

AG839009 PR956196

AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION

Workplace Relations Act 1996

S.170LS - Agreement about industrial dispute (Division 3)

Liquor, Hospitality and Miscellaneous Union

and

The Minister for Health

(AG2005/2048)

**LHMU - DEPARTMENT OF HEALTH - DENTAL HEALTH SERVICES - FEDERAL
AGREEMENT 2005**

Health and welfare services

DEPUTY PRESIDENT BLAIN

PERTH, 4 MARCH 2005

CERTIFICATION OF AGREEMENT

In accordance with section 170LT of the Workplace Relations Act 1996, the Commission hereby certifies the attached written agreement.

This agreement shall come into force from 4 March 2005 and shall remain in force until 3 March 2008.

BY THE COMMISSION:

DEPUTY PRESIDENT

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LHMU -

DEPARTMENT OF HEALTH

DENTAL HEALTH SERVICES

FEDERAL AGREEMENT

2005

PART 1 - APPLICATION & OPERATION OF AGREEMENT

1. TITLE

This agreement shall be known as the LHMU - Department of Health - Dental Health Services -Federal Agreement 2005.

1A. ARRANGEMENT

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2. DEFINITIONS

"Agency" means Dental Health Services.

"Agreement" means the LHMU - Department of Health - Dental Health Services - Federal Agreement 2005.

"Award" means the Health Employees (Dental Health Services) Award 2003.

"Chief Executive Officer" means the Director, Dental Health Services.

"Employees" means persons employed under the Award who are members of or who are eligible to be members of the Union.

"Employer" means the Minister for Health as defined in clause 4 - Applications and Parties Bound of this Agreement.

"Union" means the Liquor, Hospitality and Miscellaneous Union.

"AIRC" means the Australian Industrial Relations Commission.

3. AIM OF AGREEMENT

3.1 The aims of the Agreement are to enable the parties to develop and implement strategies which:

- (a) recognise and achieve productivity improvements without impairing the quality of services and of patient care; and
- (b) enhance job satisfaction, security and remuneration.

4. APPLICATION AND PARTIES BOUND

4.1 This Agreement is binding on the parties and on employees to which the Health Employees (Dental Health Services) Award 2003 applies.

4.2 The parties to the Agreement are:

(a) the Liquor, Hospitality and Miscellaneous Union; and

(b) the Minister for Health in his incorporated capacity under s.7 of the Hospitals and Health Services Act 1927 (WA) as the Hospitals formerly comprised in the Metropolitan Health Service Board.

4.3 The Director General of Health is the delegate of the Minister for Health in his incorporated capacity under s.7 of the Hospitals and Health Services Act 1927 (WA). In this capacity the Director General acts as the "Employer" for the purposes of this Agreement.

4.4 If the Director General of Health onward delegates any capacity to act as the "Employer" to the Chief Executive Officer or to any other office holder the Director General of Health shall inform the Union in writing of the terms of the delegation. An office holder who acts in accordance with the terms of the delegation from the Director General of Health shall be deemed to have acted as the "Employer" for the purposes of this Agreement.

5. DATE AND PERIOD OF OPERATION

The Agreement shall take effect from the date of certification and remain in force for a period of three (3) years.

6. RELATIONSHIP WITH AWARDS AND AGREEMENTS

6.1 The Agreement shall be read in conjunction with the Health Employees (Dental Health Services) Award 2003 provided that where there is any inconsistency between the express terms of this Agreement and the Award, the express terms of this Agreement shall take precedence to the extent of any such inconsistency.

6.2. This Agreement shall be read in conjunction with the Western Australian Government/ Liquor, Hospitality and Miscellaneous Union Redeployment, Retraining and Redundancy Certified Agreement 2004 (RRR Agreement) provided that where there is any inconsistency between the express terms of this Agreement and the RRR Agreement, the express terms of the RRR Agreement shall take precedence to the extent of any such inconsistency.

6.3 This Agreement shall be read in conjunction with the LHMU - Union Recognition & Job Security Agreement - Department of Health - Dental Health Services 2005 ('the State Agreement'). Except as provided in subclause 6.1, nothing in this Agreement is intended to affect the operation of any agreement or award that includes matters not specifically dealt with in this Agreement.

7. REPLACEMENT OF AGREEMENT

7.1 This agreement cancels and replaces the Hospital Employees (Dental Health Services) General Agreement 2002.

7.2 The parties to the Agreement agree to commence genuine negotiations for a replacement agreement no later than 3 months prior to the date this agreement expires.

8. NO FURTHER CLAIMS

Except where specifically provided for in this Agreement, it is a condition of this Agreement that the parties will not make any further claims with respect to any matter related to wages and working conditions contained in this Agreement.

9. COMMITMENT TO BARGAINING

The parties have agreed that employees engaged to work in classifications covered under this Agreement will not be employed under any form of individual contract or agreement made pursuant to the Workplace Relations Act 1996, or the Industrial Relations Act 1979, as amended or superseded from time to time.

PART 2 GENERAL CONDITIONS

10. WAGES

	Weekly Rate Prior to Certificati on	\$28.60 Weekly Rate Payable on and from 1 August 2004	\$28.60 Weekly Rate Payable on and from 1 August 2005	\$28.60 Weekly Rate Payable on and from 1 August 2006
Dental Technician				
1st year of employment	650.20	678.80	707.40	736.00
2nd year of employment	669.00	697.60	726.20	754.80
3rd year of employment	688.60	717.20	745.80	774.40
4th year of employment and thereafter	708.80	737.40	766.00	794.60
Dental Technician Advanced Level One				
1st year of employment	679.00	707.60	736.20	• 764.80
2nd year of employment	696.50	725.10	753.70	782.30
3rd year of employment	714.80	743.40	772.00	800.60
4th year of employment	744.10	772.70	801.30	829.90

Dental Technician Advanced Level Two				
1st year of employment	708.80	737.40	766.00	794.60
2nd year of employment	730.00	758.60	787.20	815.80
3rd year of employment	752.90	781.50	810.10	838.70
4th year of employment and thereafter	775.80	804.40	833.00	861.60
Apprentices				
1st year	273.10	285.10	297.10	309.10
2nd year	357.60	373.30	389.00	404.80
3rd year	487.70	509.10	530.60	552.00
4th year	572.20	597.30	622.50	647.70

10.2 Safety Net Review Increases After Nominal Expiry Date

If, after the nominal expiry date, this Agreement continues in force pursuant to section 170LX of the Workplace Relations Act 1996, the weekly wage rates of all employees shall increase at the same time and in the same amounts as provided to employees on the minimum award wage by subsequent Australian Industrial Relations Commission Safety Net Reviews. Any wage increases arising from the operation of this Clause shall be taken into account when determining wage increases in any replacement Agreement.

11. HOURS OF WORK - ACCRUED DAY OFF

11.1 The ordinary hours of work of all full-time employees shall be an average of 37.5 hours per week, over any five days of the week to be worked as follows:

(a) Actual hours of 37.5 over 5 days; or

(b) Subject to 11.1 (c), where a full-time employee is engaged to work in a clinic staffed by more than 1 full-time employee, actual hours of 75 hours over nine days per fortnight, with the tenth day to be taken as a rostered day off.

(c) Subclause 11.1 (b) does not apply where an employee is required to work at a clinic as the only Dental Technician.

(d) Where a dental technician who works in accordance with subclause 11.1(b) is required to work at a clinic as the only dental technician because of a change in circumstances, he/she may apply to work actual hours of 82.5 per fortnight for up to four weeks, to be worked as follows

(i) 75 hours over nine days per fortnight; and

(ii) 7.5 hours on the tenth day of the fortnight

with 7.5 hours of each fortnights work accruing as an entitlement to a paid accrued day off.

(e) Applications made under subclause 11.1 (d) will only be agreed where a dental technician

is required to change his/her ordinary hours of work for leave coverage or, where ordinary hours of work are changed with short notice in order to meet operational requirements.

11.2 When working the cycle provided in sub-paragraph 11.1 (d), accrued days off shall be taken as follows:

(a) in conjunction with a period of annual leave; or

(b) at a time mutually acceptable to the employer and the employee; and

(c) where the employer and employee mutually agree, accrued days off can be taken in single day absences.

11.3 The Employer and Employee may, by agreement, substitute the Employee's accrued day off for another day.

12. HIGHER DUTIES ALLOWANCE

12.1 Where an employee is engaged in a higher grade of work for five consecutive days or more, the employee will be paid the higher rate for the period performing the higher grade work.

12.2 This clause replaces clause 14(2) of the Award.

13. PROBATION

13.1 Subject to clause 13.2 of the Agreement, every new employee, other than a casual employee, including employees engaged for a fixed term, shall be on probation for a period of three (3) months.

13.2 An employee who is appointed from the Public Sector of Western Australia, and who has at least three months of continuous satisfactory service immediately prior to appointment will not be required to serve a period of probation.

13.3 At any time during the period of probation the Employer may annul the appointment and terminate the service of the employee by the giving of two (2) weeks notice or payment in lieu thereof.

13.4 At any time during the period of probation the employee may resign by giving two (2) weeks notice.

13.5 A lesser period of notice may be agreed, in writing between the Employer and the employee.

14. SUPPORTED WAGE

14.1 Workers Eligible for a Supported Wage

This clause defines the conditions that will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this clause. In the context of this clause, the following definitions will apply:

"Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "(Supported Wage System: Guidelines and Assessment Process)";

"Accredited Assessor ", means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessment of an individual's productive capacity within the Supported Wage System;

"Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme; and

"Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

14.2 Eligibility Criteria

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

This clause also does not apply to employers in respect of their facility, programme, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or eligible for a Disability Support Pension, except with respect to an organisation which has received recognition under s10 or s12A of the Act, or if a part only has received recognition, that part.

14.3 Supported Wage Rates

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

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

(Provided that the minimum amount payable shall be not less than \$60 per week).

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

14.4 Assessment of Capacity

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

(a) the employer and the union, in consultation with the employee, or if desired by any of these; or

(b) the employer and an accredited Assessor from a panel agreed by the parties to the Award and the employee.

14.5 Lodgment of Assessment Instruments

All assessment instruments under the conditions of this clause, including the appropriate percentage of the Award wage rate to be paid to the employee, shall be lodged by the employer with the Registrar of the Commission.

All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where the union is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within 10 working days.

14.6 Review of Assessment

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

14.7 Other Terms and Conditions of Employment

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

14.8 Workplace Adjustment

An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.

14.9 Trial Period

In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four (4) weeks) may be needed.

During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

The minimum amount payable to the employee during the trial period shall be no less than \$60.00 per week.

Work trials should include induction or training as appropriate to the job being trialed.

Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the outcome of assessment under subclause 14.5.

15. TRAINEESHIPS

15.1 Trainees are to be additional to the normal workforce of the employer so that trainees shall not replace paid workers or volunteers or reduce the hours worked by existing employees.

15.2 Training Conditions:

The arrangements between the employer and the trainee in relation to training are as specified in the Traineeship Training Agreement, as administered by the Department of Training.

15.3 Employment Conditions

(a) the initial period of employment for trainees is the nominal training period endorsed at the time the particular traineeship is established.

(b) completion of the traineeship scheme will not guarantee the trainee future employment in the public sector, but the employer will cooperate to assist the trainee to be placed in suitable employment, should a position arise.

(c) trainees are permitted to be absent from work without loss of continuity of employment to attend off the job training in accordance with the training plan. However, except for absences provided for under this Agreement and the Award, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of the absence; and

(d) overtime and shift work shall not be worked by trainees except to enable the requirements of the training to be effected. When overtime and shift work are worked the relevant allowances and penalties of the Award, based on the training wage stated in subclause 16.4 will apply. No trainee shall work overtime or shift work on their own.

15.4 Wages

The wages applicable to trainees shall be as prescribed in the National Training Wage Award 2000 for employees up to and including 20 years of age. Adult trainees will be paid the rate prescribed under the Minimum Conditions of Employment Act 1993 for the minimum weekly rate of pay for employees 21 or more years of age.

15.5 Definitions

(a) "Part time trainee" means a trainee who is employed for less than 38 hours per week; reasonably regular hours are worked each week; and wages and entitlements accrue on a pro-rata basis.

(b) "Traineeship" means a full time or part time structured employment based training arrangement approved by the Western Australian Department of Training where the trainee gains work experience and has the opportunity to learn new skills in a work environment. On successful completion of the traineeship the trainee obtains a nationally recognised qualification.

(c) "Traineeship Training Agreement" means the agreement between the employer and the trainee that provides the training conditions for the traineeship and is registered with the Western Australian Department of Training.

16. FACILITATIVE HOURS

16.1 Where there is agreement between the employer and the majority of affected employees at the workplace, the existing working hours cycle may be changed subject to:

(a) A secret ballot of all affected employees (including those on leave or workers compensation who can be contacted as far as reasonably practicable) being conducted by the Consultative Committee before any alternative rosters are introduced;

(b) The Union being informed of the ballot 2 weeks prior to the holding of the ballot; and

(c) The majority of employees will be at least 66% of the employees affected by the proposed change of hours.

16.2 At no stage of the above process will the union veto the introduction of any new Rostering arrangements.

17. TEMPORARY DEPLOYMENT

17.1 This clause will apply to all current and prospective employees.

17.2 The parties acknowledge that, with the establishment of the Metropolitan Health Service, all employees are employed by the Metropolitan Health Service and as such the appointment of staff exclusively to individual hospital sites of the Metropolitan Health Service is inappropriate. It is acknowledged that the principal intention of this clause is to facilitate the efficient use of staff resources thereby reducing reliance on less cost effective measures such as casual and agency labour. One purpose of this clause is to facilitate part time employees having a genuine opportunity to work additional hours and to enhance the career aspiration of all employees.

17.3 The parties agree that in giving effect to the mobility provisions of this clause, the employee's needs are to be considered including:

- (a) Ensuring that the careers of employees are not disadvantaged;
- (b) Consideration of family and carer responsibilities;
- (c) Availability of transport;
- (d) Matching skill level and professional suitability of any temporary job opportunity or permanent new position;
- (e) Availability of training and support to assist the employee with any skills deficit in respect to the requirement of the temporary job opportunity or permanent new position; and
- (f) Having regard to the financial impact on the employee.

17.4 An employee may be transferred temporarily to another workplace of the employer provided that:

- (a) The employee is consulted as to the transfer at least 7 days before it becomes effective unless otherwise agreed;
- (b) The period of transferred employment does not exceed 8 weeks without the employee's consent;
- (c) The transfer is at a classification level not less than the employee's, substantive classification;
- (d) The employee does not suffer any reduction in wages or conditions during the term of the transfer; and
- (e) The employee is reimbursed for reasonable additional travel costs incurred travelling from home to work and return.

17.5 Clause 25 - Fares and Travelling Allowances of the Award shall not apply to transfers under clause 17.4 except to the extent set out in clause 17.4(e).

PART 3 - LEAVE

18. ANNUAL LEAVE

An employee may by agreement with the employer take annual leave credits in multiples of single days.

19. LONG SERVICE LEAVE

19.1 Upon application by an employee, the Employer may subject to clause 19.2 of this Agreement, approve of the taking by the employee:

(a) of double the period of long service leave on half pay, in lieu of the period of long service leave entitlement on full pay; or

(b) of any portion of his/her long service leave entitlement on full pay or double such period on half pay;

(c) A full time employee who, during a qualifying period towards an entitlement of long service leave was employed continuously on both a full time and part time basis may elect to take a lesser period of long service leave calculated by converting the part time service to equivalent full time service.

19.2 An employee may by agreement with the employer clear long service leave in periods of not less than a single week.

20. LEAVE WITHOUT PAY

20.1 Subject to the provisions of sub clause 20.2, the Employer may grant an employee leave without pay for any period and is responsible for that employee on his/her return.

20.2 Every application for leave without pay will be considered on its merits and may be granted provided that the following conditions are met:

(a) The work of the department is not inconvenienced; and

(b) All other leave credits of the employee are exhausted.

20.3 An employee on a fixed term appointment may not be granted leave without pay for any period beyond that employee's approved period of engagement.

20.4 Leave Without Pay for Full Time Study

The Employer may grant an employee leave without pay to undertake full time study, subject to a yearly review of satisfactory performance.

20.5 Leave Without Pay for Australian Institute of Sport Scholarships

The Employer may grant an employee who has been awarded a sporting scholarship by the Australian Institute of Sport, leave without pay.

20.6 All Leave Without Pay granted to an employee:

(a) does not count as good service for the purpose of leave accruals and other employment entitlements;

(b) does not constitute a break in continuous service.

21. PERSONAL LEAVE

21.1 Introduction

(a) The provisions of this clause replace clause 20 - Personal Leave of the Award provided that only subclause 20.8 - Bereavement Leave shall continue to apply.

(b) The intention of Personal Leave is to give employees and Employers greater flexibility by providing leave on full pay for a variety of personal purposes. Personal leave is not to be used for circumstances normally met by other forms of leave.

(c) This clause does not apply to casuals.

21.2 Transitional Arrangement

On commencement of the operation of this clause sick leave will cease to exist. All existing sick leave credits will be converted to cumulative personal leave and recorded in days or hours. Employees will receive an entitlement of two (2) days non-cumulative personal leave. An employee's current sick leave anniversary date will be maintained for the purposes of the personal leave entitlement.

21.3 Entitlement

(a) The Employer shall credit each permanent employee with the following personal leave credits:

	Personal Leave Cumulative	Personal leave Non-cumulative
On the day of initial appointment	6.5 days	2 days
On completion of 6 months continuous service	6.5 days	
On the completion of 12 months continuous service	13 days	2 days
On the completion of each further period of 12 months continuous service	13 days	2 days

(b) Where employees access personal leave, it shall be deducted from their non-cumulative entitlement in the first instance.

(c) In the year of accrual the 15 days personal leave entitlement may be accessed in accordance with the provisions of this clause. On completion of each year unused personal leave up to a maximum of 13 days will be cumulative. Unused non-cumulative leave will be lost on completion of each anniversary year.

(d) Notwithstanding the provisions of this clause, in accordance with the Minimum Conditions of Employment Act 1993, an employee must ensure a minimum of ten (10) days per anniversary year has been, or is available to be, utilised for the purpose of sick leave to cover absences from work for illness or injury. Five (5) days of this preserved entitlement may be utilised for the purposes of carer's leave.

(e) An employee employed on a fixed term contract for a period of twelve (12) months or more shall be credited with the same entitlement as a permanent employee. An employee employed on a fixed term contract for a period less than twelve (12) months shall be credited on a pro rata basis for the period of the contract.

(f) A part time employee shall be entitled to the same personal leave credits as a full time employee, but on a pro rata basis according to the number of hours worked each fortnight. Payment for personal leave shall only be made for those hours that would normally have been worked had the employee not been on personal leave.

(g) An employee is unable to access personal leave while on any period of parental leave or leave without pay. An employee is unable to access personal leave while on any period of annual or long service leave, except as provided for in clauses 21.5(c) and 21.5(d).

(h) Personal leave will not be debited for public holidays, which the employee would have observed.

(i) If an employee has exhausted all accrued personal leave the Employer may allow the employee who has at least twelve (12) months service to anticipate up to five (5) days personal leave from next year's credit. If the employee ceases duty before accruing the leave, the value of the unearned portion must be refunded to the Employer, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of the employee.

(j) In exceptional circumstances the Employer may approve the conversion of an employee's personal leave credits to half pay to cover an absence on personal leave due to illness.

(k) Personal leave may be taken on an hourly basis.

(l) Personal leave will be paid at the ordinary rate of pay.

21.4 Application for Personal Leave

(a) Reasonable and legitimate requests for personal leave will be approved subject to available credits. Subject to clause 21.3 the Employer may grant personal leave in the following circumstances:

(i) where the employee is ill or injured;

(ii) to care for members of his or her family or household who are ill or injured and in need of immediate care and attention;

(iii) for unanticipated matters of a compassionate or pressing nature which arise without notice and require immediate attention; and

(iv) by prior approval of the Employer having regard for agency requirements and the needs of the employee, planned matters where arrangements can not be organised outside of normal working hours or be accommodated by the utilisation of flexitime credits by employees working according to approved flexible working hours arrangements or other leave. Planned personal leave will not be approved for regular ongoing situations.

(b) Employees must complete the necessary application and clearly identify which of the above circumstances apply to their personal leave request.

(c) The definition of family shall be the definition contained in the Equal Opportunity Act 1984 for "relative". That is, a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of the employee.

(d) Where practicable, the employee must give reasonable notice prior to taking leave. Where prior notice cannot be given, notice must be provided as early as possible on the day of absence. Where possible, an estimate of the period of absence from work shall be provided.

21.5 Evidence

(a) An application for personal leave exceeding two consecutive working days shall be supported by evidence that would satisfy a reasonable person of the entitlement.

(b) Personal leave will not be granted where an employee is absent from duty because of personal illness directly caused by the misconduct of the employee.

(c) Where an employee is ill during the period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of the illness the employee was confined to their place of residence or a Hospital for a period of at least seven (7) consecutive calendar days, the Employer may grant personal leave for the period during which the employee was so confined and reinstate annual leave equivalent to the period of confinement.

(d) Where an employee is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Employer that as a result of illness the employee was confined to their place of residence or a Hospital for a period of at least 14 consecutive calendar days, the Employer may grant personal leave for the period during which the employee was so confined and reinstate long service leave equivalent to the period of confinement.

(e) Unused personal leave will not be cashed out or paid out when an employee ceases their employment.

21.6 Worker's Compensation

Where an employee suffers a disability within the meaning of Section 5 of the Workers' Compensation and Rehabilitation Act 1981 which necessitates that employee being absent from duty, personal leave with pay shall be granted to the extent of personal leave credits. In accordance with section 80(2) of the Workers' Compensation and Rehabilitation Act 1981 where the claim for workers' compensation is decided in favour of the employee, personal leave credit is to be reinstated.

22. PURCHASED LEAVE - 48/52 SALARY ARRANGEMENT

22.1 At the request of an employee an Employer may agree to an arrangement ("the arrangement") whereby the employee accrues either 1 (51/52), 2 (50/52), 3 (49/52) or 4 (48/52) weeks additional annual leave in lieu of salary of the equivalent value. Both the agreement to the arrangement and the time at which the additional leave is taken will be dependent on the operational requirements of the department where the employee works at the particular time.

22.2 Unless otherwise agreed between the employee and the Employer, an employee who enters into an arrangement under this sub clause does so in blocks of 12 months. Further, it will be assumed that, an employee having entered into the arrangement, the arrangement will be continuing from year to year unless the employee otherwise notifies the Employer in writing.

22.3 For the purposes of this sub clause and without limiting the meaning of the term, "operational requirements" may include:

- (a) The availability of suitable leave cover, if required;
- (b) The cost implications;
- (c) The impact on client/patient service requirements; and
- (d) The impact on the work of other employees.

22.4 The portion of the employee's salary to be forfeited shall be calculated as a fortnightly amount and their fortnightly salary shall be decreased by that amount for the duration of the arrangement.

22.5 All annual leave taken during the course of the arrangement shall be paid at the reduced rate.

22.6 The additional leave shall continue to accrue while the employee is on leave during the course of the arrangement.

22.7 The reduced salary shall be used for all purposes during the course of the arrangement.

22.8 The additional leave shall not attract leave loading.

22.9 It is the responsibility of the employee to investigate the impact of any of the arrangements under this clause on his/her allowances, superannuation and taxation, and the options, if any, available for addressing these.

23. PURCHASED LEAVE - DEFERRED WAGES ARRANGEMENT

23.1 By written agreement between the Employer and the employee, an employee may enter into a deferred salary scheme over a five year period in which the employee may be paid 80% of their ordinary salary over a four year period, with the unpaid component accrued over the four years, and paid out in equal instalments during the fifth year.

23.2 The fifth year will be treated as continuous service, but will not count as service for the purpose of accruing leave entitlements

23.3 Access to the leave when it falls due shall not be unreasonably refused by the Employer, but in any case the leave may only be deferred by agreement between the Employer and employee.

23.4 When deciding whether to support a particular request for this arrangement, the Employer will take into account factors such as operational requirements. In order to satisfy operational requirements, the number of employees allowed to work under the arrangement may be restricted at any one time, and/or the timing of the arrangement may need to be staggered.

23.5 By agreement the four-year accrual period may be suspended. The employee will revert back to 100% of salary or access leave without pay, provided that except where longer periods of unpaid leave are otherwise prescribed by this Agreement (eg. Parental Leave), such non participatory periods shall not exceed 6 months. The commencement of the leave year shall be delayed by the length of the non-participatory period.

23.6 Where an employee withdraws from this arrangement in writing, or the employee's contract of employment terminates for any reason, the employee will receive a lump sum equal to the accrued credit. The payment of the lump sum may be deferred for a period of up to 3 months upon the employee's request, provided that where the contract has terminated the payment shall be made in his/her final pay.

23.7 Any paid leave taken during the first four years of this arrangement shall be paid at 80% of the employee's ordinary salary.

23.8 It is the responsibility of the employee to investigate the impact of any of the arrangements under this clause on his/her allowances, superannuation and taxation, and the options, if any, available for addressing these.

24. BLOOD/PLASMA DONORS LEAVE

24.1 Subject to operational requirements, employees shall be entitled to absent themselves from the workplace in order to donate blood or plasma in accordance with the following general conditions:

(a) prior arrangements with the supervisor has been made and at least two (2) days' notice has been provided; or

(b) the employee is called upon by the Red Cross Blood Centre.

24.2 The notification period shall be waived or reduced where the line manager is satisfied that operations would not be unduly affected by an employee's absence.

24.3 Employees shall be required to provide proof of attendance at the Red Cross Blood Centre upon return to work.

24.4 Employees shall be entitled to two (2) hours of paid leave per donation for the purpose of donating blood or plasma to the Red Cross Blood Centre.

25. EMERGENCY SERVICES LEAVE

25.1 Subject to operational requirements, paid leave of absence shall be granted by the Employer to an employee who is an active volunteer member of State Emergency Service, St John Ambulance Brigade, Volunteer Fire and Rescue Service, Bush Fire Brigades, Volunteer Marine Rescue Services Groups or FESA Units, in order to allow for attendances at emergencies as declared by the recognised authority.

25.2 The Employer shall be advised as soon as possible by an employee, the emergency service, or other person as to the absence and, where possible, the expected duration of leave.

25.3 The employee must complete a leave of absence form immediately upon return to work.

25.4 The application form must be accompanied by a certificate from the emergency organisation certifying that the employee was required for the specified period.

25.5 An employee, who during the course of an emergency, volunteers their services to an emergency organisation, shall comply with subclauses 25.2, 25.3 and 25.4.

26. LEAVE FOR TRAINING WITH DEFENCE FORCE RESERVES

26.1 The employer must grant leave of absence for the purpose of defence service to an employee who is a volunteer member of the Defence Force Reserves or the Cadet Force. Defence service means service, including training, in a part of the Reserves or Cadet Force.

26.2 Leave of absence may be paid or unpaid in accordance with the provisions of this clause.

26.3 Application for leave of absence for defence service shall, in all cases, be accompanied by evidence that the request for leave relates to reserve service or training. At the expiration of the leave of absence granted, the employee shall provide a certificate of attendance to the employer.

26.4 Paid leave

(a) An employee who is a volunteer member of the Defence Force Reserves or the Cadet Force is entitled to paid leave of absence for the purpose of attending a training camp, school, class or course of instruction, subject to the conditions set out hereunder.

(b) Part-time employees shall receive the same paid leave entitlement as full time employees but payment shall only be made for those hours that would normally have been worked but for the leave.

(c) On written application, an employee shall be paid salary in advance when proceeding on such leave.

(d) Casual employees are not entitled to paid leave for the purpose of defence service.

26.5 Attendance at a Camp for Annual Continuous Obligatory Training

(a) An employee is entitled to paid leave for a period not exceeding ten (10) days on full pay in any period of twelve months commencing on 1 July in each year.

(b) If the Officer -in-Charge of a military unit certifies that it is essential for an employee to be at the camp in an advance or rear party, a maximum of four (4) extra days leave on full pay shall be granted in the twelve-month period.

26.6 Attendance at One Special School, Class or Course of Instruction

(a) In addition to the paid leave granted under subclause 26.5, an employee is entitled to a period not exceeding 16 calendar days in any period of twelve months commencing on July 1 in each year, provided the employer is satisfied that the leave required is for a special purpose and not for a further routine camp.

(b) In this circumstance, an employee may elect to utilise annual leave credits. However, if the leave is not taken from annual leave, salary during the period shall be at the rate of the difference between the normal remuneration of the employee as a public servant and the defence force payments to which the employee is entitled if such payments do not exceed normal salary. In calculating the pay differential, pay for Saturdays, Sundays, Public Holidays and special rostered days off is to be excluded and no account is to be taken of the value of any board or lodging provided for the employee.

26.7 Unpaid leave

(a) Any leave for the purpose of defence service that exceeds the paid entitlement prescribed in subclauses 26.5 and 26.6 shall be unpaid.

(b) Casual employees are entitled to unpaid leave for the purpose of defence service.

26.8 Use of other leave

(a) An employee may elect to use annual or long service leave credits for some or all of their absence on defence service, in which case they will be treated in all respects as if on normal paid leave.

(b) An employer cannot compel an employee to use annual leave or long service leave for the purpose of defence service.

27. CULTURAL/CEREMONIAL LEAVE

27.1 Cultural/ceremonial leave shall be available to all employees.

27.2 Such leave shall include leave to meet the employee's customs, traditional law and to participate in cultural and ceremonial activities.

27.3 Employees are entitled to time off without loss of pay for cultural /ceremonial purposes, subject to agreement between the employer and employee and sufficient leave credits being available.

27.4 The employer will assess each application for ceremonial /cultural leave on its merits and give consideration to the personal circumstances of the employee seeking the leave.

27.5 The employer may request reasonable evidence of the legitimate need for the employee to be allowed time off.

27.6 Cultural /ceremonial leave may be taken as whole or part days off. Each day or part thereof, shall be deducted from:

- (a) the employee's annual leave entitlements (where applicable); or
- (b) accrued days off or time in lieu.

27.7 Time off without pay may be granted by arrangement between the employer and the employee for cultural/ceremonial purposes.

28. PARENTAL LEAVE

28.1 Definitions

For the purpose of this clause:

(a) "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 of age who is placed with the employee for the purpose of adoption, other than a child or step-child of the employee or of the partner of the employee or child who has previously lived continuously with the employee for a period of six months or more.

(b) "Employee" includes full time, part time, permanent and a fixed term contract employee up until the end of their contract period but does not include an employee engaged upon casual work.

28.2 Basic entitlement

(a) Employees are entitled to 52 weeks parental leave in relation to the birth or adoption of their child.

(b) Parental leave is to be available to only one parent at a time, except that both parents may simultaneously access the leave in the following circumstances:

(i) an unbroken period of one week at the time of the birth of the child:

(ii) an unbroken period of up to three weeks at the time of adoption / placement of the child; or

(iii) where the Employer agrees.

(c) In order to demonstrate to the Employer that, subject to paragraph (b), only one parent will be off on parental leave at a time an employee shall, when applying for parental leave, provide the Employer with a statutory declaration stating particulars of any period of parental leave sought or taken by his or her partner.

(d) Except as provided by clause 28.15, parental leave is unpaid.

28.3 Birth of a child

(a) A pregnant employee will provide to the Employer at least ten weeks in advance of the expected date of birth:

(i) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of birth; and

(ii) written notification of the date on which she proposes to commence parental leave, and the period of leave to be taken.

(b) Subject to subclause 28.3(c) and unless agreed otherwise between Employer and employee, a pregnant employee may commence parental leave at any time within six weeks immediately prior to the expected date of the birth.

(c) 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.

(d) Where the pregnancy of an employee terminates after 27 weeks and the employee has not commenced parental leave, the employee may take unpaid leave (to be known as special parental leave) for such period as a registered medical practitioner certifies as necessary, except that where an employee is suffering from an illness not related to the direct consequences of the delivery, an employee shall be entitled to access paid sick leave to which she is entitled, in lieu of, or in addition to, special parental leave.

(e) Where leave is granted under subclause 28.3(d), 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.

(f) Where the pregnancy of an employee then on parental leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Employer which shall not exceed four weeks from the date of notice in writing by the employee to the Employer that she desires to resume work.

(g) Where an employee then on parental leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special parental

leave) as a registered medical practitioner certifies as necessary before her return to work provided that the aggregate of paid sick leave, special parental leave and parental leave shall not exceed twelve months.

28.4 Adoption of a child

(a) The employee will notify the Employer at least ten weeks in advance of the date of commencement of parental leave and the period of leave to be taken. An employee may commence parental leave prior to providing such notice where through circumstances beyond the control of the employee, the adoption of a child takes place earlier.

(b) The Employer may require an employee to provide confirmation from the appropriate government authority of the placement.

(c) The Employer shall grant an employee who is seeking to adopt a child such unpaid leave as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee, the Employer may require the employee to take such leave in lieu of unpaid leave.

(d) 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 the date of notification for the employee's return to work.

28.5 Partner leave

An employee will provide to the Employer, at least ten weeks prior to each proposed period of parental leave:

(a)(i) for the birth of a child, a certificate from a registered medical practitioner which names the employee's partner, states that she is pregnant and the expected date of birth, or states the date on which the birth took place; or

(ii) for the adoption / placement of a child the Employer may require an employee to provide confirmation from the appropriate government authority of the placement, and

(b) written notification of the date on which he/she proposes to start and finish the period of parental leave.

28.6 Variation of notice period

Notwithstanding the requirement to give at least 10 weeks notice of the date of commencement of parental leave, such notice may be for a greater or

lesser period, where it is necessary to vary the date of commencement of parental leave due to a variation in the actual date of arrival, of the child. Such variation does not count as a variation for the purposes of clause 28.7 of this clause.

28.7 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 shall be notified at least four weeks prior to the commencement of the changed arrangements.

28.8 Parental leave and other entitlements

(a) An employee may, in lieu of or in conjunction with parental leave, access other paid leave entitlements which the employee has accrued, such as annual leave, long service leave, and TOIL or other time off entitlements accrued under flexible working arrangements, subject to the total amount of leave not exceeding 52 weeks.

(b) Subject to all other leave entitlements being exhausted, an employee shall be entitled to apply for leave without pay following parental leave by up to 2 years. The Employer's approval is required for such an extension.

28.9 Transfer to a safe job

(a) 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 parental leave.

(b) 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.

28.10 Entitlement to Part-Time employment

(a) Where:

(i) an employee is pregnant, and has a doctors certificate advising that it would be preferable on clinical grounds for the employee to work part-time;
or

(ii) an employee is eligible for parental leave, and the Employer agrees;

the employee may enter into an agreement, the terms of which are to be in writing, to work part-time in one or more periods at any time up to the child's third birthday or until the third anniversary of the placement of the child.

(b) The work to be performed part-time need not be the work performed by the employee in his or her former position.

28.11 Returning to work after a period of parental leave or part time work.

(a) An employee will notify of their intention to return to work after a period of parental leave or part-time work entered into in accordance with this clause at least four weeks prior to the expiration of the leave or part-time work.

(b) An employee will be entitled to the position that they held immediately before proceeding on parental leave. In the case of an employee transferred to a safe job pursuant to clause 28.9, the employee will be entitled to return to the position they held immediately before such transfer. An employee who entered into part-time work in accordance with clause 28.10 will be entitled to return to his or her former position.

(c) When 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.

28.12 Replacement employees

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

(b) A replacement employee will be informed of the temporary nature of the employment and of the rights of the employee who is being replaced.

28.13 Continuity of Service

Notwithstanding any award, agreement or other provision to the contrary:

(a) Absence 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 of the Award or this Agreement.

(b) Commencement of part-time employment in accordance with this clause, and return from part time to full time work under this clause, shall not break the continuity of service or employment.

28.14 Casual employment during parental leave.

(a) Notwithstanding any other provision of this clause, an employee may be employed on a casual basis during a period of parental leave, provided that any period of such service shall not count as service for the purposes of any other provision of this Agreement or of the Award, and shall not break the continuity of employment of such an employee nor change the employees employment status in regard to their substantive employment.

(b) An employee shall not be engaged by the Employer as a casual employee whilst the employee is on a period of paid parental leave, or a period of accrued annual or long service leave taken concurrently with a period of unpaid parental leave.

(c) An employee engaged for casual work pursuant to this subclause shall be employed at a level commensurate to the level of the available casual position.

28.15 Paid parental leave will be granted to employees subject to the following.

(a) An employee who is the primary care giver, and who has completed 12 months continuous service with the Employer or any Commonwealth, State or Territory public sector body or authority, will be entitled to six consecutive weeks paid parental leave from the anticipated birth date or for the purposes of adoption from the date of placement of the child, or from a later date nominated by the primary care giver, provided that for parental leave commencing on or after 1 January 2005 this entitlement will increase to seven (7) weeks paid parental leave and for parental leave commencing on or after 1 January 2006 it will increase to eight (8) weeks paid parental leave.

(b) Definitions

For the purposes of this subclause "Continuous service" means service under an unbroken contract of employment and includes:

(1) any period of leave taken in accordance with this clause;

(2) any period of part time employment worked in accordance with the Award or this Agreement; and

(3) any period of leave or absence authorised by the Employer, the Award or this Agreement.

(c) Only one period of paid parental leave is available for each birth or adoption.

(d) Contract employees' paid parental leave cannot continue beyond the expiry date of their contract.

(e) Paid parental leave taken in accordance with paragraph 28.15(a) will form part of the 52 weeks parental leave entitlement provided by this clause.

(f)(i) Paid parental leave will be paid at ordinary rates and will not include the payment of any form of allowance or penalty payment.

(ii) Notwithstanding paragraph 28.15(a), parental leave may be paid either before or after any other paid leave taken during a period of parental leave

(g) Absence on paid parental leave counts as service for the purpose of accruing entitlements to sick leave, annual leave or long service leave.

(h) The Employer may request evidence of primary care giver status.

(i) Part time employees whose ordinary working hours have been subject to variations during the preceding 12 months may elect to average these hours for the purposes of calculating payment for paid parental leave. Alternatively, the employee may elect to be paid their ordinary working hours at the time of commencement of paid parental leave.

(j) Subject to the provisions of this subclause, all other provisions of this clause apply to employees on paid parental leave.

(k) The parties agree to meet to discuss the implications for this Agreement should the Federal Government introduce a universal paid parental leave scheme.

28.16 This clause replaces Clause 22 - Parental Leave of the Award.

PART 4 DISPUTE SETTLEMENT & CONSULTATION

29. DISPUTE SETTLEMENT PROCEDURE

29.1 Any grievance, complaint or dispute arising under the Agreement shall be dealt with in accordance with this clause.

29.2 The employee/s and the manager with whom the dispute has arisen shall discuss the matter and attempt to find a satisfactory solution, within three (3) working days. An employee may be accompanied by a Union representative.

29.3 If the dispute cannot be resolved at this level, the matter shall be referred to and be discussed with the relevant manager's superior and an attempt made to find a satisfactory solution, within a further three (3) working days. An employee may be accompanied by a Union representative.

29.4 If the dispute is still not resolved, it may be referred by the employee/s or Union representative to the Chief Executive Officer or his/her nominee.

29.5 Where the dispute cannot be resolved within five (5) working days of the employee/s or the Union representatives' referral of the dispute to the Chief Executive Officer or his/her nominee, either party may refer the matter to the Commission for conciliation and/or arbitration as required.

29.6 The period for resolving a dispute may be extended by agreement between the parties.

29.7 At all stages of the procedure the employee/s may be accompanied by a Union representative.

29.8 Notwithstanding the above the Union may raise matters directly with representatives of the Employer. In each case the Union and the Employer shall endeavour to reach agreement. If no agreement is reached either party may refer the dispute to the Commission for conciliation and/or arbitration.

29.9 The status quo (ie the condition applying prior to the issue arising) will remain until the issue is resolved in accordance with the procedures outlined above.

30. CONSULTATION

30.1 The parties recognise the need for effective communication to improve the business/operational performance and working environment in agencies. The parties acknowledge that decisions will continue to be made by the employer, who is responsible and accountable to Government for the effective and efficient operation of the agency.

30.2 The parties agree that:

(a) where the employer proposes to make changes likely to affect existing practices, working conditions or employment prospects of the employees, the

union and employees affected shall be notified by the employer as early as possible.

(b) for the purposes of such discussion the employer shall provide to the employees concerned relevant information about the changes, including the nature of the changes on the employees, provided that the employer shall not be required to disclose any confidential information.

(c) in the context of such discussion the union and employees are able to contribute to the decision making process.

31. CLASSIFICATION REVIEW

31.1 In the event that a new classification structure and rates arise from a variation to the award, the terms of such variation will be given effect by applying any relevant Agreement wage increases to the award rates, as varied, and paying those rates in lieu of the rates prescribed in Clause 10 - Wages of this Agreement.

31.2 Any increased rates arising in accordance with sub-clause 31.1 will apply from the date of the order giving effect to the award variation.

32. NO FURTHER CLAIMS

Except where specifically provided for in this Agreement, it is a condition of this Agreement that the parties will not make any further claims with respect to any matter related to wages and working conditions contained in this Agreement.

PART 5 SIGNATORIES

33. SIGNATORIES OF PARTIES

Dr Neale Fong
Acting Director General of Health

_____/_____/_____
Date

David Kell
Secretary
Liquor, Hospitality and Miscellaneous Union

_____/_____/_____
Date