

Nickel Refining Award, 1971 No. 6 of 1971

1. - AWARD STRUCTURE

1.1 - TITLE

This Award shall be known as the Nickel Refining Award, 1971, as amended and consolidated and replaces Award numbered 26 of 1969, as amended.

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1.3 - AREA AND SCOPE

This Award shall apply to the employees employed by the respondent in the vocations mentioned in Clause 4.2 hereof in the nickel refining industry in the area occupied and controlled by the respondent at Kwinana.

1.4 - TERM

The term of this Award shall be for a period of one month from 7 April 2005.

1.5 - DEFINITIONS

“Multi-skilled Process Operator” means an operator who holds a trades certificate and in addition to their normal operating duties may be required, from time to time, to perform work within their competency.

“Afternoon Shift” shall mean any shift commencing between 12 noon and 6.00 p.m.

“Night Shift” shall mean any shift commencing between 6.00 p.m. and 12 midnight.

All references to “rate of pay” or “rate of wage(s)” refers to the rate contained in Clause 4.2. Similarly, “wages”, “pay” “ordinary earnings”, or “ordinary time earnings” refers to the rate in Clause 4.2.

“Commission” means the Western Australian Industrial Relations Commission.

“Union” means The Australian Workers' Union, West Australian Branch, Industrial Union of Workers.

2. - CONTRACT OF EMPLOYMENT

2.1 - CONTRACT OF SERVICE

- (1) (a) The contract of service for employees covered by this Award shall, be agreed in writing between the employer and employee on commencement of employment, and may be by the day, week or longer.
- (2) Termination of Employment
 - (a) Full time and part time employees
 - (i) The employment of a full-time or part-time employee may be terminated by the employer by providing the following period of notice:

Period of Continuous Service
Period of Notice
Not more than 1 year
1 week
More than 1 year but not more than 3 years
2 weeks
More than 3 years but not more than 5 years
3 weeks
More than 5 years
4 weeks
 - (ii) Employees over 45 years of age with 2 or more years' continuous service at the time of termination, shall receive an additional weeks' notice.
 - (iii) Where all or part of the relevant notice is not provided, the employee shall be entitled to payment in lieu.
 - (iv) Payment in lieu of notice shall be calculated using the employee's weekly ordinary time wages as prescribed.
 - (v) The period of notice in this Clause shall not apply in the case of dismissal for serious misconduct that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.
 - (vi) Notice of Termination by employee: Except in the first 3 months of service, 1 week's notice shall be necessary for an employee to terminate their engagement or by the forfeiture or payment of 1 week's pay by the employee to the employer in lieu of notice.
 - (vii) Probation:.. Notwithstanding sub Clause 2 (a)(i) above, the employment of an employee on probation, may be terminated by either party providing to the other, one day's notice, or one day's pay in lieu shall be paid or forfeited.
 - (b) Casual Employees

The employment of casual employee may be terminated by 1 hours notice, given by either party.
- (3) An employer may dismiss an employee without notice for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment, and in such cases, wages shall be paid up to the time of dismissal only.
- (4) It is a condition of employment that employees perform such work as the employer requires from time to time and on the days and during the hours usually worked by the employee.

- (5) Employees will perform all work within their skill, competence and training in accordance with the classification structure, definitions and shift rosters.
- (6) Employees will work reasonable overtime in addition to the rostered hours of duty as required by the employer.
- (7) A continuous shift employee not relieved as scheduled at the end of a shift shall continue to work until relieved or otherwise authorised by the employer to finish work provided that the employee will not be required to work unreasonable overtime.
- (8) The parties shall comply at all times with Clause 7 – Dispute Resolution Procedure.
- (9) Except as provided by this Award, an employee not attending for duty will not be paid.
- (10) An employee absent from work for three consecutive rostered working days, without notification to, and approval of, the employer shall be deemed to have abandoned their employment.
- (11)
 - (a) The employer may deduct payment for any day an employee cannot be usefully employed arising out of any cessation of operations, either wholly or partially due to industrial disputes, including any strike, ban or limitation or arising out of any cause outside the control of the employer.
 - (b) When an employee cannot be usefully employed arising out of a cause outside the control of the employer, the employer will make efforts to find alternative work for any employee so affected, or allow the employee to take annual leave.
- (12) The employer has the right to suspend an employee without pay as a disciplinary measure.
- (13) Employees may be engaged in any of the following ways:
 - (a) Full time: To work on a regular basis for an average of 38 hours per week (excluding overtime).
 - (b) Part time:
 - (i) A part time employee is engaged to work on a regular basis for less than 38 hours per week on average.
 - (ii) A part-time employee will be paid per hour one 38th of the weekly rate prescribed in the appropriate wage schedule to this Award and applicable allowances contained in this Award.
 - (iii) Entitlements to authorised leave of absence under this Award will be pro rata in proportion to the hours worked in a week, by the part-time employee, as to the full-time weekly hours.
 - (c) Temporary: To work on a full-time or part-time basis for a limited or specified period of employment.
 - (d) Casual:
 - (i) A casual employee is to be informed that they are employed on a casual basis and there is no entitlement to paid leave (except Bereavement Leave) before they are engaged.
 - (ii) An employee engaged as a casual in any of the classifications set out in this Award shall be paid a 20% loading in addition to the ordinary 38 hour earnings for the relevant classification.

- (iii) The additional amount of 20% referred to in sub clause (ii) above shall be paid in lieu of all leave otherwise allowed to employees under this Award (except Bereavement Leave in accordance with Clause 6.6) and payment shall only be made for work actually performed.
- (14)
- (a) An employee, engaged in a full-time, part-time or temporary employment capacity shall serve a three (3) month probationary period of employment.
 - (b) The employer may, without having to provide any reasons for doing so, terminate an employee's contract of employment during the probationary period by giving the employee one day's notice or payment in lieu thereof.

3. - HOURS OF WORK

3.1 - HOURS OF WORK

- (1) Cycle Work Provisions
- (a) Notwithstanding the provisions of sub clauses (2) to (4) inclusive, hours of work may be arranged over work cycles consisting of a consecutive number of working days or shifts followed by a consecutive number of non-working days.
 - (b) The total ordinary hours of work during a work cycle shall not exceed 38 hours multiplied by the number of working and non-working weeks in the cycle.
 - (c) Overtime rates shall be paid for any time worked in excess of 8 hours per day or shift, or hours in excess of the total ordinary hours prescribed in the work cycle.
 - (d) There shall be no entitlement for payment for the consecutive non-working days in a work cycle, other than where an employee is engaged on an annual salary basis.
 - (e) In the event that a work cycle is constituted by a period of 6 consecutive working weeks or more, such may be worked only following upon the union being notified.
- (2) Arrangement of Hours
- (a) Subject to the provisions of this Clause, the arrangement of hours of work of employees include but are not limited to the matters (i) to (vi) set out below, in a functional unit of the employer's operations, may be fixed following consultation between the employer and its employees in the unit concerned in:
 - (i) The span of hours.
 - (ii) Starting times.
 - (iii) Rest breaks.
 - (iv) Finishing times.
 - (v) Structure of shift rosters.
 - (vi) Work across any seven days of the week.
 - (b) In the event of agreement not being reached, a secret ballot may be conducted by the employer with the result determined by a simple majority.
 - (c) The Union Branch Secretary will be informed fourteen days prior to the introduction of any change pursuant to paragraphs (a) or (b) of this sub clause.

(3) Other Than Continuous Shift Employees

- (a) The ordinary hours of work shall be an average of 38 hours per week exclusive of meal intervals.
- (b) Employees shall be entitled to a thirty minute unpaid meal break for each day or shift of work. Where afternoon or night shifts are worked, the hours of work shall be inclusive of a paid meal interval of twenty minutes on each shift worked.
- (d) (i) When an employee is required for duty during any meal time whereby the employee's meal time is postponed for more than half an hour, the employee shall be paid at overtime rates until the employee gets a meal.
- (ii) An employee shall not be compelled to work for more than five and one half hours during ordinary or overtime hours or both without a break of the customary period for a meal.

(4) Continuous Shift Employees

- (a) The ordinary hours of work for employees engaged on continuous shift work shall be worked in a regular pattern/roster up to twelve hours per shift following consultation between the employer and the majority of employees affected.
- (b) The total ordinary hours in a shift cycle shall not exceed an average of 38 hours per week over the period of the rostered cycle.
- (c) For the purpose of assessing the total ordinary hours in a shift cycle, all time up to a maximum of twelve hours worked in any day will be taken into account.
- (d) Shift employees shall work such rostered overtime as required to achieve conformity of a shift pattern or roster.
- (e) Subject to the provisions of this paragraph, each shift employee shall be allowed time for a 20 minute crib in each shift as nearly as practicable to the middle of the shift, but dependent upon the operational requirements from day to day.
- (f) An employee called upon to work a regularly rostered overtime shift not more than once in every four weeks shall be paid for that shift at the rate of time and one half for the first two hours and double time thereafter.

3.2 - SHIFT WORK

- (1) A shift employee shall, in addition to that employee's ordinary time rate, be paid per shift at the rate of \$11.10 when on afternoon or night shift. Provided that this rate shall not apply when the employee receives a higher penalty for a shift on a Saturday, Sunday or Holiday in accordance with this Award. This rate is applicable on an overtime shift.
- (2) Where an employee, other than an employee who regularly works shift work or cycle work involving shifts, is required to work an afternoon or night shift, they shall be paid (in lieu of the allowance in sub clause (1)):
 - (a) At ordinary rates plus \$11.10 when on afternoon or night shift where the employee has received a minimum of 48 hours notice and/or the employee is required to work for more than 5 consecutive afternoon or night shifts.
 - (b) At time and one quarter where the employee is required to replace a regular shift employee who is absent for any reason beyond the control of the employer and the employee works less than 5 consecutive afternoon or night shifts.

- (c) At overtime rates where the employee is not provided with a minimum of 48 hours notice and/or is replacing a regular shift employee who is absent by reason of a direction of the employer; or is required to return to day shift without having had 24 hours off duty.
 - (d) The sequence of consecutive shifts shall not be deemed to be broken under sub clause (a) to (c) above hereof by reason of rostered days off in respect to employees employed on continuous process work or by a Saturday or Sunday in respect to other employees or by any public holiday or any other reason beyond the control of the employer.
- (3) Other than as provided for in paragraph (b) of sub clause (2) of this Clause any employee shall be required to transfer from day work to shift work and vice versa and from shift to shift as required by the employer and wherever possible employees will be given maximum notice of a requirement to change rosters. Such transfer shall not result in a reduction in the employees ordinary time earnings.
 - (4) Where an employee has commenced work, and is sent home and instructed to attend at a later shift, the employee shall be paid not less than two hours at ordinary time for the first attendance on the initial shift.
 - (5) Maximum Rate: Extra rates in this Award except rates prescribed in Clause 5.2 of this Award are not cumulative so as to exceed the maximum of double the ordinary rates or two and a half times the ordinary rate for work performed on any of the holidays prescribed in Clause 6.2 hereof.

3.3 - OVERTIME

- (1) Day employees and shift employees (other than Continuous Shift Employees).
 - (a) Subject to the provisions of sub clause (3) of this Clause, all time worked outside or in excess of the ordinary working hours on any day Monday to Friday inclusive shall be paid for at the rate of time and one half for the first two hours and double time thereafter.
 - (b) Where a day employee or a shift employee (other than a shift employee working a shift inclusive of a paid meal break) is required for duty during their usual meal time and their meal time is postponed for more than half an hour, the employee shall be paid at overtime rates from the time their meal break would normally commence until the employee gets a meal break of the customary period.
- (2) Continuous shift employees.
 - (a) Subject to the provisions of paragraph (b) of this sub clause, all time worked by a continuous shift employee in excess of the ordinary hours as prescribed on a shift other than a rostered shift shall be paid for at the rate of double time, except where such an employee is called upon to work a regularly rostered overtime shift in not more than one week in any four weeks, when the employee shall be paid for such shift at time and one-half for the first two hours and double time thereafter.
 - (b) Time worked in excess of the ordinary working hours shall be paid for at ordinary rates:
 - (i) if it is due to private arrangements between employees themselves;
 - (ii) if it does not exceed one hour and is due to a relieving employee not coming on duty at the proper time; or
 - (iii) if it is for the purpose of effecting the customary rotation of shifts.
- (3) These overtime rates shall not apply to excess time worked due to private arrangements between the employees themselves or owing to a relieving employee failing to come on duty at the proper time. The time for which any employee may be paid at ordinary rates instead of overtime due to a relieving

employee failing to come on duty at the proper time, shall not exceed two hours, after the expiration of which overtime rates shall apply to the whole shift.

- (4) Subject to the provisions of the Mines Safety and Inspection Regulations 1995, no employees covered by this Award shall by collective action be a party to any ban on overtime.
- (5) Overtime on shift work shall be based on the rate payable for the shift worked.
- (6) In the calculation of overtime rates, each day shall stand alone. Provided that, when an employee continues working beyond midnight on any day, the hours worked after midnight shall be counted as part of the previous day's work for the purpose of calculating the rates to be paid.
- (7) When an employee is required to hold themselves in readiness for a call to work after ordinary hours, the employee shall be paid at ordinary rates for the time that employee so holds themselves in readiness.
- (8) When an employee is recalled to work overtime after leaving the employer's business premises (whether notified before or after leaving such premises) the employee shall be paid for at least four hours at overtime rates; provided that, except in the case of unforeseen circumstances arising, an employee shall not be required to work the full four hours if the job for which that employee was recalled is completed within a shorter period, but if such employee is subsequently recalled to work within the period of four hours for which payment has been made, an additional payment shall not be made nor shall any extra overtime be paid in respect of any period covered by such minimum payment.

This sub clause shall not apply in cases where it is customary for an employee to return to the employer's premises to perform a specific job outside the employee's ordinary working hours or where the overtime is continuous (subject to any reasonable meal break which may be allowed) with the completion or commencement of ordinary working time.

- (9) An employee shall not be compelled to work for more than five and one half hours during ordinary or overtime hours or both without a break of the customary period for a crib.
- (10) When an employee, without being notified on the previous day is required to continue working after the usual knock off time for more than two hours the employee shall be provided with any meal required or be paid \$8.35 in lieu thereof. Provided that such payment need not be made to employees living in the same locality as their place of employment who can reasonably return home for a meal.

3.4 - SATURDAY WORK

- (1) Other Than Continuous Shift Employees
 - (a) All time worked in excess of the ordinary hours by an employee other than a continuous shift employee on Saturday shall be paid for at the rate of time and one half for the first two hours and double time thereafter. Provided that all work performed after 12.00 noon shall be paid for at the rate of double time.
 - (b) All time worked outside ordinary rostered hours on Saturday, shall be paid for at the rates prescribed in sub clause (1)(a) of this Clause.
- (2) Continuous Shift Employees
 - (a) All time worked by continuous shift employees during ordinary hours on Saturdays shall be paid for at the rate of time and one half.
 - (b) All time worked by continuous shift employees outside ordinary rostered hours on Saturday shall be paid for at the rate of double time.

3.5 - SUNDAY AND PUBLIC HOLIDAY WORK

- (1) Other Than Continuous Shift Employees
 - (a) All time worked in excess of the ordinary hours on Sundays shall be paid at the rate of double time.
 - (b) All time worked on any day prescribed as a Public Holiday under this Award shall be paid for at the rate of double time and a half.
- (2) Continuous Shift Employees
 - (a) All time worked by continuous shift employees on Sundays shall be paid for at the rate of double time.
 - (b) All time worked by continuous shift employees during ordinary rostered hours on any of the holidays prescribed in Clause 6.2 – Public Holidays of this Award, shall be paid for at the rate of double time.
 - (c) All time worked by continuous shift employees outside ordinary rostered hours on any of the holidays prescribed in Clause 6.2 – Public Holidays of this Award, shall be paid for at the rate of double time and a half.
 - (d) A continuous shift employee rostered off on any of the holidays prescribed in Clause 6.2 – Public Holidays of this Award, shall be paid rostered ordinary hours at single time rates.

3.6 - REST BREAKS AND RECALL TO WORK - ALL EMPLOYEES

- (1) When overtime work is necessary it shall wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.
- (2) 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 the employee has not had at least ten consecutive hours off duty between those times shall, subject to this sub clause, be released after completion of such overtime until the employee has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
- (3) If, on the instructions of their employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, the employee shall be paid at double rates until they are released from duty for such period and the employee 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.
- (4) An employee (other than a casual employee) not engaged on continuous shift work who works on a Sunday or public holiday and (except for meal breaks) immediately thereafter continues such work shall on being relieved from duty be entitled to be absent until they have had ten consecutive hours off duty, without deduction of pay for ordinary time of duty occurring during such absence.
- (5) The provisions of this Clause shall apply in the case of continuous shift employees 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 employee does not report for duty; or
 - (c) where a shift is worked by arrangement between employees themselves.
- (6) No employee shall be required to work without a meal break for more than five and a half consecutive hours either:
 - (a) from the start of overtime work; or

- (b) from the previous meal break.

4. - RATES OF PAY

4.1 - MINIMUM ADULT AWARD WAGE

- (1) No adult employee shall be paid less than the Minimum Adult Award Wage unless otherwise provided by this clause.
- (2) The Minimum Adult Award Wage for full time adult employees is \$484.40 per week payable on and from 7th July 2005.
- (3) The Minimum Adult Award Wage of \$484.40 per week is deemed to include all arbitrated safety net adjustments from State Wage Case decisions.
- (4) Unless otherwise provided in this clause adults employed as casuals, part time employees or pieceworkers or employees who are remunerated wholly on the basis of payment by result shall not be paid less than pro rata the Minimum Adult Award Wage according to the hours worked.
- (5) Juniors shall be paid no less than the wage determined by applying the percentage prescribed in the junior rates provision in this award to the Minimum Adult Award Wage of \$484.40 per week.
- (6)
 - (a) The Minimum Adult Award Wage shall not apply to apprentices, employees engaged on traineeships or Jobskill placements or employed under the Commonwealth Government Supported Wage System or to other categories of employees who by prescription are paid less than the minimum award rate.
 - (b) Liberty to apply is reserved in relation to any special categories of employees not included here or otherwise in relation to the application of the Minimum Adult Award Wage.
- (7) Subject to this clause the Minimum Adult Award Wage shall -
 - (a) apply to all work in ordinary hours.
 - (b) apply to the calculation of overtime and all other penalty rates, superannuation, payments during any period of paid leave and for all purposes of this award.
- (8) Minimum Adult Award Wage

The rates of pay in this award include the minimum weekly wage for adult employees payable under the 2005 State Wage Case Decision. Any increase arising from the insertion of the minimum adult award wage will be offset against any equivalent amount in rates of pay received by employees whose wages and conditions of employment are regulated by this award which are above the wage rates prescribed in the award. Such above award payments include wages payable pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements and over award arrangements. Absorption which is contrary to the terms of an agreement is not required.

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

- (9) Adult Apprentices
 - (a) Notwithstanding the provisions of this clause, an apprentice, 21 years of age or over, shall not be paid less than \$406.70 per week.

- (b) The rate paid in paragraph (a) above is payable on superannuation and during any period of paid leave prescribed by this Award.
- (c) Where in this award an additional rate is expressed as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the actual year of apprenticeship.
- (d) Nothing in this clause shall operate to reduce the rate of pay fixed by this award for an adult apprentice in force immediately prior to 5th June 2003.

4.2 - WAGES

- (1) The minimum rates of wages per week payable under the provisions of this Award shall be as follows (on and from 7 July 2005):

		Base Rate \$	Industry Allowance \$	Arbitrated Safety Net Adjustments\$	Total Rate \$
Process Operator Grade 1		330.50	90.20	159.00	579.70
Process Operator Grade 2		339.50	90.20	159.00	588.70
Process Operator Grade 3		357.30	90.20	159.00	606.50
Process Operator Grade 4		370.80	90.20	159.00	620.00
Process Operator Grade 5		386.20	90.20	159.00	635.40
Store person		332.60	90.20	159.00	581.80
Multi-skilled Operator Grade 1	Process	363.50	90.20	159.00	612.70
Multi-skilled Operator Grade 2	Process	372.50	90.20	159.00	621.70
Multi-skilled Operator Grade 3	Process	390.30	90.20	159.00	639.50
Multi-skilled Operator Grade 4	Process	403.80	90.20	159.00	653.00
Multi-skilled Operator Grade 5	Process	419.20	90.20	159.00	670.40

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

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

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

- (2) Junior Employees (percent rate for Plant Operators Grade 1 classification per week)

Under 17 years of age	55%
Between 17 and 18 years of age	65%
Between 18 and 19 years of age	80%
At 19 years of age	appropriate adult classification rate

- (3) Industry Allowance

- (a) An industry allowance of \$90.20 per week, payable for all purposes of the award, is payable for all employees, in addition to the base rate.
- (b) Such allowance recognises, and is in payment for, all aspects of work in the nickel industry, including the location and nature of individual operations within it.

4.3 - JUNIOR EMPLOYEES

- (1) Subject to the provisions of sub clause (2) of this Clause, junior employees may be employed in any calling mentioned in this Award.
- (2) Any dispute between any of the parties to this Award as to whether it is appropriate that a junior employee be employed on particular work may be referred to the Commission in accordance with the Dispute Resolution Procedure in Clause 7.

4.4 - TRAINEESHIPS

- (1) The employer may engage Trainees in any of the classifications contained within this Award.
- (2) The terms of the federal National Training Wage Award 2000 AW790899 (as subsequently amended from time to time) apply to this award provided the following Clauses and Schedules are excluded:
 - * Clause 3 - Anti-discrimination
 - * Clause 4 - Parties Bound
 - * Clause 6 - Super-session
 - * Clause 7 - Period of Operation
 - * Clause 13 – Dispute Settlement Over Traineeship Schemes

 - * Schedule A

 - * Schedule B

5. - ALLOWANCES AND FACILITIES

5.1 - MIXED FUNCTIONS

An employee engaged on duties carrying a higher rate than their ordinary classification shall be paid the higher rate for the period the employee is so engaged, but if the employee is so engaged for two hours or more of one day or shift he or she shall be paid the higher rate for the whole day or shift.

5.2 - SPECIAL RATES

- (1) In lieu of any other special rates and conditions an employee shall be paid a flat allowance of \$13.50 per week.
- (2) The payment for special rates and provisions shall only be paid for hours worked and shall not be subject to any premium or penalty additions.

5.3 - TRAVELLING

Transport: Where an employee working overtime finishes work at a time when reasonable means of transport are not available to the employee the employer shall transport the employee to their home.

6. - LEAVE

6.1 - ANNUAL LEAVE

- (1) (a) Except as hereinafter provided a period of four weeks' leave with payment of ordinary wages as prescribed in paragraph (b) hereof shall apply for each year of service and shall accrue pro rata on a weekly basis.
- (b) (i) An employee before going on Annual Leave shall be paid the wages they would have received in respect of the ordinary time they would have worked had they not been on leave during the relevant period.
- (ii) Subject to paragraph (c) hereof an employee shall, where applicable, have the amount of wages to be received for annual leave calculated by including the following where applicable:
- (aa) The rate applicable to the employee as prescribed in Clause 4.2 of this Award.
- (bb) Subject to paragraph (c)(ii) hereof the rate prescribed for work in ordinary time by Clause 3.2 - Shift Work of the Award according to the employees roster or projected roster including Saturday or Sunday shift.
- (cc) The rate payable pursuant to Clause 5.1 - Mixed Functions calculated on a daily basis, which the employee would have received for ordinary time during the relevant period whether on a shift roster or otherwise.
- (dd) Any other rates to which the employee is entitled in accordance with their contract of employment for ordinary hours of work, provided that this provision shall not operate so as to include any payment which is of a similar nature to or is paid for the same reasons as or is paid in lieu of those payments prescribed by Clause 3.3(1) - Overtime (Overtime other than Continuous Shift Employees) Clause 3.3(2) - Continuous Shift Employees, Clause 5.2 - Special Rates, of this Award nor any payment which might have become payable to the employee as reimbursement for expenses incurred.
- (c) During the period of annual leave an employee shall receive a loading calculated on the rate of wage prescribed by paragraph (b) hereof. This loading shall be as follows:
- (i) Day Employees - An employee who would have worked on day work had the employee not been on leave - a loading of 17.5%.
- (ii) Shift Employees - An employee who would have worked on shift work had the employee not been on leave - a loading of 17.5%.

Provided that where the employee would have received shift loadings prescribed by Clause 3.2 - Shift Work had the employee not been on leave during the relevant period and such loadings would have entitled the employee to a greater amount than the loading of 17.5%, then the shift loadings shall be added to the rate of wage prescribed by paragraph (b)(ii)(aa) hereof in lieu of the 17.5% loading.

Provided further, that if the shift loadings would have entitled the employee to a lesser amount than the loading of 17.5% then such loading of 17.5% shall be added to the rate of wage prescribed by paragraph (b) but not including paragraph (b)(ii)(bb) hereof in lieu of the shift loadings.

The loading prescribed by this sub clause shall not apply to proportionate leave on termination.

- (2) A seven day shift employee, i.e. a shift employee who is rostered to work regularly on Sunday and holidays shall be allowed one week's leave in addition to the leave to which the employee is otherwise entitled under this Clause. This leave will be accrued weekly.
- (3) If any prescribed holiday falls within an employee's period of annual leave and is observed on a day which, in the case of that employee would have been an ordinary working day, that day shall not be counted as annual leave.
- (4)
 - (a) After one week's continuous service in any qualifying twelve month period, an employee whose employment terminates shall, subject to the provisions of paragraph (b) of this sub clause, be paid 2.923 hours at their ordinary rate of wage in respect of each completed week of service.
 - (b) Where an employee is justifiably dismissed for serious misconduct the provisions of paragraph (a) of this sub clause do not apply.
- (5) Any time in respect of which an employee is absent from work, except time for which the employee is entitled to claim paid leave as prescribed by this Award shall not count for the purpose of determining their right to annual leave.
- (6) In special circumstances and by mutual consent of the employer, the employee and the union concerned, annual leave may be taken in not more than two periods.
- (7) An employee whose employment terminates after they have completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this Award in respect of that qualifying period shall receive payment in lieu of that leave at their ordinary rate of wage.
- (8) Notwithstanding anything else herein contained an employer who observes a Christmas close down for the purpose of granting annual leave may require an employee to take their annual leave in not more than two periods but neither of such periods shall be less than one week.
- (9)
 - (a) An employer may allow annual leave to an employee before the right thereto has accrued but where leave is so allowed and taken a further period of annual leave shall not commence to accrue until the expiration of the qualifying twelve month period in respect of which annual leave has been so allowed.
 - (b) Where leave has been allowed and taken by an employee pursuant to paragraph (a) of this sub clause and the employee's employment terminates before the employee completes the continuous service in respect of which the leave was so allowed the employer may deduct from any moneys owing to the employee upon the termination of their employment payments made for annual leave taken but not accrued.
 - (c) In a case to which paragraph (b) of this sub clause applies any payment made for or in respect of any of the holidays prescribed in Clause 6.2 – Public Holidays of this Award shall not be deemed part of the amount of wage paid on account of the annual leave.
- (10) The provisions of this Clause shall not apply to casual employees.
- (11)
 - (a) An employee who, at the commencement of their annual leave, has an entitlement to payment for non-attendance on the ground of personal ill health for not less than 38 hours under the provisions of Clause 6.4 – Sick Leave of this Award and who, within fourteen days of resuming work, produces to the employer evidence that would satisfy a reasonable person that during annual leave the employee was confined to their home or to a hospital for a period of at least seven consecutive days for a reason which, if they had not been on annual leave, would have entitled the employee to be on sick leave for so much of that period as the employee would otherwise have been entitled to payment under that Clause.
 - (b) An employee to whom paragraph (a) applies shall take the period deemed to be sick leave as annual leave at a time convenient to the employer but on ordinary pay, without the loading prescribed in paragraph (c) of sub clause (1) of this Clause.

- (12) If an employee's employment terminates in circumstances other than those referred to in sub Clause (4)(a) before the employee has taken the leave prescribed under this Award the employee shall be paid for any untaken leave that relates to completed year of service or, in a case to which sub clause (8) or (9) of this Clause applies in lieu of so much that leave as has been allowed, unless:
- (a) The employee has been dismissed for misconduct; and
 - (b) the misconduct for which the employee has been dismissed occurred prior to the completion of that qualifying period.
- (13) Where an employer and an employee have not agreed when the employee is to take their annual leave, subject to sub clause (14), the employer is not to refuse the employee taking, at any time suitable to the employee, any period of annual leave the entitlement to which accrued more than 12 months before that time.
- (14) The employee is to give the employer at least two weeks notice of the period during which the employee intends to take their leave.
- (15) Subject to subclauses (13) and (14), annual leave shall be taken at the convenience of the management of the refinery but employees shall receive one month's notice of the date of which the leave is to commence.

6.2 - PUBLIC HOLIDAYS

- (1) The following days or the days observed in lieu shall, subject to Clauses 3.1 and 3.3 hereof, be allowed as holidays without deduction of pay, namely, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in the sub clause.
- (2) When any of the days mentioned in sub clause (1) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or on a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.
- (3) Any employee absenting themselves from work without reasonable cause, proof of which shall lie upon the employee on the whole or portion of the working day succeeding a holiday provided for herein, shall not be entitled to payment for the time so absent from work.

6.3 - LONG SERVICE LEAVE

Employees covered by this Award shall be entitled to Long Service Leave in accordance with the Long Service Leave General Order of the Commission, that is published in Part 1 (January) each year in the Western Australian Industrial Gazette.

6.4 - SICK LEAVE

- (1) (a) Subject as hereinafter provided a full-time employee shall be entitled to payment for non-attendance on the ground of personal ill health or injury for up to 10 working days or 76 hours, whichever is the lesser, each year, accrued on a weekly basis.
- (b) Part-time employees who are paid a proportion of a full-time employee's pay or paid according to the number of hours worked shall be entitled to the proportion of the number of hours worked each week that the average number of hours each week bears to 38, up to 76 hours each year.

- (c) This Clause shall not apply where the employee is entitled to compensation under the Workers' Compensation and Injury Management Act 1981.
- (2) An employee shall not be entitled to receive wages from the employer for any time lost through illness or injury caused by the employee's own serious and wilful misconduct or gross and wilful neglect.
- (3) An employee, who claims to be entitled to paid leave under this Clause, is to provide the employer with evidence that would satisfy a reasonable person of the entitlement.
- (4) Sick leave shall accumulate from year to year so that any balance of the period specified in sub clause (1) of this Clause which has in any year not been allowed to any employee by their employer as paid sick leave, may be claimed by the employee subject to the conditions hereinbefore prescribed, shall be allowed by their employer in any subsequent year without diminution of the sick leave prescribed in respect of that year.
- (5) The provisions of this Clause do not apply to casual employees.

6.5 - CARER'S LEAVE

- (1) Use of Sick Leave
 - (a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this sub clause, any sick leave entitlement for absences to provide care and support for such persons when they are ill or injured. Such leave shall not exceed five (5) days in any calendar year and is not cumulative.
 - (b) The employee shall provide evidence to the employer as to the fact of illness or injury of the person and the requirement for the care and support that would satisfy a reasonable person.
 - (c) The entitlement to use sick leave is subject to:
 - (i) The employee being responsible for the primary care of the person concerned; and
 - (ii) The person concerned being either a member of the employee's family or a member of the employee's household.
 - (iii) The term "member of the employee's family" means any of the following persons:
 - (aa) The employee's spouse or de facto partner.
 - (bb) A child for whom the employee has parental responsibility as defined by the Family Court Act 1997.
 - (cc) An adult child of the employee.
 - (dd) A parent, sibling, or grandparent of the employee.
 - (d) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence.
 - (e) 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 the absence.
- (2) Use of Unpaid Leave

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care to a family member who is ill or injured.

6.6 - BEREAVEMENT LEAVE

- (1) An employee on the death of:
 - (a) Spouse or de facto partner,
 - (b) Child or step child,
 - (c) Parent, step parent or parent-in-law,
 - (d) Sibling,
 - (e) Grandparent,
 - (f) Any person, who immediately before that person's death, lived with the employee as a member of the employee's family,is entitled to paid bereavement leave of up to three days which do not need to be consecutive.
- (2) If requested, evidence of the entitlement to bereavement leave that would satisfy a reasonable person is to be furnished to the employer.
- (3) Bereavement leave is not to be taken during any other type of leave.

6.7 - PARENTAL LEAVE

The provisions of this Clause apply to full-time and part-time employees, but do not apply to casual employees.

Subject to the terms of this Clause employees are entitled to parental leave and to work part-time in connection with the birth or adoption of a child.

(1) Basic Entitlements

- (a) An employee, other than a casual employee, and their spouse are entitled to unpaid parental leave totalling 52 weeks in respect of:
 - (i) the birth of a child; or
 - (ii) the placement of a child with the view to the adoption of the child by the employee.
- (b) To obtain parental leave, an employee must satisfy the following basic requirements:
 - (i) the employee has, before the expected date of birth or placement, completed at least 12 months continuous service with the employer;
 - (ii) the employee has given the employer at least ten weeks written notice of their intention to take the leave, unless due to circumstances it is impractical or unreasonable to do so;
 - (iii) the employee has complied with paragraph (c) of this sub clause.
- (c) Except for a period of one week at the time of the birth or placement, an employee and their partner must take parental leave at different times.

- (d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse in relation to the same child, except for the period of one week's leave referred to in paragraph (c) of this sub clause.
- (e) An employee may take other leave (for example, annual leave) in conjunction with parental leave, but this will reduce the amount of parental leave they may take in accordance with sub Clause (7) of this Clause.
- (f) An employee who takes parental leave is, in most circumstances, entitled to return to the position which they held before the leave was taken.
- (g) The absence of an employee on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose in terms of this Award.

(2) Definitions

“adoption” in relation to a child, is a reference to a child who:

- (a) is not the natural child or the step-child of the employee or the employee's spouse;
- (b) is less than 5 years of age; and
- (c) has not lived continuously with the employee for six months or longer.

“employee” includes a part-time employee, but not a casual or seasonal employee;

“continuous service” means service (otherwise than as a casual or seasonal employee) under an unbroken contract of employment, and includes a period of leave, or a period of absence, authorised:

- (a) by the employer;
- (b) by an Award or order of a court or tribunal or a workplace agreement certified by such a body;
or
- (c) by a contract of employment.

“expected date of birth” means the day certified by a medical practitioner to be the day on which the medical practitioner expects the employee or the employee's spouse, as the case may be, to give birth to a child.

“medical certificate” means a certificate signed by a registered medical practitioner.

“placement” means the placement, by an adoption agency, of a child with an employee for adoption.

“spouse” includes a de facto partner.

(3) Notice Requirements

The written notice required in placitum (ii) of paragraph (b) of sub clause (1) shall include:

- (a) A specification of the first and last days of the period of leave, provided that a female employee who has given notice of her intention to take parental leave, other than for adoption, is to start the leave six weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the employee is fit to work.
- (b) In the case where parental leave is taken for the birth of a child, the employee must give to the employer:

- (i) A medical certificate that states that the employee or the employee's spouse is pregnant and specifies the estimated date of birth.
- (ii) A statutory declaration that:
 - (aa) supports the particulars notified;
 - (bb) the employee will be the child's primary care-giver throughout the period of parental leave; and
 - (cc) that the employee will not engage in any conduct inconsistent with their contract of employment while on parental leave.
- (c) In the case where parental leave is taken for the adoption of a child, the employee must give to the employer:
 - (i) A statement from the adoption agency of the proposed date of placement of the child; and
 - (ii) A statutory declaration that:
 - (aa) the child will be at the proposed date of the placement, or was, at the date of the placement, as the case requires, under the age of 5 years;
 - (bb) is not a child or step-child of the employee or the employee's spouse;
 - (cc) will not have, at the proposed date of the placement, or had not, at the date of the placement, as the case requires, previously lived with the employee for a continuous period of 6 months or more;
 - (dd) the employee will be the child's primary care-giver throughout the period of parental leave; and
 - (ee) will not engage in any conduct inconsistent with the employee's contract of employment while on adoption leave.
- (d) An employee who has given notice of their intention to take parental leave is to notify the employer, in the form of a statutory declaration, of particulars of any period of parental leave taken or to be taken by the employee's spouse in relation to the same child.
- (e) An employee who is taking parental leave is to notify the employer of any change to the date on which the employee wishes to start or finish the leave.
- (f) The starting and finishing dates of a period of parental leave is, subject to this sub clause, to be agreed between the employer and employee.
- (4) Transfer to Safe Job
 - (a) Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of the parental leave.
 - (b) Where the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as parental leave for purposes of this section.
- (5) Variation to Period of Parental Leave

- (a) Provided that the maximum period of parental leave does not exceed the period to which the employee is entitled under sub clause (7) hereof:
 - (i) The period of parental leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened.
 - (ii) The period may be further lengthened by agreement between the employee and the employer.
- (b) The period of parental leave may, with the consent of the employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.

(6) Special Parental Leave

- (a) Where an employee is not yet on parental leave and her pregnancy terminates after 28 weeks other than by the birth of a living child, the employee shall be entitled to:
 - (i) Such period of unpaid leave as a registered medical practitioner certifies as necessary before her return to work; and/or
 - (ii) For illness other than the normal consequences of confinement, paid sick leave to which she is entitled and which a registered medical practitioner certifies as necessary for her return to work.
- (b) The aggregate of parental leave, special parental leave and sick leave shall not exceed the period of leave granted under sub Clause (7) of this Clause.

(7) Period of Entitlement

An employee who qualifies for parental leave under this sub clause, is entitled to a period of 52 weeks unpaid leave, less the total of:

- (a) Each period of unpaid leave, or paid sick leave, other than parental leave, that the employer has already granted to the employee in respect of the same pregnancy; and
- (b) Each period of annual leave, or long service leave, that the employee has applied for instead of, or in conjunction with, parental leave in respect of the pregnancy; and
- (c) Each period of special parental leave; and
- (d) Each period of parental leave taken by the employee's spouse and specified in paragraph (d) of sub clause (3) of this Clause.

(8) Effect on Parental Leave of Failure to Complete 12 months Continuous Service

If parental leave has been granted on the basis that it is reasonable to expect that the employee will complete a period of at least 12 months continuous service with the employer on a particular day, the employer may cancel the leave if the employee does not complete such a period on that day.

(9) Effect on Parental Leave in Certain Circumstances

- (a) This sub clause applies if an employer has granted parental leave to an employee and:
 - (i) the pregnancy terminates otherwise than by the birth of a living child;
 - (ii) the employee gives birth to a living child but the child later dies;
 - (iii) the adoption of a child does not take place; or

- (iv) the adoption of a child takes place but does not continue.
 - (b) The employer may cancel the parental leave at any time before it begins.
 - (c) If the parental leave has begun, the employee may notify the employer in writing that the employee wishes to return to work.
 - (d) If the employee does so, the employer must notify them in writing of the day on which they are to return to work. That day must be within four weeks after the employer received the notice under sub clause (3) of this Clause.
 - (e) If the parental leave has begun, the employer may notify the employee in writing that the employee must return to work on a specified day that is not less than four weeks after the notice is given.
 - (f) If the employee returns to work, the employer must cancel the rest of the parental leave.
- (10) Effect on Parental Leave if Employee Ceases to be Primary Caretaker of Child
- (a) This sub clause applies if:
 - (i) for a substantial period beginning on or after the beginning of an employee's parental leave, the employee is not the child's primary care-giver; and
 - (ii) having regard to the length of that period and to any other relevant circumstances, it is reasonable to expect that the employee will not again become the child's primary care-giver within a reasonable period.
 - (b) The employer may notify the employee in writing that the employee must return to work on a specified day that is not less than four weeks after the notice is given.
 - (c) If the employee returns to work, the employer must cancel the rest of the leave.
- (11) Return to Work After Parental Leave
- (a) This sub clause applies when an employee returns to work after a period of parental leave.
 - (b) The employer must employ the employee in the position the employee held immediately before starting parental leave, provided that in the case of a female employee:
 - (i) if she was transferred to a safe job because of her pregnancy, the position shall be the one immediately before the transfer; or
 - (ii) if she began working part-time because of the pregnancy, the position shall be the one immediately before she so began.
 - (c) If that position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of their former position.
- (12) Replacement Employee
- An employer must not employ a person:
- (a) to replace an employee while they are on parental leave; or
 - (b) to replace an employee who, while another employee is on parental leave, is to perform the duties of the position held by the other employee; unless the employer has informed the person:

- (c) that their employment is only temporary; and
- (d) about the rights of the employee who is on parental leave.

(13) Termination of Employment

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

(14) Part-time Work

- (a) This sub clause only applies where the employer and employee have reached agreement that an employee may work part-time under the circumstances and according to the conditions contained in this sub clause.
- (b) With the agreement of the employer:
 - (i) An employee may work part-time in one or more periods at any time from the date of birth of their child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
 - (ii) A female employee may work part-time in one or more periods while she is pregnant where part-time work is, because of the pregnancy, necessary or desirable.
- (c) An employee, who has had at least 12 months continuous employment with an employer immediately before commencing part-time work under this sub clause, has at the expiration of the period of such part-time employment the right to return to his or her former position.
- (d) Subject to the provisions of this sub clause part-time employment shall be in accordance with the provisions of this Award which shall apply pro-rata.
- (e) Before commencing a period of part-time employment under this sub clause the employee and the employer shall agree:
 - (i) that the employee may work part-time;
 - (ii) upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (iii) upon the classification applying to the work to be performed; and
 - (iv) upon the period of part-time employment.
- (f) The terms of the agreement may be varied by consent.
- (g) The terms of this agreement or any variation to it shall be reduced to writing and retained by the employer. A copy of the agreement and any variation to it shall be provided to the employee by the employer.
- (h) (i) The employment of a part-time employee under this sub clause, may be terminated in accordance with the provisions of this Award but may not be terminated by the employer because the employee has exercised or proposes to exercise any rights arising under this sub clause or has enjoyed or proposes to enjoy any benefits arising under this sub clause.

- (ii) Any termination entitlements payable to an employee whose employment is terminated while working part-time under this sub clause, or while working full-time after transferring from part-time work under this sub clause, shall be calculated by reference to the full-time rate of pay at the time of termination and by regarding all service as a full-time employee as qualifying for a termination entitlement based on the period of full-time employment and all service as a part-time employment on a pro rata basis.
- (i) An employer may request, but not require, an employee working part-time under this sub clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (e) of this sub clause.
- (j) The work to be performed part-time need not be the work performed by the employee in their former position but shall be worked otherwise performed under this Award.

6.8 - JURY SERVICE

An employee required for jury service during their ordinary working hours shall be granted leave with pay for all period of time they are so required for jury service.

An employee when applying for such leave, shall be required to support their application with written proof of their attendance at such jury service.

7. - DISPUTE RESOLUTION PROCEDURE

7.1 - DISPUTE RESOLUTION PROCEDURE

- (1) This Clause applies to any grievance including, any questions, disputes or difficulties arising under this Award.
- (2) Until the steps set out in the following dispute resolution procedure are completed or the matter is otherwise determined, work shall continue as normal and as directed by the employer. No party shall be prejudiced as to the final settlement by the continuance of work in accordance with this paragraph.
- (3) The dispute resolution procedure is as follows:
 - (a) An employee or group of employees will firstly refer any grievance to their supervisor who will attempt to resolve the matter expeditiously.
 - (b) If the matter is not resolved, the supervisor will refer it to the site manager.
 - (c) If the site manager is unable to resolve the dispute it will be referred to the relevant manager for discussion and resolution.
 - (d) If, after referral at the operations manager stage, the matter remains unresolved, a three (3) working day cooling off period shall apply. Either party will give the other notice of their intentions in writing during the cooling off period.
 - (e) If the dispute remains unresolved at the end of the cooling off period then the dispute shall be referred to the Commission.
 - (f) At any stage of this process the employee has the right to request representation. Representation may be by anyone including a work colleague, union representative or staff member.

8. - KEEPING OF RECORDS

8.1 - EMPLOYMENT RECORDS

- (1) Each employer shall keep employment records containing:
 - (a) The employee's name, and if the employee is under 21 years of age, their date of birth.
 - (b) Any Industrial Instrument that applies.
 - (c) The date on which the employee commenced employment with the employer.
 - (d) All leave taken by the employee, whether paid, partly paid or unpaid.
 - (e) The information necessary for the calculation of the entitlement to, and payment for long service leave under this Award.

- (2) Industrial instrument means:
 - (a) This Award.
 - (b) An Order of the Commission.
 - (c) An Industrial Agreement.

- (3) The employer shall keep and maintain a time and wages record showing:
 - (a) The name of each employee.
 - (b) For each day:
 - (i) The time at which the employee started and finished work.
 - (ii) The period or periods for which the employee was paid.
 - (iii) Details of work breaks, including meal breaks.
 - (c) For each pay period:
 - (i) The employee's designation.
 - (ii) The total number of hours worked each week.
 - (iii) The allowances paid.
 - (iv) The wages paid.
 - (v) The gross and net amounts paid to the employee under the Industrial Instrument.
 - (vi) All deductions and reasons for them.

- (4) The employer shall on the written request by a relevant person:
 - (a) Produce to the person the employment records (including the time and wages record) relating to the employee.
 - (b) Let the person inspect the employment records (including the time and wages record).

- (c) Let the relevant person enter the premises of the employer for the purpose of inspecting the records.
 - (d) Let the relevant person take copies of or extracts from the records.
- (5) A "relevant person" means:
- (a) The employee concerned.
 - (b) If the employee is a represented person, his or her representative.
 - (c) A person authorised in writing by the employee.
 - (d) An Officer referred to in section 93 of the Industrial Relations Act 1979 (as amended) authorised in writing by the Registrar.
- (6) An employer shall comply with a written request not later than:
- (a) At the end of the next pay period after the request is received; or
 - (b) The seventh day after the day on which the request was made to the employer.
- (7) An employer must ensure that the records are kept in accordance with the Industrial Relations (General) Regulations 1997.

8.2 - RIGHT OF ENTRY FOR DISCUSSIONS WITH EMPLOYEES

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

8.3 - RIGHT OF ENTRY TO INVESTIGATE BREACHES

- (1) Upon giving 24 hours written notice, an authorised representative of the Union may enter, during working hours, any premises where relevant employees work, for the purpose of investigating any suspected breach of the Industrial Relations Act 1979, the Long Service Leave Act 1958, the Minimum Conditions of Employment Act 1993, the Occupational Safety and Health Act 1984, the Mines Safety and Inspection Regulations 1995 or an award, order, industrial agreement or employer-employee agreement that applies to any such employee.
- (2) 'Authorised representative' in this Clause has the same meaning as in sub clause (2) of Clause 8.2. - Representative Interviewing Employees.
- (3) For the purpose of investigating any breach, the authorised representative may:
 - (a) Subject to sub clause (5) require the employer to produce for the representative's inspection, during working hours at the employer's premises or at any mutually convenient time and place, any employment records of employees or other documents, other than workplace agreements or employer-employee agreements, kept by the employer that are related to the suspected breach;

- (b) Make copies of the entries in the employment records or documents related to the suspected breach; and
 - (c) During working hours, inspect or view any work, material, machinery, or appliance that is relevant to the suspected breach.
- (4) The employer is not required to produce an employment record of an employee if the employee is a party to an employer-employee agreement and has made a written request to the employer that the record not be available for inspection by an authorised representative.
 - (5) An authorised representative is not allowed to enter premises where relevant employees work for the purposes of investigating a suspected breach of an employer-employee agreement to which a relevant employee is a party unless the authorised representative is authorised in writing by that relevant employee to carry out the investigation.
 - (6) An authorised representative is not entitled to require the production of employment records or other documents unless, before exercising the power, the authorised representative has given the employer concerned:
 - (a) If the records or other documents are kept on the employers premises, at least 24 hours written notice; or
 - (b) If the records or other documents are kept elsewhere, at least 48 hours written notice.
 - (7) An authorised representative shall, upon request of the occupier of the premises, show their authority before entering the premises.

8.4 - PAYMENT OF WAGES

- (1) Wages shall be paid monthly into an account nominated by the employee, except where by agreement between the employee and employer, payment is made by cash or cheque.
- (2) At or before the time at which the employee is paid their wages the employee shall be issued with an advice showing the gross amount of wages and allowances due, all deductions, the total number of hours worked including the number of overtime hours and the rate at which such overtime has been paid. The pay advice may be in the form of an electronic pay slip.

9. - REGISTERED ORGANISATIONS MATTERS

9.1 - NOTICE BOARD

The employer shall provide notice boards for the posting of official Union notices and may remove any notice which is not signed by an official of the Union concerned or by a shop steward of that Union.

9.2 - SHOP STEWARDS

Upon notification in writing by the Secretary of the Union of the appointment of shop stewards they shall continue to be recognised by the Company.

10. - SUPERANNUATION

10.1 - SUPERANNUATION

- (1) Subject to the amendments set out in sub Clause (2) below WMC will continue to make superannuation contributions on behalf of employees covered by this Award in accordance with the Nickel Refining Award 1971 No 6 of 1971 Western Mining Limited Occupational Superannuation Order (1993) 73 WAIG 2346 (the Order).
- (2) The following amendments apply to the Order:
 - (a) The Superannuation Fund means the Plum Financial Services Ltd (Fund) ABN: 35 081 812 731 or other fund approved for the purposes of the Superannuation Industry (Superannuation) Act 1993 (C'th) nominated by WMC.
 - (b) The Company means WMC Resources Limited (WMC).
 - (c) WMC's contribution to the Superannuation Fund in respect of employees covered by this Award will be 9% or such other percentage as prescribed by the Superannuation Guarantee (Administration) Act 1992 (C'th).

11. - REDUNDANCY

11.1 - REDUNDANCY

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

Where an employee is transferred to lower paid duties for reasons set out in sub clause (1) hereof, the employee shall be entitled to the same period of notice of transfer as the employee would have been entitled to had the employment been terminated, and the employer may at the employer's option, make payment in lieu thereof of an amount equal to the difference between the former ordinary weekly rate of wage and the new lower ordinary weekly rate of wage for the number of weeks of notice still owing.
- (3) Severance Pay
 - (a) In addition to the period of notice prescribed in Clause 2.1 – Contract of Service, sub clause (2) paragraph (a), of this award, for ordinary termination, and subject to further order of the Commission, an employee whose employment is terminated for reasons set out in sub clause (1) paragraph (a) hereof, shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks' pay
2 years and less than 3 years	6 weeks' pay
3 years and less than 4 years	7 weeks' pay
4 years and less than 5 years	8 weeks' pay
5 years and less than 6 years	10 weeks' pay
6 years and less than 7 years	11 weeks' pay
7 years and less than 8 years	13 weeks' pay
8 years and less than 9 years	14 weeks' pay
9 years and less than 10 years	16 weeks' pay
10 years and over	12 weeks' pay

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

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

Provided that in the calculation of continuous service under this sub clause any time in respect of which an employee is absent from work except time for which an employee is entitled to claim annual leave, sick pay, long service leave, bereavement leave and public holidays as prescribed by this Award shall not count as time worked.

(4) **Employee Leaving During Notice**

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

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

(5) **Alternative Employment**

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

(6) **Time Off During Notice Period**

- (a) During the period of notice of termination of employment given by an employer, an employee whose employment is to be terminated for reasons set out in paragraph (a) of sub clause (1) of this Clause that employee shall for the purpose of seeking other employment be entitled to be absent from work during each week of notice up to a maximum of eight ordinary hours without deduction of pay.

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

(7) Notice to Centrelink

Where a decision has been made to terminate more than 15 employees in the circumstances outlined in sub clause (1) paragraph (a) hereof, the employer shall notify Centrelink thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(8) Superannuation Benefit

Subject to an order of the Commission, where an employee who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under sub clause (3) hereof, the difference between the severance pay specified in that sub clause and the amount of the superannuation benefit the employee receives, which is attributable to employer contributions only.

(9) Transmission of Business

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

- (i) the continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
- (ii) the period of employment which the employee has had with the transmittor or any prior transmittor shall be deemed to be service of the employee with the transmittee.

- (b) In this sub clause “business” includes trade, process, business or occupation and includes part of any such business and “transmission” includes transfer, conveyance, assignment or succession whether by agreement or by operation of law and “transmitted” has a corresponding meaning.

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

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

(11) Employees Exempted

This Clause shall not apply where employment is terminated as a consequence of conduct that justifies instant dismissal including malingering, inefficiency or neglect of duty or in the case of casual employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.

(12) Employers Exempted

Subject to an order of the Commission, in particular redundancy case, this Clause shall not apply to employers who employ less than 15 employees.

(13) Incapacity to Pay

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

12. - NAMED PARTIES AND RESPONDENTS

12.1 - NAMED PARTIES AND RESPONDENTS

Union Party to the Award

The Australian Workers' Union, West Australian Branch, Industrial Union of Workers is a named party and respondent to this Award.

Employer Party to the Award

WMC Resources Limited is a named party and respondent to this Award.

APPENDIX ONE - FORMULAS

FORMULAS

The allowances contained in the following awards are to be adjusted in accordance with the provisions set out below except when application is made to vary an allowance due to a special circumstance:

Building and Engineering Trades (Nickel Mining and Processing) Award, 1968;

Engineering and Engine Drivers' (Nickel Smelting) Award, 1973;

Engineering Trades and Engine Drivers (Nickel Refining) Award, 1971;

Nickel Mining and Processing Award, 1975;

Nickel Smelting (WMC Resources Ltd) Award 2003; and

Nickel Refining Award, 1971.

That is by:

- (1) Increasing the Shift Allowance [Clause 3.2 - Shift Work subclauses (1) and (2)(a)] and Industry Allowance [Clause 4.2 – Wages subclause (3)] using furnishing trades formula of the Engineering and Engine Drivers (Nickel Smelting) Award - key classification of Engineering Employee Grade 4 .
- (2) Increase the Meal Allowance [Clause 3.3 – Overtime subclause (10)] using CPI : Catalogue 6401.0 : Table 7 : Meals out and take away foods.
- (3) Increase the Special Rates and Provisions [Clause 5.2 – Special Rates subclause (1)] using furnishing trades formula of this Award – key classification Multi Skilled Process Operator Grade 1.

VARIATION RECORD

NICKEL REFINING AWARD, 1971

NO. 6 OF 1971

Delivered 17/02/71 at 51 WAIG 231

Consolidated s93(6) 04/03/94 at 74 WAIG 756

CLAUSE NO.	EXTENT OF VARIATION	ORDER NO.	OPERATIVE DATE	GAZETTE REFERENCE
1. Title				
(1A. State Wage Principles)				
	Ins. Cl.	1752/91	31/01/92	72 WAIG 191
	Cl. & Title	1457/93	24/12/93	74 WAIG 198
(1A. State Wage Principles December 1993)				
	Cl. & Title	985/94	30/12/94	75 WAIG 23
(1A. Statement of Principles December 1994)				
	Cl. & Title	1164/95	21/03/96	76 WAIG 911
(1A. Statement of Principles March 1996)				
	Cl & Title	915/96	7/08/96	76 WAIG 3368
(1A Statement of Principles - August 1996)				
	Cl & Title	940/97	14/11/97	77 WAIG 3177
(1A. Statement of Principles - November 1997)				
	Cl. & Title	757/98	12/06/98	78 WAIG 2579

(1A. Statement of Principles - June, 1998)

Del. Cl. & Title	609/99	06/07/99	79 WAIG 1843
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1B. Minimum Adult Award Wage

Ins. 1B	940/97	14/11/97	77 WAIG 3177
(2),(3) & (5) rates & text	609/99	01/08/99	79 WAIG 1843
Cl.	654/00	01/08/00	80 WAIG 3379
Cl	752/01	01/08/01	81 WAIG 1721
Cl	797/02	01/08/02	82 WAIG 1369
Cl.	569/03	5/06/03	83 WAIG 1899 & 2469
(9)	1197/03	1/11/03	82 WAIG 3537

2. Arrangement

Ins. 32.	464/84	1/7/84	64 WAIG 1302
Ins. 2A	1059/88	various	69 WAIG 58
Del. 2A	1940/89	08/09/89	69 WAIG 2913
Ins. 2A.	2495/89(R)	22/11/89	70 WAIG 826
Ins. 33	1701/90(R2)	05/12/90	71 WAIG 155
2A. Title	1561/91	08/11/91	71 WAIG 3262
Ins. 1A	1752/91	31/01/92	72 WAIG 191
Ins. Sch. A	699/93	06/07/93	73 WAIG 2782
1A. Title	1457/93	24/12/93	74 WAIG 198
1A. Title	985/94	30/12/94	75 WAIG 23
1A. Title	1164/95	21/03/96	76 WAIG 911

Ins. Appendix - Resolution...	693/96	16/07/96	76 WAIG 2768
Ins. Appendix - S.49B...	694/96	16/07/96	76 WAIG 2789
1A. Title	915/96	7/08/96	76 WAIG 3368
1A	940/97	14/11/97	77 WAIG 3177
Ins. 1B	940/97	14/11/97	77 WAIG 3177
1A. Title	757/98	12/06/98	78 WAIG 2579
Del. 1A	609/99	06/07/99	79 WAIG 1843
Cl.	1155/02	26/06/03	83 WAIG 1739

(2A. State Wage Principles - September 1988)

Ins. Cl.	1059/88	various	69 WAIG 58
Del. Cl. & Title	1940/89	08/09/89	69 WAIG 2913

(2A. State Wage Principle - September 1989)

Ins. Cl.	2495/89(R)	22/11/89	70 WAIG 826
Cl. & title	1561/91	08/11/91	71 WAIG 3262

2A. State Wage Principle - June 1991

3. Area and Scope

Cl.	1155/02	26/06/03	83 WAIG 1739
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4. Term

Cl.	1155/02	26/06/03	83 WAIG 1739
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5. Preference to Unionists

Deleted by section 88 (3) of the Acts Amendment and Repeal (Industrial Relations) Act (No.2) 1984.

6. Contract of Service

Cl.	1155/02	26/06/03	83 WAIG 1739
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7. Mixed Functions

Cl.	1155/02	26/06/03	83 WAIG 1739
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8. Special Rates and Provisions

(1),(2),(3),(4)(a) & 4(b) amts.	1059/88	various	69 WAIG 58
Cl.	2495/89(R)	22/11/89	70 WAIG 826
(1)	1155/02	26/06/03	83 WAIG 1739
(1)	1874/03	19/4/04	Unreported 1874

9. Hours (Other than Continuous Shift Workers)

(1) & (4)	1155/02	26/06/03	83 WAIG 1739
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10. Overtime (Other than Continuous Shift Workers)

(4)-(10)	1155/02	26/06/03	83 WAIG 1739
(6)	1874/03	19/4/04	Unreported 1874

11. Continuous Shift Workers

(3),(5)-(7), (10) & (11)	1155/02	26/06/03	83 WAIG 1739
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(6)	1874/03	19/4/04	Unreported 1874
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12. Shift Work

(3)	1195/86	10/3/87	67 WAIG 435
(3)	1406/87	5/2/88	68 WAIG 949
(3)	1059/88	various	69 WAIG 58
(3)	842/90(R2)	16/08/90	70 WAIG 4094
(3)	1561/91	08/11/91	71 WAIG 3262
Cl.	1155/02	26/06/03	83 WAIG 1739
	1874/03	19/4/04	Unreported 1874

13. Rest Period after Overtime

Cl.	1155/02	26/06/03	83 WAIG 1739
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(14. Holidays)

Rename Cl.	1155/02	26/06/03	83 WAIG 1739
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14. Public Holidays

(3)	1155/02	26/06/03	83 WAIG 1739
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15. Annual Leave

Cl.	1155/02	26/06/03	83 WAIG 1739
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16. Long Service Leave

(17. Absence Through Sickness)

Rename Cl.	1155/02	26/06/03	83 WAIG 1739
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17. Sick Leave

Cl.	1155/02	26/06/03	83 WAIG 1739
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18. Travelling

Cl.	1155/02	26/06/03	83 WAIG 1739
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(19. Union Representative Interviewing Workers)

Ins. Para	2053/1/97	22/11/97	77 WAIG 3138
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Del. Cl. & Title	1155/02	26/06/03	83 WAIG 1739
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Cl	1874/03	19/4/04	
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(20. Notice Boards)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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19. Notice Boards

(21. Shop Stewards)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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20. Shop Stewards

(22. Grievances and Disputes)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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21. Grievances and Disputes

Cl.	1155/02	26/06/03	83 WAIG 1739
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(23. Board of Reference)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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22. Board of Reference

Cl.	1155/02	26/06/03	83 WAIG 1739
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(24. Junior Workers)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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23. Junior Workers

Cl.	1155/02	26/06/03	83 WAIG 1739
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(25. Payment of Wages)

(1)	464/84	1/7/84	64 WAIG 1302
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Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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24. Payment of Wages

Cl.	1155/02	26/06/03	83 WAIG 1739
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(26. Time and Wages Record)

(2) Ins text.	491/98	16/04/98	78 WAIG 1471
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Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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25. Time and Wages Record

Cl.	1155/02	26/06/03	83 WAIG 1739
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26. Liberty to Apply

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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(27. Liberty to Apply)

27. Wages

Cl.	902/84	17/5/85	65 WAIG 855
Cl.	1059/88	various	69 WAIG 58
Cl.	2495/89(R)	22/11/89	70 WAIG 826
(1) & (2)	842/90(R2)	16/08/90	70 WAIG 4094
(1)	1701/90(R2)	05/12/90	71 WAIG 155
(1)	1561/91	08/11/91	71 WAIG 3262
Rates & Ins. Text	940/97	14/11/97	77 WAIG 3177
Cl.	65/98	06/03/98	78 WAIG 1384
(1) Rates & insert text	609/99	01/08/99	79 WAIG 1843
Cl.	654/00	01/08/00	80 WAIG 3379
Cl	752/01	01/08/01	81 WAIG 1721
(1)	797/02	01/08/02	82 WAIG 1369
Cl.	569/03	5/06/03	83 WAIG 1899 & 2469
Renum. Cl.	1155/02	26/06/03	83 WAIG 1739

(27. Wages)

Cl.	1155/02	26/06/03	83 WAIG 1739
Cl	1874/03	19/04/04	Unreported 1874

28. Bereavement Leave

Cl.	1155/02	26/06/03	83 WAIG 1739
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(29. Bereavement Leave)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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29. Jury Service

Cl.	1155/02	26/06/03	83 WAIG 1739
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30. Redundancy

Cl.	1155/02	26/06/03	83 WAIG 1739
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(30. Jury Service)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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31. Special Day Off Provisions

(1) & (4)	1155/02	26/06/03	83 WAIG 1739
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(31. Redundancy)

Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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32. Definitions

(32. Special Day Off Provisions)

Ins. Cl.	464/84	1/7/84	64 WAIG 1302
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Cl.	714/88	19/10/88	69 WAIG 59
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Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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33. Superannuation

Ins. Cl.	1155/02	26/06/03	83 WAIG 1739
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(33. Definitions)

Ins.cl.	1701/90(R2)	05/12/90	71 WAIG 155
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Renum. Cl.	1155/02	26/06/03	83 WAIG 1739
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34. Parental Leave

Ins. Cl.	1155A/02	29/01/04	84 WAIG 263
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Appendix - Resolution of Disputes Requirements

Ins. Appendix	693/96	16/07/96	76 WAIG 2768
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App	2053/97	22/11/97	77 WAIG 3079
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SCHEDULE A. - PARTIES TO THE AWARD

Ins. Sch.	699/93	06/07/93	73 WAIG 2782
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(Respondent)

Del. Title & Cl.	699/93	06/07/93	73 WAIG 2782
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Appendix - S.49B - Inspection of Records Requirements

Ins. Appendix	694/96	16/07/96	76 WAIG 2789
(1) ins. Text	2053/97	22/11/97	77 WAIG 3138
App.	491/98	16/04/98	78 WAIG 1471