

Please note that this award has been manually updated to reflect changes made by Commission Order of ~~23 January~~ 27 February 2006 (PR967245PR970333) pending publication of official version on the Australian Industrial Relations Commission website.

AW821252 PR970333

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s.113 - Application to vary an Award

Application by Australian Nursing Federation
(C2006/1009)

NURSES (WA MENTAL HEALTH SERVICES) AWARD 2003
(ODN C 60176 OF 1990)
[AW821252 Print PR927145]

Health and welfare services

DEPUTY PRESIDENT BLAIN

PERTH, 27 FEBRUARY 2006

Family Provisions Decision.

ORDER

- A. Further to the decision of the Full Bench of the Commission in the *Family Provisions Decision* [PR082005], the above-mentioned award is varied as follows:
- B. This order shall come into force from the first pay period to commence on or after 27 February 2006 and shall remain in force for a period of three months.

BY THE COMMISSION:

DEPUTY PRESIDENT

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AW821252 PR967245

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996
s.113 - Application to vary an Award

Application by Australian Nursing Federation
(C2005/5909)

NURSES (WA MENTAL HEALTH SERVICES) AWARD 2003
(ODN C 60176 OF 1990)
[AW821252 Print PR927145]

Health and welfare services

DEPUTY PRESIDENT BLAIN

PERTH, 23 JANUARY 2006

Family Provisions Decision.

ORDER

- C.** Further to the decision of the Full Bench of the Commission in the *Family Provisions Decision* [PR082005], the above-mentioned award is varied as follows:
- D.** This order shall come into force from the first pay period to commence on or after 23 January 2006 and shall remain in force for a period of three months.

BY THE COMMISSION:

DEPUTY PRESIDENT

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AW821252 [loose-leaf version]

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

AUSTRALIAN INDUSTRIAL REGISTRY LOOSE-LEAF CONSOLIDATION

NURSES (WA MENTAL HEALTH SERVICES) AWARD 2003

This award as varied to 19 July 2005 (variation PR960015) comprises pages:

1 2 3 4 5 **6-2 7-2 8-2** 9 10

11 12 **13-2** 14 15 **16-2** 17 **18-2 19-2** 19A 20

21 22 23 24 25 26 27 28 29 30

31 32 33

<Total number of pages = 35>

Note: This award consolidates and supersedes Nurses (WA Mental Health Services) Award 1991 [AW790761/N0145]

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AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

Review of award pursuant to Item 51 of Part 2 of Schedule 5 of the
Workplace Relations and Other Legislation Amendment Act 1996
(C No. 01023 of 1998)

NURSES (WA MENTAL HEALTH SERVICES) AWARD 1991

(ODN C No. 60176 of 1990)

[K1343 [AW790761]]

Various employees

Health and welfare industry

SENIOR DEPUTY PRESIDENT O'CALLAGHAN

ADELAIDE, 30 JANUARY 2003

Award simplification.

ORDER

A. Further to the decisions issued by the Commission on 14 November 2002 [PR924663] and 30 January 2003 [PR927144], the above award is varied as follows:

By deleting all clauses, schedules and appendices and inserting the following:

1. AWARD TITLE

This award will be known as the Nurses (WA Mental Health Services) Award 2003.

2. ARRANGEMENT

This award is arranged as follows:

1.	Award title.....	1
2.	Arrangement.....	1
3.	Commencement date and period of operation	2
4.	Coverage and parties bound	2
5.	Supersession and savings	3
6.	Anti-discrimination	3
7.	Definitions.....	3
8.	Contract of employment.....	4
9.	Employment categories.....	5
10.	Rates of pay - Registered Nurses	5
11.	Rates of pay - Enrolled Mental Health Nurses	8
12.	Travelling	14
13.	Payment of wages	15
14.	Hours	15

15. Meals.....	16
16. Post mortem allowance	16
17. Higher duties	16
18. Overtime, recall and on call	16
19. Shift work.....	19
20. Annual leave	19
21. Public holidays	22
22. Personal leave	23
23. Parental leave	26
24. Long service leave	31
25. Enterprise flexibility	31
26. Dispute resolution procedure	26
Schedule 1 - Respondents.....	33

3. COMMENCEMENT DATE AND PERIOD OF OPERATION

This award will operate from 10 February 2003 and will remain in force for a period of twelve (12) months.

4. COVERAGE AND PARTIES BOUND

4.1 This award is binding upon:

4.1.1 the Honourable the Minister for Health for Western Australia;

4.1.2 the Australian Nursing Federation, its officers and members and persons eligible to be its members; and

4.1.3 the Health Services Union of Australia in respect of persons who are financial members of both the Western Australian No. 2 Branch of the Health Services Union of Australia and the Western Australian Psychiatric Nurses Association.

4.2 This award applies to the employment of all Mental Health Nurses, enrolled Mental Health Nurses employed by a respondent employer in any place identified in the *Mental Health Order 1988* (WA) as in force at the commencement of this award and as contained in Schedule 1 - Respondents provided that this award will not apply to:

4.2.1 persons whose employment is regulated by the Nurses' (ANF-WA Public Sector) Award 2002 [AW814962 [PR916212]];

4.2.2 persons employed as a Rehabilitation Assistant or Registered Enrolled Nurse (other than Enrolled Mental Health Nurse) or Registered General Nurse;

4.2.3 persons employed by an employer who is a successor to the Honourable the Minister for Health for Western Australia if such successor is bound by an award to which the Australian Nursing Federation is sole union respondent or party at the date of commencement of this award; or

- 4.2.4 person employed as Directors of Nursing and Coordinators, otherwise known as Assistant Directors of Nursing, being persons employed under *Public Sector Management Act 1994* and the *Public Service Award 1992*.

5. SUPERSESSION AND SAVINGS

This award supersedes the *Nurses' (WA Mental Health Services) Award 1991* [Print K1343 [N0145]] provided that no right, obligation or liability accrued under such award will be affected by the supersession in respect of allowable matters.

6. ANTI-DISCRIMINATION

- 6.1 It is the intention of the respondents to this award to achieve the principal object in section 3(j) of the *Workplace Relations Act 1996* through respecting and valuing the diversity of the workforce by helping to prevent and eliminate discrimination on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- 6.2 Accordingly, in fulfilling their obligations under the dispute resolution procedure clause, the respondents must make every endeavour to ensure that neither the award provisions nor their operation are discriminatory in their effects.
- 6.3 Nothing in this clause is to be taken to affect:
- 6.3.1 any different treatment (or treatment having different effects) which is specifically exempted under the Commonwealth anti-discrimination legislation;
- 6.3.2 junior rates of pay;
- 6.3.3 an employee, employer or registered organisation, pursuing matters of discrimination in any state or federal jurisdiction, including by application to the Human Rights and Equal Opportunity Commission; or
- 6.3.4 the exemptions in section 170CK(3) and (4) of the *Workplace Relations Act 1996*.

7. DEFINITIONS

- 7.1 **Health care site** means any clinic, hospital, nursing post, community based health care service or other establishment where health services are delivered and which is bound by this award.
- 7.2 **Enrolled Mental Health Nurse** means a person engaged in nursing, caring for and/or working with mentally ill persons, whose name is entered in Division 2 of the Register of the Nurses Board of Western Australia.
- 7.3 The **federation** or the **union** means, subject to clause 4 - Coverage and parties bound, the Australian Nursing Federation and/or the Health Services Union of Australia, or where the context so admits, the Western Australian Branches of the aforementioned organisations.

- 7.4** A **part-time employee** means an employee who regularly works less than an average of 38 hours per week.
- 7.5** **Registered Nurse** means a person engaged in nursing, caring for and/or working with mentally ill persons whose name is entered in Division 1 of the register of the Nurses Board of Western Australia.

8. CONTRACT OF EMPLOYMENT

8.1 Employer giving notice

8.1.1 The contract of service may be terminated by the employer on any day by giving to the employee the required period of notice in writing and the contract will expire at the end of that period of notice.

8.1.2 The required period of notice will be:

Employees' period of continuous service with the employer	Period of Notice
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

The required period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the employer.

8.1.3 The contract of service of an employee engaged as a casual may be terminated by the employer giving the employee one hour's notice. Such notice need not be in writing.

8.1.4 Payment in lieu of the required period of notice may be made by the employer if the required notice is not given.

The employer may terminate the contract of service by providing part of the required notice and payment in lieu of the balance.

8.1.5 The period of notice in this clause does not apply in the case of dismissal for conduct that justifies instant dismissal or in the case of casual employees or employees engaged for a specific period or for a specific task or tasks.

8.2 Employee giving notice

8.2.1 The contract of service for a Nurse may be terminated on any day by the nurse giving to the employer two weeks notice in writing and the contract will expire at the end of that period of notice.

8.2.2 If an employee fails to give the required notice or leaves during the notice period, the employer may, at its discretion, deduct from any monies due to the employee, an amount equal to ordinary time earnings for the period of notice not given.

- 8.2.3** The employee and the employer may agree in writing upon a longer period of notice than prescribed in this clause.
- 8.2.4** The required notice may be dispensed with by agreement in writing between the employer and employee.

8.3 Work as Directed

By giving one month's notice to an employee who is contracted to work in a specific area an employer may require that employee to work in any work site within that area.

9. EMPLOYMENT CATEGORIES

9.1 Casual employment

- 9.1.1** An employee employed for a period less than two weeks is deemed to be a casual worker and be paid 20% on the hourly rate specified in this award.
- 9.1.2** If a casual employee is still required at the end of two weeks she/he may be re-employed as a casual with payment in accordance with 9.1.1 for another two weeks.

9.2 Part-time employment

- 9.2.1** Notwithstanding anything contained in this award an employer may employ part-time employees.
- 9.2.2** Part-time employees as prescribed in 7.4 will be remunerated at a weekly rate for the class of work on which they are engaged with this rate determined by the proportion which their ordinary weekly hours bear to 38.
- 9.2.3** Part-time employees will be allowed annual leave and sick leave in the same manner as full-time employees excepting that payment for such leave will be in the same ratio as their ordinary weekly hours averaged over the qualifying period bear to 38.
- 9.2.4** Notwithstanding anything contained in this award, the employer may vary the ordinary hours of a part-time employee by the provision of one day's notice provided such variation will only apply to periods of one week or more.

10. RATES OF PAY - REGISTERED NURSES

10.1 Definitions

The following definitions will apply to Registered Nurse employees for the purposes of this clause:

- 10.1.1 Registered Nurse Level 1** means a Registered Nurse (as defined) who holds a current practising certificate, provides direct patient care within a nominated area of a health care site where there is access to a higher level of clinical nursing expertise and is responsible (where applicable) for clinical supervision of Enrolled Nurses (as defined).
- 10.1.2 Registered Nurse Level 2** means a Registered Nurse (as defined) who holds a current practising certificate and any other qualification required for working with mentally ill persons. Such a nurse is responsible for direct patient care, the clinical management of a nominated area within a health care site and for clinical supervision of Registered Level 1 Nurses and/or Enrolled Nurses.
- 10.1.3 Registered Nurse Level 3 - Clinical** means a Registered Nurse (as defined) who holds a current practising certificate and any other qualifications required for working with mentally ill persons. Such a nurse provides clinical expertise and is responsible for the standard of nursing care in (a) nominated area(s) within a health care site. Such a nurse may be responsible for direct client/patient care of a specific caseload.
- 10.1.4 Registered Nurse Level 3 - Management** means a Registered Nurse (as defined) who holds a current practising certificate and any other qualifications required for working with mentally ill persons. Such a nurse is responsible for overall management (budgetary and personnel) of (a) nominated area(s) within a health care site.
- 10.1.5 Registered Nurse Level 3 - Staff Development/Research** means a Registered Nurse (as defined) who holds a current practising certificate and any other qualification required for working with mentally ill persons. Such a nurse, who in collaboration with other nursing personnel, has responsibility for planning, implementation and evaluation for nursing staff development programs and of nursing research projects.

10.2 Wages

[10.2.1 varied by PR949226; substituted by PR960015 ppc 19Jul05]

10.2.1 The following will be the weekly rate of wages payable to Registered Nurses:

	Base rate per week	Arbitrated safety net adjustments	Total rate per week
	\$	\$	\$
Level 1:1	471.60	159.00	630.60
Level 1:2	495.10	159.00	654.10
Level 1:3	518.70	159.00	677.70
Level 1:4	542.30	159.00	701.30
Level 1:5	565.90	159.00	724.90
Level 1:6	589.50	159.00	748.50

	Base rate per week	Arbitrated safety net adjustments	Total rate per week
	\$	\$	\$
Level 1:7	613.00	159.00	772.00
Level 1:8	636.60	157.00	793.60
Level 2:1	660.20	157.00	817.20
Level 2:2	675.90	155.00	830.90
Level 2:3	691.60	155.00	846.60
Level 2:4	707.30	155.00	862.30
Level 3:1	736.80	155.00	891.80
Level 3:2	754.50	155.00	909.50
Level 3:3	772.20	155.00	927.20
Level 3:4	789.90	155.00	944.90

10.2.2 Progression through the increments for a Registered Nurse Level 1 will occur by annual increments, having regard to the acquisition and utilisation of skills and knowledge through experience in the practice setting(s) over such period.

10.2.3 Progression for all other classifications for which there is more than one wage point, will be by annual increments, subject to a satisfactory performance appraisal and having regard to the acquisition and utilisation of skills and knowledge through experience in the practice setting(s) over such period.

10.3 Previous nursing experience

10.3.1 Where an employee is appointed to a position, previous relevant nursing experience at that level, or in a similar level under a differing career structure, will be taken into account for determining the appropriate increment level.

10.3.2 Experience will include the time spent in relevant hospital based post-basic course/s and includes post-registration training approved by the Nurses Board of Western Australia.

10.3.3 The onus of proof of previous experience will rest with the employee. Provided that an employee returning to the profession after an absence greater than five years will commence at the first increment of Level 1 for a period of three months. During this time the employee will be reviewed by an assessment panel. Upon satisfactory review she/he will move to the level and increment as determined by the panel's assessment.

10.3.4 An employee who fails to satisfy the panel of her/his competency to progress through the Level 1 increments or into another level as the case may be, may apply for reassessment by an assessment panel after a period of twelve months from the date of employment.

10.4 Post registration qualifications - Registered Nurses

10.4.1 Subject to 10.4.1(b), a nurse classified in accordance with 10.2.1 will be entitled to progress one increment on that person's first appointment following registration with the Western Australian Nurses' Registration Board, or at any one time during that person's employment history as a Registered Mental Health Nurse Level 1, on attainment of the following:

10.4.1(a) a UG1 degree in nursing; or

10.4.1(b) registration in another branch of nursing or on another nursing register maintained by the Western Australian Nurses' Registration Board, where the employee is working in a particular practice setting which requires the additional registration; or

10.4.1(c) successful completion of a post-registration course of at least twelve months duration, by an employee required to perform the duties of a position to which the course is directly relevant.

10.4.2 A Registered Nurse who has been advanced once in accordance with 10.4.1, whether as a Registered General Nurse or as a Registered Mental Health Nurse, will not be entitled to further advancement under this clause.

[10.5 varied by PR949226; PR960015 ppc 19Jul05]

10.5 Nurses employed as evening or night shift supervisors at Graylands or Lemnos between the hours of 3:45pm and 7:30am or as the Nurse in Charge at Whitby Falls Hostel between the hours of 3:30pm and 7:00am will receive an additional payment of \$14.04 per hour.

[10.5.1 varied by PR949226; PR960015 ppc 19Jul05]

10.5.1 Where work in these locations involves working a four days on/two days off roster an additional payment of \$15.08 per hour will be paid in lieu of the amount set out in clause 10.5. This allowance will be included in and form part of the ordinary rate.

[10.6 substituted by PR949226; PR960015 ppc 19Jul05]

10.6 The rates of pay in this award include the arbitrated safety net adjustment payable under the *safety Net Review—Wages June 2005* decision [PR002005]. This arbitrated safety net adjustment may 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 certified agreements, currently operating enterprise flexibility agreements, Australian workplace agreements, award variations to give effect to enterprise agreements and overaward arrangements. Absorption which is contrary to the terms of an agreement is not required.

Increases made under previous National Wage Case principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

[10.7 deleted by PR949226 ppc 13Jul04]

11. RATES OF PAY - ENROLLED MENTAL HEALTH NURSES

11.1 Definitions

The following definitions will apply to registered Enrolled Nurses for the purposes of this clause:

11.1.1 Enrolled nurse or Enrolled Mental Health Nurse means an employee:

11.1.1(a) whose training or education is deemed satisfactory for the purposes of enrolment on a register or roll as a nurse other than as a Registered Nurse; and

11.1.1(b) who is subject to the regulations and/or by-laws of the Nurses Board of Western Australia and who holds a current practising certificate as such.

11.1.2 Employee or employees includes, for the purposes of this clause, **Enrolled Nurse or Enrolled Mental Health Nurse** (as defined) unless otherwise stated.

11.1.3 Inservice training means the formal and/or informal work related learning activities undertaken by an employee through opportunities provided by the employing agency, which contribute to an employee's professional development and efficiency by:

11.1.3(a) the acquisition and updating of skills and knowledge beneficial to effective performance within a team; and/or

11.1.3(b) reducing the degree of direct supervision required by the employee; and/or

11.1.3(c) enhancing the breadth and/or depth of knowledge and skills required by an employee in a specific area and/or range of areas of nursing practice, as the case may be.

11.1.4 Supervision means, subject to the regulations and/or by laws at the Nurses Board of Western Australia the oversight, direction, instruction, guidance and/or support provided to an employee by the Registered Nurse responsible for ensuring such an employee is not placed in situations where required to function beyond his or her preparation and competence. Specifically:

11.1.4(a) direct supervision means the employee works side by side continuously with a Registered Nurse responsible for observing and directing his or her activities in circumstances where, in the judgement of the Registered Nurse, such an arrangement is warranted in the interests of safe and/or effective practice;

11.1.4(b) indirect supervision means such other supervision provided to an employee assuming responsibility for functions delegated by a Registered Nurse in circumstances where, in the judgement of the Registered Nurse accountable for such delegation, direct supervision of the employee is not required.

11.1.5 Pay point 1 means the Pay point to which an employee will be appointed as an Enrolled Nurse (as defined) where the employee possesses and may be required to utilise a level of nursing skill and knowledge based on:

11.1.5(a) Training and experience

- 11.1.5(a)(i)** The satisfactory completion of a hospital based course of training in nursing of not more than twelve months duration leading to enrolment as an Enrolled Nurse (as defined); or
- 11.1.5(a)(ii)** the satisfactory completion of a course of training of twelve months duration in a specified branch of nursing leading to enrolment on a register or roll maintained by a State/Territory Nurses Registration Board;
- 11.1.5(a)(iii)** the satisfactory completion of a course of training of twelve months duration in a branch of nursing leading to the possession of a qualification required by the employer in the employee's employment.

and practical experience of up to but not more than twelve months in the provision of nursing care and/or services, and, the undertaking of inservice training, subject to its provision by the employing agency, from time to time.

11.1.5(b) Skill indicators

The employee has:

- 11.1.5(b)(i)** limited or no practical experience of current situations; and
- 11.1.5(b)(ii)** limited discretionary judgement, not yet developed by practical experience.

11.1.6 Pay point 2 means the Pay point to which an employee will be appointed or will progress from Pay point 1, having been assessed as being competent at Pay point 1, where the employee possesses and may be required to utilise a level of nursing skill and knowledge based on:

11.1.6(a) Training and experience

- 11.1.6(a)(i)** The satisfactory completion of a hospital based course of general training in nursing of more than twelve months duration and/or 500 or more hours theory content or a course accredited at associate diploma level leading to enrolment as an Enrolled Nurse; or

11.1.6(a)(ii) in addition to the experience, skill and knowledge requirements specified for Pay point 1 (as defined), not more than one further year of practical experience in the provision of nursing care and/or services;

and the undertaking of inservice training, subject to its provision by the employing agency, from time to time.

11.1.6(b) Skill indicators

An employee is required to demonstrate some of the following in the performance of his or her work:

11.1.6(b)(i) a developing ability to recognise changes required in nursing activity and in consultation with the Registered Nurse, implement and record such changes, as necessary; and/or

11.1.6(b)(ii) is able to relate theoretical concepts to practice; and/or

11.1.6(b)(iii) requires assistance in determining priorities.

11.1.7 Pay point 3 means the Pay point to which an employee will be appointed or progress from Pay point 2, having been assessed as being competent at Pay point 2, where the employee possesses and may be required to utilise a level of nursing skill and knowledge based on:

11.1.7(a) Training and experience

In addition to the experience, skill and knowledge requirements specified for Pay point 2 (as defined), not more than one further year of practical experience in the provision of nursing care and/or services and the undertaking of inservice training, subject to its provision by the employing agency, from time to time.

11.1.7(b) Skill indicators

An employee is required to demonstrate some of the following in the performance of his or her work:

11.1.7(b)(i) an ability to organise, practice and complete nursing functions in stable situations with limited direct supervision; and/or

11.1.7(b)(ii) the use of observation and assessment skills to recognise and report deviations from stable conditions; and/or

11.1.7(b)(iii) demonstrated flexibility in the capacity to undertake work across a broad range of nursing activity and/or competency in a specialised area of practice; and/or

11.1.7(b)(iv) uses communication and interpersonal skills to assist in meeting psychosocial needs of individuals/groups.

11.1.8 Pay point 4 means the Pay point to which an Enrolled Nurse (as defined) will be appointed or progress from Pay point 3, having been assessed as being competent at Pay point 3, where such an employee possesses and may be required to utilise a level of nursing skill and knowledge based on:

11.1.8(a) Training and experience

11.1.8(a)(i) In addition to the experience, skill and knowledge requirements specified for Pay point 3 (as defined), not more than one further year of practical experience in the provision of nursing care and/or services; and

11.1.8(a)(ii) the undertaking of inservice training, subject to its provision by the employing agency, from time to time.

11.1.8(b) Skill indicators

An employee is required to demonstrate some of the following in the performance of his or her work:

11.1.8(b)(i) demonstrable speed and flexibility in accurate decision making; and/or

11.1.8(b)(ii) organises own workload and sets own priorities with minimal direct supervision; and/or

11.1.8(b)(iii) uses observation and assessment skills to recognise and report deviations from stable conditions across a broad range of patient and/or service needs; and/or

11.1.8(b)(iv) uses communication and interpersonal skills to meet psychosocial needs of individuals/groups.

11.1.9 Pay point 5 means the Pay point to which an Enrolled Nurse (as defined) will be appointed or shall progress from Pay point 4, having been assessed as being competent at Pay point 4, where such an employee possesses and may be required to utilise a level of nursing skill and knowledge acquired on the basis of:

11.1.9(a) Training and experience

11.1.9(a)(i) In addition to the experience, skill and knowledge requirements specified for Pay point 4 (as defined), not more than one further year of practical experience in the provision of nursing care and/or services; and

11.1.9(a)(ii) the undertaking of relevant inservice training, subject to its provision by the employing agency, from time to time.

11.1.9(b) Skill indicators

An employee is required to demonstrate all of the following in the performance of his or her work:

- 11.1.9(b)(i) contributes information in assisting the Registered Nurse/s with development of nursing strategies/improvements within the employee's own practice setting and/or nursing team, as necessary; and
- 11.1.9(b)(ii) responds to situations in less stable and/or changed circumstances resulting in positive outcomes, with minimal direct supervision; and
- 11.1.9(b)(iii) demonstrates efficiency and sound judgement in identifying situations requiring assistance from a Registered Nurse.

11.2 Wages

[11.2.1 varied by PR949226; PR960015 ppc 19Jul05]

- 11.2.1 The following will be the weekly rates of wages payable to employees covered by this award:

	Base rate per week	Arbitrated Safety Net adjustments	Total rate per week
	\$	\$	\$
Pay point 1	519.20	71.00	590.20
Pay point 2	528.60	71.00	599.60
Pay point 3	538.10	71.00	609.10
Pay point 4	547.50	71.00	618.50
Pay point 5	554.90	71.00	625.90

11.2.2 Pay point progression

Subject to the terms specified for each Pay point as defined in this award herein, each employee will progress on his or her annual anniversary date from one Pay point to the next, having regard to the acquisition and utilisation of skills and knowledge through experience in his or her practice setting/s over such period.

- 11.2.3 Provided that an employee's progression may be deferred or refused by the employer, provided that any such deferral or refusal is referable only to the terms specified for each Pay point (as defined), and is not unreasonably nor arbitrarily imposed by the employer. It will be considered unreasonable if the employer has refused to provide training and/or opportunities to work in various practice settings in the employer's establishment.

11.2.4 Appeal and review

An employee may appeal a deferral or refusal imposed under 11.2.2, provided that where such appeal results in a revocation of the employer's decision, Pay point progression will be deemed to operate and be payable from the employee's anniversary date for such progression, pursuant to 11.2.1.

11.2.5 Paragraph 11.2.2, will not operate to prevent:

11.2.5(a) a review, initiated by either the employer or employee, of a deferral imposed pursuant to 11.2.2; and/or

11.2.5(b) the lifting of such a deferral at, and operative, from such date;

where circumstances have changed such that the employee appropriately falls within the terms specified for his/her next Pay point (as defined).

11.2.6 An appeal or review, for the purposes of this subclause, shall be undertaken and resolved in accordance with clause 26 - Dispute resolution procedure.

11.2.7 Accelerated advancement

Subject to 11.2.8, an employee (other than an Enrolled Nurse appointed in his/her first year of experience at Pay point 2 pursuant to 11.1.5(a)(i)), will be entitled to accelerated advancement by one Pay point:

11.2.7(a) for possession of a post enrolment qualification recognised by the employer;
or

11.2.7(b) on completion of a post enrolment course of at least six months duration;

where such an employee is required to perform duties to which such training is directly relevant.

11.2.8 An employee who has advanced in accordance with 11.2.7 will not be entitled to further accelerated advancement pursuant to this subclause.

11.3 Recognition of training, experience and skill

All relevant training, experience and skills as an Enrolled Nurse, other than such experience pre-dating any break of three or more consecutive years, shall be counted for the purposes of determining the appropriate Pay point on appointment for employees appointed thereafter.

12. TRAVELLING

12.1 An employee, when travelling on duty away from her/his home station or headquarters, will not by reason of such travelling suffer any interruption of the continuity of her/his pay for ordinary working hours in each day, but no overtime will be allowed for time occupied in travelling.

- 12.2** Where an employee is rostered for duty at a hospital other than her/his home station for a period of less than three months, reasonable travelling time will be allowed for the journey. In addition to the ordinary rate of pay reasonable excess daily travelling costs between her/his place of residence or home station, as determined by the employer, will be paid. The words **excess daily travelling costs**, for the purpose of this subclause mean the amount by which the cost of travelling to and from the place of employment exceeds the sum (if any) which the employee ordinarily pays in travelling each day between her/his place of residence and her/his station.
- 12.3** When travelling on duty outside the metropolitan area, employees will be reimbursed the actual reasonable travelling costs incurred. The cost of such travelling will be depend on the time the employee leaves her/his headquarters or home. If the employee leaves headquarters or home after, or returns before, 8.00 a.m., 1.00 p.m., or 6.00 p.m. and midnight the respective cost of breakfast, lunch, dinner or bed will not be reimbursed.
- 12.4** If any employee, except at her/his own request, or on account of misconduct, is required by the employer to transfer to any station other than her/his home station, she/he shall be paid the actual reasonable cost of the removal of her/his household effects, unless the employer undertakes the removal.

13. PAYMENT OF WAGES

Wages will be paid into the employee's account with a bank or other financial institution registered in Western Australia through an electronic transfer fund.

14. HOURS

- 14.1** The ordinary hours of duty will be an average of 38 hours per week with the hours actually worked being 40 per week or 80 per fortnight at the option of the employer.
- 14.1.1** Except where provided elsewhere in this award the ordinary hours will be worked with two hours of each week's work accruing as an entitlement of a maximum of twelve accrued days off which will be taken as a minimum period of one week made up of five consecutive accrued days off in conjunction with a period of annual leave or at a time mutually acceptable to the employer and the employee.
- 14.1.2** Notwithstanding the provisions of 14.1.1 where an employer and employee mutually agree accrued days off may be taken in a period of less than five consecutive days, provided that any period will be a full day or a multiple thereof.
- 14.1.3** This subclause does not apply to part-time and casual employees who do not accrue time off.
- 14.2** By agreement between the employer and the employee the ordinary hours (average of 38 hours per week) of an employee in lieu of the provisions of 14.1 may be worked by any other arrangement in accordance with the provisions of clause 25 - Enterprise flexibility.

- 14.3** Notwithstanding anything to the contrary in this clause and at the option of the employer, nurses employed in clinics or departments which function during the normal hours of duty on Monday, Tuesday, Wednesday, Thursday, Friday and Saturday may be granted hours of duty together with public holidays and annual leave as are generally applicable to the clerical staff employed in the said clinics or departments. The daily hours of duty shall include a break of not more than one hour for lunch and such time will not be included as part of the normal working week of 38 hours.
- 14.4** All rosters will be for fortnightly periods.
- 14.5** An employer and employee may by agreement substitute the accrued days off the employee is to take for another day in which case the accrued days off will become ordinary working days.
- 14.6** A roster for accrued days off will be posted at least four weeks before the time it comes into operation.
- 14.7** A roster for accrued days off may allow an employee to take accrued days off before they become due.
- 14.8** Prior to going on night duty a nurse will, wherever practicable, come off duty at 4.00 p.m. and go on at 11.30 p.m. the same night, provided that night duty is not to be preceded or succeeded by duty commencing after 12.30 p.m.

15. MEALS

Meal breaks will be a minimum of 30 minutes and will not be counted as time worked, provided that where an employee is held on call within the hospital, the period on call will be counted in the ordinary working hours for that day.

16. POST MORTEM ALLOWANCE

[16 varied by PR949226; PR960015 ppc 19Jul05]

A nurse carrying out mortuary duties in connection with post mortem examinations will be paid an allowance of \$2.49 per body.

17. HIGHER DUTIES

- 17.1** An employee called upon to perform work carrying a higher minimum rate than her/his regular rate of pay for a period of more than four hours in the shift will be paid the higher minimum for the time engaged on such work.
- 17.2** Where an employee is called upon to relieve a Director of Nursing for a period of not less than five days the employee will receive that rate of pay for that week.
- 17.3** Where the period of relieving is of less than five days duration, the employee shall retain the conditions of this award and shall receive any higher duties allowance applicable, provided that Whitby Falls is excluded from the terms of this subclause.

18. OVERTIME, RECALL AND ON CALL

18.1 Except as hereinafter provided all time worked in excess of ordinary working hours prescribed in clause 14 - Hours; or 9.2 - Part-time employment, be paid for as follows:

18.1.1 For all authorised overtime worked by a full-time employee in excess of their rostered ordinary hours of work outside the ordinary hours of her/his shift Monday to Saturday inclusive, payment will be made at the rate of time and a half for the first three hours and double time thereafter.

18.1.2 For all authorised overtime worked on a Sunday by a full-time employee payment will be made at the rate of double time.

18.1.3 For all authorised overtime worked on a public holiday by a full-time employee payment will be made at the rate of double time and a half, exclusive of loadings.

18.1.4 For all authorised time worked by a part-time employee in excess of rostered hours the employee will:

18.1.4(a) receive credit for those hours in the accumulation of other pro rata entitlements under this award and be paid at the rate of ordinary time for all hours worked less than 38 per week; or

18.1.4(b) be paid at ordinary time and receive an allowance equal to that provided to casual employees under this award for such hours worked less than 38 per week.

18.1.5 For all authorised time worked by a part-time employee in excess of 38 hours per week the provision of 18.1.1, 18.1.2 and 18.1.3 will apply.

18.2 Subject to clause 18.3 an employer may require an employee to work reasonable overtime at overtime rates.

18.3 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 having regard to:

18.3.1 any risk to employee health and safety;

18.3.2 the employee's personal circumstances including any family responsibilities;

18.3.3 the needs of the workplace or enterprise;

18.3.4 the notice (if any) given by the employer of the overtime and by the employee of his or her intention to refuse it; and

18.3.5 any other relevant matter.

[18.4 varied by PR949226; PR960015 ppc 19Jul05]

18.4 Where an employee is required to work overtime for a period of at least two hours in excess of the rostered daily hours, without being informed before booking off on the previous day, she/he will be provided with a meal free of cost or paid an allowance of \$6.45 in lieu of a meal.

18.5 Where it is mutually agreed by the employee and the employer, time off in lieu of payment for overtime may be allowed proportionate to the payment to which the employee is entitled. Such time off shall be taken at a mutually convenient date.

18.6 Recall

18.6.1 An employee who is recalled to work for any purpose will be paid a minimum of three hours at the appropriate overtime rate provided that the employee will not be required to work for three hours if the work for which the employee was recalled to perform is completed in less time.

18.6.2 Where an employee is recalled to work for any purpose within three hours of commencing normal duty, the employee will be paid at the appropriate overtime rate for that period up to and until the commencement time of normal duty, but the employee will not be obliged to work for the full period if the work for which the employee was recalled is completed in less time.

18.6.3 Where an employee is recalled to duty in accordance with 18.6.1 and 18.6.2, then the payment of the appropriate overtime rate commences from:

18.6.3(a) in the case of an employee who is on call, from the time the employee starts work; and

18.6.3(b) in the case of an employee who is not on-call, time spent travelling to and from the place of duty where the employee is actually recalled to perform emergency duty will be included with actual duty performed for the purpose of overtime payment.

Provided that where an employee is recalled within three hours of commencing normal duty, only time spent in travelling to work will be included with actual duty for the purpose of overtime payment.

18.6.4 If an employee is recalled to work the employee will:

18.6.4(a) except as provided in 18.6.4(b), be provided free of charge with transport from home to the health care site and return or, be paid the vehicle allowance provided in clause 15.11 of the *Nurses (ANF-WA Public Sector) Award, 2002*.

18.6.4(b) if recalled to work within three hours of commencing normal duty and the employee remains at work, the employee will be provided free of charge with transport from home to the health care site, or be paid the vehicle allowance specified in 18.6.4(a), for the journey from the employee's home to the health care site.

18.7 On call

18.7.1 An employee placed on-call is required to remain at her/his private residence or any other mutually agreed place as will enable the employer to readily contact her/him during the hours for which she/he has been placed on-call. This does not prevent the provision by employers of electronic or other devices by which the employee can be contacted as an alternative to being stationed at an agreed place. The employer will provide such devices at no charge.

18.7.2 An employee who is rostered to be on-call at such place as prescribed in 18.7.1 between rostered shifts of ordinary hours:

[18.7.2(a) varied by PR949226; PR960015 ppc 19Jul05]

18.7.2(a) from Monday to Friday shall receive an allowance of \$15.85;

[18.7.2(b) varied by PR949226; PR960015 ppc 19Jul05]

18.7.2(b) on a Saturday shall receive an allowance of \$23.77;

[18.7.2(c) varied by PR949226; PR960015 ppc 19Jul05]

18.7.2(c) on a Sunday, public holiday or any other day on which the employee is not rostered on duty shall receive an allowance of \$27.74;

provided that only one allowance shall be payable in any period of 24 hours.

18.7.3 Subject to 18.7.1, should an employee rostered to be on call be recalled to duty, she/he is entitled to receive normal overtime provisions in accordance with this clause.

- 18.7.4** An employee rostered to be on-call or part thereof spanning two days over which two different on-call allowances apply, will receive a payment which is equal to the allowance payable for the day attracting the higher allowance.
- 18.7.5** If the usual means of contact between the employer and the employee on-call, is a telephone and if the employee pays or contributes towards the payment of the rental of such telephone, the employer will reimburse the employee 1/52nd of the annual rental paid by the employee for each seven days on which an employee is required to be on-call.
- 18.7.6** No employee will be required to remain on-call whilst on leave or the day before commencing leave, or whilst on accrued days off, or the day before commencing accrued days off, unless by mutual agreement between the employee and the employer.

19. SHIFT WORK

- 19.1** The loading on the ordinary rates of pay for an employee who works a completed rostered afternoon shift commencing after 12.00 noon and finishing after 6.00 p.m. on week days will be 12.5%. This additional payment does not apply to an employee who on any week day commences his/her ordinary hours of work after 12.00 noon and completes those hours at or before 6.00 p.m. on that day.
- 19.2** The loading on the ordinary rates of pay for an employee who works a rostered night shift between the hours of 6.00 p.m. and 7.30 a.m. on a weekday will be 15%.

- 19.3** An employee rostered to work ordinary hours between midnight Friday and midnight on the following Saturday will be paid a loading of 50% on actual hours worked during this period.
- 19.4** An employee rostered to work ordinary hours between midnight Saturday and midnight on the following Sunday will be paid a loading of 75% on actual hours worked during this period.
- 19.5** Provided that the rates prescribed in this clause shall be in substitution for and not cumulative on the rates prescribed in 19.1.

20. ANNUAL LEAVE

Period of leave

- 20.1** Except as hereinafter provided a period of her/his employer will allow 152 hours leave to an employee, after each period of twelve months continuous service with such employer. Employees will be entitled to a further 38 hours paid leave for each completed twelve months continuous service north of 26 degrees south latitude.
- 20.2** Shift employees (i.e. employees who rotate afternoon and/or night shift with day shift), shall be granted an additional 38 hours leave. Provided that for employees whose shifts are not subject to regular rotation, one working day's additional leave with a maximum of five working days for each seven weeks actually worked on afternoon and/or night shift will be granted; provided further, that employees who have completed 31 weeks on afternoon and/or night shift shall be granted the additional 38 hours leave.
- 20.3** The employee will be paid for any period of annual leave prescribed in this clause at the ordinary rate of wage the employee has received for the greatest proportion of the calendar month prior to taking the leave, and, in the case of shift workers, that rate of wage will include the shift and weekend penalties the employee would have received had the employee not proceeded on annual leave.
- 20.3.1** Where it is not possible to calculate the shift and weekend penalties the employee would have received, the employee will be paid at the rate of the average of such payments made each week over the four weeks prior to taking the leave.
- 20.3.2** In addition to the rates prescribed in 20.3 and 20.3.1 an employee shall be paid, where her/his weekly entitlement under 20.3 or 20.3.1, is less than 18.75% in addition to her/his weekly rate of pay prescribed in clause 11 - Rates of pay - Enrolled Mental Health Nurses, a loading which will produce an amount equal to 18.75% in addition to the rate of wage prescribed in clause 11 - Rates of pay - Enrolled Mental Health Nurses.
- 20.3.3** The amount in excess of the ordinary wage resulting from the calculation in 20.3.2 will not exceed 125% of the amount recorded by the Australian Bureau of Statistics as the average weekly earning for an adult male employed in Western Australia during the September quarter immediately preceding the date on which annual leave referred to herein accrued.

20.4 Subject as hereinafter provided:

20.4.1(a) If after one months continuous employment an employee lawfully terminates her/his employment or her/his employment is terminated by the employer through no fault of the employee, the employee will be paid 2.92 hours pay in respect of each completed week of continuous service for which annual leave has not already been taken.

20.4.1(b) In the case of a shift worker within the meaning of 20.2, she/he will be paid such additional days leave as have accrued under 20.2 at the date of termination in respect of each completed week of continuous service for which annual leave has not already been taken.

20.4.1(c) Employees north of 26 degrees south latitude will be paid 3.65 hours pay in respect of each completed week of continuous service for which annual leave has not already been taken and shift workers within the meaning of 20.2 will be paid such additional days leave as have accrued under 20.2 in respect of each completed week of continuous service for which annual leave has not already been taken.

20.4.1(d) In the case of any nurse transferring from one employer to another employer respondent to this award, the annual leave entitlement will be transferred unless the employee requests the annual leave to be paid out in full.

20.4.2 If the service of an employee terminates and the employee has taken a period of leave in accordance with 20.5 and if the period of leave so taken exceeds that which would become due pursuant to 20.4.1, the employee will be liable to repay an amount representing the difference between the amount received by the employee for the period of leave taken in accordance with 20.5 and the amount which would have accrued in accordance with 20.4.1. The employer may deduct this amount from monies due to the employee by reason of the other provisions of this award at the time of termination.

20.4.3 In addition to any payment to which she/he may be entitled under this subclause an employee whose employment terminates after she/he has completed a twelve months qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period will be given payment in lieu of that leave unless she/he has been justifiably dismissed for misconduct and the misconduct for which she/he has been dismissed occurred prior to the completion of that qualifying period.

20.5 An employee may, with the approval of the employer, be allowed to take the annual leave prescribed by this clause before the completion of twelve months continuous service as prescribed by 20.1.

20.6 The annual leave prescribed in this clause may by consent between the employer and the employee be taken in two portions if so required by the employee provided that no portion shall be less than two consecutive weeks.

- 20.6.1** By mutual agreement between the employer and the employee the annual leave may be further split on one additional occasion provided that no portion shall be less than one week.
- 20.6.2** When an employee requests that the annual leave be split into two or three portions the employer shall make every reasonable endeavour to accommodate the wishes of the employee.
- 20.7** When computing the annual leave under this clause, no deduction will be made from such leave in respect of the period an employee is on annual leave, absent through sickness with or without pay, except for that portion of an absence that exceeds three months, or absence on workers' compensation, except for that portion of an absence that exceeds six months in any year.
- 20.8** When an employee proceeds on 152 hours leave prescribed by 20.1, there will be no accrual towards an accrued day off. Accrual towards an accrued day off will continue during any other period of annual leave prescribed by this clause.
- 20.9** The provisions of this clause do not apply to casual employees.

21. PUBLIC HOLIDAYS

- 21.1** The following days or the days observed in lieu thereof, will subject as hereinafter provided, be allowed as holidays without deduction of pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.
- 21.2** Where any of the days mentioned in 21.1 falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday, the holiday will be observed on the next succeeding Tuesday. In such case the substitute day will be a holiday without deduction of pay and the day for which it is substituted will not be a holiday.
- 21.2.1** When any of the days observed as a holiday under this clause falls during an employee's annual leave, the employee will for each such day, be allowed a day's leave with pay to be taken immediately after completion of that annual leave.
- 21.2.2** When any of the days observed as a holiday as prescribed in this clause falls on a day when a rostered employee is rostered off duty and the employee has not been required to work on that day she/he will be paid as if the day was an ordinary working day or if the employer agrees be allowed to take a day's holiday in lieu of the holiday at a time mutually acceptable to the employer and the employee.
- 21.2.3** When any of the days observed as a holiday prescribed in this clause falls on a day when an employee is on an accrued day off the employee will be allowed to take a day's holiday in lieu of the holiday on a day immediately following the employee's annual leave or at a time mutually acceptable to the employer and the employee.

- 21.3** Any employee who is required to work on the day observed as a holiday as prescribed in this clause in her/his normal hours of labour or ordinary hours in the case of a rostered employee will be paid for the time worked at the rate of double time and one half or if the employee agrees be paid for the time worked at the rate of time and one half and in addition be allowed at a time mutually acceptable to the employer and the employee to take the time worked on public holidays as time off in lieu of another day or days in multiples of two hours or more.
- 21.4** An employee will be entitled to take days in lieu of public holidays accrued pursuant to 21.2.2 and 21.2.3 and 21.3 in conjunction with a period of annual leave, provided that the entitlement will not exceed five days per year.
- 21.5** When an employee is absent on leave without pay, sick leave without pay or workers' compensation, any day observed as a holiday on a day falling during such absence will not be treated as a paid holiday. Where the employee is on duty or available on the whole of the working day immediately preceding a holiday, or resumes duty or is available on the whole of the working day immediately following a day observed as a holiday as prescribed by this clause the employee will be entitled to be paid for such holiday.
- 21.6** The additional payments, prescribed in 21.3 will be in substitution for any additional payment for work done on any afternoon and/or night shift.
- 21.7** Where:
- 21.7.1** a day is proclaimed as a public holiday or as a public half-holiday under section 7 of the *Public and Bank Holidays Act, 1972 (WA)*; and
- 21.7.2** that proclamation does not apply throughout the State or to the metropolitan area of the State;
- that day shall be a whole holiday or, as the case may be, a half-holiday for the purposes of this award within the district or locality specified in the proclamation.
- 21.8** An employee whilst on a public holiday prescribed by this clause will continue to accrue an entitlement to an accrued day off as prescribed in clause 14 - Hours.
- 21.9** This clause does not apply to casual employees.

22. PERSONAL LEAVE

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

~~¹ The provisions of this clause apply to full-time and regular part-time employees (on a pro rata basis) but do not apply to casual employees. The entitlements of casual employees are set out in clause 22.6~~

22.1 Amount of paid personal leave

~~²22.1.1 — Paid personal leave will be available to an employee when they are absent due to:~~

¹ Varied by PR967245, 23 January 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

² Varied by PR967245, 23 January 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

- ~~personal illness or injury (sick leave); or~~

- ~~• for the purposes of caring for an immediate family or household member that is sick and requires the employee's care and support (carer's leave); or~~
- ~~• because of bereavement on the death of an immediate family or household member (bereavement leave).~~

22.1.1 Paid personal leave will be available to employees when they are absent due to:

- personal illness or injury (sick leave); or
- for the purposes of caring for an immediate family or household member who is sick and requires the employee's care and support or who requires care due to an unexpected emergency (carers leave); or
- because of bereavement on the death of an immediate family or household member (bereavement leave).

22.1.2 The amount of personal leave to which an employee is entitled depends on how long he or she has worked for the employer and accrues as follows:

22.1.2(a) 92 hours will be available in the first year of service;

22.1.2(b) 92hours will be available per annum in the second and subsequent years of service.

22.1.3 In any year unused personal leave accrues by the lesser of:

22.1.3(a) 76 hours less the amount of sick leave and carer's leave taken during the year; or

22.1.3(b) the balance of that year's unused personal leave.

22.2 Immediate family or household

22.2.1 The entitlement to carer's or bereavement leave is subject to the person in respect of whom the leave is taken being either:

22.2.1(a) a member of the employee's immediate family; or

22.2.1(b) a member of the employee's household.

22.2.2 The term **immediate family** includes:

22.2.2(a) spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse means a person of the opposite sex to the employee who lives with the employee as his or her husband or wife on a bona fide domestic basis; and

22.2.2(b) child or an adult child (including an adopted child, a step child or an ex-nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.

22.3 Sick leave

- 22.3.1** An employee is entitled to use up to 76 hours of the current year's personal leave entitlement on a weekly pro rata basis as sick leave in the first year of service and 76 hours in the second and subsequent years of service.
- 22.3.2** An employee is entitled to use accumulated personal leave for the purposes of sick leave where the current year's sick leave entitlement has been exhausted.

- 22.3.3** Payment for sick leave will be at the rate the employee would have received had the employee not proceeded on sick leave, and the accrued entitlement to sick leave will be reduced by the number of ordinary hours the employee is rostered to work on the day the employee is absent on sick leave.
- 22.3.4** An employee will not be entitled to paid sick leave if the illness or injury occurs during a period of accrued time off, unless the illness is for a period of seven consecutive days or more.
- 22.3.5** An employee while on paid sick leave will continue to accrue an entitlement to an accrued day(s) off.
- 22.3.6** For the purposes of this clause service will be deemed to be continuous so that an employee's accrued entitlement to sick leave will not be diminished due to resigning from any employer party to this award and commencing with another employer party to this award provided that the time between ceasing and resuming employment does not exceed the period of any annual leave owing plus one week.
- 22.3.7** An employee will advise the employer as soon as reasonably practicable of the inability to attend work, the nature of the illness or injury and the estimated duration of the absence. Other than in extraordinary circumstances, such advice will be given to the employer within 24 hours of the commencement of the absence.
- 22.3.8** An employee will not be entitled to the benefit of this clause unless the employee produces proof to the satisfaction of the employer of the sickness, provided that the employer will not be entitled to a medical certificate for absences of less than three consecutive working days unless the total of such absences exceeds five days in any one accruing year.
- 22.3.9** An employee who suffers personal ill health or injury whilst on annual leave may be paid sick leave in lieu of annual leave subject to:
- 22.3.9(a)** providing a medical certificate stating the illness or injury necessitated confinement to home or hospital for seven consecutive days or more;
 - 22.3.9(b)** the portion of annual leave coinciding with the paid sick leave is to be taken at a time agreed by the employer and employee or will be added to the next period of annual leave; or if termination occurs before then, be paid for in accordance with the annual leave provisions of this award;
 - 22.3.9(c)** payment for replaced annual leave will be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in clause 20 - Annual leave, will be deemed to have been paid with respect to the replaced annual leave.
- 22.3.10** This clause will not apply where the employee is entitled to compensation under the *Workers' Compensation and Rehabilitation Act 1981*.

22.4 Bereavement leave

- 22.4.1** An employee is entitled to use up to 2 days personal leave as bereavement leave on each occasion.
- 22.4.2** Where an employee has exhausted all personal leave entitlements, including accumulated entitlements, they will be entitled to unpaid bereavement leave by agreement with the employer.
- 22.4.3** The employer may require the employee to provide satisfactory evidence of the death of the member of the employee's immediate family or household.
- 22.4.4** Payment in respect of bereavement leave is to be made only where the employee otherwise would have been on duty and will not be granted in any case where the employee concerned would have been off duty in accordance with her or his roster, or on long service leave, annual leave, sick leave, workers compensation, leave without pay or on a public holiday.
- 22.4.5** An employee will not be entitled to claim payment for bereavement leave when the employee is absent on an accrued day off.
- 22.4.6** An employee whilst on bereavement leave will continue to accrue an entitlement to an accrued day off.
- ³22.4.7** An employee may take unpaid bereavement leave by agreement with the employer.

22.5 Carer's leave

- 22.5.1** An employee is entitled to use any accrued sick leave entitlement each year as carer's leave.
- 22.5.2** Except by agreement with the employer, the employee is not entitled to take carer's leave where another person has taken leave to care for the same person.
- 22.5.3** Before taking carer's leave, an employee must, wherever practicable, give the employer notice prior to the absence of the intention to take carer's leave. The notice must include:
- 22.5.3(a)** the name of the person requiring care and support and her or his relationship to the employee;
 - 22.5.3(b)** the reasons for taking the leave; and
 - 22.5.3(c)** the estimated length of absence.
- 22.5.4** If it is not practicable for the employee to give prior notice of absence, the employee must notify the employer by telephone at the first opportunity on the day of the absence.

³ Varied by PR967245, 23 January 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

⁴22.5.5 ~~An employee may take unpaid carer's leave by agreement with the employer. Where employees have exhausted all paid personal leave entitlements, they are entitled to take unpaid personal leave to care for members of their immediate family or household who are sick and require care and support or who require care due to an unexpected emergency. The employer and the employee shall agree on the period. In the absence of agreement, the employee is entitled to take up to two days (up to a maximum of 16 hours) per occasion, provided the requirements of 22.5.3, 22.5.6 and 22.5.7 are met.~~

⁴ Varied by PR967245, 23 January 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

22.5.6 The employee must, if required by the employer, establish 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.

⁵22.5.7 When taking leave to care for members of their immediate family or household who require care due to an unexpected emergency, the employees must, if required by the employer, 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.

22.6 Casual Employment

22.6.1 Caring Responsibilities

22.6.1(a) Subject to the evidentiary and notice requirements in 22.4.3, 22.5.3, 22.5.6 and 22.5.7, casual employees are entitled to not be available to attend work, or to leave work:

- if they need to care for members of their immediate family or household who are sick and require care and support, or who require care due to an unexpected emergency, or the birth of a child; or
- upon the death in Australia of an immediate family or household member.

22.6.1(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.

22.6.3(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.

23. PARENTAL LEAVE

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

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

An **eligible casual employee** means a casual employee:

- (a) employed by an employer on a regular and systematic basis for several periods of employment or on a regular and systematic basis for an ongoing period of employment during a period of at least 12 months; and

⁵ Varied by PR967245, 23 January 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

⁶ Varied by PR967245, 23 January 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

- (b) who has, but for the pregnancy or the decision to adopt, a reasonable expectation of ongoing employment.

For the purposes of this clause, **continuous service** is work for an employer on a regular and systematic basis (including any period of authorised leave or absence).

An employer must not fail to re-engage a casual employee 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.

An eligible casual employee employed by their current employer, on or prior to 1 January 1998, shall be entitled to parental leave under the term of the award as of 4 July 2001.

An eligible casual employee employed on or after 4 July 2001 shall be entitled to parental leave under the term of the award as of 4 July 2002.

23.1 Definitions

23.1.1 For the purpose of this clause **child** means a child of the employee under the age of one year except for adoption of a child where 'child' means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.

23.1.2 Subject to 23.1.3, in this clause, **spouse** includes a de facto or former spouse.

23.1.3 In relation to 23.5, spouse includes a de facto spouse but does not include a former spouse.

23.2 Basic entitlement

23.2.1 After twelve months continuous service, parents are entitled to a combined total of 52 weeks unpaid parental leave on a shared basis in relation to the birth or adoption of their child. For females, maternity leave may be taken and for males, paternity leave may be taken. Adoption leave may be taken in the case of adoption.

23.2.2 Subject to 23.3.6, parental leave is to be available to only one parent at a time, in a single unbroken period, except that both parents may simultaneously take:

23.2.2(a) for maternity and paternity leave, an unbroken period of up to one week at the time of the birth of the child;

23.2.2(b) for adoption leave, an unbroken period of up to three weeks at the time of placement of the child.

23.3 Maternity leave

23.3.1 An employee must provide notice to the employer in advance of the expected date of commencement of parental leave. The notice requirements are:

23.3.1(a) of the expected date of confinement (included in a certificate from a registered medical practitioner stating that the employee is pregnant) - at least ten weeks;

23.3.1(b) of the date on which the employee proposes to commence maternity leave and the period of leave to be taken - at least four weeks.

23.3.2 When the employee gives notice under 23.3.1(a) the employee must also provide a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

23.3.3 An employee will not be in breach of this clause if failure to give the stipulated notice is occasioned by confinement occurring earlier than the presumed date.

23.3.4 Subject to 23.2.1 and unless agreed otherwise between the employer and employee, an employee may commence parental leave at any time within six weeks immediately prior to the expected date of birth.

23.3.5 Where an employee continues to work within the six week period immediately prior to the expected date of birth, or where the employee elects to return to work within six weeks after the birth of the child, an employer may require the employee to provide a medical certificate stating that she is fit to work on her normal duties.

23.3.6 Special maternity leave

23.3.6(a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child, then the employee may take unpaid special maternity leave of such periods as a registered medical practitioner certifies as necessary.

23.3.6(b) Where an employee is suffering from an illness not related to the direct consequences of the confinement, an employee may take any paid sick leave to which she is entitled in lieu of, or in addition to, special maternity leave.

23.3.6(c) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave to which she is then entitled and such further unpaid special maternity leave as a registered medical practitioner certifies as necessary before her return to work. The aggregate of paid sick leave, special maternity leave and parental leave, including parental leave taken by a spouse, may not exceed 52 weeks.

23.3.7 Where leave is granted under 23.3.4, during the period of leave an employee may return to work at any time, as agreed between the employer and the employee provided that time does not exceed four weeks from the recommencement date desired by the employee.

23.4 Paternity leave

23.4.1 An employee will provide to the employer at least ten weeks prior to each proposed period of paternity leave, with:

23.4.1(a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement, or states the date on which the birth took place; and

23.4.1(b) written notification of the dates on which he proposes to start and finish the period of paternity leave; and

23.4.1(c) a statutory declaration stating:

23.4.1(c)(i) he will take that period of paternity leave to become the primary care-giver of a child;

23.4.1(c)(ii) particulars of any period of maternity leave sought or taken by his spouse; and

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

23.4.2 The employee will not be in breach of 23.4.1 if the failure to give the required period of notice is because of the birth occurring earlier than expected, the death of the mother of the child, or other compelling circumstances.

23.5 Adoption leave

- 23.5.1** The employee will notify the employer at least ten weeks in advance of the date of commencement of adoption leave and the period of leave to be taken. An employee may commence adoption leave prior to providing such notice, where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.
- 23.5.2** Before commencing adoption leave, an employee will provide the employer with a statutory declaration stating:
- 23.5.2(a)** the employee is seeking adoption leave to become the primary care-giver of the child;
 - 23.5.2(b)** particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - 23.5.2(c)** that for the period of adoption leave the employee will not engage in any conduct inconsistent with their contract of employment.
- 23.5.3** An employer may require an employee to provide confirmation from the appropriate government authority of the placement.
- 23.5.4** Where the placement of child for adoption with an employee does not proceed or continue, the employee will notify the employer immediately and the employer will nominate a time not exceeding four weeks from receipt of notification for the employee's return to work.
- 23.5.5** An employee will not be in breach of this clause as a consequence of failure to give the stipulated periods of notice if such failure results from a requirement of an adoption agency to accept earlier or later placement of a child, the death of a spouse, or other compelling circumstances.
- 23.5.6** An employee seeking to adopt a child is entitled to unpaid leave for the purpose of attending any compulsory interviews or examinations as are necessary as part of the adoption procedure. The employee and the employer should agree on the length of the unpaid leave. Where agreement cannot be reached, the employee is entitled to take up to two days unpaid leave. Where paid leave is available to the employee, the employer may require the employee to take such leave instead.

23.6 Variation of period of parental leave

Unless agreed otherwise between the employer and employee, an employee may apply to their employer to change the period of parental leave on one occasion. Any such change to be notified at least four weeks prior to the commencement of the changed arrangements.

23.7 Parental leave and other entitlements

An employee may in lieu of or in conjunction with parental leave, access any annual leave or long service leave entitlements which they have accrued subject to the total amount of leave not exceeding 52 weeks.

23.8 Transfer to a safe job

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

23.8.2 If the transfer to a safe job is not practicable, the employee may elect, or the employer may require the employee to commence parental leave for such period as is certified necessary by a registered medical practitioner.

23.9 Returning to work after a period of parental leave

23.9.1 An employee will notify of their intention to return to work after a period of parental leave at least four weeks prior to the expiration of the leave.

23.9.2 An employee will be entitled to the position which they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to 23.8, the employee will be entitled to return to the position they held immediately before such transfer.

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

23.10 Replacement employees

23.10.1 A replacement employee is an employee specifically engaged or temporarily promoted or transferred, as a result of an employee proceeding on parental leave.

23.10.2 Before an employer engages a replacement employee the employer must inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

⁷23.11 Right to Request

23.11.1 An employee entitled to parental leave pursuant to the provisions of clause 23 may request the employer to allow the employee:

23.11.1(a) to extend the period of simultaneous unpaid parental leave provided for in clause 23.2.2 up to a maximum of eight weeks;

⁷ Varied by PR967245, 23 January 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

23.11.1(b) to extend the period of unpaid parental leave provided for in clause 23.2.1 by a further continuous period of leave not exceeding 12 months;

23.11.1(c) 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.

23.11.2 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.

23.12 ⁸COMMUNICATION DURING PARENTAL LEAVE

23.12.1 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:

23.12.1(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 parental leave; and

23.12.1(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 parental leave.

23.12.2 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 employee intends to return to work and whether the employee intends to request to return to work on a part-time basis.

23.12.3 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 23.12.1

24. LONG SERVICE LEAVE

24.1 The provisions of the General Order of the Western Australian Industrial Relations Commission as it relates to Western Australian Government wages employees will apply to employees covered by this award with the exception that long service leave for the second and subsequent periods of service will accrue at the rate of thirteen weeks leave for seven years continuous service.

⁸ Varied by PR970333, 27 February 2006 but not yet reflected in consolidated version pending publication of official version on the Australian Industrial Relations Commission website.

24.2 When an employee proceeds on long service leave there will be no accrual towards an accrued day off as prescribed in clause 14 - Hours.

25. ENTERPRISE FLEXIBILITY

Where an employer or employees wish to pursue an agreement at the enterprise or workplace about how the award should be varied so as to make the enterprise or workplace operate more efficiently according to its particular needs the following process will apply:

25.1 A consultative mechanism and procedures appropriate to the size, structure and needs of the enterprise or workplace will be established.

25.2 For the purpose of the consultative process the employees may nominate the Federation or other employee representative to represent them.

25.3 Where agreement is reached an application will be made to the Commission.

26. DISPUTE RESOLUTION PROCEDURE

26.1 In the event of a dispute arising in the workplace the procedure to resolve the matter will be as follows:

26.1.1 The employee and their supervisor will meet and confer on the matter; and

26.1.2 If the matter is not resolved at such a meeting, the parties shall arrange for further discussions between the employee and his or her nominated representative, if any, and more senior levels of management.

26.1.3 If the matter is still not resolved a discussion shall be held between representatives of the employer and the Federation or other employee representative.

26.1.4 If the matter is still not resolved it may be referred to the Commission for conciliation and, if necessary, arbitration.

26.1.5 While the parties attempt to resolve the matter work will continue as normal unless an employee has a reasonable concern about an imminent risk to his or her health or safety.

26.2 To assist in the resolution of disputes, an employee who is required to attend industrial proceedings may be granted leave of absence without loss of pay to attend Australian Industrial Relations Commission proceedings. The granting of leave will be subject to the operating requirements of the employer.

26.2.1 The employer may grant paid leave during ordinary working hours to an employee representative to attend a short course conducted by a recognised training provider which is specifically directed towards effective dispute resolution. The granting of leave shall be subject to the operating requirements of the agency.

26.2.2 The specific training course will be agreed between the employer and the individual employee.

SCHEDULE 1- RESPONDENTS

Armadale Lodge, Albany highway, Armadale
Armadale Psychiatric Clinic, 3056 Albany Highway, Armadale
Avro Community Health Centre, 2 Nicholson Road, Subiaco
Bentley Clinic, 35 Mill Street, Cannington
Bentley Lodge, Mill St, Bentley
Bunbury Clinic, Blair Street, Bunbury
Creative Expression Unit, Mooro Drive, Mt Claremont
Eden Hill Cluster Homes, Freeland Square, Eden Hill
Fremantle Clinic, 1 Stirling Street, Fremantle
Geraldton Clinic, Shenton Street, Geraldton
Graylands Hospital, Brockway Road, Mt Claremont
Guildford Community Occupational Therapy Day Centre, Queens Rd, South Guildford
Hillview Child and Adolescent Clinic, 999 Albany Highway East Victoria Park
Hillview Terrace Hospital, Albany Highway, East Victoria Park
Housecraft Training Centre, Mooro Drive, Mt Claremont
Industrial Rehabilitation Division, Mooro Drive, Mt Claremont
Jarrah Road Community Occupational Therapy Day Centre, Jarrah Rd, Bentley
Lemnos Hospital, Stubbs Terrace, Shenton Park
Mildred Creek Centre, 999 Albany Highway, East Victoria Park
Moss Street Lodge, 33 Moss Street, East Fremantle
Multicultural Psychiatric Centre, 590 Newcastle Street, North Perth
Neurosciences Unit, Selby Street, Shenton Park
North Fremantle Workshop, 98 Stirling Highway, North Fremantle
Osborne Clinic, Osborne Place, Stirling
Osborne Lodge, Osborne Place, Stirling
Primary Rehabilitation Unit, Mooro Drive, Mt Claremont
Selby Child and Adolescent Clinic, Selby Street, Shenton Park
Selby Lodge, Lemnos Street, Shenton Park
Stubbs Terrace Hospital, 233 Stubbs Terrace, Shenton Park
Swan Clinic, La Salle Avenue, Viveash
Swan Lodge, Eveline Road, Middle Swan
The East Wing of Swan Lodge, Eveline Rd, Middle Swan (known as La Salle Hospital)
W E Robinson Unit, 999 Albany Highway, East Victoria Park
Warwick Child and Adolescent Clinic, Erindale Road, Warwick
Whitby Falls Hostel, South Western Highway, Mundijong

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