

Part 2 applies during the Transition Period only.

2.1. Early Retirement

A number of employees may already be considering and planning for retirement from working life. For some employees this may coincide conveniently with the finalization of quarrying activities. For others the timing may be less convenient and they may wish to retire before the finalization of quarrying activities. To assist and facilitate this during the Transition Period, Boral Quarries will allow any employee who is fifty five years of age or more with twenty or more years of service to elect to take a retirement redundancy package of 39 weeks pay for the purposes of retiring from working life (replacing them initially with labour hire if required).

To avoid any doubt the:

- (a) RRP will not apply to any employee taking up this option; and
- (b) Redundancy provisions of the Parent Award do not apply to an employee electing to take a retirement redundancy package.

PART 3

The Transition Period & Closure Period

Part 3 applies during the Transition Period and Closure Period only.

3.1. Alternative Employment

Boral Quarries is committed to working with the employees to locate employment opportunities at other quarries within the quarries division.

Boral Quarries has already interviewed all employees to determine, in concert with them, their priorities and preferences in terms of on-going employment etc.

Employees will periodically be interviewed to keep them informed of job opportunities and to determine any changing priorities they have.

During the:

- (a) Transition Period this will happen no less than once every twelve months; and
- (b) Closure Period this will happen no less than once every four months.

Boral Quarries prefers to transfer existing employees rather than recruit afresh where the existing employee is the best candidate. This can benefit Boral Quarries by:

- (a) reducing costs;
- (b) avoiding a potentially lengthy recruitment process; and
- (c) minimizing the need for extended induction and job take up.

Accordingly, Boral Quarries will offer suitable candidates transfers to other quarries where such positions exist rather than recruiting from the open market. ¹

Boral Quarries will also make available to employee's relevant internal Boral job vacancies that appear on the Boral intra net.

3.2 Work Cover Tickets

Employees may wish to take the skills they currently hold and utilize them in related industries. To assist in this process Boral Quarries will provide at its cost the opportunity for employees to obtain Work Cover tickets for any equipment they currently operate at Emu Plains Quarry.

3.3 Retraining

To assist any employee retrain for work outside of the quarry industry Boral Quarries will pay up to \$782.10 or such higher amount that Boral considers reasonable in the circumstances, to the cost of any retraining activity upon remittance of tax invoices.

3.4 Outplacement Services

Boral Quarries will provide upon request outplacement services to employees including:

- (a) assistance in writing resumes;
- (b) training/counselling on interview preparation; and
- (c) financial counselling,

to a value of \$1564.20 from a provider mutually acceptable to both Boral Quarries and the Emu Quarry Consultative Committee.

¹ This does not affect the common law rights and obligations of Boral or employees in relation to accepting or declining suitable alternative employment at sites other than Emu Plains Quarry.

3.5 Relocation

Where alternative employment is found in accordance with Part 3 Clause 1, for an employee and this necessitates the employee changing their residential domicile, Boral Quarries will:

- (a) provide the employee with three days leave without loss of pay for them to undertake the move; and
- (b) upon presentation of a tax invoice, up to \$1042.80 towards the cost of a removalist used to move furniture and other household effects to the new residence.

3.6 Multi Skilling and Discontinuance of Primary Skill

The employees acknowledge that as part of the transition and closure they may be required to:

- (a) use competencies they do not regularly apply; and/or
- (b) obtain competencies not currently held.

Accordingly, an employee may be directed to perform any work they are competent to perform (when and as directed by Boral).

Employees shall use their reasonable endeavors to obtain competencies they currently do not hold if required by Boral Quarries.

To avoid any doubt clause 13.2, 13.3, 13.4, 13.5 and Schedule A of the Parent Award shall not apply during the Transition Period and thereafter.

PART 4

The Closure Period

Part 4 applies during the Closure Period only.

4.1. Use of Contractors

Boral Quarries anticipate that they could utilise contractors extensively during the Closure Period and thereafter. The use of contractors already extends to:

- (a) part of the operator workforce;
- (b) specialist work; and
- (c) some maintenance activities.

The use of contractors could extend to more or all quarrying activities.

The employees acknowledge and accept this and will work co-operatively with Boral Quarries to ensure that any use of contractors is efficient and effective.

Accordingly, Boral Quarries may utilize contract labour as it sees fit.

4.2 Supervision of Contractors

The employees acknowledge and accept that during the closure period they may be directed to:

- (a) oversee the work of contractors; and/or
- (b) assist in the training of contractors.

4.3 Selection and Labour Retention

Boral Quarries will need to retain a core workforce until:

- (a) quarrying is finalised; or
- (b) a contract labour force is used.

Accordingly, Boral Quarries may (irrespective of any provision in the Parent award but subject to Part 6 clause 7 of this award) select as it sees fit:

- (a) who will be made redundant;
- (b) when any redundancy is to be made; and
- (c) whether redundant positions are to be filled by contract labour.

4.4 Retention Redundancy Payment

Subject to this award, in recognition of the co-operation and flexibilities provided for in this award and the need to retain core skills until the quarry closes, Boral Quarries will pay each employee a retention redundancy payment (the RRP), constituted as part of (and in addition to) any redundancy package arising from the Parent award.

The RRP will be:

Years of Service	Amount	Years of Service	Amount	Years of Service	Amount
<1	\$1,042.80	5	\$3,649.80	18	\$14,599.20
1	\$1,564.20	6	\$4,171.20	19	\$15,120.60
2	\$2,085.60	7	\$4,692.60	20	\$15,642.00
3	\$2,607.00	8	\$5,214.00	21	\$16,684.80
4	\$3,128.40	9	\$6,256.80	22	\$17,727.60
		10	\$7,299.60	23	\$18,770.40
		11	\$8,342.40	24	\$19,813.20
		12	\$9,385.20	25	\$20,856.00
		13	\$10,428.00	26	\$21,898.80
		14	\$11,470.80	27	\$22,941.60
		15	\$12,513.60	28	\$23,984.40
		16	\$13,556.40	29	\$25,027.20
		17	\$14,077.80	30	\$26,070.00

For each additional full year of completed service after 30 years service, an additional \$521.40 per year's service shall be paid as part of the RRP.

The RRP shall:

- (a) only be paid when a job is made redundant in accordance with clause 3 of Part 4; and
- (b) not be paid to an employee if at any time during the closure period they materially breach any provision of this award.

4.5 Continuity of Quarrying Operations

It is of critical importance that quarry operations continue during the closure period in a co-operative manner without resort to any industrial action.

Boral Quarries and the employees are unreservedly committed to achieving this.

Accordingly, the employees shall not engage in any industrial action of any kind during the closure period.

To avoid any doubt:

- (a) this does not mean that an employee must undertake work if to do so would put them in an unsafe situation; and
- (b) any dispute that does arise will be processed through the disputes procedure in the Parent Award.

4.6 Media

The employees shall not issue any statement, comment, information or document concerning Boral Quarries, the quarry or the Redevelopment in any media without the prior written approval of Boral Quarries.

PART 5

The Post Closure Period

Part 5 relates to the Post Closure Period only.

5.1. New Business

Boral Quarries may operate a new business on or about the current Emu Quarry site. Any such business (other than a business regulated by the Quarries &c, State Award) will be considered as a green fields site and as such:

- (a) the Parent Award shall not apply to it;
- (b) no existing employee will have an automatic right to any job in such a business;
- (c) any employee working in any such business will be selected on merit; and
- (d) Boral Quarries will consult with the Australian Workers Union NSW before applying for or making any industrial instrument to regulate the new business.

PART 6

General

Part 6 relates to the:

- (1) Pre Transition Period;
- (2) Transition Period;
- (3) Closure Period; and
- (4) Post Closure Period.

6.1. No Further Claims

The employees (and their union) undertake not to pursue any extra claims award or over award, arising from or connected with, directly or indirectly, the ending of their employment occasioned by the end to quarrying operations or arising from any significant change as contemplated by the Parent Award, except those arising from a Test Case decision of the Industrial Relations Commission of NSW.

Notation: To avoid any doubt and for abundant caution this clause does not relate to claims for increases in wages and allowances which are governed by the Parent Award.

6.2. No Precedent

The provisions of this award are not to be used by the Union in negotiations or proceedings concerning Boral Quarries or company's related to Boral Quarries and are not to be regarded as a precedent and are based on the particular facts and circumstances affecting Boral Quarries and its Emu Quarry employees.

6.3. Indexation of Monetary Amounts

The monetary amounts referred to in this award shall be indexed each year by any percentage increase applied to the ordinary weekly wage arising from the Parent Award.

6.4. Set Off

Should the redundancy benefits in the Parent Award increase (or an award is made replacing or substituting for the Parent Award which has the effect of increasing the redundancy benefits in the Parent Award) after the making of this award the RRP will be reduced for each employee by any such increase at the time of their redundancy.

6.5. Relationship to Parent Award

This award overrides the Parent award to the extent of any inconsistency and/or to the extent that this award deals with the same subject matter.

6.6. Disputes Procedure

To avoid any doubt clause 7, Industrial Disputes of the Parent Award applies to this award.

6.7. Anti-Discrimination

- (a) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age, trade union activity and responsibilities as a carer.
- (b) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award that, by its terms or operation, has a direct or indirect discriminatory effect.
- (c) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (d) Nothing in this clause is to be taken to affect:
 - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
 - (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

- (e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTATION:

- (i) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

- (ii) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects ... any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

6.8. Dictionary

RRB means the Retention Redundancy Bonus arising from Part 4 clause 4.

Boral Quarries means Boral Construction Materials Group Limited.

Employees means an employee employed by Boral Quarries at the Emu Plains Quarry.

Contractor means a contractor, sub-contractor or labour hire company.

Parent award means the Boral Emu Plains Quarry (State) Award as varied or replaced.

Media means and media without limiting the forgoing, television, video, radio, newsprint, magazines.

Pre Transition Period means 2003 to 2008.

Transition Period means 2009.

Closure Period means 2010 to the cessation of quarrying activities at the Emu Plains Quarry.

Post Closure Period means the period after the cessation of quarrying activities at the Emu Plains Quarry.

New business means any business set up on or about the Emu Plains Quarry site (other than a business regulated by the Quarries &c, State Award).

Industrial action means industrial action as defined in the Industrial Relations Act 1996.

6.9. Area, Incidence and Duration

This award rescinds and replaces the Emu Plains Transition to Closure Award published 6 January 2006 (355 I.G. 1022) and shall apply to all employees of Boral Quarries employed in the classifications set out in the Parent Award.

This award shall operate on and from 15 March 2006 and have a nominal term of thirty six months.

M. J. WALTON *J, Vice-President.*

BORAL PROSPECT QUARRY TRANSITION TO CLOSURE (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Boral Construction Materials Group Limited.

(No. IRC 1245 of 2006)

Before The Honourable Justice Walton, Vice-President

15 March 2006

AWARD

Contents

Preamble

PART 1

The Transition Period

1. Early Retirement

PART 2

The Transition Period & Closure Period

1. Alternative Employment
2. Work Cover Tickets
3. Retraining
4. Outplacement Services
5. Multi Skilling

PART 3

The Closure Period

1. Use of Contractors
2. Supervision of Contractors
3. Selection and Labour Retention
4. Retention Redundancy Payment
5. Continuity of Quarrying Operations
6. Media

PART 4

The Post Closure Period

1. New Business

PART 5

General

1. No Further Claims

2. No Precedent
3. Indexation of Monetary Amounts
4. Set Off
5. Relationship to Parent Award
6. Disputes Procedure
7. Anti-Discrimination
8. Dictionary
9. Area, Incidence and Duration

Preamble

The Redevelopment of the Boral Quarries Prospect Greystanes Estate is a unique process for Boral Quarries and the Prospect quarry employees.

It involves the complete Redevelopment of the Estate leading to the largest remaining land release for residential and light commercial use in the Sydney basin (the Redevelopment).

Boral Quarries endeavours to optimise the finalisation of quarrying activities at Prospect to balance the profitability of quarrying activities and the Redevelopment.

This process will require a level of co-operation and flexibility not usually required in a standard quarrying operation and a recognition that all employment at the Prospect quarry will come to an end.

For their part many employees will see the Redevelopment as a threat to historically secure employment others will see it as a convenient opportunity to end working life or pursue other career opportunities.

Boral Quarries recognizes this and understands that employees will be affected differently.

Some will:

- (a) retire from working life;
- (b) seek further employment with Boral Quarries;
- (c) seek further employment with Boral generally; and
- (d) seek further employment elsewhere.

This award is designed to address all of these circumstances in a manner that ensures the success of the Redevelopment and Boral Quarries while reasonably and fairly responding to the needs of employees.

There are three distinct periods that this award relates to the:

- (a) Transition Period (2003 to 2005);
- (b) Closure Period (2006 to ending of quarrying activities); and
- (c) Post Closure Period (after the current quarrying activities have ceased).

PART 1

The Transition Period

Part 1. Applies During the Transition Period Only.

1. Early Retirement

A number of employees may already be considering and planning for retirement from working life. For some employees this may co-inside conveniently with the finalization of quarrying activities. For others the timing

may be less convenient and they may wish to retire before the finalization of quarrying activities. To assist and facilitate this during the Transition Period, Boral Quarries will allow any employee who is fifty five years of age or more with twenty or more years of service to elect to take a retirement redundancy package of 26 weeks pay for the purposes of retiring from working life (replacing them with contract labour if required).

To avoid any doubt the:

- (a) RRP will not apply to any employee taking up this option; and
- (b) Redundancy provisions of the Parent Award do not apply to an employee electing to take a retirement redundancy package.

PART 2

The Transition Period & Closure Period

Part 2. Applies During the Transition Period and Closure Period Only.

1. Alternative Employment

Boral Quarries is committed to working with the employees to locate employment opportunities at other quarries within the quarries division.

Boral Quarries has already interviewed all employees to determine, in concert with them, their priorities and preferences in terms of on-going employment etc.

As a consequence of this Boral Quarries has re-located a number of suitable employees to both its Dunmore and Peat's Ridge quarries.

Employees will periodically be interviewed to keep them informed of job opportunities and to determine any changing priorities they have.

Boral Quarries prefers to transfer existing employees rather than recruit afresh where the existing employee is the best candidate. This can benefit Boral Quarries by:

- (a) reducing costs;
- (b) avoiding a potentially lengthy recruitment process; and
- (c) minimizing the need for extended induction and job take up.

Accordingly, Boral Quarries will offer suitable candidates transfers to other quarries where such positions exist rather than recruiting from the open market. ¹

Boral Quarries will also make available to employees relevant internal Boral job vacancies that appear on the Boral intra net.

2. Work Cover Tickets

Employees may wish to take the skills they currently hold and utilize them in related industries. To assist in this process Boral Quarries will provide at its cost the opportunity for employees to obtain Work Cover tickets for any equipment they currently operate at Prospect quarry.

¹ This does not affect the common law rights and obligations of Boral or employees in relation to accepting or declining suitable alternative employment at sites other than Prospect Quarry.

3. Retraining

To assist any employee retrain for work out side of the quarry industry Boral Quarries will pay up to \$782.25 or such higher amount that Boral considers reasonable in the circumstances, to the cost of any retraining activity upon remittance of receipts.

This does not affect the common law rights and obligations of Boral or employees in relation to accepting or declining suitable alternative employment at sites other than Prospect Quarry.

4. Outplacement Services

Boral Quarries will provide upon request outplacement services to employees including:

- (a) assistance in writing resumes;
- (b) training/counselling on interview preparation; and
- (c) financial counselling,

to a value of \$1564.50 from a provider mutually acceptable to both Boral Quarries and the Union.

5. Multi Skilling

The employees acknowledge that as part of the transition and closure they may be required to:

- (a) use competencies or skills they do not regularly use; and/or
- (b) obtain competencies or skills not currently held.

Accordingly:

- (a) an employee may be directed to perform any work within their competence or skill (when and as directed by Boral Quarries) ²; and
- (b) employees shall use their best endeavours to obtain competencies or skills they currently do not hold if required by Boral Quarries.

PART 3

The Closure Period

Part 3 applies during the Closure Period only.

1. Use of Contractors

Boral Quarries anticipate that they could utilise contractors extensively during the Closure Period and thereafter. The use of contractors already extends to:

- (a) part of the operator workforce;
- (b) specialist work; and
- (c) some maintenance activities.

The use of contractors could extend to more or all quarrying activities.

² This does not limit the operation of the mixed functions clause.

The employees acknowledge and accept this and will work co-operatively with Boral Quarries to ensure that any use of contractors is efficient and effective.

Accordingly, Boral Quarries may utilize contract labour as it sees fit.

2. Supervision of Contractors

The employees acknowledge and accept that during the closure period they may be directed to:

- (a) oversee the work of contractors; and/or
- (b) assist in the training of contractors.

3. Selection and Labour Retention

Boral Quarries will need to retain a core workforce until:

- (a) quarrying is finalised; or
- (b) a contract labour force is used.

Accordingly, from 1 August 2006, Boral Quarries may (irrespective of any provision in the Parent award but subject to Part 5 clause 7 of this award) select as it sees fit:

- (a) who will be made redundant;
- (b) when any redundancy is to be made; and
- (c) whether redundant positions are to be filled by contract labour.

4. Retention Redundancy Payment

Subject to this award, in recognition of the co-operation and flexibilities provided for in this award and the need to retain core skills until the quarry closes, Boral Quarries will pay each employee a retention redundancy payment (the RRP), constituted as part of (and in addition to) any redundancy package arising from the Parent award.

The RRP will be:

Years of Service	Amount	Years of Service	Amount	Years of Service	Amount
<1	\$1,043.00	5	\$3,650.50	18	\$14,602.00
1	\$1,564.50	6	\$4,172.00	19	\$15,123.50
2	\$2,086.00	7	\$4,693.50	20	\$15,645.00
3	\$2,607.50	8	\$5,215.00	21	\$16,688.00
4	\$3,129.00	9	\$6,258.00	22	\$17,731.00
		10	\$7,301.00	23	\$18,774.00
		11	\$8,344.00	24	\$19,817.00
		12	\$9,387.00	25	\$20,860.00
		13	\$10,430.00	26	\$21,903.00
		14	\$11,473.00	27	\$22,946.00
		15	\$12,516.00	28	\$23,989.00
		16	\$13,559.00	29	\$25,032.00
		17	\$14,080.50	30+	\$26,075.00

The RRP shall:

- (a) only be paid when a job is made redundant in accordance with clause 3 of Part 3; and
- (b) not be paid to an employee if at any time during the closure period they materially breach any provision of this award.

5. Continuity of Quarrying Operations

It is of critical importance that quarry operations continue during the closure period in a co-operative manner without resort to any industrial action.

Boral Quarries and the employees are unreservedly committed to achieving this.

Accordingly, the employees shall not engage in any industrial action of any kind during the closure period.

To avoid any doubt:

- (a) this does not mean that an employee must undertake work if to do so would put them in an unsafe situation; and
- (b) any dispute that does arise will be processed through the disputes procedure in the Parent Award.

6. Media

The employees shall not issue any statement, comment, information or document concerning Boral Quarries, the quarry or the Redevelopment in any media without the prior written approval of Boral Quarries.

PART 4

THE POST CLOSURE PERIOD

Part 4 relates to the Post Closure Period only. During the Post Closure Period the following shall apply.

1. New Business

Boral Quarries may operate a new business on or about the current Prospect Quarry site. Any such business (other than a business regulated by the Quarries &c, State Award) will be considered as a green fields site and as such:

- (a) the Parent Award shall not apply to it;
- (b) no existing employee will have an automatic right to any job in such a business;
- (c) any employee working in any such business will be selected on merit; and
- (d) Boral Quarries will consult with the Australian Workers Union NSW before applying for or making any industrial instrument to regulate the new business.

PART 5

General

Part 5 relates to the:

- (a) Transition Period;
- (b) Closure Period; and

- (c) Post Closure Period.

1. No Further Claims

The employees (and their union) undertake not to pursue any extra claims award or over award, arising from or connected with, directly or indirectly, the ending of their employment occasioned by the end to quarrying operations or arising from any significant change as contemplated by the Parent Award, except those arising from a Test Case decision of the Industrial Relations Commission of NSW.

Notation: To avoid any doubt and for abundant caution this clause does not relate to claims for increases in wages and allowances which are governed by the Parent Award.

2. No Precedent

The provisions of this award are not to be used by the Union in negotiations or proceedings concerning Boral Quarries or companies related to Boral Quarries and are not to be regarded as a precedent and are based on the particular facts and circumstances affecting Boral Quarries and its Prospect Quarry employees.

3. Indexation of Monetary Amounts

The monetary amounts referred to in this award shall be indexed each year by any percentage increase applied to the ordinary weekly wage arising from the Parent Award.

4. Set Off

Should the redundancy benefits in the Parent Award increase (or an award is made replacing or substituting for the Parent Award which has the effect of increasing the redundancy benefits in the Parent Award) after the making of this award the RRP will be reduced for each employee by any such increase at the time of their redundancy.

5. Relationship to Parent Award

This award overrides the Parent award to the extent of any inconsistency and/or to the extent that this award deals with the same subject matter.

6. Disputes Procedure

To avoid any doubt clause 2.6 Avoidance of Workplace Conflict of the Parent Award applies to this award.

7. Anti-Discrimination

- (a) It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age, trade union activity and responsibilities as a carer.
- (b) It follows that in fulfilling their obligations under the dispute resolution procedure prescribed by this award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award that, by its terms or operation, has a direct or indirect discriminatory effect.
- (c) Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (d) Nothing in this clause is to be taken to affect:
- (i) any conduct or act which is specifically exempted from anti-discrimination legislation;

- (ii) offering or providing junior rates of pay to persons under 21 years of age;
 - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;
 - (iv) a party to this award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.
- (e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

NOTATION:

- (i) Employers and employees may also be subject to Commonwealth anti-discrimination legislation.
- (ii) Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

8. Dictionary

RRP means - the Retention Redundancy Payment arising from Part 4, clause 4.

Boral Quarries means - Boral Construction Materials Group Limited.

Employees means - an employee employed by Boral Quarries at the Prospect Quarry.

Contractor means - a contractor, sub-contractor or labour hire company.

Parent award means - the Boral Prospect Quarry (State) Award as varied or replaced.

Media means - and media without limiting the forgoing, television, video, radio, newsprint, magazines.

Transition Period means - 2003 to 2005.

Closure Period means - 2 006 to the cessation of quarrying activities at the Prospect Quarry.

Post Closure Period means - the period after the cessation of quarrying activities at the Prospect Quarry.

New business means - any business set up on or about the Prospect Quarry site (other than a business regulated by the Quarries, c. (State) Award.

Union means - the Australian Workers Union, New South Wales, or/and The Local Government Clerical, Administration, Energy, Airlines and Utilities Union.

Industrial action means - industrial action as defined in the *Industrial Relations Act 1996*.

9. Area, Incidence and Duration

This award rescinds and replaces the Boral Prospect Quarry Transition to Closure (State) Award published 12 August 2005 (353 I.G. 64) and shall apply to all employees of Boral Quarries employed in the classifications set out in the Parent Award.

This award shall operate on and from 15 March 2006 and have a nominal term of thirty six months.

M. J. WALTON *J, Vice-President.*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (EDUCATION EMPLOYEES DEPARTMENT OF CORRECTIVE SERVICES) CONSENT AWARD 2006

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by N.S.W. Department of Corrective Services.

(No. IRC 2494 of 2006)

Before The Honourable Justice Marks

27 June 2006

AWARD

PART A

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Definitions
3.	Conditions Fixed by other Instruments of Employment
4.	Qualifications
5.	Salaries
6.	Incremental Progression and Calculation of Service
7.	Working Hours
8.	Shift Work
9.	Recreation Leave
10.	Non Attendance Time
11.	Duties of Correctional Education Officers
12.	Duties of Teachers
13.	Leave Entitlements
14.	Part-Time Work
15.	Qualifications Upgrade
16.	Recruitment - Exceptional Circumstances
17.	Professional Development
18.	Education Quality
19.	Consultation
20.	Anti-Discrimination
21.	Harassment Free Workplace
22.	Deduction of Union Membership Fees
23.	Dispute Resolution Procedures
24.	Duties as Directed
25.	No Further Claims
26.	Area, Incidence and Duration

PART B

MONETARY RATES

Table 1 - Salaries

2. Definitions

2.1 "Act" means the *Public Sector Employment and Management Act 2002*, or any replacement Act.

- 2.2 "AEVTI" means the Adult Education and Vocational Training Institute, which is the registered provider of adult education and vocational training for inmates within the Department.
- 2.3 "Commissioner" means the Chief Executive Officer of the Department of Corrective Services as listed in Column 2 of Schedule 1 of the Act.
- 2.4 "Correctional Centre" means a centre administered by the Department to accommodate persons committed by a court of law.
- 2.5 "Correctional Education Officer" means an employee appointed as such who is qualified as provided in sub clause 4.3 of this Award and who is required to undertake the duties specified in clause 11. of this Award.
- 2.6 "Day Worker" means an employee, other than a shift worker, whose ordinary hours of work are from Monday to Friday with hours as specified for the particular classification.
- 2.7 "Department" means the Department of Corrective Services, as specified in Schedule 1 of the Act.
- 2.8 "Employee" means an officer or temporary employee as defined under the Act.
- 2.9 "Federation" means the New South Wales Teachers Federation.
- 2.10 "DPE" means the Director of Public Employment constituted under Chapter 6 of the Act.
- 2.11 "Personnel Handbook" means the NSW Public Service Personnel Handbook, published by the Premier's Department.
- 2.12 "Regulation" means the Public Sector Employment and Management (General) Regulation 1996 or any replacement regulation.
- 2.13 "Senior Correctional Education Officer" means an employee appointed as such and who is qualified as provided in sub clause 4.4 of this Award.
- 2.14 "Teacher" means an employee who is appointed as such and who is qualified as provided in sub clause 4.2 of this Award and who is required to undertake duties as specified in clause 12. of this Award. A permanent part-time teacher means a teacher who is appointed under the Act for set and regular hours that are less than the full contract hours of this Award.
- 2.15 "Through care" means the philosophy and practice of the Department by which inmates are managed from the start of their sentence with a view to maximizing reintegration into the community and achieving a reduction in recidivism.

3. Conditions Fixed By Other Instruments of Employment

- 3.1 The following Awards as varied from time to time, or any replacement Awards, in so far as they fix conditions of employment applying to employees covered by this Award, which are not fixed by this Award, shall continue to apply.
- 3.1.1 Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006.
- 3.1.2 Crown Employees (Transferred Employees Compensation) Award.
- 3.2 The following Agreement made pursuant to section 131 of the Act, which details conditions of employment not fixed by this Award, shall continue to apply:
- 3.2.1 Crown Employees (Transferred Officers' Excess Rent Assistance) Agreement No. 2354 of 1981.
- 3.3 The provisions of the Department's Flexible Working Hours Agreement shall apply except where modified by this Award.

- 3.4 Except as expressly modified by this Award, and except where conditions are determined by the Awards and Agreement referred to in sub clauses 3.1, 3.2 and 3.3 of this clause, the conditions of service of employees shall be determined by the provisions of the Act, the Regulation and the Personnel Handbook.

4. Qualifications

- 4.1 The following qualifications shall apply except where specific exception is approved by the Commissioner and where detailed in clause 15. Qualifications Upgrade or clause 16. Recruitment - Exceptional Circumstances of this Award.

- 4.2 Teachers - shall hold a:

4.2.1 Bachelors degree in Education from a recognised university, incorporating subjects studied which qualifies the employee to teach in the learning area required by AEVTI; or

4.2.2 Graduate Diploma (or higher) in Education, from a recognised university; and qualification (degree, diploma or certificate) from a recognised university (or other recognised tertiary education institution) in a discipline other than education, incorporating subjects studied which qualifies the employee to teach in the learning area required by AEVTI;

together with relevant related employment experience, as approved by the Principal AEVTI.

- 4.3 Correctional Education Officers - shall hold a:

4.3.1 Bachelors degree in Education from a recognised university, incorporating subjects studied which qualifies the employee to teach in the learning area required by AEVTI; or

4.3.2 Graduate Diploma (or higher) in Education, from a recognised university; and qualification (degree, diploma or certificate) from a recognised university (or other recognised tertiary education institution) in a discipline other than education, incorporating subjects studied which qualifies the employee to teach in the learning area required by AEVTI;

together with relevant related employment experience, as approved by the Principal AEVTI.

- 4.4 Senior Correctional Education Officers - shall hold a:

4.4.1 Bachelors degree in Education from a recognised university; or

4.4.2 Graduate Diploma (or higher) in Education and qualification (degree, diploma or certificate) from a recognised university (or other recognised tertiary education institution) in a discipline other than education;

together with experience in adult education, as approved by the Principal AEVTI.

5. Salaries

- 5.1 Salaries at Part B Monetary Rates Table 1 - Salaries for Senior Correctional Education Officers, Correctional Education Officers and Teachers under this Award incorporate the following salary increases:

5.1.1 4% from the first pay period commencing on or after 1 January 2006 for Teachers, Correctional Education Officers and Senior Correctional Education Officers.

5.1.2 4% from the first pay period commencing on or after 1 January 2007 for Teachers, Correctional Education Officers and Senior Correctional Education Officers.

5.1.3 4% from the first pay period commencing on or after 1 January 2008 for Teachers, Correctional Education Officers and Senior Correctional Education Officers,

- 5.2 These rates continue to be inclusive of the previously paid environmental allowance.
- 5.3 Commencing salaries for all employees to a position under this Award shall be consistent with the provisions of Chapter 2, section 16.8 Commencing rates of pay of the Personnel Handbook.

6. Incremental Progression and Calculation of Service

- 6.1 Incremental progression and calculation of service shall be determined in accordance with Chapter 5, Managing the Workplace, of the Personnel Handbook, except where varied by clause 15. Qualifications Upgrade and/or clause 16. Recruitment - Exceptional Circumstances of this Award.

7. Working Hours

- 7.1 Ordinary hours of work shall be 35 hours per week, Monday to Friday.
- 7.2 Senior Correctional Education Officers and Correctional Education Officers
- 7.2.1 The provisions of the Department's Flexible Working Hours Agreement dated 3 November 1998, or any Agreement replacing this Agreement, shall apply to Senior Correctional Education Officers and Correctional Education Officers, including access to two days flex leave per month and five days banked leave.
- 7.2.2 A Senior Correctional Education Officer or Correctional Education Officer shall not be directed to work longer than five continuous hours without a meal break.
- 7.2.3 The bandwidth shall be 7.30am - 9.00pm.
- 7.2.4 The core time shall be 10.00am - 3.00pm.
- 7.2.5 Flexible working hours including the taking of flex leave and banked leave shall remain at Departmental discretion, to be negotiated at the local level provided that the delivery of teaching programs are maintained.
- 7.3 Teachers
- 7.3.1 The standard attendance hours of full time Teachers shall be 35 hours per week in recognition of the particular environment in the Department of Corrective Services.
- 7.3.2 The daily span of working hours in correctional centres for Teachers under this Award shall be between 7.30am and 5.30pm on Monday to Friday, inclusive. Direct teaching activities and duties related to teaching worked by Teachers should, unless otherwise unavoidable or by agreement between a Teacher and the supervising Senior Correctional Education Officer, be continuous.
- 7.3.3 Teachers who are directed to perform direct teaching activities between:
- (i) 5.30pm and 9.00pm Monday to Friday and who are required to teach two separate sessions during these hours or one session which commences later than 5.30pm; or
 - (ii) 7.30am and 9.00pm Saturday and who are required to teach two separate sessions during these hours;
- shall be paid at the rate of time and one quarter or may elect to take time in lieu which shall be calculated at the same rate as would have applied to the payment of teaching activities performed in terms of this clause.
- 7.3.4 Teachers shall not be entitled to flex time arrangements and shall be required to attend for rostered direct teaching activities as required by the Senior Correctional Education Officer.

7.3.5 The hours of attendance for duties related to teaching may be arranged by Teachers in consultation with the Senior Correctional Education Officer provided the requirements of the Department are met at all times. This will facilitate flexible start and finish times for Teachers.

8. Shiftwork

8.1 Senior Correctional Education Officers, Correctional Education Officers and Teachers, who because of operational requirements are not covered by Flexible Working Hours arrangements and are rostered on shifts outside the ordinary working hours of a Day Worker shall be paid a shift allowance of 15 per cent.

8.2 Senior Correctional Education Officers and Correctional Education Officers employed as shift workers, who are regularly required to perform rostered duty on Saturdays, Sundays and public holidays shall receive the following compensation and be subject to the following conditions:

8.2.1 For ordinary rostered time worked on a Saturday - additional payment at the rate of half time extra.

8.2.2 For ordinary rostered time worked on a Sunday - additional payment at the rate of three-quarter time extra.

8.2.3 When rostered off on a public holiday - an additional day's pay.

8.2.4 When rostered on a public holiday and work performed - additional payment at the rate of time and a half extra.

8.2.5 Annual leave at the rate of four weeks a year, that is, 20 working days plus eight rest days.

8.2.6 Additional leave on the following basis:

Number of ordinary shifts worked on Sundays and/or Public Holidays during a qualifying period of 12 months from 1 December one year to 30 November the next year.

Additional Leave

4 -10	1 additional day's leave
11 -17	2 additional days' leave
18 - 24	3 additional days' leave
25 - 31	4 additional days' leave
32 or more	5 additional days' leave

9. Recreation Leave

9.1 Senior Correctional Education Officers, Correctional Education Officers and Teachers employed as day workers, Monday to Friday, shall be entitled to recreation leave as follows:

9.1.1 Recreation leave in accordance with the provisions of the Regulation, the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006, as reviewed from time to time, or any replacement Award, and the Personnel Handbook.

9.1.2 At least two consecutive weeks of recreation leave shall be taken by employees every twelve months as described in the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006.

10. Non Attendance Time

10.1 Correctional Education Officers

10.1.1 In return for undertaking a maximum of 400 hours per annum of direct teaching activities, as provided at sub clause 11.4, all Correctional Education Officers shall receive 10 working days non attendance time.

10.2 Teachers

10.2.1 In return for the hours as described in clause 12. of this Award, Teachers shall be entitled to 7 weeks of agreed non attendance time if employed for a full calendar year.

10.2.2 Where a Teacher commences or ceases employment part way through a calendar year, the entitlement to non attendance time shall be calculated on a pro rata basis.

10.2.3 The pro rata calculation mentioned in subclause 10.2.2 shall be as negotiated and agreed between the Department and Federation.

10.2.4 Where public holidays fall during a period of non attendance time, those days shall be counted as non attendance time.

10.3 For Correctional Education Officers and Teachers, non attendance time shall be taken at the Department's convenience.

10.4 For Correctional Education Officers and Teachers, non attendance time shall be non accumulative.

10.5 An annual calendar detailing the dates for non attendance time to be taken shall be developed by the Senior Correctional Education Officer in consultation with senior management of the correctional centre and education employees, for approval by the Principal AEVTI.

11. Duties of Correctional Education Officers

11.1 Subject to sub clauses 11.2 and 11.3 of this Award and following consultation with the supervising Senior Correctional Education Officer, Correctional Education Officers shall be required to undertake:

11.1.1 Direct teaching activities for up to 10 hours per week; and

11.1.2 Duties related to teaching and through care initiatives for a minimum of 25 hours per week up to 35 hours per week, as specified at sub clause 11.4, provided that the total ordinary hours of duty for the week shall not exceed 35 hours.

11.2 To accommodate the educational delivery needs of a correctional centre, the direct teaching activities, if required, shall be 10 hours per week plus or minus 5 hours in any one week.

11.3 There may be a need from time to time for a Correctional Education Officer not to undertake any direct teaching activities for a specified period of time (as determined by the Department) in order to meet the needs of the correctional centre. In these circumstances:

11.3.1 Duties related to teaching/through care initiatives as provided by sub clause 11.4 shall be substituted for direct teaching activities; and

11.3.2 Non attendance time as provided for in clause 10. of this Award, shall continue to apply as if direct teaching activities were being undertaken.

11.4 Direct teaching activities and duties related to teaching/through care initiatives to be undertaken by Correctional Education Officers shall be as specified in the following table:

Direct Teaching Activities Correctional Education Officer	Duties Related to Teaching/Through Care Initiatives
<p>Face-to-face teaching in any environment or setting, including but not limited to:</p> <ul style="list-style-type: none"> - classrooms - workshops - industry - in the field <p>Application of assessment and diagnostic instruments for inmates.</p> <p>Vocational assessment and counselling.</p> <p>Tutorial support for distance education enrolments and individual learners with difficulties.</p> <p>Workplace training & assessment.</p>	<p>Duties related to teaching, including but not limited to:</p> <ul style="list-style-type: none"> -preparation, for example, of course outlines and lesson plans -marking -support and advice to inmates -enrolment and associated administration including maintenance of education and case management files, preparation of case reports and running sheets -attendance at staff meetings -attendance at case management meetings -attendance at moderation meetings -participation in case planning and case management activities -leading approved staff development activities engaging in approved staff development activities -research -recognition of prior learning processes -selection and purchase of resources -maintenance of inmate libraries in liaison with the Manager Library Services -course, curriculum and materials development and review -course co-ordination as specified in curriculum documents <p>Duties related to facilitation of Departmental through care initiatives linking internal and external stakeholders, including but not limited to:</p> <ul style="list-style-type: none"> -industry and community liaison and promotion -co-ordination of traineeships and workplace training programs -workplace consultancy and advisory services -work placement co-ordination, supervision and pre and post release planning -inmate selection for education & vocational training programs & other program readiness -development of education case plan (includes Departmental Education Profile Interviews) -review of education plans

- 11.5 The specific range of duties as described in the table at sub clause 11.4 of this Award to be undertaken by a Correctional Education Officer must meet the needs of the particular correctional centre. Duties required of a Correctional Education Officer shall be planned following consultation between the Correctional Education Officer and the supervising Senior Correctional Education Officer.

12. Duties of Teachers

- 12.1 Teachers shall be required to undertake direct teaching activities for 20 hours per week and duties related to teaching for 15 hours per week as provided by sub clause 12.2 of this Award.
- 12.2 Direct teaching activities and duties related to teaching for Teachers shall be as specified in the following table:

Direct Teaching Activities Teacher	Duties Related to Teaching
<p>Face-to-face teaching in any environment or setting, including but not limited to:</p> <ul style="list-style-type: none"> -classrooms -workshops -industry -in the field <p>Application of assessment and diagnostic instruments for inmates.</p> <p>Vocational assessment and counselling.</p> <p>Tutorial support for distance education enrolments and individual learners with difficulties.</p> <p>Workplace training & assessment.</p>	<p>Duties related to teaching, including but not limited to:</p> <ul style="list-style-type: none"> -preparation, for example, of course outlines and lesson plans -marking -support and advice to inmates -enrolment and associated administration including maintenance of education and case management files, preparation of case reports and running sheets -attendance at staff meetings -attendance at case management team meetings -attendance at moderation meetings -participation in case planning and case management activities -course, curriculum and materials development and review -development of learning materials -research -recognition of prior learning processes -engaging in approved staff development activities -leading approved staff development activities -inmate selection for education & vocational training programs & other program readiness -development of education case plan (includes Departmental Education Profile Interviews) -review of education plans

- 12.3 The parties agree that the duties undertaken by Teachers shall support the work of Correctional Education Officers in relation to through care outcomes.
- 12.4 The specific range of duties as described in the table at sub clause 12.2 of this Award to be undertaken by a Teacher must meet the needs of the particular correctional centre. Duties required of a Teacher shall be planned following consultation between the Teacher and the supervising Senior Correctional Education Officer.
- 12.5 From time to time a teacher's Direct Teaching Activities i.e. teaching hours, may be lost due to restricted correctional centre routines and other centre activities. In order to maintain a reasonable level of teaching hours:
- 12.5.1 There may be occasions where teaching hours previously lost may be made up during the following six week period, and
- 12.5.2 A Teacher may be required by the supervising Senior Correctional Education Officer to make up a maximum of 5 hours over a period of one week such that the number of teaching hours taught by that teacher shall not exceed 6 hours in any one day and 25 hours in any one week,
- 12.5.3 These hours may only be made up on the days a Teacher is usually engaged to work and shall replace the hours usually spent on Duties Related to Teaching.

13. Leave Entitlements

- 13.1 Sick leave, maternity leave, parental leave, adoption leave, family and community service leave, and all other leave except for extended leave shall be granted and administered to employees in accordance with the provisions of the Act, the Regulation, the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 and as described in the Personnel Handbook.

- 13.2 Extended leave entitlements shall be granted and administered to employees in accordance with Schedule 3 of the Act and as described in the Personnel Handbook.

14. Part-Time Work

- 14.1 The Department is committed to providing part-time work opportunities where practicable. Such arrangements should provide flexibility for effective use of resources and be of benefit to employees.
- 14.2 Part-time arrangements must be acceptable to both the Department and the employee and shall be in accordance with the provisions of the Industrial Relations Act 1996 and the Flexible Work Practices Policy and Guidelines issued by the PEO in October 1995, including the requirement that entitlements are generally on a pro-rata basis.

15. Qualifications Upgrade

- 15.1 Sub clauses 15.2 - 15.6 apply only to those persons:
- 15.1.1 Who commenced employment as Teachers during the nominal term of the Crown Employees (Education Employees, Department of Corrective Services) Consent Award 2002; and
- 15.1.2 Who have already been offered the opportunity to gain qualifications whilst on probation as part of the process associated with the conversion of Contract Teachers to permanent full-time and part-time Teachers.
- 15.2 Teachers who have not commenced or completed the agreed course of study shall not have their appointment confirmed.
- 15.3 Teachers who have not commenced or completed their agreed course of study within the agreed and acceptable timeframe shall have their circumstances reviewed by the Principal AEVTI and a representative of Federation. Where:
- 15.3.1 Special circumstances exist, an extension of time shall be granted to commence or complete the course of study and the probationary period is extended for 12 months (the probationary period may be extended for up to 2 years with extensions beyond 2 years at the discretion of the Commissioner);
- 15.3.2 No special circumstances exist, the Teacher's appointment shall be annulled.
- 15.4 Once the required qualifications are gained the Teacher's salary entitlements shall be adjusted to the appropriate step commensurate to the qualifications gained and the date at which those qualifications were attained.
- 15.5 The Teacher shall remain on step one and shall not progress until evidence of the qualification being gained is provided to the Department.
- 15.6 The Department shall continue to contribute an amount to be determined towards the cost of gaining the qualification. Eligibility is limited to those employees whom the Department has already agreed to reimburse the cost of gaining such qualifications.

16. Recruitment - Exceptional Circumstances

- 16.1 In exceptional circumstances only, applicants for newly advertised Teacher positions who do not possess the required teaching qualifications shall not be excluded from the selection process (subject to sub clause 16.2 being met), and may be appointed on probation subject to the provisions of clause 15. Qualifications Upgrade, sub clauses 15.2 - 15.5 of this Award. The applicant must hold qualifications in the core subject area of the advertised Teacher position.
- 16.2 Exceptional circumstances shall be advertised as such and shall be limited to positions in rural locations that have been previously widely advertised with a resultant field of applicants who meet all selection

criteria except for the qualifications. This may include applicants who have already commenced a course of study or have extensive employment related experience.

- 16.3 The decision as to whether an exceptional circumstance exists rests with the Commissioner (or delegated officer) following consultation with the Principal AEVTI.
- 16.4 The provisions of sub clause 15.6 of this Award do not apply to employees selected as a result of exceptional circumstances.

17. Professional Development

- 17.1 The Department is committed to the development of highly skilled, motivated and professional employees.
- 17.2 Access to professional development opportunities shall be based on the:
- 17.2.1 Department's needs; and
- 17.2.2 Needs of individual employees as determined in consultation with their supervisors both at the local level and with the Principal of AEVTI.
- 17.3 Subject to sub clause 17.2 of this Award, the professional development of Senior Correctional Education Officers, Correctional Education Officers and Teachers shall be provided by:
- 17.3.1 Access to relevant courses provided by the Corrective Services Academy; and
- 17.3.2 Provision for study assistance as described in the Personnel Handbook; and
- 17.3.3 Access to retraining across disciplines in accordance with the needs of the Department to facilitate multi-skilling and career path development.
- 17.4 Senior Correctional Education Officers, Correctional Education Officers and Teachers are encouraged to share their professional development experiences with other Senior Correctional Education Officers, Correctional Education Officers and Teachers.

18. Education Quality

- 18.1 In line with the Department's commitment to reducing re-offending, AEVTI is committed to providing adult education programs to inmates and to identified disadvantaged groups within the inmate population.
- 18.2 The provision of educational courses shall be in the form of nationally accredited training equivalent to that available in the community. This standard will be maintained by the employment of professional educators within the system.
- 18.3 Education programs aim to contribute to the good order of correctional centres and to the overall well being of inmates.
- 18.4 Education programs aim to assist inmates to develop skills and aptitudes to improve their prospects for post release reintegration into the wider community.
- 18.5 These programs will include classroom subjects, vocational education, creative and cultural activities, physical education and sports, social education and library facilities.

19. Consultation

- 19.1 The parties agree to consult on any matter relating to the introduction of major, system wide, educational initiatives by the Department.

19.2 A consultative committee shall be established for this purpose.

20. Anti-Discrimination

20.1 It is the intention of the parties bound by this Award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.

20.2 It follows that in fulfilling their obligations under the dispute resolution procedures prescribed by this Award the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this Award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the Award which, by its terms or operation, has a direct or indirect discriminatory effect.

20.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.

20.4 Nothing in this clause is to be taken to affect:

20.4.1 Any conduct or act which is specifically exempted from anti-discrimination legislation;

20.4.2 Offering or providing junior rates of pay to persons under 21 years of age;

20.4.3 Any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*;

20.4.4 A party to this Award from pursuing matters of unlawful discrimination in any State or federal jurisdiction.

20.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

20.5.1 Employers and employees may also be subject to Commonwealth anti-discrimination legislation.

20.5.2 Section 56(d) of the *Anti-Discrimination Act 1977* provides:

"Nothing in the Act affects any other act or practice of a body established to propagate religion that conforms to the doctrines of that religion or is necessary to avoid injury to the religious susceptibilities of the adherents of that religion."

21. Harassment Free Workplace

21.1 The Department is committed to ensuring that officers work in an environment free of harassment. Harassment is any repeated uninvited or unwelcome behaviour directed at another person. The effect of harassment is to offend, annoy or intimidate another person and to make the workplace uncomfortable and unpleasant. Harassing behaviour is unacceptable and disruptive to the well-being of individuals and workplace productivity.

21.2 Harassment on any grounds including, but not limited to, sex, race, marital status, physical impairment, sexual preference, HIV/AIDS or age shall not be condoned by the Department or the Federation.

21.3 Senior Correctional Education Officers shall exercise their best endeavours to prevent all forms of harassment by setting personal examples, by ensuring proper standards of conduct are maintained in the workplace and by taking immediate and appropriate measures to stop any form of harassment of which they may be aware.

21.4 All employees are required to refrain from perpetuating, or being party to, any form of harassment.

- 21.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by legislation.

22. Deduction of Union Membership Fees

- 22.1 The Federation shall provide the Department with a schedule setting out Federation's fortnightly membership fees payable by members of the Federation in accordance with Federation's rules.
- 22.2 The Federation shall advise the Department of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of Federation fortnightly membership fees payable shall be provided to the Department at least one month in advance of the variation taking effect.
- 22.3 Subject to subclauses 22.1 and 22.2 above, the Department shall deduct Federation's fortnightly membership fees from the pay of any employee who is a member of Federation in accordance with the Federation's rules, provided that the employee has authorised the Department to make such deductions.
- 22.4 Monies so deducted from the employee's pay shall be forwarded regularly to the Federation together with all necessary information to enable the Federation to reconcile and credit subscriptions to employees' membership accounts.
- 22.5 Unless other arrangements are agreed to by the Department and Federation, all membership fees shall be deducted on a fortnightly basis.
- 22.6 Where an employee has already authorised the deduction of membership fees from his/her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

23. Dispute Resolution Procedures

- 23.1 Subject to the provisions of the *Industrial Relations Act 1996*, should any dispute (including a question or difficulty) about an industrial matter arise, then the following procedures shall apply:
- 23.1.1 Should any dispute, question or difficulty arise as to matters occurring in a particular workplace, then the employee and/or Federation workplace representative shall raise the dispute, question or difficulty with the supervisor as soon as practicable.
- 23.1.2 The supervisor shall discuss the matter with the employee and/or Federation representative within two working days with a view to resolving the dispute, question or difficulty or by negotiating an agreed method and time frame for proceeding.
- 23.1.3 Should the above procedure be unsuccessful in producing a resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the individual employee or the Federation may raise the matter with an appropriate officer of the Department with a view to resolving the dispute, question or difficulty or negotiating an agreed method and time frame for proceeding.
- 23.1.4 Where the procedures in sub-clause 23.1.3 do not lead to resolution of the dispute, question or difficulty, the matter shall be referred to the Commissioner and the General Secretary of the Federation. They or their nominees shall discuss the dispute, question or difficulty with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
- 23.1.5 Should the above procedure not lead to a resolution, then either party may make application to the Industrial Relations Commission of New South Wales.
- 23.1.6 While the dispute resolution procedure is being followed, the status quo shall remain unless an occupational health and safety issue precludes such work. The status quo is the situation which prevailed before the cause of the dispute.

24. Duties as Directed

- 24.1 The Department may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training consistent with the classification structure of this Award and provided that such duties are not designed to promote deskilling.
- 24.2 The Department may direct an employee to carry out such duties and use such tools and equipment as may be required, provided that the employee has been properly trained in the use of such tools and equipment.

25. No Further Claims

- 25.1 Except as provided by the *Industrial Relations Act* 1996, prior to 31 December 2008, there shall be no further claims by the parties to this Award for changes to salaries, rates of pay, allowances, or conditions of employment in relation to matters expressly contained in this award.

26. Area, Incidence and Duration

- 26.1 This Award shall apply to all Senior Correctional Education Officers, Correctional Education Officers and Teachers employed by the Government of NSW under Chapters 1A and 2 of the Act in the Department of Corrective Services, a Department listed in Schedule 1, Part 1 of the Act.
- 26.2 This Award rescinds and replaces the Crown Employees (Education Employees, Department of Corrective Services) Consent Award 2004 published 20 May 2005 (351 IG, 72 varied by Erratum published 29 July 2005 (352 IG, 1095) and varied by the Secure Employment Test Case IRC 1330 of 2006 on 10 March 2006.
- 26.3 The Award takes effect from 1 January 2006 and expires on 31 December 2008.

PART B

MONETARY RATES

Table 1 - Salaries

	4% - from first pay period commencing on or after 1/1/06 \$	4% - from first pay period commencing on or after 1/1/07 \$	4% from first pay period commencing on or after 1/1/08 \$
Teacher/CEO			
Step 1	59,182	61,549	64,011
Step 2	60,851	63,285	65,816
Step 3	63,227	65,756	68,386
Step 4	66,344	68,998	71,758
SCEO			
Step 1	75,377	78,392	81,528
Step 2	77,706	80,814	84,047

F. MARKS J

(1343)

SERIAL C4376

**CROWN EMPLOYEES (INSTITUTE MANAGERS IN TAFE)
SALARIES AND CONDITIONS AWARD 2006**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by New South Wales Department of Education.

(No. IRC 128 of 2006)

Before Commissioner Cambridge

25 January 2006

AWARD

PART A

1. Arrangement

Clause No.	Subject Matter
1.	Arrangement
2.	Dictionary
3.	Salary
4.	Hours of Work
5.	Training and Professional Development
6.	Right of Private Practice
7.	Appointment and Transfer
8.	Performance Management
9.	Appeal Rights
10.	Regression
11.	Dispute Resolution Procedures
12.	Discipline Process
13.	Anti-discrimination
14.	Deferred Salary Scheme
15.	Leave
16.	Filling of Positions
17.	Qualification Requirements
18.	Goods and Services Tax
19.	No Further Claims
20.	Locality/Remote Areas Allowance
21.	Industrial Rights
22.	Special Fitness and Hard to Fill
23.	Deduction of Union Membership Fees
24.	Area, Incidence and Duration

PART B

MONETARY RATES

- Schedule 1 - Salaries
- Schedule 2 - Performance Management for Institute
Managers
- Schedule 3 - Allowances

2. Dictionary

- 2.1 "Act" means the *Technical and Further Education Commission Act 1990*.
- 2.2 "Association" means the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales.
- 2.3 "Department" means the NSW Department of Education and Training.
- 2.4 "Employee" means a person employed in a classification covered by this award.
- 2.5 "Employer" means the Crown in the right of the State of New South Wales (the Crown).
- 2.6 "Federation" means the New South Wales Teachers Federation.
- 2.7 "Institute Manager" means all persons permanently or temporarily employed as educational leaders and administrative managers in TAFE within the classification of institute manager as provided for in this Award. Institute managers have supervisory responsibility for administrative and/or educational programs and/or staff.
- 2.8 "Managing Director" means the Managing Director of TAFE.
- 2.9 "Unions" means the New South Wales Teachers Federation and the Public Service Association and Professional Officers' Association Amalgamated Union of New South Wales having regard to their respective coverage.
- 2.10 "Semester" means the period commencing the first day where teachers return generally from the Christmas or the mid year vacation period, and ending on the last day of the next following mid year or Christmas vacation periods.
- 2.11 "TAFE" means the TAFE Commission established under the Act.
- 2.12 "Time off in lieu" means that period of approved time (hours or days) taken by an institute manager to make up for a period or periods of work beyond the standard working hours to undertake the performance of their duties.

3. Salary

- 3.1 Salaries for institute managers under this award are as provided for in Schedule 1, Salaries, of Part B.
- 3.2 An institute manager may, subject to agreement by the employer, elect to receive:
- 3.2.1 either a motor vehicle benefit or, where approval has been granted by the Premier and the Treasurer, elements of the Department's Salary Packaging Scheme excluding the novated leasing of motor vehicles; and
- 3.2.2 a salary equal to the difference between the salary prescribed under this award in respect of the institute manager and the amount specified from time to time for the motor vehicle benefit or the elements of the Department's Salary Packaging Scheme, provided that the total salary sacrifice is limited to fifty per cent of the institute manager's gross salary.
- 3.3 The motor vehicle benefit provided for in subclause 3.2.1 provides the institute manager with access to the use of a motor vehicle on a business/private basis in accordance with TAFE's policy.

4. Hours of Work

- 4.1 The parties agree that a flexible and adaptive approach in relation to working hours and working arrangements will be adopted which recognises the professionalism of institute managers and allows that:

- 4.1.1 standard working hours shall be 35 hours per week. The pattern of attendance shall be agreed between an individual manager and their line manager;
- 4.1.2 institute managers shall not be directed to work more than 35 hours in any one week;
- 4.1.3 where work has been negotiated with and approved by the line manager to be performed beyond standard working hours, institute managers are entitled to time off in lieu to compensate for additional hours worked. Time off in lieu arrangements are to be negotiated and approved by the line manager in advance and to be taken to meet the operational requirements of the institute and the personal needs of the institute manager;
- 4.1.4 in recognition of the professional nature of the work the parties agree that time off in lieu does not accrue in any one week until three additional hours have been worked, and then it accrues at the rate of one hour for every hour worked. Where a week includes a public holiday, time off in lieu is to be worked out pro-rata;
- 4.1.5 time off in lieu may be taken in single, multiple or part days within one semester of accrual. In extenuating circumstances, an institute manager may, with the approval of their line manager and taking into account the needs of the institute, accrue time off in lieu in excess of a semester;
- 4.1.6 line managers are responsible for recording and/or reporting of time off in lieu taken by institute managers. Institute managers shall have access to these records, which shall be made available on request.

5. Training and Professional Development

- 5.1 The parties confirm a commitment to training and development for institute managers. Institute managers recognise their obligation to maintain and update their professional skills for the benefit of TAFE students and staff.
- 5.2 The employer will continue to participate in initiatives to identify competencies for institute managers in consultation with relevant industry parties.
- 5.3 The employer is committed to providing access to and support for professional and management development training.
- 5.4 Where the employer requires professional development, the employer will meet the compulsory fees involved. Where the professional development opportunity is voluntary the employer may, at its discretion, refund all or part of the compulsory fees incurred by the institute managers approved to undertake approved training and professional development programs.
- 5.5 Ten working days shall be provided per annum, which may be accumulated over two years to a period of 20 days, for institute managers to undertake training and professional development related to their current and medium term development needs as identified by the performance agreement, the objectives of which are set out in Schedule 2 of Part B, Performance Management for Institute Managers. The professional development activity must be approved by the institute director in advance, with the time to be taken in minimum periods of half a day subject to the operating needs of the institute. This does not preclude access to other professional development opportunities provided by the employer.
- 5.6 Institute managers undertaking courses of study who require arrangements different to those in subclause 5.5 may apply to the employer for special consideration. The employer shall consider these requests on a case-by-case basis.
- 5.7 Institute managers employed as at the time of the making of the 2001 *Crown Employees (Institute Managers in TAFE) Salaries and Conditions Award* (327 IG 872) with an existing balance of professional development time of up to 30 days may utilise this time as provided for in subclause 5.5 of this award. Following the utilisation of this balance, professional development time will accrue on the basis provided for in subclause 5.5 of this award.

6. Right of Private Practice

- 6.1 Institute managers may apply to their institute directors for the right of private practice in accordance with the Department's Private and Secondary Employment policy.
- 6.2 Institute managers may negotiate with their line manager to undertake some teaching as a part-time casual and/or OTEN contract teacher. The line manager shall consider such requests on a case by case basis having regard to the following factors:
- 6.2.1 the institute manager has expressed a wish to return to teaching on a full-time basis in the near future;
- 6.2.2 the institute manager requests such an arrangement in order to maintain and/or develop their educational and/or managerial effectiveness;
- 6.2.3 the institute manager possesses specialist knowledge/experience relevant to the employer's educational needs.

7. Appointment and Transfer

- 7.1 The filling of vacant positions of institute manager will be by way of a competitive selection process based on merit, subject to the provisions of the TAFE NSW Recruitment and Staff Selection policy.
- 7.2 A person who is not an officer and is appointed to an institute manager's position shall be appointed for a minimum probationary period of one year. Confirmation of their position shall depend on completion of a satisfactory annual review, pursuant to Clause 8, Performance Management.
- 7.3 Nothing in this award shall operate to remove the right of the employer to transfer an institute manager to meet the operating needs of the employer or remove existing rights to entitlements as provided in the Transferred Officers Compensation Managing Director of TAFE Determination No.4 of 2001.
- 7.4 Institute managers who wish to seek transfer will be considered by the employer on a case by case basis.
- 7.5 Where the employer directs an institute manager to transfer, the institute manager shall have access to a Transfer Review Panel.
- 7.6 In assessing an application for transfer, the institute director or delegate will assess the institute manager's skills and other attributes against the selection criteria for the position and if matched, can directly appoint or if in doubt can proceed to merit selection.
- 7.7 The institute manager has no right of appeal for non-appointment should a transfer application not be approved.

8. Performance Management

- 8.1 The performance of institute managers will be reviewed annually under a performance management scheme, the objectives of which are set out in Schedule 2, Performance Management for Institute Managers, of Part B Monetary Rates.

9. Appeal Rights

- 9.1 For positions with salary equivalent to or below that applicable to the maximum salary for Clerk Grade 12, institute managers shall have access to the Government and Related Employees Appeal Tribunal in terms specified by the *Government and Related Employees Appeal Tribunal Act 1980*.
- 9.2 For positions above the salary level for maximum Clerk Grade 12, staff have a right of appeal to the Managing Director where such appointment would involve a salary increase for the appellant or the prospective appointee. Such appeals will be managed in accordance with TAFE's appeals process as agreed by the parties.

10. Regression

- 10.1 Staff wishing to regress to positions below institute manager classifications should express their interest to the relevant institute director who will consider the request, along with others, whenever an appropriate vacancy occurs.

11. Dispute Resolution Procedures

- 11.1 Subject to the provisions of the *Industrial Relations Act 1996* the following procedures shall apply:
- 11.1.1 Should any dispute (including a question or difficulty) arise as to matters occurring in a particular workplace, the institute manager and/or the relevant union's workplace representative shall raise the matter with the appropriate line manager as soon as practicable.
- 11.1.2 The line manager shall discuss the matter with the institute manager and/or the relevant union's workplace representative within two working days with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
- 11.1.3 Should the above procedure be unsuccessful in producing resolution of the dispute, question or difficulty or should the matter be of a nature which involves multiple workplaces, then the institute manager and or the relevant union may raise the matter with an appropriate officer of TAFE at the Institute level with a view to resolving the dispute, or by negotiating an agreed method and time frame for proceeding.
- 11.1.4 Where the procedures in sub clause 11.2.3 of this clause do not lead to resolution of the dispute, the matter shall be referred to the General Manager Industrial Relations and Employment Services of the Department and the General Secretary of the Federation and the General Secretary of the Association. They or their nominees shall discuss the dispute, question or difficulty with a view to resolving the matter or by negotiating an agreed method and time frame for proceeding.
- 11.2 Should the above procedures not lead to a resolution, then either the Department or the Federation or the Association may apply to the Industrial Relations Commission of New South Wales.

12. Discipline Process

- 12.1 The parties recognise that the following two discipline processes have application in TAFE and will be applied to institute managers;
- 12.2 The procedure applicable to members of staff of the employer whose conditions of employment are determined by the Crown Employees (Teachers in TAFE and Related Employees) Salaries and Conditions Award 2006, or any successor instruments to the said award; or
- 12.3 The procedure that applies to all other members of staff which is specified in Part 2.7 of the *Public Sector Employment and Management Act 2002*.

13. Anti-Discrimination

- 13.1 It is the intention of the parties bound by this award to seek to achieve the object in section 3(f) of the *Industrial Relations Act 1996* to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- 13.2 It follows that in fulfilling their obligations under the dispute resolution procedure prescribed in clause 11 of this award, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the award which, by its terms or operation, has a direct or indirect discriminatory effect.

- 13.3 Under the *Anti-Discrimination Act 1977*, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- 13.4 Nothing in this clause is to be taken to affect:
- any conduct or act which is specifically exempted from anti-discrimination legislation;
 - offering or providing junior rates of pay to persons under 21 years of age;
 - any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act 1977*.
- a party to this award from pursuing matters of unlawful discrimination in any state or federal jurisdiction.
- 13.5 This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

14. Deferred Salary Scheme

- 14.1 Institute managers may seek to join the Department's deferred salary scheme.
- 14.2 Successful applicants may defer twenty per cent of their salary for the first four years and be paid the deferred salary in the fifth year.
- 14.3 The deferred salary scheme does not apply to temporary institute managers.

15. Leave

- 15.1 Annual Recreation leave - Annual recreation leave shall be in accordance with the *Annual Holidays Act 1944* and TAFE policy.
- 15.2 Extended leave - Extended leave shall be in accordance with the Act.
- 15.3 Sick leave -
- 15.3.1 Sick leave at the rate of fifteen working days paid sick leave per calendar year i.e. 1 January to 31 December. The full annual entitlement is available from 1 January each year (not accrued on a monthly basis). The unused component of the annual entitlement is fully cumulative.
 - 15.3.2 Where an institute manager requires sick leave additional to the annual or cumulative entitlement provided in sub clause 15.3.1 above in cases of long-term illness, they may apply to the employer for special sick leave. Such requests will be considered by the employer on a case-by-case basis.
- 15.4 Family and Community Service Leave
- 15.4.1 General - The institute director or nominee may grant family and community service leave for the following purposes:
 - (a) for reasons related to the family responsibilities of the institute manager; or
 - (b) for reasons related to the performance of community service by the institute manager; or
 - (c) for reasons of pressing necessity.

Family and community service leave replaces short leave.

- 15.4.2 Quantum - The amount of family and community service leave available to an institute manager shall be either:
- (a) 2.5 days during the first year of service and five days in any period of two years after the first year; or
 - (b) after two years of continuous service, one day of family and community service leave for each completed year of service less the total amount of short leave or family and community service leave previously granted to an institute manager;

whichever is the greater period.

Where such leave is exhausted, sick leave in accordance with subclause 15.5.1 may be used.

Family and community service leave is not to be taken for attendance at court to answer a criminal charge, unless the institute director or nominee approves such leave in the particular case.

15.5 Personal Carer's Leave -

- 15.5.1 Use of Sick Leave - An institute manager may use the available sick leave from the current year plus any accumulated sick leave from the previous three years to provide care and support for family members when they are ill. Such illness shall be supported, if required, by a medical certificate or statutory declaration that the illness is such as to require the care by another person for a specified period. The choice of medical certificate or statutory declaration is the institute manager's. Neither the medical certificate nor statutory declaration is required to reveal the exact nature of the illness. Wherever practicable, prior notice of the intention to take leave should be given.

The entitlement to use sick leave in accordance with this subclause is subject to:

- (a) the institute manager being responsible for the care of the person concerned; and
- (b) the person concerned being:
 - (1) a spouse of the institute manager; or
 - (2) a de facto spouse who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (3) a child or an adult (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the institute manager or spouse or de facto spouse of the institute manager; or
 - (4) a same sex partner who lives with the institute manager as the de facto partner of that institute manager on a bona fide domestic basis; or
 - (5) a relative of the institute manager who is a member of the same household where, for the purposes of this section:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse, because of marriage, has to blood relatives of the other; and

"household" means a family group living in the same domestic dwelling.

An institute manager shall, wherever practicable, give the institute director or nominee notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the institute manager, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the institute manager to give prior notice of absence, the institute manager shall notify the institute director or nominee of such absence at the first opportunity on the day of absence.

15.5.2 Use of Other Leave - To care for an ill family member, an institute manager may also use recreation, extended leave or leave without pay with the consent of the institute director.

15.5.3 Use of Time in Lieu - To care for an ill family member, an institute manager may also, with the institute director's consent, take accrued time in lieu as provided for in subclauses 4.1.4 and 4.1.5 of this award.

15.6 Bereavement Leave -

15.6.1 An institute manager shall be entitled to up to two days bereavement leave on each occasion of the death of a person prescribed in subclause 15.5.1 above, provided that for the purpose of bereavement leave, the institute manager need not have been responsible for the care of the person concerned.

15.6.2 The institute manager must notify the institute director or nominee as soon as practicable for the intention to take bereavement leave and shall, if required by the institute director or nominee, provide to the satisfaction of the institute director or nominee proof of death.

15.6.3 An institute manager shall not be entitled to bereavement leave under this clause during any period in respect of which the institute manager has been granted other leave.

15.6.4 Bereavement leave may be taken in conjunction with other leave available under this clause. In determining such a request the institute director or nominee shall give consideration to the circumstances of the institute manager and the reasonable operational requirements of the employer.

16. Filling of Positions

16.1 Positions which have been affected by a workplace change will be filled in accordance with the Department's Procedures for Managing Potentially Displaced, Displaced and Excess Permanent Employees and Displaced Long Term Temporary Employees.

16.2 Positions not filled through the provisions of sub clause 16.1 of this award shall be filled as follows:

16.2.1 Displaced/Excess Staff - The regional human resources manager will determine if there are any suitable vacancies using the corporate employees service centre weekly vacancy spreadsheet. The manager will then proceed in accordance with the procedures at subclause 16.1.

16.2.2 Regression - Where the position has not been filled by the preceding steps, institute managers who are seeking regression will be eligible for priority consideration for appointment to vacant positions. Further details are contained in TAFE's transfer and regression policy.

16.2.3 Staff Selection (Recruitment) Action - Where no appointment has been made through the process identified in subclauses 16.2.1 and 16.2.2, the position will be advertised within TAFE.

16.2.4 Staff Selection (Recruitment) Action - Where no appointment has been made through the processes identified in subclauses 16.2.1, 16.2.2 and 16.2.3, the position will be advertised externally.

- 16.3 Nothing in subclause 16.2 shall limit the appeal rights of institute managers, which are set out in clause 9, Appeal Rights.

17. Qualification Requirements

- 17.1 Qualifications for positions shall accurately reflect the requirements of the position and conform to equal employment opportunity principles. Any artificial barriers to promotion should be removed.
- 17.2 The qualification requirements of positions shall be reviewed by the employer from time to time in consultation with the unions.

18. Goods and Services Tax

- 18.1 The parties shall monitor the overall impact of the Commonwealth Government's goods and services tax through the term of the award. In the event that the Industrial Relations Commission makes a State decision (as defined by section 49 of the *Industrial Relations Act 1996*) having regard to the impact on wages of the goods and services tax, the unions reserve the right to make application to the Industrial Relations Commission in relation to that decision.

19. No Further Claims

- 19.1 Except as provided by the *Industrial Relations Act 1996*, prior to 31 December 2008, there shall be no further claims by the parties to this Award for changes to salaries, rates of pay, allowances, or conditions of employment in relation to matters expressly contained in this award.

20. Locality/Remote Areas Allowance

- 20.1 Institute managers currently receiving the allowances contained in Schedule 3, Allowances of Part B - Locality Allowances - Tables 1, 2 and 3, shall continue to receive these allowances for as long as they continue in their current position at their existing location. Institute managers appointed on or after 29 May 2001 shall be paid the remote areas allowances as contained in Table 4 of Schedule 3 of Part B, Allowances as adjusted in line with adjustments to the public service remote areas allowance as contained in clause 40 of the Crown Employees (Public Service Conditions of Employment) Award 2002 or any variations to or successor instruments to the said award.
- 20.2 Institute managers currently receiving the remote areas allowance as contained in Table 4 of Schedule 3, Part B, Allowances shall continue to receive this allowance while remaining in their current position at their existing location.

21. Industrial Rights

- 21.1 Union Representatives -
- 21.1.1 An accredited union representative at the place in which he/she is employed shall, upon notification thereof to his/her employer, be recognised as an accredited union representative.
- 21.1.2 An accredited union representative shall be allowed the necessary time during working hours to interview the employer or his/her representative on matters affecting employees.
- 21.1.3 An accredited union representative shall be allowed a reasonable period of time during working hours to interview a duly accredited union official.
- 21.2 Consultative and Other Committee Work -
- 21.2.1 Where an institute manager is required by the employer, nominated by the union or otherwise selected by staff to participate in work-based consultative or like committees, the employer shall provide such staff with paid leave to attend to such matters.

- 21.2.2 In addition, where such committees unanimously agree to undertake a particular project consistent with its terms of reference, the employer shall provide sufficient paid time to enable the institute manager to undertake the project.

22. Special Fitness and Hard to Fill

- 22.1 A position will be regarded as "hard to fill" when it has been advertised once throughout TAFE and twice throughout New South Wales in the major press and no appointment has been made.
- 22.2 When a position has been identified as "hard to fill" in accordance with subclause 22.1 of this clause, the employer will review the position in order to ensure that the current position description and accountabilities appropriately reflect the nature of the position. Where appropriate, job redesign will follow and the new position will be advertised in the normal manner.
- 22.3 Where job redesign has not been deemed to be appropriate, the employer or nominee may offer an allowance of up to ten per cent of the maximum salary of the position when it is next advertised.
- 22.4 The allowance will be paid to the selected applicant for as long as he/she remains in the advertised position.

23. Deduction of Union Membership Fees

- 23.1 The union shall provide the employer with a schedule setting out union fortnightly membership fees payable by members of the union in accordance with the union's rules.
- 23.2 The union shall advise the employer of any change to the amount of fortnightly membership fees made under its rules. Any variation to the schedule of union fortnightly membership fees payable shall be provided to the employer at least one month in advance of the variation taking effect.
- 23.3 Subject to 23.1 and 23.2 above, the employer shall deduct union fortnightly membership fees from the pay of any employee who is a member of the union in accordance with the union's rules, provided that the employee has authorised the employer to make such deductions.
- 23.4 Monies so deducted from employees' pay shall be forwarded regularly to the union together with all necessary information to enable the union to reconcile and credit subscriptions to employees' union membership accounts.
- 23.5 Unless other arrangements are agreed to by the employer and the union, all union membership fees shall be deducted on a fortnightly basis.
- 23.6 Where an employee has already authorised the deduction of union membership fees from his or her pay prior to this clause taking effect, nothing in this clause shall be read as requiring the employee to make a fresh authorisation in order for such deductions to continue.

24. Area, Incidence and Duration

- 24.1 This award applies to all persons employed in the classification of institute manager. The award shall take effect on and from 1 January 2006 and shall remain in force until 31 December 2008.
- 24.2 This award rescinds and replaces the Crown Employees (Institute Managers in TAFE) Salaries and Conditions Award published 23 December 2005 (355 I.G. 558) and all variations thereof.

PART B**MONETARY RATES****SCHEDULE 1 - SALARIES**

Institute Managers	Salary from the first pay period to commence on or after 1.1.06	Salary from the first pay period to commence on or after 1.1.07	Salary from the first pay period to commence on or after 1.1.08
Increase	4%	4%	4%
	\$	\$	\$
Level 1	95,376	99,191	103,159
Level 2	102,574	106,677	110,944
Level 3	107,974	112,293	116,785
Level 4	115,173	119,780	124,571
Level 5	122,371	127,266	132,357

SCHEDULE 2 - PERFORMANCE MANAGEMENT FOR INSTITUTE MANAGERS**1. Introduction**

The scheme establishes a framework for individuals to plan their work performance and the provision of objective feedback. It also facilitates training and career development.

2. Objectives of Performance Management

The objectives of performance management are to support the professional development of institute managers and to enhance the performance of the employer. All institute managers shall participate in the scheme. The performance management scheme will provide an effective means for institute managers to understand, reflect upon and improve their performance through developmental processes and to understand the role, accountabilities and standards that are expected of them.

The performance management process is a collaborative process between the line manager and the institute manager. The line manager will exercise leadership by working together with the institute manager to implement the performance management scheme and to provide continuing support and feedback to the officer. The institute manager in consultation with the line manager will identify appropriate targets and monitor their progress, requesting assistance as needed.

The major outcomes of the performance management process will be the identification of developmental needs of the institute manager, the development strategies to support these needs, feedback on performance and achievements. The process will also enhance the productivity, effectiveness and efficiency of the employer to meet changing industry and community needs.

The objectives are to:

establish clear individual performance goals linked to, and consistent with, the employer's goals and priorities and institute's plans and objectives;

identify each institute manager's current and medium term development needs (in relation to the organisation and self), and career goals and develop strategies to support these needs;

assist with the achievement of the employer's long term objectives and annual priorities;

provide for each institute manager, a valid basis for performance assessment against job-related criteria; and

provide job-related guidance and performance feedback in a continuing way.

The scheme will reflect and support the employer's overall objectives as set out in:

- the Department's and TAFE's Strategic Plans;
- annual priorities; and
- institutes' management plans.

The scheme is an ongoing process and consists of three major components:

- developing the performance agreement;
- review process; and
- feedback.

Appropriate training will support implementation of the scheme.

SCHEDULE 3 - ALLOWANCES

1. Definitions - for the Purpose of this Schedule:

- 1.1 "Dependent child" means, unless otherwise defined in the award, a child of which an institute manager is a parent and who is resident with and wholly maintained by such institute manager and either is under the age of sixteen years or is a full time student under the age of eighteen years or is completing their school studies up to and including Year 12.
- 1.2 "Dependent partner" means a person who is resident with and substantially reliant upon an institute manager for their financial support, being either the institute manager's spouse or a person whom the relevant institute director or nominee is satisfied is cohabiting otherwise than in marriage with the institute manager in a permanent de facto and bona fide domestic relationship.
- 1.3 "Married couple" means and shall include an institute manager and their spouse or a person whom the relevant institute director or nominee is satisfied is cohabiting otherwise than in marriage in a permanent de facto and bona fide domestic relationship.

Table 1 - Locality Allowances - Climatic

Climatic Allowances (Hot Summer Temperatures)	TAFE Colleges or TAFE Campuses located in the Western Division of New South Wales at the following locations: Boggabilla, Bourke, Broken Hill, Cobar, Coonabarabran, Coonamble, Condobolin, Moree, Nyngan, Walgett, Warren, Wilcannia			
	On and From 1.1.05 per annum \$	4% from the first pay period to commence on or after 1.1.06 \$	4% from the first pay period to commence on or after 1.1.07 \$	4% from the first pay period to commence on or after 1.1.08 \$
Single or married with independent non-teaching Partner	928	965	1,004	1,044
Married with dependent partner	1,097	1,141	1,187	1,234
Married with teaching partner	549	571	594	618

Isothermic (Cold Winter Temperatures)	TAFE Colleges or TAFE Campuses within a zone of New South Wales established by the 0° Celsius July Average Minimum Temperatures at the following locations: Armidale, Bathurst, Cooma, Glenn Innes, Inverell, Tenterfield			
Single or married with independent non-teaching partner	469	488	508	528
Married with dependent partner	626	651	677	704
Married with teaching partner	313	326	339	353

Table 2 -Locality Allowances - Isolation from Socio-economic Goods and Services

Isolation from Socio-Economic Goods and Services Allowance				
Single or married with independent non-teaching or teaching partner	On and from 1.1.05 per annum	4% from the first pay period to commence on or after 1.1.06	4% from the first pay period to commence on or after 1.1.07	4% from the first pay period to commence on or after 1.1.08
	\$	\$	\$	\$
Wilcannia	2,742	2,852	2,966	3,085
Goodooga	2,437	2,534	2,635	2,740
Brewarrina	1,220	1,269	1,320	1373
Bourke	916	953	991	1,031
Boggabilla	613	638	664	691
Cobar, Dunedoo, Nyngan, Warren	305	317	330	343
Married with dependent partner				
Wilcannia	5,483	5,702	5,930	6,167
Goodooga	4,874	5,069	5,272	5,483
Brewarrina	2,440	2,538	2,640	2,746
Bourke	1,832	1,905	1,981	2,060
Boggabilla	1,226	1,275	1,326	1,379
Cobar, Dunedoo, Nyngan, Warren	610	634	659	685
Dependent children for married institute manager with dependent partner				
Wilcannia				
First Child	318	331	344	358
Subsequent Child	202	210	218	227
Goodooga				
First Child	269	280	291	303
Subsequent Child	151	157	163	170
Dependent children for single or married institute manager with independent non-teaching or teaching partner				
Wilcannia				
First Child	159	165	172	179
Subsequent Child	101	105	109	113
Goodooga				
First Child	135	140	146	152
Subsequent Child	76	79	82	85

Table 3 - Locality Allowances - Motor Vehicles Depreciation

Motor Vehicles Depreciation	On and from 1.1.05 per annum \$	4% from the first pay period to commence on or after 1.1.06 \$	4% from the first pay period to commence on or after 1.1.07 \$	4% from the first pay period to commence on or after 1.1.08 \$
Applies to TAFE Colleges or TAFE Campuses at Wilcannia and Goodooga only	1,638	1,704	1,772	1,843

Remote Areas Allowance - Public Service Allowances**Table 4 - Remote Areas Allowance**

1. Grade A Allowances	1. Grade B Allowances	1. Grade C Allowances
(a) With dependents: \$1,522 per annum	(a) With dependents: \$2,018 per annum	(a) With dependents: \$2,695 per annum
(b) Without dependents: \$1,061 per annum	(b) Without dependents: \$1,415 per annum	(b) Without dependents: \$1,888 per annum
All other locations situated on or to the west of a line starting from the right bank of the Murray River opposite Swan Hill and then passing through the following towns or localities in the following order: Conargo, Coleambally, Hay, Rankins Springs, Marsden, Condobolin, Peak Hill, Nevertire,	Locations Angledool Barrington Bourke Brewarrina Clare Enngonia Goodooga	Locations Fort Grey Mootwingee Mount Wood Nocoleche Olive Downs Tibooburra Yethong
Gulargambone, Coonabarabran, Wee Waa, Moree, Warialda, Ashford and Bonshaw and includes a place situated in any such town or locality. Locations All others within the above but not covered in the Category B or C allowances.	Ivanhoe Lake Mungo Lightning Ridge Louth Mungindi Pooncarie Redbank Walgett Wanaaring Weilmoringle White Cliffs Wilcannia Willandra	

I. W. CAMBRIDGE, Commissioner.

(076)

SERIAL C4809**BUTTER, CHEESE & OTHER DAIRY PRODUCTS (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by The Australasian Meat Industry Employees' Union, New South Wales Branch, Industrial Organisation of Employees.

(No. IRC 5808 of 2005)

Before The Honourable Justice Backman

30 November 2005

VARIATION

1. Delete clause 10, Arbitrated Safety Net Adjustment, of the award published 26 October 2001 (328 I.G. 1114), and insert in lieu thereof the following:

10. Arbitrated Safety Net Adjustment

The rates of pay in this award include the adjustments payable under the State Wage Case 2005. These adjustments may be offset against:

- (i) any equivalent overaward payments, and/or
- (ii) award wage increases since 29 May, 1991 other than safety net, State Wage Case , and minimum rates adjustments.
2. Delete Part B, Monetary Rates and insert in lieu thereof the following:

PART B**MONETARY RATES****Table 1 - Wages**

Item No	Description	Amount per week 2005 State Wage Case (on and from 17 January 2007) \$
1	Production Assistant 1	519.50
2	Production Assistant 2	528.50
3	Plant Operator 1	531.90
4	Plant Operator 2	540.20
5	Plant Operator 3	552.40
6	Foreperson	563.30
7	Employee Grading and Taking Delivery of Milk	570.70

Table 2 - Other Rates

Item No	Clause No	Description	Amount 2005 State Wage Case \$
1	5.5	Meal Allowance	6.53
2	8.1	Driver of scammel, articulated or vehicle with trailer attached - Where the semi-trailer has single axle	24.91
3		Where the semi-trailer has more than one axle	30.28
4	8.2	Leading Hand Allowance - In Charge of 2 - 10 employees	13.81
5		In Charge of more than 10 employees	16.67
6	8.3	Clearing or Cleaning of Box Allowance - Each wet clean	0.55
7		Each dry clean	0.29
8	8.4	Operating more than two condenser/evaporating pans/ovens	3.21
9	8.5	Washing condenser pans/vacuum holding vats or evaporators - Each flying clean	0.12
10		Each full clean	0.50
11	8.6	Operating a pedestrian stacker in cold temperatures	8.93
12	8.7	Operating a pedestrian stacker	6.61
13	8.8	Operating a pedestrian forklift	4.86
14	8.9	First-Aid Allowance	10.38
15	8.10.2	Laundry Allowance	5.20
16	9.1.1	Early Morning Shift	8.85
17	9.1.2	Afternoon Shift	11.58
18	9.1.3	Night Shift	14.58
19	9.1.4	Fixed afternoon or night shift - Extra per shift Working in Cold Temperature Allowance -	1.62
20	11.1.1	Below 2 degrees	0.15
21	11.1.2	Below -1 degree	0.30
22	11.2.3	Below - 16 degrees	0.41
23	11.2.4	Below - 20 degrees	0.78
24	11.2.5	Below - 30 degrees	1.02

3. This variation shall take effect from the first pay period to commence on or after 17 January 2007.

A.F. BACKMAN J

ELECTRICAL, ELECTRONIC AND COMMUNICATIONS CONTRACTING INDUSTRY (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Electrical Trades Union of Australia, New South Wales Branch, Industrial Organisation of Employees.

(No. IRC 533 of 2006)

Before The Honourable Justice Wright, President
The Honourable Mr Justice Staff
Mr Deputy President Sams
Commissioner Ritchie

13 February 2006

VARIATION

1. Insert after paragraph 8.2.4, of clause 8, Contract of Employment, of the award published 17 March 2006 (358 I.G. 1), the following new paragraphs:

8.2.5 Bereavement entitlements for casual employees

8.2.5.1 Subject to evidentiary and notice requirements in subclause 24.3.2 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in subclause 24.4.1.3.2 of clause 24.4 Personal/Carers Leave.

8.2.5.2 The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

8.2.5.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

8.2.6 Personal Carers entitlement for casual employees

8.2.6.1 Subject to evidentiary and notice requirement in 24.4.1.2 casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in subclause 24.4.1.3.2 who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.

8.2.6.2 The employer and employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.

8.2.6.3 An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

2. Delete clause 24, Other Leave, and insert in lieu thereof the following:

24. Other Leave

- 24.1 Long Service Leave: For long service leave provisions see *Long Service Leave Act 1955*.
- 24.2 Building and Construction Industry Long Service Payments: For employees performing building and construction work as defined by the *Building and Construction Industry Long Service Payments Act 1986*, see the *Building and Construction Industry Long Service Payments Act 1986*.
- 24.3 Bereavement Leave
- 24.3.1 An employee, other than a casual employee, shall be entitled to up to two days bereavement leave without deduction of pay on each occasion of the death of a person prescribed in paragraph 24.3.3 of this subclause.
- 24.3.2 The employee must notify the employer as soon as practicable of the intention to take bereavement leave and will provide to the satisfaction of the employer proof of death.
- 24.3.3 Bereavement leave shall be available to the employee in respect to the death of a person prescribed for the purposes of personal/carer's leave as set out in subclause 24.4.1.3.2 provided that, for the purposes of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- 24.3.4 An employee shall not be entitled to bereavement leave under this Clause during any other period in respect of which the employee has been granted other leave.
- 24.3.5 Bereavement leave may be taken in conjunction with other leave available under subclauses 24.4.2, 24.4.3, 24.4.4, 24.4.5 and 24.4.6. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.
- 24.4 Personal/Carer's Leave
- 24.4.1 Use Of Sick Leave
- 24.4.1.1 An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subclause 24.4.1.3.2, who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for in Clause 22, Sick Leave, for absences to provide care and support for such persons when they are ill or who require care due to an unexpected emergency. Such leave may be taken for part of a single day.
- 24.4.1.2 The employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
- 24.4.1.3 The entitlement to use sick leave in accordance with this subclause is subject to:
- 24.4.1.3.1 The employee being responsible for the care of the person concerned; and
- 24.4.1.3.2 The person concerned being:
- 24.4.1.3.2.1 A spouse of the employee; or

- 24.4.1.3.2.2 A de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- 24.4.1.3.2.3 A child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
- 24.4.1.3.2.4 A same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
- 24.4.1.3.2.5 A relative of the employee who is a member of the same household, where for the purposes of this paragraph:
- 24.4.1.3.2.5.1 "relative" means a person related by blood, marriage or affinity;
- 24.4.1.3.2.5.2 "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
- 24.4.1.3.2.5.3 "household" means a family group living in the same domestic dwelling.
- 24.4.1.3.2.6 An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take into account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 31 should be followed.

24.4.2 Unpaid Leave For Family Purpose

- 24.4.2.1 An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to member of a class of person set out in subclause 24.4.1.3.2 above who is ill or who requires care due to an unexpected emergency.

24.4.3 Annual Leave

- 24.4.3.1 An employee may elect with the consent of the employer, to take annual leave not exceeding 10 days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- 24.4.3.2 Access to annual leave, as prescribed in subclause 24.4.3.1 above, shall be exclusive of any shutdown period provided for elsewhere under this award.

- 24.4.3.3 An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- 24.4.3.4 An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

24.4.4 Time Off In Lieu Of Payment Of Overtime

- 24.4.4.1 An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
- 24.4.4.2 Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- 24.4.4.3 If having elected to take time as leave in accordance with paragraph 24.4.4.1 of this subclause, the leave is not taken for whatever reason payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
- 24.4.4.4 Where no election is made in accordance with said paragraph 24.4.4.1, the employee shall be paid overtime rates in accordance with the award.

24.4.5 Make-Up Time

- 24.4.5.1 An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
- 24.4.5.2 An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

24.4.6 Rostered Days Off

- 24.4.6.1 An employee may elect, with the consent of the employer, to take a rostered day off at any time.
- 24.4.6.2 An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
- 24.4.6.3 An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
- 24.4.6.4 This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the union(s) to participate in negotiations.

24.5 Parental Leave

- 24.5.1 Refer to the *Industrial Relations Act 1996* (NSW). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

24.5.2 An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

24.5.2.1 The employee or employee's spouse is pregnant;

or

24.5.2.2 The employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

24.5.3 Right to request

24.5.3.1 An employee entitled to parental leave may request the employer to allow the employee:

24.5.3.1.1 To extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;

24.5.3.1.2 To extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months; to assist the employee in reconciling work and parental responsibilities.

24.5.3.1.3 The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

24.5.3.1.4 Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under 24.5.3.1.2 must be recorded in writing.

24.5.3.2 Communication during parental leave

24.5.3.2.1 Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

24.5.3.2.1.1 make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave;

24.5.3.2.1.2 provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

24.5.3.2.2 The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employer intends to return to work on a part-time basis.

24.5.3.2.3 The employer shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph 24.5.3.2.1.

3. This variation shall take effect from the 19 December 2005.

F. L. WRIGHT *J, President.*
C. G. Staff *J.*
P. J. SAMS *D.P.*
D. W. RITCHIE, Commissioner.

Printed by the authority of the Industrial Registrar.

INALA DISABILITY SERVICES (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Health Services Union, Industrial Organisation of Employees.

(No. IRC 1175 of 2006)

Before The Honourable Justice Boland

10 March 2006

VARIATION

1. Insert in clause 1, Arrangement, of the award published 17 February 2006 (357 I.G. 177), the following new clause number and subject matter and renumber the existing clause 58, Area, Incidence and Duration, to read as Clause 59.

58. Secure Employment
59. Area, Incidence and Duration

2. Insert after clause 57, Reasonable Hours, the following new clause:

58. Secure Employment

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of six months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of six months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.

- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
 - (1) whether the employee will convert to full-time or part-time employment; and
 - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW);

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
 - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
 - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
 - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
 - (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
 - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;
 - (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;

- (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
 - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause

Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.

- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.
3. Delete clause 7, Casual Employee, and insert in lieu thereof the following:

7. Casual Employee

- 7.1 A casual employee shall mean an employee employed to perform work of a short-term and/or irregular nature.
- 7.2 A casual employee shall be paid an hourly rate equal to one-thirty eighth of the appropriate weekly rate prescribed by Clause 20, Rates of Pay, plus an additional loading of fifteen (15 %) per cent.
- 7.3 Pursuant to the *Annual Holidays Act 1944*, casual employees are entitled to payment in lieu of annual leave at the end of each engagement in addition to entitlements under this clause, i.e. an amount equal to one-twelfth (8.33%) of the employee's ordinary pay for such period of engagement.
- 7.4 Where a casual employee is engaged to undertake shift work, the prescribed shift penalty for the appropriate shift shall be paid in addition to the loading prescribed in 7.2 and 7.3
- 7.5 A casual employee shall be paid a minimum of two hours at the appropriate rate for each engagement.

NOTE: To calculate the appropriate rate of pay for a casual employee the formula is: appropriate hourly rate + 15% = sub total (1) [+appropriate shift penalty = subtotal (2)]+ 8.33% = total.

- 7.6 Personal Carers Entitlement for casual employees
- (a) Subject to the evidentiary and notice requirements in Clauses 41.1(b) and 41.1(d) casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in Clause 41.1(c)(ii) who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
 - (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
 - (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

7.7 Bereavement entitlements for casual employees

- (a) Subject to the evidentiary and notice requirements in Clause 42 casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in Clause 41.1(c)(ii).
- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

4. Delete clause 38 Parental Leave, and insert in lieu thereof the following:

38. Parental Leave

- 38.1 All employees are entitled to parental leave in accordance with the provisions of the *Industrial Relations Act, 1996*.
- 38.2 Permanent employees are eligible for paid parental leave when they have completed at least 40 weeks' of continuous service prior to the expected date of birth or prior to the date of taking custody of the child.
- 38.3 Employees who are eligible for paid parental leave are entitled to such leave as follows:

(i) Paid Leave

(a) Paid Maternity Leave

An eligible employee is entitled to nine weeks paid maternity leave at ordinary rate of pay from the date the maternity leave commences.

Maternity leave may commence up to nine weeks prior to the expected date of birth. It is not compulsory for an employee to take this period off work. However, if an employee decides to work during this period, it is subject to the employee being able to satisfactorily perform the full range of normal duties.

- (b) Paid Paternity Leave - an eligible employee is entitled to one week paid paternity leave in any one year at ordinary pay which must commence within four weeks of the birth of the child. (Eligible employees will be as defined in the Industrial Relations Act 1996.)
- (c) Paid Adoption Leave - an eligible employee is entitled to paid adoption leave of three weeks from and including the date of taking custody of the child.
- (d) Such leave may be paid:
 - 1. on a normal fortnightly basis;
 - 2. in advance in a lump sum;
 - 3. at the rate of half pay over a period of 18 weeks on a regular fortnightly basis for maternity leave and at the rate of half pay over a period of six weeks on a regular fortnightly basis for adoption leave.

Annual and/or long service leave credits can be combined with periods of maternity leave or adoption leave on half pay to enable an employee to remain on full pay for that period.

(ii) Unpaid Leave

(a) Unpaid Maternity Leave

An employee is entitled to a further period of unpaid maternity leave of not more than twelve months after the actual date of birth of the child.

(b) Unpaid Paternity Leave

An employee is entitled to a further period of unpaid paternity leave of not more than three weeks, to be taken in conjunction with a period of paid paternity leave, unless otherwise agreed by the employer and employee.

(c) Unpaid Adoption Leave

An employee is entitled to unpaid adoption leave as follows:

1. where the child is under the age of 12 months - a period of not more than 12 months from the date of taking custody;
2. where the child is over the age of 12 months - a period of up to 12 months, such period to be agreed upon by both the employee and the employer.

38.4 An employee who has once met the conditions for paid maternity leave and paid adoption leave will not be required to again work the 40 weeks' continuous service in order to qualify for a further period of maternity leave or adoption leave, unless:

- (i) there has been a break in service where the employee has been re-employed or re-appointed after a resignation, medical retirement or after her services have been otherwise dispensed with; or
- (ii) the employee has completed a period of leave without pay of more than 40 weeks. In this context, leave without pay does not include sick leave without pay, maternity leave without pay, or leave without pay associated with an illness or injury compensable under the *Workers' Compensation Act 1987*.

38.5 An employee who intends to proceed on maternity or paternity leave should formally notify her employer of such intention as early as possible, so that arrangements associated with her absence can be made. Written notice of not less than eight weeks prior to the commencement of the leave should accordingly be given. This notice must include a medical certificate stating the expected date of birth and should also indicate the period of leave desired.

38.6 In the case of notification of intention to take adoption leave, due to the fact that an employee may be given little notice of the date of taking custody of a child, employees who believe that, in the reasonably near future, they will take custody of a child, should formally notify their employer as early as practicable of the intention to take adoption leave. This will allow arrangements associated with the adoption leave to be made.

38.7 After commencing maternity leave or adoption leave, an employee may vary the period of her maternity leave or adoption leave, once, without the consent of the employer and otherwise, with the consent of the employer. A minimum of four weeks' notice must be given, although an employer may accept less notice if convenient.

38.8 Any person who occupies the position of an employee on parental leave must be informed that the employee has the right to return to her former position. Additionally, since an employee also has the right to vary the period of her maternity leave or adoption leave, offers of temporary employment should be in writing, stating clearly the temporary nature of the contract of employment. The duration of employment should also be set down clearly, to a fixed date or until the employee elects to return to duty, whichever occurs first.

- 38.9 When an employee has resumed duties, any period of full pay leave is counted in full for the accrual of annual and long service leave and any period of maternity leave or adoption leave on half pay is taken into account to the extent of one-half thereof when determining the accrual of annual and long service leave.
- 38.10 Except in the case of employees who have completed ten years service the period of parental leave without pay does not count as service for long service leave purposes. Where the employee has completed ten years service the period of parental leave without pay shall count as service for long service leave purposes provided such leave does not exceed six months.
- 38.11 Parental leave without pay does not count as service for incremental purposes. Periods of parental leave on full pay and at half pay are to be regarded as service for incremental progression on a pro-rata basis.
- 38.12 Where public holidays occur during a period of paid parental leave, payment is at the rate of parental leave received, that is the public holidays occurring in a period of full pay parental leave are paid at the full rate and those occurring during a period of half pay leave are paid at the half rate.
- 38.13 If because of an illness associated with her pregnancy an employee is unable to continue to work then she can elect to use any available paid leave (sick, annual and/or long service leave) or to take sick leave without pay.
- 38.14 Where an employee is entitled to paid maternity leave, but because of illness, is on sick, recreation, long service leave, or sick leave without pay prior to the birth, such leave ceases nine weeks prior to the expected date of the birth. The employee then commences maternity leave with the normal provisions applying.
- 38.15 Where, because of an illness or risk associated with her pregnancy, an employee cannot carry out the duties of her position, an employer is obliged, as far as practicable, to provide employment in some other position that she is able to satisfactorily perform. A position to which an employee is transferred under these circumstances must be as close as possible in status and salary to her substantive position.
- 38.16 In the event of a miscarriage any absence from work is to be covered by the current sick leave provisions.
- 38.17 In the case of stillbirth, an employee may elect to take sick leave, subject to the production of a medical certificate, or maternity leave. She may resume duty at any time provided she produces a doctor's certificate as to her fitness.
- 38.18 An employee who gives birth prematurely, and prior to proceeding on maternity leave shall be treated as being on maternity leave from the date leave is commenced to have the child. Should an employee return to duty during the period of paid maternity leave, such paid leave ceases from the date duties are resumed.
- 38.19 An employee returning from parental leave has the right to resume her former position. Where this position no longer exists the employee is entitled to be placed in a position nearest in status and salary to that of her former position and for which the employee is capable or qualified.
- 38.20 Employees may make application to their employer to return to duty for less than the full-time hours they previously worked by taking weekly leave without pay. Such return to work is to be according to the following principles:
- (i) the period is to be limited to twelve months after which the full-time duties must be resumed;
 - (ii) the employee is to make an application for leave without pay to reduce her full-time weekly hours of work. This application should be made as early as possible to enable the employer to make suitable staffing arrangements. At least four weeks' notice must be given;
 - (iii) the quantum of leave without pay to be granted to individual employees is to be at the absolute discretion and convenience of the employer;

- (iv) salary and conditions of employment are to be adjusted on a basis proportionate to the employee's full-time hours of work, that is for long service leave the period of service is to be converted to the full-time equivalent and credited accordingly.
- (v) Full-time employees who return to work under this arrangement remain full-time employees.

38.21 Where an employee becomes pregnant whilst on maternity leave, a further period of maternity leave may be granted. Should this second period of maternity leave commence during the currency of the existing period of maternity leave, then any residual maternity leave from the existing entitlement lapses.

38.22 An employer must not fail to re-engage a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996* (NSW)) because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

38.23 Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (1) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (2) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (3) to return from a period of parental leave on a part-time basis until the child reaches school age;

to assist the employee in reconciling work and parental responsibilities.

- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and the employer's decision to be in writing

The employee's request and the employer's decision made under sub-clauses 38.23 (a)(2) and 38.23 (a)(3) must be recorded in writing.

- (d) Request to return to work part-time

Where an employee wishes to make a request under Clause 38.23 (a)(3) such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

38.24 Communication during parental leave

- (a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

- (1) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and
 - (2) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.
- (b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return or other contact details which might affect the employer's capacity to comply with Clause 38.24 (a).
 - (c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

5. Delete clause 41, Personal/Carer's Leave, and insert in lieu thereof the following:

41. Personal/Carer's Leave

41.1 Use of Sick Leave

- (a) An employee with responsibilities in relation to a class of person set out in (c)(ii) who needs their care and support, shall be entitled to use, in accordance with this sub-clause any sick leave entitlement for absences to provide care and support for such persons when they are ill.
- (b) The employee shall, if required,
 - (1) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned or that the illness is such as to require care by another person, or
 - (2) establish by production of documentation acceptable to the employer or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, an employee must not take carer's leave under this sub-clause where another person has taken leave to care for the same person.

- (c) The entitlement to use sick leave in accordance with this sub-clause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being:
 - (A) a spouse of the employee; or
 - (B) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
 - (C) a child or an adult child (including an adopted child, a step child, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
 - (D) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or

- (E) a relative of the employee who is a member of the same household, where for the purposes of this paragraph:
1. "relative" means a person related by blood, marriage or affinity;
 2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
 3. "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence.

Note: In the unlikely event that more than 10 days sick leave in any year is to be used for caring purposes the employer and employee shall discuss appropriate arrangements which, as far as practicable, take account of the employer's and employee's requirements.

Where the parties are unable to reach agreement the disputes procedure at Clause 33 should be followed.

41.2 Unpaid Leave for carer's leave Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in sub-clause 41.1(c) (ii) above, who is ill or who require care due to an unexpected emergency.

41.3 Annual Leave

- (a) To give effect to this clause, but subject to the *Annual Holidays Act 1944*, an employee may elect with the consent of the employer, to take annual leave not exceeding ten days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in 41.3 (a) above, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.
- (d) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

41.4 Time Off in lieu of payment for overtime

- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer.
- (b) Overtime taken as time off during ordinary hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (c) An employer shall, if requested by an employee, provide payment, at the rate provided for the payment of overtime in the Award, for any overtime worked under subclause (a) above where such time has not been taken within four weeks of accrual. Notwithstanding anything contained elsewhere in this subclause, on notice from the employer, an employee must elect within six months of accrual, whether to take overtime worked under (a) above as an overtime payment or as time off work at the ordinary time rate of pay.

41.5 Make-up time

An employee may elect, with the consent of their employer, to work "make-up time", under which the employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.

6. The variations relating to the Secure Employment provisions shall take effect on and from 10 March 2006; while those relating to Casual Employees, Personal/Carers' Leave, and Parental Leave shall take effect from 19 December 2005.

R. P. BOLAND *J.*

Printed by the authority of the Industrial Registrar.

CROWN EMPLOYEES (SCHOOL ADMINISTRATIVE AND SUPPORT STAFF) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by NSW Department of Education and Training.

(No. IRC 329 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in clause 1, Arrangement of the award published 27 May 2005 (351 I.G. 374), the following new clause number and subject matter and renumber the existing clause 22, Area, Incidence and Duration, to read as clause 23.

22. Short Term Temporary Employees Entitlements
23. Area, Incidence and Duration

2. Delete clause 16, Leave, and insert in lieu thereof the following:

16. Leave

16.1 Adoption, Maternity and Parental Leave

16.1.1 Maternity leave shall apply to an employee who is pregnant and, subject to this clause the employee shall be entitled to be granted maternity leave as follows:

- (i) For a period up to 9 weeks prior to the expected date of birth; and
- (ii) For a further period of up to 12 months after the actual date of birth.
- (iii) An employee who has been granted maternity leave and whose child is stillborn may elect to take available sick leave instead of maternity leave.

16.1.2 Adoption leave shall apply to an employee adopting a child and who will be the primary care giver, the employee shall be granted adoption leave as follows:

- (i) For a period of up to 12 months if the child has not commenced school at the date of the taking of custody; or
- (ii) For such period, not exceeding 12 months on a full-time basis, as the Director-General may determine, if the child has commenced school at the date of the taking of custody.
- (iii) An employee shall be entitled to special adoption leave (without pay) for up to 2 days to attend interviews or examinations for the purposes of adoption. Special adoption leave may be taken as a charge against recreation leave, extended leave or family and community service leave, or organised through hours averaging provisions if applicable.

16.1.3 Parental leave shall apply to male and female staff to look after his/her child or children where maternity or adoption leave does not apply. Parental leave applies for a period not exceeding 12 months. Parental leave may commence at the time of the birth of the child or other termination of the of the spouse's or partner's

- pregnancy or, in the case of adoption, from the date of taking custody of the child or children or at any time up to 2 years from that date.
- 16.1.4 An employee taking maternity or adoption leave is entitled to payment at the ordinary rate of pay for a period of 14 weeks, an employee entitled to parental leave is entitled to payment at the ordinary rate of pay for a period of up to 1 week, provided the employee:
- (i) Applied for maternity, adoption or parental leave within the time and in the manner determined set out in paragraph 16.1.9 of this clause; and
 - (ii) Prior to the commencement of maternity, adoption or parental leave, completed not less than 40 weeks' continuous service.
 - (iii) Payment for the maternity, adoption or parental leave may be made as follows:
 - (a) in advance as a lump sum; or
 - (b) fortnightly as normal; or
 - (c) fortnightly at half pay; or
 - (d) a combination of full-pay and half pay.
- 16.1.5 Payment for maternity, adoption or parental leave is at the rate applicable when the leave is taken. An employee holding a full time position who is on part time leave without pay when they start leave is paid:
- (i) at the full time rate if they began part time leave 40 weeks or less before starting maternity, adoption or parental leave;
 - (ii) at the part time rate if they began part time leave more than 40 weeks before starting maternity, adoption or parental leave and have not changed their part time work arrangements for the 40 weeks;
 - (iii) at the rate based on the average number of weekly hours worked during the 40 week period if they have been on part time leave for more than 40 weeks but have changed their part time work arrangements during that period.
- 16.1.6 An employee who has taken no more than 12 months full time maternity, adoption or parental leave or its part time equivalent is entitled to be paid at their normal rate (i.e. the rate at which they were paid before proceeding on maternity, adoption or parental leave) for another period of such leave regardless of whether they resume their normal hours of work before proceeding on leave for another pregnancy or adoption.
- 16.1.7 Except as provided in paragraphs 16.1.4, 16.1.5 and 16.1.6 of this clause, maternity, adoption or parental leave shall be granted without pay.
- 16.1.8 Right to request
- (i) An employee who has been granted maternity, adoption or parental leave in accordance with paragraphs 16.1.1, 16.1.2 or 16.1.3 may make a request to the Director-General to:
 - (a) extend the period of simultaneous unpaid leave use up to a maximum of eight weeks in cases where partners wish to take maternity/adoption leave and parental leave;

- (b) extend the period of unpaid maternity, adoption or parental leave for a further continuous period of leave not exceeding 12 months;
- (c) return from a period of full time maternity, adoption or parental leave on a part time basis until the child reaches school age (note: returning to work from maternity, adoption or parental leave on a part time basis includes the option of returning to work on part time leave without pay);

to assist the employee in reconciling work and parental responsibilities.

- (ii) The Director-General shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the Director-General's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.

16.1.9 Notification Requirements

- (i) When the Director-General is made aware that an employee or their spouse is pregnant, or an employee's spouse is pregnant or is adopting a child, the Director-General must inform the staff member of their entitlements and their obligations under the Award.
- (ii) An employee who wishes to take maternity, adoption or parental leave must notify the Director-General in writing at least 8 weeks (or as soon as practicable) before the expected commencement of the leave:
 - (a) that she/he intends to take maternity, adoption or parental leave, and
 - (b) the expected date of birth or the expected date of placement, and
 - (c) if she/he is likely to make a request under paragraph 16.1.8
- (iii) At least 4 weeks before an employee's expected date of commencing maternity, adoption or parental leave they must advise:
 - (a) the date on which the maternity, adoption or parental leave is intended to start, and
 - (b) the period of leave to be taken.
- (iv) Employee's request and the Director-General's decision to be in writing
The employee's request and the Director-General's decision made under 16.1.9(i) and 16.1.9(ii) must be recorded in writing.
- (v) An employee intending to request to return from maternity, adoption or parental leave on a part-time basis or seek an additional period of leave of up to 12 months must notify the Director-General in writing as soon as practicable and preferably before beginning maternity, adoption or parental leave. If the notification is not given before commencing such leave, it may be given at any time up to 4 weeks before the proposed return on a part time basis, or later if the Director-General agrees.
- (vi) An employee on maternity leave is to notify the Director-General of the date on which she gave birth as soon as she can conveniently do so.

- (vii) An employee must notify the Director-General as soon as practicable of any change in her intentions as a result of premature delivery or miscarriage.
 - (viii) An employee on maternity or adoption leave may change the period of leave or arrangement, once without the consent of the Director-General and any number of times with the consent of the Director-General. In each case she/he must give the Director-General at least 14 days notice of the change unless the Director-General decides otherwise.
- 16.1.10 An employee has the right to his/her former position if she/he has taken approved leave or part-time work in accordance with paragraph 16.1.8, and she/he resumes duty immediately after the approved leave or work on a part-time basis.
- 16.1.11 If the position occupied by the employee immediately prior to the taking of maternity, adoption or parental leave has ceased to exist, but there are other positions available that the employee is qualified for and is capable of performing, the employee shall be appointed to a position of the same grade and classification as the employee's former position.
- 16.1.12 An employee who has returned to full time duty without exhausting their entitlement to 12 months unpaid maternity, adoption or parental leave is entitled to revert back to such leave. This may be done once only, and a minimum of 4 weeks notice (or less if acceptable to the Director-General) must be given.
- 16.1.13 An employee who is sick during her pregnancy may take available paid sick leave or accrued recreation or extended leave or sick leave without pay. An employee may apply for accrued recreation leave, extended leave or leave without pay before taking maternity leave. Any leave taken before maternity leave ceases at the end of the working day immediately preceding the day she starts her nominated period of maternity leave or on the working day immediately preceding the date of birth of the child, whichever is sooner.
- 16.1.14 An employee may elect to take available recreation leave or extended leave within the period of maternity, adoption or parental leave provided this does not extend the total period of such leave.
- 16.1.15 An employee may elect to take available recreation leave at half pay in conjunction with maternity, adoption or parental leave subject to:
- (i) accrued recreation leave at the date adoption leave commences is exhausted within the period of maternity, adoption or parental leave;
 - (ii) the total period of maternity, adoption or parental leave, is not extended by the taking of recreation leave at half pay;
 - (iii) When calculating other leave accruing during the period of recreation leave at half pay, the recreation leave at half pay shall be converted to the full time equivalent and treated as full pay leave for accrual of further recreation, extended and other leave at the full time rate.
- 16.1.16 If, for any reason, a pregnant employee is having difficulty in performing her normal duties or there is a risk to her health or to that of her unborn child the Director-General, should, in consultation with the employee, take all reasonable measures to arrange for safer alternative duties. This may include, but is not limited to greater flexibility in when and where duties are carried out, a temporary change in duties, retraining, multi-skilling, teleworking and job redesign.
- 16.1.17 If such adjustments cannot reasonably be made, the Director-General must grant the employee maternity leave, or any available sick leave, for as long as it is

necessary to avoid exposure to that risk as certified by a medical practitioner, or until the child is born which ever is the earlier.

16.1.18 Communication during maternity, adoption or parental leave

- (i) Where an employee is on maternity, adoption or parental leave and a definite decision has been made to introduce significant change at the workplace, the Director-General shall take reasonable steps to:
 - (a) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing maternity, adoption or parental leave; and
 - (b) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing maternity, adoption or parental leave.
- (ii) The employee shall take reasonable steps to inform the Director-General about any significant matter that will affect their decision regarding the duration of maternity, adoption or parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.
- (iii) The employee shall also notify the Director-General of changes of address or other contact details which might affect the Director-General's capacity to comply with subparagraph 16.1.18(i).

16.2 Annual Leave Loading

- 16.2.1 A permanent or long-term temporary employee is entitled to payment of an annual leave loading of 17½ per cent on the monetary value of up to four weeks' recreation leave accrued in a leave year, subject to the provisions set out in paragraphs 16.2.2 to 16.2.4 of this subclause.
- 16.2.2 Where additional leave is accrued by a permanent or long-term temporary employee stationed in an area of the State of New South Wales which attracts a higher rate of annual leave accrual, the annual leave loading shall continue to be paid on a maximum of four weeks' leave.
- 16.2.3 For the calculation of the annual leave loading, the leave year shall commence at the beginning of term one each year and shall end at the end of term four.
- 16.2.4 Payment of the annual leave loading shall be made on the recreation leave accrued during the previous leave year. Except in cases of voluntary redundancy, proportionate leave loading is not payable on cessation of employment.

16.3 Extended Leave

- 16.3.1 A permanent or long-term employee shall be entitled to extended leave of 44 working days on full pay after completing 10 years of service and a further 11 working days for each completed year of service after 10 years.
- 16.3.2 Payment for extended leave for permanent employees is calculated using the hourly rates designated in Schedule 1 multiplied by a factor of 1.058.
- 16.3.3 Part-time permanent and long-term temporary employees shall receive a pro rata proportion of the full-time entitlement.

- 16.3.4 Permanent and long term temporary employees with 7 years or more service are entitled to take (or be paid out on resignation) extended leave. The amount of leave available is that which would have applied if pro rata leave was granted.
- 16.3.5 Public holidays that fall whilst a permanent or long term temporary employee is on a period of extended leave are paid and not debited from an employee's leave entitlement.
- 16.3.6 Permanent and long term temporary employees with an entitlement to extended leave may elect to take leave at double pay.

16.4 Family and Community Service Leave

- 16.4.1 The Director-General shall, in the case of emergencies or in personal or domestic circumstances, grant to a permanent or long-term temporary employee some or all of the available family and community service leave on full pay.
- 16.4.2 Such cases may include but not be limited to the following:
- (i) compassionate grounds - such as the death or illness of a close member of the family or a member of the employee's household;
 - (ii) accommodation matters up to one day - such as attendance at court as defendant in an eviction action, arranging accommodation, or when required to remove furniture and effects;
 - (iii) emergency or weather conditions - such as when flood, fire or snow, etc., threaten property and/or prevent an employee from reporting for duty;
 - (iv) other personal circumstances - such as citizenship ceremonies, parent/teacher interviews or attending child's school for other reasons.
- 16.4.3 Attendance at court by a permanent or long-term temporary employee to answer a charge for a criminal offence, if the Director-General considers the granting of family and community service leave to be appropriate in a particular case.
- 16.4.4 A permanent or long-term temporary employee who is selected to represent Australia or the State as a competitor in major amateur sport (other than Olympic or Commonwealth Games).
- 16.4.5 A permanent or long-term temporary employee who holds office in Local Government other than as a Mayor of a Municipal Council, President of a Shire Council or Chairperson of a County Council, to attend meetings, conferences or other duties associated with that office where those duties necessitate absence during normal working hours.
- 16.4.6 The maximum amount of family and community service leave on full pay which may, subject to this award, be granted to a permanent or long-term temporary employee shall be the greater of the leave provided in subparagraphs (i) or (ii) of this paragraph.
- (i) 2½ days in the first year of service and, on completion of the first year's service, five days in any period of two years; or
 - (ii) After the completion of two years' continuous service, the available family and community service leave is determined by allowing one day's leave for each completed year of service less the total amount of short leave or family and community service leave previously granted to the employee.
- 16.4.7 If available family and community service leave is exhausted as a result of natural disasters, the Director-General shall consider applications for additional family and community service leave, if some other emergency arises. On the death of a person

defined in paragraph 16.7.3 of this clause, additional paid family and community service leave of up to two days may be granted on a discrete, per occasion basis to a permanent or long-term temporary employee.

- 16.4.8 In cases of illness of a family member for whose care and support the employee is responsible, paid sick leave in accordance with subclause 16.7 of this clause shall be granted when paid family and community service leave has been exhausted.

16.5 Leave Without Pay

- 16.5.1 The Director-General may grant leave without pay to a permanent or long-term temporary employee if good and sufficient reason is shown.

- 16.5.2 Leave without pay may be granted on a full-time or a part-time basis.

- 16.5.3 For leave up to and including a period of 12 months, a permanent employee has a right of return to the same school at their same classification. For periods in excess of 12 months and up to and including three years, a permanent employee has a right of return to the nearest suitable vacancy to their previous school.

- 16.5.4 Leave without pay may be granted to long-term temporary employees, provided it does not extend beyond the end of the school year in which it is taken.

- 16.5.5 Where a permanent or long-term temporary employee is granted leave without pay for a period not exceeding 10 consecutive working days, the employee shall be paid for any proclaimed public holidays falling during such leave without pay.

- 16.5.6 Where a permanent or long-term temporary employee is granted leave without pay which, when aggregated, does not exceed five working days in a period of 12 months, such leave shall count as service for incremental progression and accrual of recreation leave.

- 16.5.7 A permanent or long-term temporary employee who has been granted leave without pay shall not engage in private employment of any kind during the period of leave without pay, unless prior approval has been obtained from the Director-General.

- 16.5.8 A permanent or long-term temporary employee shall not be required to exhaust accrued paid leave before proceeding on leave without pay but, if the employee elects to combine all or part of accrued paid leave with leave without pay, the paid leave shall be taken before leave without pay.

16.6 Military Leave

- 16.6.1 During the period of 12 months commencing on 1 July each year, the Director-General may grant to a permanent or long-term temporary employee who is a volunteer part-time member of the Defence Forces, military leave on full pay to undertake compulsory annual training and to attend schools, classes or courses of instruction conducted by the employee's unit.

- 16.6.2 Up to 24 working days' military leave per year may be granted by the Director-General to members of the Naval and Military Reserves and up to 28 working days per year to members of the Air Force Reserve for the activities specified in paragraph 16.6.1 of this subclause.

- 16.6.3 At the expiration of military leave, the employee shall furnish to the principal a certificate of attendance signed by the commanding officer or other responsible officer.

16.7 Personal Carers Leave

Use of Sick Leave to Care for a Family Member

When family and community service leave provided for in subclause 16.4 of this clause is exhausted, a permanent or long-term temporary employee with responsibilities in relation to a category of person set out in paragraph 16.7.3 of this subclause who needs the employee's care and support, may elect to use available paid sick leave, subject to the conditions specified in this subclause, to provide such care and support when a family member is ill.

16.7.1 The sick leave shall initially be taken from the current leave year's entitlement followed, if necessary, by the sick leave accumulated over the previous three years. In special circumstances, the Director-General may grant additional sick leave from the sick leave accumulated during the employee's eligible service.

16.7.2 If required by the Director-General, the permanent or long-term temporary employee must establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

16.7.3 The entitlement to use sick leave in accordance with this subclause is subject to:

- (i) the employee being responsible for the care and support of the person concerned; and
- (ii) the person concerned being:
 - (a) a spouse of the employee; or
 - (b) a de facto spouse, being a person of the opposite sex to the employee who lives with the employee as her husband or his wife on a bona fide domestic basis although not legally married to that employee; or
 - (c) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or of the spouse or of the de facto spouse of the employee; or
 - (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
 - (e) a relative of the employee who is a member of the same household where, for the purposes of this definition:

"relative" means a person related by blood, marriage, affinity or Aboriginal kinship structures;

"affinity" means a relationship that one spouse or partner has to the relatives of the other; and

"household" means a family group living in the same domestic dwelling.

Use of recreation leave to care for a family member

16.7.4 A permanent or long term temporary employee may elect, with the consent of the Director-General, to take recreation leave not exceeding 10 days in single day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

16.7.5 A permanent or long term temporary employee may elect, with the consent of the Director-General, to take recreation leave at any time within a period of 24 months from the date at which it falls due.

16.8 Recreation Leave

- 16.8.1 Full-time permanent and long-term temporary employees accrue 20 days' recreation leave per year. Full-time permanent and long-term temporary employees in the central and western divisions of New South Wales accrue 25 days' recreation leave per year.
- 16.8.2 Part-time permanent and long-term temporary employees receive a pro rata proportion of the full-time entitlement.
- 16.8.3 Recreation leave for permanent or long-term temporary employees is paid during the initial four weeks (five weeks central and western divisions) of the summer school holidays (excluding public holidays).

16.9 Sick Leave

16.9.1 If the Director-General is satisfied that a permanent or long-term temporary employee is unable to perform duty because of the employee's illness or the illness of a member of their family, the Director-General:

- (i) shall grant to the employee sick leave on full pay; and
- (ii) may grant to the employee sick leave without pay if the absence exceeds the entitlement of the employee under this award to sick leave on full pay.

16.9.2 Entitlements

- (i) Sick leave on full pay accrues to a permanent or long-term temporary employee at the rate of 15 days each school year. Any leave which is not taken accumulates.
- (ii) Sick leave on full pay accrues at the beginning of the school year. If an employee is appointed after the beginning of the school year, sick leave on full pay accrues on a proportionate basis for the year in which employment commences.
- (iii) All continuous service as a permanent or long-term temporary employee shall be taken into account for the purpose of calculating sick leave due. Where the service is not continuous, previous periods of service shall be taken into account for the purpose of calculating sick leave due if the previous sick leave records are available.
- (iv) Sick leave without pay shall count as service for the accrual of recreation leave and paid sick leave.
- (v) When determining the amount of sick leave accrued, sick leave granted on less than full pay shall be converted to its full pay equivalent.

16.9.3 Paid sick leave which may be granted to a permanent and long-term temporary employee in the first three months of service shall be limited to five days' paid sick leave, unless the Director-General approves otherwise. Paid sick leave in excess of five days granted in the first three months of service shall be supported by a satisfactory medical certificate.

16.9.4 No paid sick leave shall be granted to short-term temporary employees.

16.10 Sick Leave - Requirements for Medical Certificate

16.10.1 A permanent or long-term temporary employee absent from duty for more than three consecutive working days because of illness must furnish a medical certificate to the Director-General in respect of the absence.

- 16.10.2 A permanent or long-term temporary employee shall be put on notice in advance if required by the Director-General to furnish a medical certificate in respect of an absence from duty for three consecutive working days or less because of illness.
- 16.10.3 If there is any concern about the reason shown on the medical certificate, the Director-General, after discussion with the employee, may refer the medical certificate and the employee's application for leave to the Government Medical Officer for advice.
- 16.10.4 The nature of the leave to be granted to a permanent or long-term temporary employee shall be determined by the Director-General on the advice of the Government Medical Officer.
- 16.10.5 If sick leave applied for is not granted, the Director-General must, as far as practicable, take into account the wishes of the employee when determining the nature of the leave to be granted.
- 16.10.6 A permanent or long-term temporary employee may elect to have an application for sick leave dealt with confidentially by the Government Medical Officer in accordance with the general public service policy on confidentiality, as applies from time to time.
- 16.10.7 If a permanent or long-term temporary employee who is absent on recreation or extended leave furnishes to the Director-General a satisfactory medical certificate in respect of an illness which occurred during the leave, the Director-General may grant sick leave to the employee if the period set out in the medical certificate is five working days or more.
- 16.10.8 Paragraph 16.10.7 of this subclause applies to all permanent or long-term temporary employees other than those on leave prior to resignation or termination of services, unless the resignation or termination of services amounts to a retirement.
- 16.10.9 The reference in this subclause to a medical certificate shall apply, as appropriate, to the certificates of up to one week provided by a registered dentist, optometrist, chiropractor, osteopath, physiotherapist, oral and maxillo facial surgeon or, at the Director-General's discretion, another registered health services provider. Where the absence exceeds one week and, unless the health provider listed above is also a registered medical practitioner, applications for any further sick leave must be supported by a medical certificate from a registered medical practitioner.
- 16.11 Sick Leave - Workers' Compensation
- 16.11.1 Pending the determination of an employee's worker's compensation claim and on production of an acceptable medical certificate, the Director-General shall grant sick leave on full pay for which the employee is eligible, followed, if necessary, by sick leave without pay or, at the employee's election, by accrued recreation leave or extended leave.
- 16.11.2 If liability for the worker's compensation claim is accepted, then an equivalent period of any sick leave taken by the employee pending acceptance of the claim shall be restored to the credit of the employee.
- 16.11.3 A permanent or long-term temporary employee who continues to receive compensation after the completion of the period of 26 weeks referred to in section 36 of the *Workers Compensation Act 1987* may use any accrued and untaken sick leave to make up the difference between the amount of compensation payable under that Act and the employee's ordinary rate of pay. Sick leave utilised in this way shall be debited against the employee.
- 16.11.4 If an employee notifies the Director-General that he or she does not intend to make a claim for any such compensation, the Director-General shall consider the reasons for the employee's decision and shall determine whether, in the circumstances, it is appropriate to grant sick leave in respect of any such absence.

- 16.11.5 A permanent or long-term temporary employee may be required to submit to a medical examination under the *Workers Compensation Act 1987* in relation to a claim for compensation under that Act. If an employee refuses to submit to a medical examination without an acceptable reason, the employee shall not be granted available sick leave on full pay until the examination has occurred and a medical certificate is issued indicating that the employee is not fit to resume employment.
- 16.11.6 If the Director-General provides the permanent or long-term temporary employee with employment which meets the terms and conditions specified in the medical certificate issued under the *Workers Compensation Act 1987* and, without good reason, the employee fails, to resume or perform such duties, the employee shall be ineligible for all payments in accordance with this clause from the date of the refusal or failure.
- 16.11.7 No further sick leave shall be granted on full pay if there is a commutation of weekly payments of compensation by the payment of a lump sum pursuant to section 51 of the *Workers Compensation Act 1987*.

16.12 Sick Leave - other than Workers' Compensation

- 16.12.1 If the circumstances of any injury to or illness of a permanent or long-term temporary employee give rise to a claim for damages or to compensation, other than compensation under the *Workers Compensation Act 1987*, sick leave on full pay may, subject to and in accordance with this clause, be granted to the employee on completion of an acceptable undertaking that:
- (i) any such claim, if made, will include a claim for the value of any period of paid sick leave granted by the Department to the employee; and
 - (ii) in the event that the employee receives or recovers damages or compensation pursuant to that claim for loss of salary or wages during any such period of sick leave, the employee will repay to the Department the monetary value of any such period of sick leave.
- 16.12.2 Sick leave on full pay shall not be granted to a permanent or long-term temporary employee who refuses or fails to complete an undertaking, except in cases where the Director-General is satisfied that the refusal or failure is unavoidable.
- 16.12.3 On repayment to the Department of the monetary value of sick leave granted to the employee, sick leave equivalent to that repayment and calculated at the employee's ordinary rate of pay shall be restored to the credit of the employee.

16.13 Study Assistance

- 16.13.1 Study assistance of up to three hours per week may be granted on full pay to permanent or long-term temporary employees who are studying on a part-time basis.
- 16.13.2 Approval of study assistance will be at Departmental convenience. Study assistance may be used for:
- (i) attending compulsory lectures or tutorials, where these are held during working hours; and/or
 - (ii) necessary travel outside working hours to attend lectures, tutorials, etc., held during or outside working hours; and/or
 - (iii) private study for an approved course.
- 16.13.3 Subject to the convenience of the school or centre, permanent or long-term temporary employees may choose to accumulate part or all of their hours of study assistance to attend compulsory field days or residential schools.

16.14 Special Leave

16.14.1 Jury Service

- (i) A permanent or long-term temporary employee shall, as soon as possible, notify the Director-General of the details of any jury summons served on the employee.
- (ii) A permanent or long-term temporary employee who, during any period when required to be on duty, attends a court in answer to a jury summons shall, upon return to duty after discharge from jury service, furnish to the Director-General a certificate of attendance issued by the Sheriff or by the Registrar of the court giving particulars of attendances by the employee during any such period and the details of any payment or payments made to the employee under section 72 of the *Jury Act* 1977 in respect of any such period.
- (iii) When a certificate of attendance on jury service is received in respect of any period during which a permanent or long-term temporary employee was required to be on duty, the Director-General shall grant, in respect of any such period for which the employee has been paid out-of-pocket expenses only, special leave on full pay. In any other case, the Director-General shall grant, at the sole election of the employee, available recreation leave on full pay or leave without pay.

16.14.2 Witness at Court - Official Capacity

When a permanent or long-term temporary employee is subpoenaed or called as a witness in an official capacity, the employee shall be regarded as being on duty.

Salary and any expenses properly and reasonably incurred by the employee in connection with the employee's appearance at Court as a witness in an official capacity shall be paid by the Department.

16.14.3 Witness at Court - Other than in Official Capacity - Crown Witness

A permanent or long-term temporary employee who is subpoenaed or called as a witness by the Crown (whether in right of the Commonwealth or in right of any State or Territory of the Commonwealth) shall:

- (i) be granted, for the whole of the period necessary to attend as such a witness, special leave on full pay; and
- (ii) pay into the Treasury of the State of New South Wales all money paid to the employee under or in respect of any such subpoena or call other than any such money so paid in respect of reimbursement of necessary expenses properly incurred in answer to that subpoena or call.

16.14.4 Called as a Witness in a Private Capacity

A permanent or long-term temporary employee who is subpoenaed or called as a witness in a private capacity shall, for the whole of the period necessary to attend as such a witness, be granted at the employee's election, leave without pay.

16.14.5 Examinations

Special leave on full pay up to a maximum of five days in any one year shall be granted to permanent or long-term temporary employees for the purpose of attending at any examination approved by the Director-General.

Special leave granted to attend examinations shall include leave for any necessary travel to or from the place at which the examination is held.

16.14.6 Association Activities

Special leave on full pay may be granted to permanent or long-term temporary employees who are accredited trade union delegates to undertake approved trade union activities as specified below:

- (i) annual or biennial conferences of the Association;
- (ii) meetings of the Association's Executive, Committee of Management or Council;
- (iii) annual conference of the Labor Council of NSW and the biennial Congress of the Australian Council of Trade Unions;
- (iv) attendance at meetings called by the Labor Council of NSW involving a public sector trade union which requires attendance of a delegate;
- (v) attendance at meetings called by the Department as and when required;
- (vi) giving evidence before an industrial tribunal as a witness for the Association;
- (vii) reasonable travelling time to and from conferences or meetings to which the provisions of this subclause apply.

16.14.7 Training Courses

The following training courses will attract the grant of special leave as specified below:

- (i) Accredited Occupational Health and Safety (OH&S) courses and any other accredited OH&S training for OH&S Committee members.
- (ii) Courses organised and conducted by the Trade Union Education Foundation or by the Association or a training provider nominated by the Association. A maximum of 12 working days in any period of two years applies to this training and is subject to:
 - (a) the operating requirements of the workplace permitting the grant of leave and the absence not requiring employment of relief staff;
 - (b) payment being at the base rate, i.e. excluding extraneous payments such as shift allowances/penalty rates, overtime, etc;
 - (c) all travelling and associated expenses being met by the employee or the association;
 - (d) attendance being confirmed in writing by the Association or a nominated training provider.

16.14.8 Return Home when Temporarily Living Away from Home

Sufficient special leave shall be granted to a permanent or long-term temporary employee who is temporarily living away from home as a result of work requirements to return home once each month to enable such employees to spend two days and two nights with their family. If the employee wishes to return home more often, they may be granted extended leave or leave without pay, if the operational requirements allow.

16.14.9 Return Home when Transferred to New Location

Special leave shall be granted to a permanent or long-term temporary employee who has moved to the new location ahead of dependants, to visit such dependants, subject to the

conditions specified in the Crown Employees (Transferred Employees Compensation) Award or successor instrument.

16.14.10 A permanent or long-term temporary employee who identifies as an Aborigine or a Torres Strait Islander may be granted up to one day's special leave per year to enable the employee to participate in the National Day celebrations.

3. Insert after clause 21, No Further Claims and No Industrial Action, the following new clause and renumber the existing clause 22, Area, Incidence and Duration, to read as clause 23.

22. Short Term Temporary Employees Entitlements

22.1 Other than as described under subclauses 22.3, 22.4, 22.5 and 22.6 of this clause, short term temporary employees are not entitled to any other paid or unpaid leave.

22.2 As set out in subclause 5.8, the short term temporary rates of pay incorporate a payment in lieu of a recreation leave entitlement.

22.3 Short term temporary employees will be entitled to Long Service Leave in accordance with the provisions of the *Long Service Leave Act 1955*.

22.4 Short term temporary employees will be entitled to unpaid parental leave under Chapter 2, Part 4, Division 1, Section 54 Entitlement to Unpaid Parental leave, *Industrial Relations Act 1996*, if they meet the definition of a regular casual employee (see section 53(2) of the *Industrial Relations Act 1996*). The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW).

22.4.1 The Director-General must not fail to re-engage a short term temporary employee who meets the definition of a regular casual employee because:

- (i) the employee or employee's spouse is pregnant; or
- (ii) the employee is or has been immediately absent on parental leave.

The rights of the Director-General in relation to engagement and re-engagement of short term temporary employees are not affected, other than in accordance with this clause.

22.5 Personal Carers entitlement for short term temporary employees

22.5.1 Short term temporary employees are entitled to not be available to attend work, or to leave work if they need to care for a family member described in subclause 16.7.3 of the Award who is sick and requires care and support, or who requires care due to an unexpected emergency, or the birth of a child. This entitlement is subject to the evidentiary requirements set out below in 22.5.4, and the notice requirements set out in 22.5.5.

22.5.2 The Director-General and the short term temporary employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The short term temporary employee is not entitled to any payment for the period of non-attendance.

22.5.3 The Director-General must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not to engage a short term temporary employee are otherwise not affected.

- 22.5.4 The short term temporary employee shall, if required,
- (i) establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person, or
 - (ii) establish by production of documentation acceptable to the Director-General or a statutory declaration, the nature of the emergency and that such emergency resulted in the person concerned requiring care by the employee.

In normal circumstances, a short term temporary employee must not take carer's leave under this subclause where another person had taken leave to care for the same person.

- 22.5.5 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day or shift of such absence, the employee will inform the Director-General within 24 hours of the absence.

22.6 Bereavement entitlements for short term temporary employees

- 22.6.1 Short term temporary employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a family member on production of satisfactory evidence (if required by the Director-General).

- 22.6.2 The Director-General and the short term temporary employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The short term temporary employee is not entitled to any payment for the period of non-attendance.

- 22.6.3 The Director-General must not fail to re-engage a short term temporary employee because the employee accessed the entitlements provided for in this clause. The rights of the Director-General to engage or not engage a short term temporary employee are otherwise not affected.

- 22.6.4 The short term temporary employee must, as soon as reasonably practicable and during the ordinary hours of the first day or shift of such absence, inform the Director-General of their inability to attend for duty. If it is not reasonably practicable to inform the Director-General during the ordinary hours of the first day or shift of such absence, the employee will inform the Director-General within 24 hours of the absence.

4. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J, *President*

(710)

SERIAL C4507

WHOLESALE FRUIT AND VEGETABLE EMPLOYEES' (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Shop, Distributive and Allied Employees' Association, New South Wales, Industrial Organisation of Employees.

(No. IRC 1819 of 2006)

Before Commissioner Murphy

21 March 2006

VARIATION

1. Insert in numerical order in the Arrangement of the award published 8 September 2000 (318 I.G. 552), as varied, the following new clause number and subject matter:

16A. Secure Employment

2. Insert after clause 16, Wages, the following new clause:

16A. Secure Employment

- (a) Objective of this Clause

The objective of this clause is for the employer to take all reasonable steps to provide its employees with secure employment by maximising the number of permanent positions in the employer's workforce, in particular by ensuring that casual employees have an opportunity to elect to become full-time or part-time employees.

- (b) Casual Conversion

- (i) A casual employee engaged by a particular employer on a regular and systematic basis for a sequence of periods of employment under this Award during a calendar period of nine months shall thereafter have the right to elect to have his or her ongoing contract of employment converted to permanent full-time employment or part-time employment if the employment is to continue beyond the conversion process prescribed by this subclause.
- (ii) Every employer of such a casual employee shall give the employee notice in writing of the provisions of this sub-clause within four weeks of the employee having attained such period of nine months. However, the employee retains his or her right of election under this subclause if the employer fails to comply with this notice requirement.
- (iii) Any casual employee who has a right to elect under paragraph (b)(i), upon receiving notice under paragraph (b)(ii) or after the expiry of the time for giving such notice, may give four weeks' notice in writing to the employer that he or she seeks to elect to convert his or her ongoing contract of employment to full-time or part-time employment, and within four weeks of receiving such notice from the employee, the employer shall consent to or refuse the election, but shall not unreasonably so refuse. Where an employer refuses an election to convert, the reasons for doing so shall be fully stated and discussed with the employee concerned, and a genuine attempt shall be made to reach agreement. Any dispute about a refusal of an election to convert an ongoing contract of employment shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.

- (iv) Any casual employee who does not, within four weeks of receiving written notice from the employer, elect to convert his or her ongoing contract of employment to full-time employment or part-time employment will be deemed to have elected against any such conversion.
- (v) Once a casual employee has elected to become and been converted to a full-time employee or a part-time employee, the employee may only revert to casual employment by written agreement with the employer.
- (vi) If a casual employee has elected to have his or her contract of employment converted to full-time or part-time employment in accordance with paragraph (b)(iii), the employer and employee shall, in accordance with this paragraph, and subject to paragraph (b)(iii), discuss and agree upon:
 - (1) whether the employee will convert to full-time or part-time employment; and
 - (2) if it is agreed that the employee will become a part-time employee, the number of hours and the pattern of hours that will be worked either consistent with any other part-time employment provisions of this award or pursuant to a part time work agreement made under Chapter 2, Part 5 of the *Industrial Relations Act 1996* (NSW).

Provided that an employee who has worked on a full-time basis throughout the period of casual employment has the right to elect to convert his or her contract of employment to full-time employment and an employee who has worked on a part-time basis during the period of casual employment has the right to elect to convert his or her contract of employment to part-time employment, on the basis of the same number of hours and times of work as previously worked, unless other arrangements are agreed between the employer and the employee.

- (vii) Following an agreement being reached pursuant to paragraph (vi), the employee shall convert to full-time or part-time employment. If there is any dispute about the arrangements to apply to an employee converting from casual employment to full-time or part-time employment, it shall be dealt with as far as practicable and with expedition through the disputes settlement procedure.
 - (viii) An employee must not be engaged and re-engaged, dismissed or replaced in order to avoid any obligation under this subclause.
- (c) Occupational Health and Safety
- (i) For the purposes of this subclause, the following definitions shall apply:
 - (1) A "labour hire business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which has as its business function, or one of its business functions, to supply staff employed or engaged by it to another employer for the purpose of such staff performing work or services for that other employer.
 - (2) A "contract business" is a business (whether an organisation, business enterprise, company, partnership, co-operative, sole trader, family trust or unit trust, corporation and/or person) which is contracted by another employer to provide a specified service or services or to produce a specific outcome or result for that other employer which might otherwise have been carried out by that other employer's own employees.
 - (ii) Any employer which engages a labour hire business and/or a contract business to perform work wholly or partially on the employer's premises shall do the following (either directly, or through the agency of the labour hire or contract business):
 - (1) consult with employees of the labour hire business and/or contract business regarding the workplace occupational health and safety consultative arrangements;

- (2) provide employees of the labour hire business and/or contract business with appropriate occupational health and safety induction training including the appropriate training required for such employees to perform their jobs safely;
 - (3) provide employees of the labour hire business and/or contract business with appropriate personal protective equipment and/or clothing and all safe work method statements that they would otherwise supply to their own employees; and
 - (4) ensure employees of the labour hire business and/or contract business are made aware of any risks identified in the workplace and the procedures to control those risks.
- (iii) Nothing in this subclause (c) is intended to affect or detract from any obligation or responsibility upon a labour hire business arising under the *Occupational Health and Safety Act 2000* or the *Workplace Injury Management and Workers Compensation Act 1998*.
- (d) Disputes Regarding the Application of this Clause
- Where a dispute arises as to the application or implementation of this clause, the matter shall be dealt with pursuant to the disputes settlement procedure of this award.
- (e) This clause has no application in respect of organisations which are properly registered as Group Training Organisations under the *Apprenticeship and Traineeship Act 2001* (or equivalent interstate legislation) and are deemed by the relevant State Training Authority to comply with the national standards for Group Training Organisations established by the ANTA Ministerial Council.
3. This order shall take effect from 21 March 2006.

J. P. MURPHY, Commissioner

Printed by the authority of the Industrial Registrar.

MACQUARIE GENERATION EMPLOYEES (STATE) AWARD 2005

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Macquarie Generation.

(No. IRC 404 of 2006)

Before The Honourable Justice Wright, President

3 February 2006

VARIATION

1. Insert in numerical order in the Arrangement of the award published 26 August 2005 (353 I.G. 362) the following new clause number and subject matter:

30. Parental Leave

2. Delete subclause 25.3 of Clause 25, Carer's Leave and insert in lieu thereof the following:

25.3

- (a) An employee may elect, with the consent of the employer to take annual leave not exceeding ten days in single-day periods, or part thereof, in any calendar year at a time or times agreed by the parties.

3. Insert a new paragraph (b) in subclause 25.3 of clause 25.

25.3

- (b) An employee may elect with the employers agreement to take annual leave at any time within a period of 24 months from the date at which it falls due.

4. Insert a new subclause 25.8 in clause 25.

25.8 Carer's Entitlement for Casual Employees

- (a) Subject to the evidentiary and notice requirements in paragraph (b) of sub clause 1 of this clause casual employees are entitled to not be available to attend work, or to leave work if they need to care for a person prescribed in paragraph (b) of sub clause 2 of this clause who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child.
- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance.
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not to engage a casual employee are otherwise not affected.

5. Insert a new subclause 26.6 in clause 26, Bereavement Leave.

26.6 Bereavement entitlements for casual employees

- (a) Subject to the evidentiary and notice requirements in sub clause 2 of this clause casual employees are entitled to not be available to attend work, or to leave work upon the death in Australia of a person prescribed in paragraph (b) of sub clause 2 of Clause 25, Carer's Leave.
- (b) The employer and the employee shall agree on the period for which the employee will be entitled to not be available to attend work. In the absence of agreement, the employee is entitled to not be available to attend work for up to 48 hours (i.e. two days) per occasion. The casual employee is not entitled to any payment for the period of non-attendance
- (c) An employer must not fail to re-engage a casual employee because the employee accessed the entitlements provided for in this clause. The rights of an employer to engage or not engage a casual employee are otherwise not affected.

6. Insert after clause 29, Leave Reserved the following new clause 30, Parental Leave.

30. Parental Leave

30.1 Refer to the *Industrial Relations Act 1996* (NSW).

The following provisions shall also apply in addition to those set out in the *Industrial Relations Act 1996* (NSW)

30.2 An employer must not fail to re-engage a regular casual employee (see section 53(2) of the Act) because:

- (a) the employee or employee's spouse is pregnant; or
- (b) the employee is or has been immediately absent on parental leave.

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

30.3 Right to request

- (a) An employee entitled to parental leave may request the employer to allow the employee:
 - (i) to extend the period of simultaneous unpaid parental leave use up to a maximum of eight weeks;
 - (ii) to extend the period of unpaid parental leave for a further continuous period of leave not exceeding 12 months;
 - (iii) to return from a period of parental leave on a part-time basis until the child reaches school age; to assist the employee in reconciling work and parental responsibilities.
- (b) The employer shall consider the request having regard to the employee's circumstances and, provided the request is genuinely based on the employee's parental responsibilities, may only refuse the request on reasonable grounds related to the effect on the workplace or the employer's business. Such grounds might include cost, lack of adequate replacement staff, loss of efficiency and the impact on customer service.
- (c) Employee's request and the employer's decision to be in writing The employee's request and the employer's decision made under 30.3(a)(ii) and 30.3(a)(iii) must be recorded in writing.

(d) Request to return to work part-time

Where an employee wishes to make a request under 30.3(a)(iii), such a request must be made as soon as possible but no less than seven weeks prior to the date upon which the employee is due to return to work from parental leave.

30.4 Communication during parental leave

(a) Where an employee is on parental leave and a definite decision has been made to introduce significant change at the workplace, the employer shall take reasonable steps to:

(i) make information available in relation to any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave; and

(ii) provide an opportunity for the employee to discuss any significant effect the change will have on the status or responsibility level of the position the employee held before commencing parental leave.

(b) The employee shall take reasonable steps to inform the employer about any significant matter that will affect the employee's decision regarding the duration of parental leave to be taken, whether the employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

(c) The employee shall also notify the employer of changes of address or other contact details which might affect the employer's capacity to comply with paragraph (a).

The rights of an employer in relation to engagement and re-engagement of casual employees are not affected, other than in accordance with this clause.

7. This variation shall take effect from 19 December 2005.

F. L. WRIGHT J, *President*

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(1216)

SERIAL C3906

ARMAGUARD NSW ROAD CREW ENTERPRISE AWARD 2005 - 2008

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Linfox Armaguard Pty Limited.

(No. IRC 3453 of 2005)

Before The Honourable Justice Marks

20 July 2005

ORDER

The Industrial Relations Commission of New South Wales orders that: -

1. The contents of the Armaguard NSW Road Crew Enterprise Award 2005 - 2008 shall be kept confidential between the parties of Linfox Armaguard and the Transport Workers Union of New South Wales, persons who are members of the union, or persons eligible to be a member of that union who perform work, the terms and conditions of which are covered by the award.
2. On application to the Industrial Registrar, the contents of the award may be disclosed to any person or entity that satisfies the Industrial Registrar that he, she or it has a genuine interest or need to access the document for legitimate purposes. Disclosure may also be made to a duly authorised representative of the Office of Industrial Relations or the Workcover Authority.
3. This award shall take effect on and from 20 July 2005 and shall remain in force for a period of three years.

F. MARKS J.

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HEALTH EMPLOYEES CONDITIONS OF EMPLOYMENT (STATE) AWARD

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Erratum to Serial C2605 published 21 May 2004

(344 I.G. 573)

(No. IRC 5751 of 2003)

ERRATUM

1. Delete in instruction 1, and substitute the following:
1. Delete clause 1, Arrangement of the award published 6 November 1998 (307 I.G. 88), and insert in lieu thereof the following:

1. Arrangement

PART A

Clause No.	Subject Matter
21.	Accommodation and Amenities
26A.	Anti-Discrimination
16.	Annual Leave
46.	Area, Incidence and Duration
1.	Arrangement
7.	Board and Lodging
30.	Blood Count
35.	Child Care
5.	Climatic and Isolation Allowance
2.	Definitions
26.	Dispute Resolution
13.	Excess Fares and Travelling Time
39.	Exemptions
3.	Hours
31.	Infectious Cleaning
22.	Inspection of Lockers of Employees
32.	Labour Flexibility
17.	Long Service Leave
40.	Maternity Leave and Adoption Leave
14.	Meals
25.	New Classifications
47.	No Extra Claims
29.	Notice Board
10.	On Call
9.	Overtime
19.	Payment and Particulars of Salary
11.	Penalty Rates for Shift Work and Weekend Work
6.	Permanent Part-time and Part-time Employees
27.	Personal/Carer's Leave, Family and Community Service Leave

24. Promotions and Appointments
15. Public Holidays
45. Reasonable Hours
8. Relieving Other Members of Staff and Mixed Functions
38. Removal Expenses
4. Roster of Hours
44. Salary Packaging
43. Salary Sacrifice to Superannuation
18. Sick Leave
12. Special Working Conditions
41. Study Time
37. Telephone Allowance
33. Teleworking
20. Termination of Employment
42. Trade Union Leave
23. Uniforms and Protective Clothing
28. Union Representative
36. Union Subscriptions
34. Workforce Review

G. M. GRIMSON *Industrial Registrar.*

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SERIAL C4888

ENTERPRISE AGREEMENTS APPROVED BY THE INDUSTRIAL RELATIONS COMMISSION

(Published pursuant to s.45(2) of the *Industrial Relations Act 1996*)

EA06/265 - Positron Power Pty Ltd NSW Enterprise Agreement 2005-2008

Made Between: Positron Power -&- the Electrical Trades Union of Australia, New South Wales Branch.

New/Variation: Replaces EA05/20.

Approval and Commencement Date: Approved and commenced 24 March 2006.

Description of Employees: The agreement applies to all employees employed by Positron Power Pty Ltd., located at 2/562 High Street, Penrith NSW 2750, who are engaged upon construction work within NSW, who fall within the coverage of the Electrical, Electronic and Communications Contracting Industry (State) Award.

Nominal Term: 30 Months.

EA06/266 - Enrico's Kitchen & NUW Enterprise Agreement 2005

Made Between: Enrico's Kitchen -&- the National Union of Workers, New South Wales Branch.

New/Variation: New.

Approval and Commencement Date: Approved 24 March 2006 and commenced 1 February 2006.

Description of Employees: The agreement applies to all employees employed by Enrico's Kitchen, located at 14-16 Cavasinni Place, Wetherill Park NSW 2164, who fall within the coverage of the Grocery Products Manufacturing (State) Award.

Nominal Term: 24 Months.

EA06/267 - Boral Australia Gypsum Camellia Enterprise Agreement 2006

Made Between: Boral Australia Gypsum Limited -&- the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch, Electrical Trades Union of Australia, New South Wales Branch, Liquor, Hospitality and Miscellaneous Union, New South Wales Branch.

New/Variation: New.

Approval and Commencement Date: Approved 20 March 2006 and commenced 1 March 2006.

Description of Employees: The agreement applies to all employees employed by Boral Australia Gypsum Limited, who are engaged at the company's sites located at 3 Thackeray Street, Camellia NSW 2142 and 11 Lyn Parade, Lurnea NSW 2170 and all classes of persons provided herein within the jurisdiction of the Plaster of Paris Industrial Committee which include metal and electrical tradespersons, who fall within the coverage of the Boral Australia Gypsum Camellia Consent Enterprise (State) Award 2004.

Nominal Term: 36 Months.

EA06/268 - Boral Bricks Bringelly Plant Enterprise Agreement 2005

Made Between: Boral Bricks Pty Limited -&- The Federated Brick, Tile and Pottery Industrial Union of Australia, New South Wales Branch.

New/Variation: Replaces EA03/132.

Approval and Commencement Date: Approved 24 March 2006 and commenced 1 November 2005.

Description of Employees: The agreement applies to all employees employed by Boral Bricks Pty Limited, who are engaged at the company's Bringelly Plant, located at Lot 2, Greendale Road, Bringelly NSW 2171, who fall within the coverage of the Brick and Paver Industry (State) Award.

Nominal Term: 24 Months.

EA06/269 - Chubb Security Services Pty Ltd Lane Cove Processing Centre 2005-2008 Enterprise Agreement

Made Between: Chubb Security Services Limited -&- the New South Wales Local Government, Clerical, Administrative, Energy, Airlines & Utilities Union.

New/Variation: New.

Approval and Commencement Date: Approved 24 March 2006 and commenced 20 December 2005.

Description of Employees: The agreement applies to all employees employed by Chubb Security Services Pty Ltd., Lane Cove Cash Processing Centre, located at 702 Mowbray Road, Lane Cove NSW 2066, who are engaged in the classifications specified in Clause 3 of this agreement, who fall within the coverage of the Clerical and Administrative Employees (State) Award and the Chubb Security Services Cash Processing and Clerical and Administrative Employees Award.

Nominal Term: 36 Months.

EA06/270 - Yumaro Leisurewear Enterprise Agreement 2006

Made Between: Yumaro Leisurewear -&- the Transport Workers' Union of New South Wales.

New/Variation: Replaces EA04/54.

Approval and Commencement Date: Approved and commenced 23 March 2006.

Description of Employees: The agreement applies to all employees employed by Yumaro Incorporated trading as Yumaro Leisurewear, who fall within the coverage of the Clothing Trades (State) Award.

Nominal Term: 36 Months.

EA06/271 - Hawker Pacific Bankstown Airport Warehousing Enterprise Agreement 2005

Made Between: Hawker Pacific Pty Ltd -&- the National Union of Workers, New South Wales Branch.

New/Variation: Replaces EA04/220.

Approval and Commencement Date: Approved 24 March 2006 and commenced 21 November 2005.

Description of Employees: The agreement applies to all employees employed by Hawker Pacific Pty Ltd., who are engaged as Storemen and Packers at its warehouse operations located at 112 Airport Avenue, Bankstown Airport NSW 2200, who fall within the coverage of the Storemen and Packers, General (State) Award.

Nominal Term: 24 Months.

EA06/272 - Linfox Australia Pty Ltd & NUW - Wyong Warehouse Enterprise Agreement 2005

Made Between: Linfox Australia Pty Ltd -&- the National Union of Workers, New South Wales Branch.

New/Variation: Replaces EA05/46.

Approval and Commencement Date: Approved 17 March 2006 and commenced 12 April 2005.

Description of Employees: The agreement applies to all employees employed by Linfox Australia Pty Ltd., located at 60 Holbeche Road, Arndell Park NSW 2148, engaged in or in connection with providing warehouse services, who fall within the coverage of the Storemen and Packers Bond and Free Stores (State) Award.

Nominal Term: 24 Months.

EA06/273 - The Ramsay Health Care & New South Wales Nurses' Association Enterprise Agreement 2006-2008

Made Between: Ramsay Health Care Australia Pty Limited -&- the New South Wales Nurses' Association.

New/Variation: New.

Approval and Commencement Date: Approved and commenced 21 March 2006.

Description of Employees: The agreement applies to all employees employed by Ramsay Health Care Limited (Ramsay Health Care Australia Pty Ltd, located at Level 9, 154 Pacific Highway, St Leonards NSW 2065, who are engaged in the occupation and/or industry of nursing as defined in the Private Hospital Industry Nurses' (State) Award and at all private hospitals and day procedure centres in which the employer employs in New South Wales. It shall also apply to any facility acquired in NSW during the term of the agreement, who fall within the coverage of the following awards: Private Hospital Industry Nurses' (State) Award, Nurses' (Private Sector) Training Wage (State) Award, Nurses (Private Sector) Redundancy (State) Award and the Private Hospital and Nursing Home Nurses' Superannuation (State) Award. This agreement shall not apply to the divested hospitals North Gosford Private Hospital and Lingard Private Hospital and also to The Hills Private Hospital and the Prince of Wales Private Hospitals which are to be divested.

Nominal Term: 29 Months.

EA06/274 - Collex Pty Ltd Hornsby Domestic Waste, Recycling & Green Waste Services Agreement 2005

Made Between: Collex Pty Ltd -&- the Transport Workers' Union of New South Wales.

New/Variation: New.

Approval and Commencement Date: Approved and commenced 24 March 2006.

Description of Employees: The agreement applies to all employees employed by Collex Pty Ltd., Level 4, 65 Pirrama Road, Pymont NSW, who are engaged in the Hornsby Domestic Waste, Recycling & Green Waste contract, who fall within the coverage of the Trade Industry - Waste Collection and Recycling (State) Award.

Nominal Term: 36 Months.

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