

Vol. 336, Part 5

4 October 2002

Pages 566 – 657



NEW SOUTH WALES  
**INDUSTRIAL GAZETTE**

Printed by the authority of the  
**Industrial Registrar**  
50 Phillip Street, Sydney, N.S.W.

ISSN 0028-677X

**CONTENTS**

	Page
Awards and Determinations	
Awards Made or Varied	
Erina Fair Expansion Project	(AIRC) 566
Nestle Smithtown Enterprise Award 2001	(AIRC) 588
Tomago Aluminium Smelter AP22 Capacity Expansion	(AIRC) 618
Pharmacy Assistants (State)	(VSW) 656

648)

SERIAL C1413

**ERINA FAIR EXPANSION PROJECT AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Labor Council of New South Wales, State peak council for employees.

(No. IRC 3646 of 2002)

Before The Honourable Mr Deputy President Harrison

2 and 29 July 2002

**AWARD**

Clause No.	Subject Matter
1.	Arrangement
2.	Introduction
3.	Objectives
3.1	Work Organisation
3.2	People Development/Skills
3.3	Environment & Safety
3.4	Generally
4.	Definitions
5.	Application
6.	Duration
7.	Industry Standards
7.1	Superannuation and Redundancy
7.2	Top Up/24 Hour Income Protection Insurance
7.3	Productivity allowance
7.4	Payment of the productivity allowance
7.5	Changing the Programme and Scheduled Milestones
8.	Environment, Health, Safety and Rehabilitation (EHS&R)
8.1	Induction
8.2	Environment, Health and Safety Plans
8.3	The Safety Committee
8.4	Implementation of this Clause
8.5	OH&S Industry Induction
8.6	Formwork Safety
8.7	Temporary Power/ Testing and Tagging
9.	Dispute resolution
9.1	Employer specific disputes
9.2	Project Wide Disputes
9.3	Demarcation Disputes
10.	Monitoring Committee
11.	Productivity initiatives
11.1	Learning initiatives
11.2	Inclement weather
11.3	The Site Management Plan
11.4	Rostered Days Off
11.5	Maximising Working Time
11.6	Hours of Work
12.	Immigration Compliance
12.1	Immigration compliance
12.2	Legal right of employees to work
13.	Long Service Compliance
14.	No Extra Claims

15. No Precedent
16. Single Bargaining Unit
17. Union Rights
  - 17.1 Visiting Union Officials
  - 17.2 Project Delegate
  - 17.3 Union Membership
18. Australian Content
19. Protective Clothing
20. Workers Compensation and Insurance Cover
21. Avoidance of Employee Entitlements
22. Apprentices
23. Training and Workplace Reform
24. Subcontractor Employee 24hour Death Cover
25. Anti-Discrimination
26. Personal/Carers Leave
  - 26.1 Use of Sick Leave
  - 26.2 Unpaid Leave for Family Purpose
  - 26.3 Annual Leave
  - 26.4 Time-off in Lieu of Payment for Overtime
  - 26.5 Make-up Time
  - 26.6 Rostered days off
27. Leave Reserved

#### Execution

Annexure A - Parties

Annexure B

Part 1 - Scheduled Milestones

Part 2 - Programme Milestones

Annexure C - Authority to Obtain from DIMA Details of Immigration Status

## 2. Introduction

The Parties to this Award acknowledge that enterprise bargaining is an appropriate way for employers and employees (and their unions) to settle fair terms and conditions of employment. The Parties acknowledge and agree that the integrity of Enterprise Agreements and awards must be maintained.

The Parties also acknowledge that the building industry has special features which may require the Parties to enter into agreements applicable to the project. This Award is intended to supplement existing Enterprise Agreements and be a framework document to assist the Employers in management of Project specific issues. It is recognised that this Award is not intended to extend the traditional coverage of the Union Parties nor is it intended to cover works not within the scope of works given to Bovis Lend Lease by their client. This Award builds on the Parties commitment to the reform and development of the industry and the New South Wales Code of Practice for the Construction Industry.

## 3. Objectives

The Parties agree to continue to develop and implement the following objectives in respect of the following four key areas on the Project:

### 3.1 Work Organisation

- (a) Implementation of forms of work organisation which encourage the use and acquisition of skills and continual learning;
- (b) Continued development of more effective management practices;

- (c) Continued development of communication processes which facilitate participation by all Employers, Employees and Unions;
- (d) Introduction of new technology and associated change to enhance productivity;
- (e) Improved quality of work; and
- (f) Increase the scope of sub-contract work packages to promote genuine skills enhancement and acquisition by Employees, consistent with their classification, training and qualification.

### 3.2 People Development/Skills

Provision of a career structure for all Employees based on skills and competencies and increased job satisfaction.

### 3.3 Environment & Safety

- (a) Provision of high standards of occupational health & safety on the Project; and
- (b) Improved impact of the Project on the environment.

### 3.4 Generally

- (a) Implementation of this Award, and compliance with all relevant statutory provisions;
- (b) Elimination of unproductive time;
- (c) Compliance by subcontractors with the provisions of applicable and/or enterprise agreements and legislative requirements;
- (d) Improved conditions for all employees working on the Project;
- (e) Increased leisure time for employees by eliminating excessive hours of work; and
- (f) Enhancing job opportunities for persons who have a legal right to work including persons who wish to take on apprenticeships or traineeships.

## 4. Definitions

"Award" means this Erina Fair Expansion Project Award made between the Parties.

"Bovis Lend Lease" means Bovis Lend Lease Pty Limited (A.C.N. 000 098 162) of Tower 13, Australia Square, Sydney NSW 2000.

"Code of Practice" means the New South Wales Government Code of Practice for the Construction Industry.

"Employee" means a person engaged by an Employer and who performs work on the Project.

"Employer" means Bovis Lend Lease and/or any subcontractor engaged by Bovis Lend Lease to work on the Project, including subcontractors' respective subcontractors.

"Enterprise Agreement" means an agreement registered or certified under the *Workplace Relations Act (Cth)* 1996 or approved under the *Industrial Relations Act (NSW)* 1996.

"EHS&R" means Environment Health Safety and Rehabilitation.

"Environment Health Safety and Rehabilitation Policy" means either of the plan or policy devised and implemented by the Project Manager for the Project (as amended from time to time).

"Monitoring Committee" means the committee established under clause 10 of this Award.

"Parties" means the Employers, and the Unions referred to in Annexure A.

"Practical Completion" means the completion of the Project, where the building is fit for occupancy and/or purpose, as determined by Bovis Lend Lease's Client.

"Programme Milestones" means the milestones listed in Part 2 of Annexure B as amended by the Project Manager from time to time.

"Project" means the construction works contracted to Bovis Lend Lease at the Erina Fair Shopping Centre, Erina, NSW.

"Project Manager" means the Project Manager (Delivery) for the Project appointed by Bovis Lend Lease from time to time.

"Safety Committee" means the site safety committee formed under the *Occupational Health and Safety Act* (NSW) 2000.

"Site Management Plan" means the project or site management plan, a copy of which can be located at the office of the Project Manager.

"Scheduled Milestones" means those targets described in Part 1 of Annexure B as amended under Clause 7.4 from time to time.

"T.E.T.A" means Transport Education Training Australia.

"Unions" means each of the Unions listed in Part 2 of Annexure A.

## 5. Application

- (a) Subject to clause 5(c), this Award will apply to work done on the Project by the Employees for the period the Employer engages the Employees to work on the Project.
- (b) Nothing in this Award shall prevent an Employer from negotiating an Enterprise Agreement.
- (c) Despite any other term of this Award, the Parties agree that the integrity of individual Enterprise Agreements will be maintained and that where Employers have entered into an Enterprise Agreement the provisions of that Enterprise Agreement will continue to apply to the Employer and its Employees on the Project.
- (d) The Parties agree that where any term or condition in this Award is inconsistent with a term or condition in an Enterprise Agreement, the terms of the Enterprise Agreement will override the terms of this Award to the extent of any inconsistency, provided the greater entitlement of any inconsistency shall apply. The Parties agree that there is to be no "double dipping", in the event that the provisions in an Enterprise Agreement cover the benefits provided for in this agreement even if those benefits are paid or awarded differently.
- (e) By entering into this Award, the Parties intend to enter legal relations and acknowledge and agree that the terms of this Award will create a binding contract.
- (f) The Parties also acknowledge and agree that the terms of this Award form part of the tender conditions for work on this Project.

## 6. Duration

This Award shall operate on and from 21 January 2002 until Practical Completion.

## 7. Industry Standards

### 7.1 Superannuation and Redundancy

- (a) The Parties acknowledge that a contribution of \$80.00 per week (increasing to \$90.00 per week from 1 July 2002), be made to the superannuation fund nominated in the relevant industrial instruments being C+BUS; NESS; STA, TWU or other schemes approved by the Parties.
- (b) The Employers will make a contribution of \$56 per week (increasing to \$61 per week from 1 July 2002) into ACIRT or MERT unless there is an alternative arrangement to the satisfaction of the individual Employer's employees and the Parties to this Award.

### 7.2 Top Up/24 Hour Income Protection Insurance

Each Employer will provide Workers Compensation Top-Up/24 Hour Income Accident Insurance with the CTAS scheme or other similar schemes which are approved by the Parties to this Award.

### 7.3 Productivity allowance

- (a) Provided the Scheduled Milestones and the Programme Milestones are met, the Employer will pay a productivity allowance for each hour worked on the Project.
- (b) The maximum amount paid as productivity allowance under this Award is \$2.00 per hour worked.
- (c) The Project Manager will determine whether the Scheduled and Programme Milestones have been achieved and if the Milestones have been met, the Project Manager will advise the Employers and the Monitoring Committee accordingly.

### 7.4 Payment of the productivity allowance

- (a) The productivity allowance

The Parties agree that the productivity allowance is paid only if the Scheduled Milestones and the Programme Milestones are met.

The Milestones are comprised of two (2) elements:

- (i) works completed against the Programme Milestones; and
- (ii) works completed to the Scheduled Milestones.

- (b) Programme and Scheduled Milestones

The Parties agree to use their best endeavours to meet or exceed the Schedules and Programme Milestones.

The productivity allowance shall be calculated and paid as follows:

- (i) the Project Manager will review the works monthly and will verify the achievement of the Programme and Scheduled Milestones;
- (ii) the Project Manager will advise the client as to whether the relevant Programme and Scheduled Milestones have been achieved;
- (iii) if the relevant Programme and Scheduled Milestones are met, the maximum payment shall be \$2.00 per hour for each hour of time worked; and
- (iv) payment shall be made as part of weekly wages.

In the event that a Programme or Scheduled Milestone is not achieved, the Monitoring Committee shall meet with the Project Manager to determine:

- (i) the reason why the milestone target was not achieved; and
- (ii) the action required to catch up the next milestone target.

If a Programme Milestone or Scheduled Milestone is not achieved for two consecutive months:

- (i) the productivity allowance shall cease being paid; but
- (ii) if in a following period work catches up to the Schedule, the completion to programme schedule component shall recommence, and shall include payments for the preceding period(s) not paid.

Payment shall be calculated on an hours worked basis only and shall not include any calculation of a award or other entitlements.

The Parties agree that achievement of the identified Scheduled Milestones shall be determined by Bovis Lend Lease's client and the Labor Council of NSW in conjunction with the Unions.

(c) Transport workers

The Parties agree that the Award does not apply to purely incidental activities such as couriers. This Award will apply to transport workers who are employed by an Employer if the relevant Employer makes deductions from the remuneration of the transport worker(s) in accordance with the "Pay As You Earn" provisions of the *Income Tax Assessment Act 1936*. The Parties agree that any transport worker carrying out work relating to the Project will be paid, in addition to his or her remuneration, the project productivity allowance of \$2.00 per hour, provided that the transport worker is involved with the Project for two or more hours on any calendar day.

(d) Potential for part-payment

When deciding whether to pay the productivity allowance, the Project Manager may recommend part-payment of the allowance based on part-performance of the Scheduled Milestones or the Programme Milestones.

## 7.5 Changing the Programme and Scheduled Milestones

The Parties agree that the Scheduled and Programme Milestones must be reviewed and updated throughout the life of the Project and that the Monitoring Committee will meet at regular intervals and with the Project Manager, agree and set new Scheduled and Programme Milestones.

## 8. Environment, Health, Safety and Rehabilitation (EHS&R)

### 8.1 Induction

- (a) All Employees must attend an agreed EHS&R induction course on commencement of their engagement on the Project.
- (b) The Parties recognise the EHS&R induction training provided by T.E.T.A. for casual and permanent transport workers.

### 8.2 Environment, Health and Safety Plans

All Employers must submit an environment, health safety and rehabilitation management plan, in accordance with the Safety Alliance for the Construction Industry "S" Pack, to Bovis Lend Lease. These plans should include evidence of:

- (a) risk assessment of their works;
- (b) hazard identification, prevention and control;
- (c) planning and re-planning for a safe working environment;
- (d) industry and trade specific induction of Employees;
- (e) monitoring performance and improvement of work methods;
- (f) reporting of all incidents and/or accidents;
- (g) compliance verification; and
- (h) regular EHS&R meetings, inspections and audits of the Project.

### 8.3 The Safety Committee

The Safety Committee will be properly constituted and will abide by the agreed procedures as defined in its constitution and as revised from time to time. All members of the Safety Committee will undertake agreed Occupational Health and Safety training with Comet Training or other agreed providers. The Safety Committee may invite the Union to attend any Safety Committee meeting or site inspection.

### 8.4 Implementation of this Clause

- (a) The Parties acknowledge and agree that all Parties are committed to safe working procedures and to the Project Environment Health and Safety Policy.
- (b) If the Project Manager or the Safety Committee is of the opinion that an Employee or Employer has committed a serious breach of either the Environment Health and Safety Policy or the relevant safety management plan (or any other agreed safe working procedures), the Project Manager (or the Project Manager on recommendation from the Safety Committee) will implement disciplinary action against the Employer or Employee which may include taking all steps required to remove the Employer or Employee from the Project.
- (c) The Parties agree that pursuant to clause 6.3 of the Code of Practice, in the event that an unsafe condition exists, work is to continue in all areas not affected by that condition and that an Employer may direct Employees to move to a safe place of work. No Employee will be required to work in any unsafe area or situation.

### 8.5 OH&S Industry Induction

No person will be engaged on site unless he or she has completed an Industry Occupational Health and Safety Induction (such as a "Green Card") approved by the Workcover Authority of NSW.

### 8.6 Formwork Safety

All persons engaged on the erection or dismantling of formwork will have the relevant Workcover Formwork Certificate of Competency. Where an employee does not have a Certificate of Competency, Comet or other agreed provider, will be contacted to assess the qualifications of the relevant employee.

### 8.7 Temporary Power/ Testing and Tagging

In order to maintain the highest standards of safety in regard to the use of electricity during construction, it is agreed that the temporary installation is installed strictly in accordance with AS 3012 (1995). All work is to be carried out by qualified electrical tradespeople. Testing and tagging is to be carried out only by licensed electricians.

## 9. Dispute Resolution

One of the aims of this Award is to eliminate lost time in the event of a dispute and to achieve prompt resolution of any dispute.

### 9.1 Employer specific disputes

In the event of a dispute or conflict occurring specifically between an Employer and its Employees or their representative Union, the following procedure will be adopted:

- (a) Discussion between those directly affected;
- (b) Discussion between site management representatives of the Employer and the Union delegate;
- (c) Discussion between site management representatives of the Employer and the Union organiser;
- (d) Discussion between senior management of the Employer, Bovis Lend Lease and the appropriate Union official;
- (e) Discussion between the Secretary of the relevant Union (or nominee) and Bovis Lend Lease NSW Operations Manager (or nominee);
- (f) Discussion between senior management of the Employer, Bovis Lend Lease and the Industrial Officer of the Newcastle office of the Labor Council of New South Wales. This shall occur within 7 days of the dispute being initially raised;
- (g) If the dispute is not resolved after step (e), the Employer may notify the dispute to the Industrial Relations Commission of New South Wales, and request that the Industrial Relations Commission of New South Wales resolve the dispute pursuant to its powers set out in the *Industrial Relations Act 1996* (NSW);
- (h) Work shall continue without interruption or dislocation during discussion and resolution of disputes.

### 9.2 Project Wide Disputes

In the event of a dispute or conflict effecting more than one Employer occurring, the following procedure will be adopted:

- (a) Discussion between those directly affected;
- (b) Discussion between site management representatives of Bovis Lend Lease and the Union delegate;
- (c) Discussion between site management representatives of Bovis Lend Lease and the Union organiser;
- (d) Discussion between senior management of Bovis Lend Lease and the appropriate Union official;
- (e) Discussion between the Secretary of the relevant Union (or nominee) and Bovis Lend Lease NSW Operations Manager (or nominee);
- (f) Discussion between Bovis Lend Lease Operations Manager (or nominee) and the Industrial Officer of the Newcastle office of the Labor Council of New South Wales. This shall occur within 7 days of the dispute being initially raised;
- (g) If the dispute is not resolved after step (e), the Employer may notify the dispute to the Industrial Relations Commission of New South Wales, and request that the Industrial Relations

Commission of New South Wales resolve the dispute pursuant to its powers set out in the *Industrial Relations Act 1996* (NSW);

- (h) Work shall continue without interruption or dislocation during discussion and resolution of the dispute.

### 9.3 Demarcation Disputes

In the event that a dispute arises which cannot be resolved between the relevant Unions, the Unions agree to the following dispute settling procedure:

- (a) Work shall continue without interruption or dislocation during discussion and resolution of disputes. This will not prejudice the position of any party;
- (b) Discussion between the Labor Council of New South Wales and the Unions to try to resolve the dispute;
- (c) The parties agree that the outcome of any matter dealt with the terms of Clause 9.3 (b), shall not be used as a precedent, reference, example or exhibit in any way whatsoever in matters arising from this Project;
- (d) If the dispute is not resolved after step (b), either Union may notify the dispute to the Industrial Relations Commission of New South Wales and request that the Industrial Relations Commission of New South Wales resolve the dispute pursuant to its powers set out in the *Industrial Relations Act 1996* (NSW);
- (e) Nothing in this sub clause shall affect the rights of an Employer or a Union in relation to the settlement of any demarcation issue.

## 10. Monitoring Committee

- (a) The Parties will establish a Committee to monitor the success of this Award.
- (b) This Monitoring Committee will meet at the commencement of construction and then at monthly intervals or as required during construction on the Project.
- (c) The Monitoring Committee will consider ways in which the aims and objectives of this Award can be enhanced, which may include, but not be limited to discussion of:

developing more flexible ways of working;

enhancing occupational, health and safety;

productivity plans;

compliance with Awards and other statutory requirements by Employers; and

inserting new scheduled milestones into Annexure B.

If the principles of this Award are not being followed, the Committee will develop a plan in consultation with the Parties, to implement the intent of the Award.

- (d) the Monitoring Committee will meet at quarterly intervals or as required to review existing milestones and will set new milestones as appropriate during the course of this Award.

## 11. Productivity Initiatives

### 11.1 Learning initiatives

Each Employer shall be required to demonstrate to Bovis Lend Lease implementation of commitment to skill enhancement and workplace reform while working on the Project.

#### 11.2 Inclement weather

The Parties to this Award will collectively proceed towards the minimisation of lost time due to inclement weather.

Further, the Parties are bound to adopt the following principles with regard to inclement weather and idle time created by inclement weather:

- (a) Adoption of a reasonable approach regarding what constitutes inclement weather;
- (b) Employees shall accept transfer to an area or site not affected by inclement weather if, in the opinion of the Parties, useful work is available in that area or site and that work is within the scope of the Employee's skill, competence and training consistent with the relevant classification structures (provided that the Employer shall provide transport to such unaffected area where necessary);
- (c) Where the initiatives described in (b) above are not possible or non-productive, the use of non-productive time will be used for activities such as relevant and meaningful skill development; production/upgrade of skill modules; presentation and participation in learning; planning and reprogramming of the Project;
- (d) All Parties are committed to an early resumption of work following any cessation of work due to inclement weather;
- (e) The Parties agree the practice of "one out, all out" will not occur.

#### 11.3 The Site Management Plan

- (a) The Parties agree that the Site Management Plan ("the Plan") is of paramount importance to the productive and efficient operations of the Project.
- (b) The Parties agree that they will comply with the Plan.
- (c) The Plan consists of sub-plans covering the following areas:
  - deliveries, materials handling and personnel movement;
  - pedestrians, visitors and members of the public;
  - existing operators and neighbours;
  - protection of existing trees;
  - construction noise;
  - hours of work;
  - waste management and clean up;
  - behaviour on site.
- (d) If the Project Manager considers that an Employee or Employer has committed a serious breach of the plan, the Project Manager will discuss this matter with the relevant Employer and Union. After this discussion the Project Manager may recommend that the Employee/Employer be removed from the Project.

#### 11.4 Rostered Days Off

It is agreed that a procedure for increasing the flexibility of Rostered Days Off (RDOs) will be implemented on the Project.

With a view:

- (a) to increasing the quality of working life for Employees;
- (b) to increasing the productivity of the Project; and
- (c) that any RDOs accrued on the Project must be taken during the course of the Project.

A roster of RDOs will be prepared, following consultation with the Monitoring Committee and agreement of the individuals involved and their respective union.

Records of each Employee's RDO status will be maintained by their Employer, and where possible, recorded on the Employee's payslip. Records of each Employee's RDO status shall be made available to the Employee, the Employee's delegate or union official upon request.

Where practicable, Saturday work prior to the published industry RDOs will not be worked.

#### 11.5 Maximising Working Time

The Parties agree that crib and lunch breaks may be staggered for Employees so that work does not cease during crib and lunch. There will be no unreasonable interruption of the comfort of Employees having lunch and the amenities will be maintained in a clean and hygienic state at all times.

#### 11.6 Hours of Work

- (a) Ordinary hours of work shall be 8 hours per shift between 6.00am and 6.00pm Monday to Friday. However, ordinary hours may commence from 5.00am by agreement between the Employer, Employee and relevant Union.
- (b) The Parties recognise that, in general, the hours worked by individuals in the construction industry are not consistent with the objectives of maintaining high productivity or a high quality of life. As a means of improving this situation, no Employee on this Project will be expected to work in excess of 58 hours per week except in an emergency.

### **12. Immigration Compliance**

#### 12.1 Immigration compliance

The Parties are committed to compliance with Australian immigration laws so as to ensure maximum work opportunities for unemployed permanent residents and Australian citizens. Employers will be advised by Bovis Lend Lease of the importance of immigration compliance. Where there is concern that illegal immigrants are being engaged by an Employer on the Project, Bovis Lend Lease will act decisively to ensure compliance.

#### 12.2 Legal right of employees to work

Employers are required, prior to employees commencing work on-site, to check the legal right of employees to work. The authorisation form attached to this Award (as per Annexure C) may assist in providing evidence of the employee's legal status.

### **13. Long Service Compliance**

If applicable, in accordance with the *Building and Construction Industry Long Service Payments Amendment Act 1998*, no Employee will be engaged on site unless he or she is a worker registered under the relevant long service leave legislation. All Employers (if applicable) engaged on site will be registered as employers in accordance with the *Building and Construction Industry Long Service Payments Amendment Act 1998* and will strictly comply with their obligations.

#### **14. No Extra Claims**

Subject to Clause 27 Leave Reserved, the Parties agree that they will not pursue extra claims in respect of matters covered by this Award (including but not limited to any claim for a disability allowance) during the term of this Award.

#### **15. No Precedent**

The Parties agree not to use this Award as a precedent and that this Award will in no way create a claim for flow-on of on-site wage rates and conditions.

#### **16. Single Bargaining Unit**

This Award was negotiated by the Labor Council of New South Wales on behalf of the Unions and by Bovis Lend Lease in its own right and on behalf of the Employers.

#### **17. Union Rights**

The Parties to this Award acknowledge the right of Employees to be active union members and respect the right of the relevant Union to organise and recruit Employees. The Parties to this Award also acknowledge that good communication between the union official, the delegate and its members is an important mechanism in assisting the Parties to resolve grievances and disputes in a timely fashion.

##### **17.1 Visiting Union Officials**

- (a) Union officials (party to this Award) when arriving onsite, shall call at the site office and introduce themselves to a Management representative of the Employer, prior to pursuing their union duties.
- (b) Union officials shall produce their right of entry permits, if required, and observe the relevant awards, the Occupational Health and Safety Act and Regulations, and other statutory/legislative obligations for entry to the site.
- (c) Union officials with the appropriate credentials shall be entitled to inspect all such wage records, other payment records and related documentation necessary to ensure that the Employers are observing the terms and conditions of this Award.
- (d) All such wages books and other payment records shall be made available within 48 hours on site or at another convenient, appropriate place, provided notice is given to the Employers and the Project Manager by the Union.
- (e) Such inspections shall not take place unless there is a suspected breach of this Award, other appropriate industrial instruments, *Enterprise Agreements*, *the Industrial Relations Act 1996* (NSW), or other employer statutory requirements.

##### **17.2 Project Delegate**

Definition - In this clause the expression "Project Delegate" means the Employee who is the accredited representative of the Union on the Project.

Parties to this Award recognise that the Project workforce will elect a Project Delegate who shall be the principal spokesperson for the Project workforce.

Rights of the Project Delegate

1. The Parties acknowledge it is the sole right of the Union and its members to elect the Project Delegate for each work site, who shall be recognised as the authorised representative of the Union at the site.
2. The Project Delegate shall have the right to approach or be approached by any Employee of an Employer to discuss industrial matters with that Employee during normal working hours.
3. The Project Delegate shall have the right to communicate with members of the Union in relation to industrial matters without impediment by an Employer. Without limiting the usual meaning of the expression "impediment", this provision applies to the following conduct by an Employer:
  - (a) moving the Project Delegate to a workplace or work situation which prevents or significantly impedes communication with members;
  - (b) changing a Project Delegate's shifts or rosters so that communication with Employees is prevented or significantly impeded;
  - (c) disrupting duly organised meetings.
4. The Project Delegate shall be entitled to represent members in relation to industrial matters at the workplace, and without limiting the generality of that entitlement is entitled to be involved in representing members:
  - (a) the introduction of new technology on the Project and other forms of workplace change;
  - (b) career path, reclassification, training issues; and to initiate discussions and negotiations on any other matters affecting the employment of members;
  - (c) ensuring that workers on site are paid their correct wages, allowances and other lawful entitlements;
  - (d) to check with relevant industry schemes so as to ensure that superannuation, long service leave and redundancy has been paid on time.
5. In order to assist the Project Delegate to effectively discharge his or her duties and responsibilities, the Project Delegate shall be afforded the following rights:
  - (a) the right to reasonable communication with other delegates, union officials and management in relation to industrial matters, where such communication cannot be dealt with or concluded during normal breaks in work;
  - (b) at least 10 days paid time off work to attend relevant Union training courses/forums.
6. The Employer of the Project Delegate shall provide to the Project Delegate the following:
  - (a) a lockable cabinet for the keeping of records;
  - (b) a lockable notice board for the placement of Union notices at the discretion of the Project Delegate;
  - (c) where practicable, and if agreed to, a union office;
  - (d) where a union office room is not practicable, access to a meeting room;
  - (e) use of the telephone for legitimate union business associated with the Project;
  - (f) from existing resources, and when required for legitimate union Project related business, access to a word-processor, typewriter, a photocopier, facsimile machine and e-mail.

7. There shall be no deduction to wages where the Union requires a Project Delegate to attend any Court or Industrial Tribunal proceedings relating to Industrial matters on the Project.

### 17.3 Union Membership

Properly accredited officials and workplace representatives of the Union shall have the right to be provided with appropriate access to Employees to promote the benefits of union membership.

To assist in this process the Employer shall:

- (i) if requested, and on the written authority of the Employee, provide payroll deduction services for union fees. Such fees shall be remitted to the union on a monthly basis with enough information supplied to enable the union to carry out a reconciliation; and
- (ii) provide the union with access to talk to new Employees at induction training.

Nothing in this clause shall be contrary to the relevant legislation.

## 18. Australian Content

The Project Manager shall endeavour to maximise Australian content in materials and construction equipment on the Project where practical and feasible.

## 19. Protective Clothing

Employers will provide their Employees engaged on site with legally produced Australian made protective clothing on the following basis:

### Safety Footwear

Appropriate safety footwear shall be supplied on commencement if not already provided, to all persons engaged on the Project and will be replaced on a fair wear and tear, provided it is produced to the Employer as evidence.

### Clothing

Two sets of protective clothing (combination of bib and brace or shorts, trousers and shirts) will be supplied to all persons after accumulated engagement on site of 152 hours or more and will be replaced once per calendar year thereafter.

### Jackets

Each person, after accumulated employment on site of 152 hours shall be eligible to be issued with warm bluey jacket or equivalent, which will be replaced once per calendar year thereafter.

In circumstances where any Employee(s) of an Employer is/are transferred to the Project from another project where an issue of equivalent clothing was made, then such Employees shall not be entitled to an issue on this Project until the expiry of the calendar year.

Employees who receive from their employer an issue and replacement of equivalent clothing and/or safety footwear as part of the Employer's policy or Enterprise Agreement shall not be entitled to the provisions of this clause.

Employers will consult with the Labor Council of NSW to be provided with a list of Australian manufacturers who use legal labour in the manufacturing of their work clothes.

All transport workers who are involved on the Project for longer than 2 hours on any calendar day, will be provided with safety footwear, one set of clothing and one jacket by their Employer prior to commencement on the Project, unless they have been provided with such footwear and clothing by their Employer within the previous 12 month period.

## 20. Workers Compensation and Insurance Cover

Employers must ensure that all persons that they engage to work on the project are covered by workers compensation insurance.

Bovis Lend Lease will audit Certificates of Currency from each Employer engaged on site to ensure that the wages estimate and tariff declared for the type of work undertaken is correct. This information will be available to accredited Union officials on request.

Employers and their Employees must comply with the following steps to ensure expedited payment of workers compensation.

- (a) All Employees will report injuries to the project first aider and their supervisor at the earliest possible time after the injury.
- (b) All Employees will comply with the requirements for making a workers compensation claim, including the provision of a Workcover medical certificate, at the earliest possible time after the injury. This information will also be supplied to the Project first aid officer, and their supervisor.
- (c) In cases where the Employee is unable to comply with the above, the relevant Employer will assist in fulfilling requirements for making a claim.

Employers must ensure that they are aware of and will abide by Sections 63 to 69 of the *Workers Injury Management and Workers Compensation Act 1998*, which provide that:

The Employer shall keep a register of injuries /site accident book in a readily accessible place on site;

All Employees must enter in the register any injury received by the Employee. The Employer must be notified of all injuries on site immediately.

An Employer who receives a claim for compensation, must within seven (7) days of receipt, forward the claim or documentation, to their insurer;

An Employer who receives a request from their insurer for further specified information must within seven (7) days after receipt of the request, furnish the insurer with the information as is in the possession of the Employer or reasonably obtained by the Employer.

An Employer who has received compensation money from an insurer shall as soon as practicable pay the money to the person entitled to the compensation.

## 21. Avoidance of Employee Entitlements

The Parties agree that they will abide by the provisions of the Code of Practice relating to the construction industry of NSW. The Code of Practice states that there shall be no pyramid subcontracting, all-in-payments, or cash in hand. The Parties will not engage in all-in-payments or sham subcontract arrangements designed to avoid and underpay award and statutory obligations. The Union will notify the Employer immediately, should any such unacceptable arrangements be found. If an unacceptable arrangement is found, the arrangement shall be rectified and all statutory entitlements shall be paid to the Employee. It should be noted, however, that this shall not restrict any Employer's right to legitimately sublet work

## 22. Apprentices

As part of the Project's commitment to learning and skills development, a ratio of one apprentice/ trainee to every five tradespersons within each Employer's workforce is to be maintained.

### 23. Training and Workplace Reform

The Parties are committed to achieving improvements in productivity and innovation through cooperation and reform. Employers are expected to demonstrate their commitment to develop a more highly skilled workforce by providing their Employees with career opportunities through appropriate access to training and removing any barriers to the use of skills acquired.

### 24. Subcontractor Employee 24 hour Death Cover

Bovis Lend Lease will effect and maintain 24 hour death cover of \$25,000 for all Employees of Employers whilst they are directly engaged on the Project. Such payment will be made within 14 days of the production of appropriate documentation. This cover will be maintained for a carry over period of 30 days unless the Employee is covered for 24 hour death cover by another principal contractor.

### 25. Anti-Discrimination

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

#### NOTES -

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

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

### 26. Personal/Carers Leave

This clause is applicable only in respect to the Carers and Parental Leave provisions

#### 26.1 Use of Sick Leave

- (a) An Employee, other than a casual employee, with responsibilities in relation to a class of person set out in clause 26.1 (c)(ii) who needs the Employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, for absences to provide care and support, for such persons when they are ill. Such leave may be taken for part of a single day.
- (b) The Employee shall, if required, establish either by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an Employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
  - (i) the Employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the Employee; or
    - (b) a de facto spouse, who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (c) a child or an adult child (including an adopted child, a step child, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian) grandparent, grandchild or sibling of the Employee or spouse or de facto spouse of the Employee; or
    - (d) a same sex partner who lives with the Employee as the de factor partner of that Employee on a bona fide domestic basis; or
    - (e) a relative of the Employee who is a member of the same household, where for the purposes of this paragraph:
      - 1. "relative" means a person related by blood, marriage or affinity;
      - 2. "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other: and
      - 3. "household" means a family group living in the same domestic dwelling.
- (d) An Employee shall, wherever practicable, give the Employer notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the Employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the Employee to give prior notice of absence, the Employee shall notify the Employer by telephone of such absence at the first opportunity on the day of absence.

#### 26.2 Unpaid Leave for Family Purpose

An Employee may elect, with the consent of the Employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in 26.1 (c)(ii) above who is ill.

#### 26.3 Annual Leave

- (a) An Employee may elect with the consent of the Employer, subject to the *Annual Holidays Act 1944* (NSW), to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph 26.3(a) above, shall be exclusive of any shutdown period provided for elsewhere under this Award.
- (c) An Employee and Employer may agree to defer payment of the annual leave loading in respect of single day absences, until at least five consecutive annual leave days are taken.

#### 26.4 Time-off in Lieu of Payment for Overtime

- (a) An Employee may elect, with the consent of the Employer, to take time-off in lieu of payment for overtime at a time or times agreed with the Employer within twelve (12) months of the said election.
- (b) Overtime taken as time off during ordinary time hours shall be taken at the ordinary time rate, that is an hour for each hour worked.
- (c) If, having elected to take time as leave in accordance with paragraph 26.4(a) above, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the twelve (12) month period or on termination.
- (d) Where no election is made in accordance with paragraph 26.4(a), the Employee shall be paid overtime rates in accordance with the award.

#### 26.5 Make-up Time

- (a) An Employee may elect, with the consent of the Employer, to work "make up time", under which the Employee takes time off ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the award at the ordinary rate of pay.
- (b) An Employee on shift work may elect, with the consent of the Employer, to work "make up time" (under which the Employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.

#### 26.6 Rostered days off

- (a) An Employee may elect, with the consent of the Employer, to take a RDO at any time.
- (b) An Employee may elect, with the consent of the Employer, to take RDOs in part day amounts.
- (c) An Employee may elect, with the consent of the Employer, to accrue some or all RDOs for the purpose of creating a bank to be drawn upon at a time mutually agreed between the Employer and Employee, or subject to reasonable notice by the Employee or the Employer.
- (d) This subclause is subject to the Employer informing each Union which is both party to the Award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility, and providing a reasonable opportunity for the Unions to participate in negotiations.

### 27. Leave Reserved

The Parties are mindful that during the life of this Project, the majority of the Employers, Employees (and the Unions) will be re-negotiating the terms and conditions of their Enterprise Agreements.

To the extent that the appropriate legislation permits, the Parties accept that protected action in respect to the re-negotiation process may occur.

The Parties acknowledge that the integrity of this process will be observed.

Execution

Signed for and on behalf of the Labor Council of New South Wales by:

Print Name:

Date:

Signed for and on behalf of the Construction Forestry Mining and Energy Union (Construction and General Division) (CFMEU) by:

Print Name:

Date:

Signed for and on behalf of the Communication Electrical Electronic Energy Information Postal Plumbing and Allied Services Union of Australia (NSW) Branch - Plumbing by:

Print Name:

Date:

Signed for and on behalf of the Automotive Food Metals Engineering Printing & Kindred Industries Union (also known as AMWU) by:

Print Name:

Date:

Signed for and on behalf of the Electrical Trades Union of Australia (NSW Branch) (ETU) by:

Print Name:

Date:

Signed for and on behalf of the Transport Workers Union (TWU) by:

Print Name:

Date:

Signed for and on behalf of Bovis Lend Lease Pty Limited by:

Print Name:

Date:

## **ANNEXURE A**

(Parties)

### **PART 1**

EMPLOYERS:

Bovis Lend Lease Pty Limited and other Employers.

### **PART 2**

## UNIONS:

The Labor Council of New South Wales (The Labor Council).

Construction Forestry Mining and Energy Union (Construction & General Division) New South Wales Branch (CFMEU).

The New South Wales Plumbers and Gasfitters Employees' Union.

Automotive Food Metals Engineering Printing & Kindred Industries Union New South Wales Branch (also known as AMWU).

Electrical Trades Union of Australia New South Wales Branch.

Transport Workers Union of Australia, New South Wales Branch (TWU).

**ANNEXURE B****PART 1**

## Scheduled Milestones

Milestone	Objective	Indicator	Assessment
1. Programme	Achieve new working Programme milestone and Practical completion on 15 September 2003.	Marked up Programme and attached table.	
2. EH&S	Protection and relation with public. Reduction of potential class one occurrences. Compliance with work method Statements Inductions	Minimise disruption to public and operation of the existing shopping centre. Reduction in severity and frequency of PIs. Reduction in safety Indicators. Monitor SWM and actual method. All employees attend Induction.	
3. Quality	Compliance with AFC Specifications Drawings and documentation.	Verification of ITP and Consultant QA report.	
4. Behaviour / Hours of Work	Quiet enjoyment of Existing Tenants. Refer Management Plan Further issues.	No complaints	
5. Zero Lost Time	No lost time due to site wide Stoppages	Marked up Programme	

**PART 2**

## Programme Milestones.

Milestone 1	Eastern Roadworks	30 April, 2002
Milestone 2	Erina Corner 2 levels of Carpark, Relocate Substation, GB'Dock, Best & Less	23 August, 2002
Milestone 3	Erina Corner Retail & Supermarket	14 January, 2003
Milestone 4	New Eatery	9 May, 2003
Milestone 5	New Mall & Multi-deck Carpark	2 June, 2003

**ANNEXURE C**

**AUTHORITY TO OBTAIN FROM DIMA DETAILS OF IMMIGRATION STATUS**

I, (Family Name) \_\_\_\_\_ Given Name/s \_\_\_\_\_

Date of Birth \_\_\_\_\_ Nationality: \_\_\_\_\_

Visa number \_\_\_\_\_ Passport number: \_\_\_\_\_

authorize the Department of Immigration and Multicultural Affairs (DIMA) to release by fax details to:

\_\_\_\_\_  
(Name of employer representative)

Details of my immigration status and entitlement to work legally in Australia.

This information will only be made available to the employer representative or an authorised trade union Officer on request

I also understand the above-named will only use this information for the purpose of establishing and verifying only my legal entitlement to work in Australia and for no other purpose.

.Signed: \_\_\_\_\_ Dated: \_\_\_\_\_

Name of employer: \_\_\_\_\_

Phone \_\_\_\_\_ Fax: \_\_\_\_\_

Please send or fax this form to:  
The Department of Immigration and Multicultural Affairs  
Phone: (02) 9258 4730  
Fax: (02) 9258 4763

R. W. HARRISON *D.P.*

(804)

**SERIAL C1179**

**NESTLE SMITHTOWN ENTERPRISE AWARD 2001**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Nestle Australia Limited.

(No. IRC 6803 of 2001)

Before The Honourable Mr Deputy President Harrison

2 and 8 November 2001

**AWARD**

**1. Arrangement**

Clause No.	Subject Matter
15.	Allowances
18.	Annual Leave
	Appendix 1 - CBT Module Structure
	Appendix 2 - CBT Pay Structure

- 35. Area Incidence and Duration
- 1. Arrangement
- 30. Casual & Temporary Employees
- 7. Classifications
- 20. Compassionate Leave
- 3. Competency Based Training
- 25. Conditions of Employment
- 2. Consultation
- 13. Consultation and Productivity
- 27. Deduction of Union Fees
- 6. Definitions
- 37. Grade Wage Rates
- 5. Grievance Procedure
- 8. Hours of Work
- 4. Induction of New Employees
- 21. Jury Service Leave
- 34. Leave to Attend Union Business
- 19. Long Service Leave
- 11. Meal Breaks
- 16. Mixed Functions
- 36. No Extra Claims
- 10. Overtime
- 22. Parental Leave
- 26. Payment of Wages
- 24. Personal/Carers Leave
- 17. Public Holidays
- 32. Redundancy
- 12. Rest Periods
- 9. Rostered Days Off (RDO's)
- 28. Shiftworkers
- 23. Sick Leave
- 38. Signatories
- 31. Superannuation
  
- 33. Trade Union Training
- 29. Twelve Hour Shift AWS
- 14. Wage Increases

## 2. Consultation

The parties to this Award are committed to continuous improvement of product quality, work environment, work performance, productivity and structural efficiency through consultation and working together to resolve problems. The parties agree to continue to enhance flexibility, productivity and efficiency of the Factory through a review of working patterns and arrangements as necessary from time to time.

To achieve this, a Consultative Committee will be established and will meet where necessary, but a minimum of twice per year, to involve employees in decisions affecting the workplace.

## 3. Competency Based Training

With the move to skills related career paths and competency based training, employees will be encouraged to undertake ongoing development and training in order to improve productivity and efficiency and increase personal skill development, motivation and self-esteem. The parties recognise that not all employees will want to participate in Competency Based Training.

For all employees participating in Competency Based Training, an individual training pathway shall be developed. This training pathway shall be developed in consultation with the Employee concerned, representation if requested, their department manager and the Human Resources Manager.

The aim of the Training Pathway is to identify training required for the Employee to meet current and future job needs particularly in relation to career progression into work areas outside of their current role. Implementation of an individual training pathway will remain subject to business needs. The consolidation of individual training pathways will provide the basis for the Training Needs Analysis for the Assessment Committee to consider at the annual review.

It is acknowledged by the parties that in some cases it may be necessary to incorporate modules from other Certificates in order to provide the Employees with relevant training and underlying knowledge of their position. Points from such modules will be recognised in the Classification Structure.

### 3.1 Objectives of Agreement:

- (a) To encourage employees covered by this agreement to acquire and use relevant skills, which improve the competitiveness of the Factory operations and provide broader career opportunities.
- (b) To reward employees on the basis of relevant skills attained and used (these skills must be appropriately validated).
- (c) To establish agreed pay rate relativities.
- (d) Nothing in this agreement precludes the development at a later date of a Classification Structure, which includes CBT Skill Levels beyond the current Level 7, which would be applicable for those Weekly Paid employees that go on to study the Advanced Certificate in Food Processing, Diploma or a Degree in Food Technology.

### 3.2 Programme Review:

The CBT Program shall be reviewed annually by the Assessment Committee. The following items should be reviewed:

- (a) % of employees participating in training
- (b) specific module development requirements
- (c) any impediments to participation in training
- (d) quality and relevance of module content
- (e) opportunities to improve CBT programme
- (f) development of training plan for subsequent year of program in line with business needs
- (g) the inclusion of modules in Skill Levels beyond Level 7
- (h) allocation of training in subsequent years
- (i) outstanding matters that have not been resolved

Recommendations from the Assessment Committee are to be made to Company management in order to achieve continuous improvement of the CBT programme.

### 3.3 Delivery of Pay Increases:

- (a) Participation Payment

The Company is prepared to make a \$12.00 per week payment to all employees who enrol for and successfully complete the following Skill Level 1 modules, i.e.

Apply safe work procedures

Apply basic food safety procedures

Apply basic Q.A. practices

Apply basic mathematical concepts

Communicate in the workplace

Payment of the \$12.00 per week will be made to participants at the completion of the Skill Level 1 modules.

- (i) As employees progress through the Skill Levels training and assessment program and competencies are validated, pay rates shall be those set out in Appendix 2 backdated to the assessment request date of the last module to be completed in the Skill Level.
- (ii) The CBT Skill Level Module Structure (Appendix 1) provides an outline of the proposed (subject to availability) modules for each stream up to Skill Level 5.

#### 3.4 Programme Outline:

- (a) This system operates on the basis that every Production Position in the Factory is defined by the skills and competencies needed to perform the work in those positions.
- (b) Employees will be paid for the skills and knowledge required, which includes those acquired under the approved training pathway.
- (c) Some modules within the CBT curriculum will be available to a limited number of employees in order to meet the business needs. Eg First Aid, Forklift Driving, Workplace Assessor, Workplace Trainer
- (d) The system for determining pay is based on the National Certificate of Food Processing and its points system. Every module has a points value. As employees complete whole or (where defined) part modules and are assessed, they will be credited with the relevant points subject to validation of the competency in the workplace.

#### 3.5 Key Procedures for Administration of System:

- (a) Training Provision
  - (i) The classification system is accompanied by the delivery of training. The Company will provide a defined amount of training each year in paid time to enable Employees to complete Skill Level modules required for their position.
  - (ii) Employees may be required to stand aside from their position temporarily for the purposes of training participants in approved Competency Based Training.
  - (iii) Where it is identified that a person needs to temporarily stand aside from their position for the purposes of providing multiskilling training, consultations will take place with the person in regards to the need to do so, the likely duration of such displacement and possible training or tasks that could be undertaken during this period.
  - (iv) Employees will be offered training as follows:
    - Skill Level 1-4 - up to 80 hours per annum
    - All Other Levels - to be determined at the time

The hours allowed includes authorised absence from workstation to attend Face to Face Delivery Sessions, Tutorial Support Sessions and gathering of information required to complete Learning Outcomes and Assessment Tasks. Hours will be advised at the commencement of the training.

- (v) Training will be based on accelerated hours where possible.
- (vi) A roster will be prepared that allows for scheduled access for the Employee to Well Learning Support and the Industry Trainer.
- (vii) It is not compulsory for Employees to enrol in the National Certificate in Food Processing.
- (viii) Such people will still participate in site general wage increases.
- (ix) It is acknowledged by the parties that in order for specific requirements placed on the Company through Company Policy, External Agencies or Legislation, that Employees are still required to attend training sessions in relation to these specific requirements.
- (x) An Employee may wish to enrol in NCFP modules after participating in such general training.

(b) Assessment Committee

- (i) An Assessment Committee will be formed consisting of an equal number of Management and Employee Representatives:

Company Nominated Assessment Committee Member

Elected Employee Representatives (2) who hold current or are working towards, accreditation as Workplace Trainers and/or Assessors

Human Resources Manager

- (ii) The Committees objectives are to:

Ensure that the Assessment Procedure is administered according to the nationally recognised standard procedure.

Conduct an annual review of the CBT program as outlined in clause 3.2

Provide a forum for questions and grievances related to assessments to be raised and dealt with in a consistent and timely manner.

(c) Assessment Procedure

Module Assessments involve written, verbal or demonstration of knowledge in order to complete the Assessment Task, Computer Based assessment or any combination thereof and in the case of some modules a Workplace Verification Task will be undertaken.

In relation to the Workplace Verification Task:

The Participant will:

- (i) Identify their work area
- (ii) Identify the Workplace Verification Task for the module they seek assessment in.
- (iii) Review the questions in the Assessment Task and ensure they are ready to answer the questions

(iv) Select an Assessor to conduct the Workplace Verification Task from the Assessor List

(v) Notify the Human Resources Manager when ready to do the Assessment

The Human Resources Manager will be responsible for:

(i) Co-ordination of the Assessment (eg. Time, place, etc.)

(ii) Ensuring assessments are conducted in such a way as to meet the Assessment Criteria as outlined in the Learning Outcome Documents

(iii) Recording the Assessment request date

(iv) Ensuring that the Pay Office is advised of any changes to an Employees rate of pay

(d) Appeals Procedure

The Employee may discuss any issue relating to the Assessment with any member of the Assessment Committee who will endeavour to:

attempt to resolve the issue

or may consult site experts or Union Officers

or may refer issue to the Assessment Committee

The Assessment Committee:

will mediate between Employee and Assessor

may consult site experts

will advise on best course of action to resolve issue

may refer issue to the Factory Manager

(e) Recognition of Prior Learning (RPL)

The parties to the agreement are committed to the RPL process

RPL: "is the acknowledgment of skills and knowledge obtained through formal training, work and/or life experiences".

(f) Training Delivery/Flexibility

Training delivery and assessment will take place during Company time. (Note: Employees may need to complete some course work and study in their own time).

There will be an opportunity at times during the production cycle to release operators from some positions without providing Employees to relieve.

This will be established on a case-by-case basis and may only be for parts of certain shifts.

(g) Temporary/Casual Employees

The Company will provide Training opportunities up to Skill Level 2 for regular Temporary/Casual Employees

At the annual review the need for provision of further training access will be considered.

(h) General Wage Increases

In the event that a % general wage increase is to be applied, then this is applied to the rates in the CBT Classification Structure document (Appendix 2).

Non-participants in CBT will still participate in general site wage increases.

3.6 Transfers Between Positions and Departments

(a) All positions will comprise three levels of competencies:

Common core competencies

Position specific competencies

Multi-skilling competencies

(b) Where an employee is required to move to another position by the company due to business needs, only those competencies that are a requirement of the new position will be transferred across. However, the employee's pay rate will be maintained until such time as they have completed training in the new modules relevant to the new position and points acquired to match the pay rate.

The employee will not suffer a reduction in their base rate of pay or current CBT points as a result of the transfer. If however, an employee refuses to train in any of the competencies required in the new position, taking into consideration RPL, consultation with the employee will then take place outlining available options.

(c) Where an Employee is successful in applying for a position with a different skills requirement, only those competencies which are a requirement of the new position will be transferred across and the competency rate of pay will be adjusted accordingly. The employee will need to complete the training modules required for the new position and will be paid for their higher level of competency upon successful completion of the required modules.

3.7 Procedure to Be Followed If an Employee is Required to Step Aside from Their Current Position:

(a) In order to meet current and future defined job requirements an Employee may need to undertake informal or formal training.

(b) In the event that an Employee does not wish to undertake and/or an Employee is no longer able to meet the job requirements, consideration will need to be given as to whether or not an Employee remains in that position.

(c) Where it is identified that an Employee may be required to step aside from their existing position on a permanent basis, there shall be consultations with the Employee concerned and the Union at least 6 months prior to implementation of the change.

(d) Such discussions should identify suitable alternative positions and training required to ensure a smooth transition and an appropriate method for transfer of Classification and remuneration including any applicable allowances and alternative options, ensuring the base rate remains the same but with provision for a reduction in CBT points if a module is no longer relevant to the new position.

(e) Where an Employee is concerned about the fairness of their treatment, Clause 5 of the Nestlé Smithtown Enterprise Award will be followed.

3.8 Multi Skilling:

The parties agree to observe the existing multi-skilling arrangements and to pursue and eliminate any remaining impediments to multi-skilling and broadening the range of tasks, which an Employee may be required to perform.

#### **4. Induction of New Employees**

As part of the Company's Induction Procedure the Union Delegate(s) will be given the opportunity to meet with the new Employee during the Induction Programme.

Existing facilities will be available for the purpose of the meeting and discussions.

#### **5. Grievance Procedure**

In order to avoid industrial action the parties to a grievance or dispute will take all reasonable steps to ensure the following procedure is followed responsibly and expeditiously without affecting work performance or productivity. The Employees will avoid work stoppages, bans and limitations and co-operate positively in reviews of work practices aimed at improving productivity.

- 5.1 If an Employee has any problem or concern in relation to his/her employment he/she shall in the first instance discuss the matter with his/her Supervisor who will endeavour to resolve the issue expeditiously.
- 5.2 Any unresolved matter shall then be referred to the Department Head. This can be done by the employee himself/herself or the employee and his/her Union Delegate.
- 5.3 Should the dispute still remain unresolved, appropriate assistance should then be sought from the Factory Manager and if necessary, an official of the Union.
- 5.4 In the event of no agreement being reached within seven (7) days, the dispute shall be referred to the Industrial Registrar.
- 5.5 Until the matter is determined, work shall continue in accordance with the pre-dispute conditions except where a trial is put in place in line with Consultation and Productivity (Clause 13) in which case the trial will go ahead.
- 5.6 Nothing in this clause will operate to the detriment of an Employees health and safety.

#### **6. Definitions**

6.1 Full-Time Employee:

Is one appointed after completion of the probationary period employed and paid by the week for an indefinite period. (See 25.2).

6.2 Casual Employee:

Is one engaged for a minimum of four and a maximum of twelve hours per day.

6.3 Temporary Employee:

Is one engaged for a specific period of at least 38 ordinary hours. Where an Employee is engaged on a short-term temporary basis, ie between 1 and 3 weeks duration, there shall be a maximum of 5 such engagements per calendar year.

6.4 Daywork Employee:

Is one whose ordinary hours of work are performed between 6.00am and 4.00pm or as otherwise agreed Monday to Friday inclusive?

6.5 Five (5) Day Shiftwork Employee:

Is one other than a day work Employee whose ordinary hours of work are performed at any time Monday to Friday inclusive.

6.6 Seven (7) Day Shiftwork Employee:

Is one other than a day work Employee or a five (5) Day Shiftwork Employee whose ordinary hours of work are performed at any time of any day of the week.

6.7 Twelve (12) Hour Shiftwork Employee:

Is one whose ordinary hours of work fall into a continuous 12-hour shift roster covering all days of the week.

6.8 Day's Pay:

Unless otherwise specified is 0.2 of the Day work Employee's, Five (5) Day Shiftwork Employee's or Seven (7) Day Shiftwork Employee's relevant weekly Grade Wage Rate prescribed by this award.

6.9 Union:

Means the Australasian Meat Industry Employees' Union, Newcastle and Northern Branch.

6.10 Company:

Means Nestlé Australia Ltd, ACN 000 011 316.

## 7. Classifications

7.1 Production Process:

Current Full-time, Casual and Temporary Employees shall be paid a weekly wage, as set out in Table 1, inclusive of the weekly wage according to the following Classification Gradings and definitions. Those Employees that are participating in Competency Based Training will be paid as per Appendix 2.

All new Employees engaged after 14 January 1998 will be paid as per the CBT Classification structure.

Food Processing Operator Grade 5:

Employees classified in Grade 5 must have completed an approved recognised course at a tertiary institution and must have demonstrated proficiency in the grade and passed such written and practical examinations as required by law and/or the Company.

Indicative tasks:

Team Co-ordinator: appointed by the Company, responsible for the technical co-ordination of an area within the plant including but not limited to sourcing of relief workers where required, related administrative tasks including inputting computer data, ensuring standards of hygiene and sanitation are maintained and performing such other tasks as outlined in the position description.

Through ongoing consultation with the Team Co-ordinators the Company will identify competencies and skills that a Team Co-ordinator currently has and those that are necessary to "technically co-ordinate" the area to meet the business needs.

The underlying skills to carry out the role to meet the business needs will be provided through training. If an Employee does not participate in the training and attain the skills then consideration may have to be given as to their continuing in that role.

#### Food Processing Operator Grade 4:

Employees classified in Grade 4 must be undertaking an approved recognised course at a tertiary institution. Employees at this level must have demonstrated proficiency in Grade 3 modules and have passed such workplace and competency assessments at Grade 3 as required by law and/or the Company.

#### Indicative tasks:

Performance and interpretation of complete chemical and/or microbiological analysis; inputting computer data; maintaining records.

#### Food Processing Operator Grade 3

Employees classified in Grade 3 must have demonstrated proficiency in the grade and passed such written and practical examinations as required by law and/or the Company.

#### Indicative tasks:

Operation of a forklift or other plant, machinery or equipment as required in and about the establishment, keeping stock records including stocktakes; preparing consignments for dispatch including quality checks; inputting computer data; loading and unloading trucks for dispatch and receiving;

Operating; adjusting; dismantling; cleaning and assembling manufacturing plant, machines or equipment; including a forklift or pedestrian forklift; performing quality checks and analysis; inputting computer data; maintaining records.

Operating; adjusting; dismantling; cleaning and assembling packing plant machines and equipment; performing quality checks; inputting computer data; maintaining records; receiving and/or issuing stores or goods.

Performance and interpretation of complete chemical and/or microbiological analysis; inputting computer data; maintaining records.

#### Food Processing Operator Grade 2:

Employees classified in Grade 2 must have demonstrated proficiency in the grade and passed such written and practical examinations as required by law and/or the Company.

#### Indicative tasks:

Operate a pedestrian forklift and other plant, machinery or equipment in and about the establishment; inputting computer data; performing in-line quality checks; maintaining records; loading and unloading;

Receiving and/or issuing of goods or stores including preparing material for dispatch; keeping store and stock records including stocktakes; operating machinery and equipment associated with receiving or dispatching goods; performing quality checks; removing cartons, tins or containers from packing area to store etc; inputting computer data.

Provision of employee services including maintenance of facilities, operation of the canteen and staff sales shop including stock control, distribution of uniforms and provision of first aid supplies. Ensure hygiene standards, customer service levels and facilities are maintained at the required standard.

Operating; adjusting; dismantling; cleaning and assembling manufacturing plant, machines or equipment; including a pedestrian forklift; performing quality checks and analysis; inputting computer data; maintaining records.

Operating; adjusting; dismantling; cleaning and assembling packing plant machines and equipment; performing quality checks; inputting computer data; maintaining records; receiving and/or issuing stores or goods.

Food Processing Operator Grade 1:

Employees classified in Grade 1 must have undertaken the Company Induction Program and successfully completed the Skill Level 1 Competency modules. Employees must also have demonstrated proficiency in the workplace by assessment passed such written and practical examinations as required by law and/or the Company.

Indicative tasks:

Performing general service duties as required including cleaning; refuse removal; gardening; stacking; packing line servicing; sample preparation; quality checks; inputting computer data; maintaining records; general cleaning of work areas and stations.

## **8. Hours of Work**

- 8.1 Ordinary hours of work shall be scheduled not to exceed an average of thirty - eight (38) hours per week in a work cycle.
- 8.2 Except for a meal break or rest period ordinary hours on any day shall not be worked in broken periods. (See Clause 11 and 12).
- 8.3 At least eight (8) hours shall lapse between an Employee's ordinary hours of work on any one-day or shift and the next.
- 8.4 The Company shall post a roster of the ordinary work hours of all Employees and shall not change this roster, except by mutual agreement or except in the case of an emergency, unless fourteen (14) days notice is given to the Employee concerned.
- 8.5 By mutual agreement between the Company and an Employee the hours or days of work may be altered without incurring penalties.
- 8.6 Ordinary hours of work for a Day work Employee shall be restricted to a maximum of eight (8) on any day. However by mutual agreement up to 10 ordinary hours may be worked.
- 8.7 The method of implementation of a Twelve Hour Day shall be subject to negotiation between the Company, the Employees and the Union.
- 8.8 The extension of 12 Hour Shift System beyond present work units will be subject to negotiation between the Company, the Employees and the Union.

## **9. Rostered Days Off (RDOs)**

- 9.1 Five (5) day, seven (7) day Shiftwork Employees and Day work Employees scheduled to work in excess of 38 ordinary hours per week in a work cycle will have 0.4 hours accumulated for a RDO. The 0.4 hours will accumulate when an Employee works all their scheduled ordinary hours on a day and when on paid sick leave; paid public holidays; paid jury service; paid compassionate leave; and paid family leave.
- 9.2 There is no accrual of an RDO when on Annual Leave or an RDO.

- 9.3 Once an employee has accrued the equivalent of 45.6 hours RDO, the company may request the employee to utilise such RDO hours within one (1) month or by mutual agreement for hours over and above this accrued amount.

If an employee has a need to accrue further RDO hours, this may be arranged by mutual agreement with the Company.

- 9.4 A RDO shall be taken at a time or times mutually agreed upon when the employee has accumulated seven point six (7.6) hours credit for each day off which shall be deducted from accumulated credit hours. An employee may, with the consent of the Company, take RDO's in part day amounts. Payment for a RDO shall be at the same rate as if worked. An Employee shall not be entitled to sick leave for illness on a RDO.
- 9.5 Where by agreement an Employee works on a RDO the Employee may by agreement be granted a substitute RDO at a mutually agreed time or may be paid overtime rates for the time worked.
- 9.6 All accrued RDO's will be paid out upon termination of employment.
- 9.7 An Employee may elect, with the consent of the Company, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the Company and Employee, or subject to reasonable notice by the Employee or the Company.
- 9.8 This subclause is subject to the Company informing the Union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of RDO flexibility and providing a reasonable opportunity for the Union to participate in negotiations.

#### 10. Overtime

- 10.1 An Employee shall work reasonable overtime as required.
- 10.2 Any time worked in excess of the ordinary hours on any one day shall be overtime and paid for at a rate of time and a half for the first two (2) hours and double time thereafter calculated on the Employees relevant weekly Grade Wage Rate.
- 10.3 Where an Employee is required to work overtime not continuous with the completion or commencement of his or her ordinary scheduled work hours he or she shall be employed for a mutually agreed period of time and paid for the time worked at the overtime rate.
- 10.4 Where overtime extends from one day into the next, such a period of overtime shall be regarded as all having been worked on the first day for payment purposes.
- 10.5 Where an Employee works more than three (3) hours overtime on site on call back or continuous with the completion of his or her scheduled ordinary working hours the employee shall be allowed a minimum of eight (8) continuous hours break prior to resuming work.
- 10.6 Should an eight (8) hour break not be allowed Employee shall be paid at double time of the Employees' relevant weekly Grade Wage Rate for all time worked after the completion of overtime until such a break is allowed.
- 10.7 An Employee who is required to work more than two hours overtime after their normal finishing time without being notified the previous working day shall be entitled to meal allowance as per Item 3 of Table 2.
- 10.8 An Employee, other than an Employee rostered to work ordinary hours on a Saturday, shall be paid time and a half for the first two (2) hours and double time thereafter for Saturday work.
- 10.9 An Employee, other than an Employee rostered to work ordinary hours on a Sunday, shall be paid double time for all time worked on Sunday.

- 10.10 An Employee not rostered to work but required to work on a Public Holiday falling on a Monday to Friday who has not been given the required notice (as per Clause 8.4) shall be paid (as per Clause 17.8).
- 10.11 Full-time Employees will receive first preference for overtime available in their work area.

### **11. Meal Breaks**

- 11.1 Day work Employees shall be allowed a thirty (30) minute unpaid meal break when working day work .
- 11.2 5 day and 7 day Shiftwork Employees shall be allowed a twenty (20) minute paid meal break when working shiftwork.
- 11.3 Employees working a 12 Hour Shift system shall be allowed a 40 minute paid meal break, which may be taken as, agreed.
- 11.4 Unless otherwise agreed Employees shall not be required to work more than 5 ordinary hours without a meal break.
- 11.5 Notice will be given the previous working day of the Company's intention to vary the time of the meal break. Variation of the time of the meal break will not incur penalty rates.
- 11.6 Overtime rates will be paid for the meal break if the Company fails to give notice the previous working day of its intention to vary the time of the meal break the following day.

### **12. Rest Periods**

A paid rest period of ten (10) minutes will be allowed at agreed times both before and after the meal break each day in the rest area.

### **13. Consultation and Productivity**

Consultative measures currently operating at the Smithtown Factory shall continue and shall be used to maintain continuing co-operation between the parties to achieve improved productivity of manufacturing and related operations.

To provide a process for change the following provisions shall apply:

Where an issue is raised by the Company or the Union as part of continuous productivity improvement, consultation shall take place as follows:

- (a) The changes shall be explained to all affected Employees including details of how the change or changes will work and how they will improve or alter productivity including output, waste, cost, etc.
- (b) Employees will have their input and any alterations or alteration considered.
- (c) Where agreement is reached on the proposed changes, they will be implemented as soon as practicable.
- (d) If no agreement is reached, provided the changes are permitted by the terms of the award, they may be implemented on a trial basis as soon as practicable after the expiry of two working weeks from the date on which the productivity improvement is first raised. It is recognised that a trial having a direct impact on all Employees may not be capable of immediate implementation but shall not take longer than four working weeks to implement. The consultative process will continue while the trial continues.

Either party may take the issue to the Industrial Relations Commission of NSW at any stage after the issue is raised.

Where an occupational health and safety issue is raised, it shall be processed in accordance with the applicable Occupational Health and Safety legislation.

Where an Employee has personal difficulties arising from a productivity improvement those difficulties will be promptly investigated and the Employee will have recourse to the Grievance Procedure as outlined in the award.

#### 14. Wage Increases

The following increases will apply to wages during the term of this Agreement:

- (a) from first pay period commencing on or after 28 October 2001, a 2% increase.
- (b) from first pay period commencing on or after 28 April 2002, a 3% increase.
- (c) from first pay period commencing on or after 27 October 2002, a 2% increase.
- (d) from first pay period commencing on or after 26 April 2003, a 3.5% increase.
- (e) from first pay period commencing on or after 25 October 2003, a 1.5% increase.

The payments shown above in (b), (d) and (f) are subject to agreement at the Factory that continuous improvement in the Factory performance is occurring.

Evidence of this will be as follows:

- (i) Positive movement in the Factory's KPI's. KPI's will include three (3) core and two (2) specific KPI's in each agreement term.
- (ii) Agreement by all parties of changes required to improve the business.
- (iii) No industrial action occurring. In the event that a payment as outlined in 14.(b), (d) or (f) above, is not made due to Industrial action being taken, the Union reserves its right to take the claim for the payment to be reinstated to the New South Wales Industrial Relations Commission.
- (iv) Satisfactory performance of the site training and consultative processes
- (v) Other issues that may be raised by Employees, the Union or the Company.
- (vi) No extra claims for wages or conditions made on the Company.

This evidence shall be considered at the Factory 3 months prior to the due date and where progress is unsatisfactory, the reasons for this will be examined and a plan put in place to correct any problems.

Where, on the due date, performance is still unsatisfactory, the Company reserves its right to reduce a payment or defer it for a period.

Where, the Union disagree with this decision it can pursue the issue through the disputes procedure.

All grievances are to be processed through the agreed procedures without industrial action (see Clause 5).

#### 15. Allowances

With a move to a CBT Classification and Wages System which is in effect a payment for skills system, the treatment of the allowances described below will be reviewed annually by the parties and any agreement that is reached will be incorporated in each of the allowances.

- 15.1 Emergency Team Allowance: Employees appointed by the Company as permanent members of the Emergency Team shall be paid an allowance as per Item 1, Table 2 per week, in addition to other

payments to which they are entitled under this award. The allowance shall not be included for the calculation of overtime payments or other payments.

The allowance will continue to be paid provided Employee attends the required number of training sessions per calendar year as specified by the Occupational Health & Safety Committee in order to maintain skill levels and continues to be ready willing and able to carry out the duties required of an Emergency Team Member.

- 15.2 First Aid Allowance: an Employee who holds a current First Aid Accreditation and is appointed by the Company as a First Aid Attendant, shall be paid an allowance as per Item 2 in Table 2 per week, in addition to other payments to which they are entitled under this agreement. The allowance shall not be included for the calculation of overtime payments or other payments.

The allowance will continue to be paid provided the appointed Employee maintains currency of accreditation by completing refresher training and continues to be ready willing and able to carry out the duties required of a First Aider.

- 15.3 Team Co-ordinator Allowance: an Employee appointed by the Company who is responsible for the technical co-ordination of an area within the plant shall be paid a margin as per item 4 in Table 2 attached per week above the employees relevant weekly Grade Wage Rate. Where such an appointment is on a permanent basis, this allowance has been incorporated in the Grade 5 Wage Rate as shown in Table 1 but will continue to be treated as a separate allowance paid on a per week basis.

- 15.4 Workplace Trainer Category 1 Allowance: Workplace Trainer Category 1 shall be paid at the rate of \$3.80 per week, for all purposes regardless of whether the Employee provides training or not.

This allowance will be known as Workplace Trainer Category 1 Allowance.

- 15.5 Workplace Assessor A Allowance: Workplace Assessor A shall be paid at the rate of \$2.50 per week, for all purposes regardless of whether the Employee conducts assessments or not.

This allowance will be known as Workplace Assessor A Allowance.

## **16. Mixed Functions**

An Employee performing duties of a higher grade job for more than 1 hour on any day (except when working or relieving whilst undergoing training) shall be paid at the higher grade rate for all hours worked on that day including overtime.

## **17. Public Holidays**

- 17.1 The following days shall be Public Holidays:

New Years Day, Australia Day - 26 January, Good Friday, Easter Saturday, Easter Monday, Anzac Day - 25 April, Queen's Birthday, Eight Hour Day, Christmas Day - 25 December, Boxing Day, Picnic Day and any other day gazetted as a Public Holiday in the State of New South Wales.

- 17.2 By agreement with an Employee or all Employees a day other than the gazetted day may be observed as the holiday.

- 17.3 Picnic Day shall be allowed and observed on a mutually agreed day.

- 17.4 An Employee shall be paid for a public holiday when he/she attends work on both days rostered to attend work before and after the holiday. Where sick leave is claimed for either day, verification to the satisfaction of the Company shall qualify an Employee to receive payment for the public holiday.

- 17.5 Daywork Employees and Five (5) Day Shiftwork Employees shall receive a day's pay for each holiday falling on a Monday to Friday inclusive.

- 17.6 Seven (7) Day Shiftwork and Twelve (12) Hour Shiftwork Employees shall receive a day's pay for each holiday, whether rostered to work that holiday or not.
- 17.7 An Employee rostered to work on a holiday shall in addition to the payment under subclause 17.5 or 17.6 of this clause be paid single time extra for the time worked.
- 17.8 An Employee not rostered to work on a holiday but required to work on a holiday shall in addition to payment under paragraph 17.5 or 17.6 of this clause be paid time and one half, for the time worked.

### 18. Annual Leave

- 18.1 The provisions of the *Annual Holidays Act* 1944 (the Act) apply, which allows for four (4) weeks paid annual leave per annum.
- 18.2 As far as practicable at least three (3) months notice shall be given of a shutdown and its intended duration.
- 18.3 Seven (7) Day Shift Work and Twelve (12) hour shift Employees shall have an additional annual leave entitlement of one (1) weeks leave.
- 18.4 All Employees on taking annual leave that has fallen due in accordance with the Act shall be paid an allowance in advance being the greater of:
- (a) 17.5% of the Employees relevant weekly Grade Wage Rate per week of leave taken; or
  - (b) The applicable shift allowance for the projected roster.
- 18.5 In relation to mixed functions, for the purpose of calculating an Employees ordinary pay it shall be the rate applicable at the date of commencement of leave.
- Casual Employees - refer to Clause 30.9.
- Temporary Employees - refer to Clause 30.10.
- 18.6 Where employees are pre-planning annual leave, discussions should be held with the Department Manager to ascertain business needs at that time and the practicality of such leave

### 19. Long Service Leave

The provisions of the *Long Service Leave Act* 1955 apply.

### 20. Compassionate Leave

A Full-time or Temporary Employee shall be entitled to a maximum of three days of compassionate leave without loss of pay on the production of satisfactory evidence on each occasion of death of any one of the following family members:

spouse - including de facto

parent, step-parent or parent-in-law

sibling or step-sibling

child or step-child

foster parent or foster child

grandparents

### **21. Jury Service Leave**

A Full-time or Temporary Employee required to perform jury service during his or her normal work hours shall be paid the difference between the Employees relevant Grade Wage Rate for the period and the jury service payment.

### **22. Parental Leave**

The Company's Parental Leave Policy, applicable at the time of certification of this agreement, shall continue to apply for the duration of this agreement, provided employees shall not be excluded from any improvement to the policy which may occur during that period.

### **23. Sick Leave**

- 23.1 Full-time and Temporary Employees shall be entitled to seventy six (76) hours sick leave, for each completed year of service.
- 23.2 Such sick leave shall accumulate, on a pro-rata basis indefinitely.
- 23.3 An Employee, ill and unable to attend work shall notify the Company at his or her earliest convenience and in any event no later than twenty four (24) hours of falling ill, of the nature of the illness and the estimated duration of absence.
- 23.4 An Employee shall, prove to the satisfaction of the Company that he/she was unable on account of such illness or injury to attend for duty for any absence of two (2) or more days. Where an employees' single day absences indicate misuse, the Company will review such single day absences with the employee.

### **24. Personal/Carers Leave**

- 24.1 Use of Sick Leave:
- (a) An Employee other than a Casual Employee with responsibilities in relation to a class of person as set out in subparagraph (ii) of paragraph (c), who needs the employees care and support shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement, provided for at Clause 23 of this award for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.
- (b) The Employee shall, if required, establish by production of a medical certificate or statutory declaration the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (i) the Employee being responsible for the care of the person concerned; and;
- (ii) the person concerned being:
- (a) a spouse of the Employee; or
- (b) a de facto spouse who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
- (c) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex-nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or

- (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
  - (e) a relative of the Employee who is a member of the same household where, for the purposes of this subparagraph:
    - (1) 'relative' means a person related by blood, marriage or affinity;
    - (2) 'affinity' means a relationship that one spouse, because of marriage, has to blood relatives of the other; and
    - (3) 'household' means a family group living in the same domestic dwelling.
- (d) An Employee shall, wherever practicable, give the Company notice prior to the absence of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the Company by telephone of such absence at the first opportunity on the day of absence.

#### 24.2 Unpaid leave for family purpose:

An Employee may elect, with the consent of the Company, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph I of Clause 24.1 who is ill.

#### 24.3 Annual Leave:

- (a) An Employee may elect with the consent of the Company, subject to the *Annual Holidays Act* 1944, to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this Clause, shall be exclusive of any shutdown period provided for elsewhere under this award.
- (c) An Employee and Company may agree to defer payment of the annual leave loading, in respect of single day absences, until at least five consecutive annual leave days are taken.

#### 24.4 Make-up time:

- (a) An Employee may elect, with the consent of the Company to work 'make-up time', under which the Employee takes time off ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
- (b) An Employee on shift work may elect, with the consent of the Company to work 'make-up time' (under which the Employee takes time off ordinary hours and works those hours at a later time) at the shift work rate, which would have been applicable to the hours taken off.

### 25. Conditions of Employment

#### 25.1 Contract of Employment:

Contracts of Employment shall be as defined in Clause 6.

Each Employee will be advised before commencing employment, the terms of their employment. An Employees' terms of employment will not be changed unless by mutual agreement.

#### 25.2 Probationary Period for Full-Time Employees:

Appointment as a Full-time Employee is subject to a three (3) months probationary period during which performance will be reviewed at monthly intervals and if satisfactory the Employee will remain a Full-time Employee of the Company. If unsatisfactory, employment will be terminated. If within the next three (3) months the Employee's performance becomes unsatisfactory the Union shall be advised and the Company shall take appropriate disciplinary action up to and including termination.

#### 25.3 Promotions/Transfers - Performance Review

The criteria for assessment of Employees for promotion transfer between departments etc. will include the Performance Review and will be in accordance with the published Discrimination Free Workplace Policy and in the case where all things are equal seniority will be a factor taken into consideration. Employees will be encouraged to participate in an annual Performance Review.

The review sets the minimum frequency for a formal review of the Employees performance against the prescribed assessment criteria. The process provides a forum for Management and the Employee to discuss ongoing development and training in order to improve productivity and efficiency, increase personal skill development, motivation, self esteem and the development of a agreed skills related career paths that satisfy the Employees' aspirations and the Company's future needs.

It is recognised that some Employees may not wish to participate in the Performance Review process.

#### 25.4 Termination of Employment:

(a) With Notice:

Termination of employment other than of a Casual Employee is by one week's notice or by payment or forfeiture of one week's wages.

(b) Without Notice:

Employment may be terminated without notice for serious misconduct, including neglect of duty, inefficiency, malingering, pilfering, physical or verbal abuse of another person, abuse of alcohol or drugs affecting the Employee's work performance and payment will be up to the time of termination.

#### 25.5 Standdown:

The Company shall have the right to deduct payment for any day the Employee cannot be usefully employed because of any strike or through any breakdown in machinery or any cause for which the Company cannot reasonably be held responsible.

#### 25.6 Abandonment of Employment:

The absence of an Employee from work for a continuous period of three (3) working days without the consent of the Company and notification to the Company will be deemed abandonment of employment and wages will be paid up to the last time of work. This is recognised as a resignation by the Employee unless, within a period of fourteen (14) days since the last attendance at work the Employee establishes to the satisfaction of the Company he or she was absent and could not notify the Company for a reasonable cause.

#### 25.7 Work to Be Performed:

- (a) The Company may direct an Employee to carry out such duties as are within the limits of the employees' skill, competence and training.

### 26. Payment of Wages

26.1 Temporary and Full-Time Employees:

Wages are to be paid weekly, not more than 2 days in arrears into a bank, building society or credit union account nominated by the Employee.

26.2 Casual Employees:

Casual Employees are to be paid by cheque at the completion of their engagement. If an Employee so wishes, wages may be paid into a bank, building society or credit union account nominated by the Employee at the same time of payment of Temporary and Full-time Employees wages.

**27. Deduction of Union Fees**

Where authorised by an Employee, the Company shall deduct from wages Union Membership fees which shall then be forwarded to the Union.

**28. Shift Workers**

Notwithstanding anything in this award, the following principles will apply:

28.1 Twelve Hour Shift Employees:

- (a) The shift roster in the Extract and Scott Plants will be a Continuous 12 Hour Shift Roster, 4 days on 4 days off, 2 early shifts followed by a 24 hour break followed by 2 late shifts.
- (b) Employees working this shift roster will be paid according to the "Annualised Wage System", see Clause 29.
- (c) Annual Leave, Sick Leave and Long Service Leave shall be deducted and paid for the Ordinary Hours taken.

28.2 Shift Allowances:

A shiftworker shall be paid the following allowance:

	Grade Wage Rate %
(i) Five (5) Day Shiftworker	15
(ii) Seven (7) Day Shiftworker	30
(iii) Twelve (12) Hour Shiftworker	30

**29. Twelve Hour Shiftworkers - AWS**

Employees working this shift roster will be paid according to the "Annualised Wage System".

The concept of the AWS is to annualise the weekly pay of 12 Hour Shift Employees ("Employees"). This is achieved by totalling:

- 45 ordinary weeks,
- 2 weeks sick leave ("SL")
- 5 weeks annual leave ("AL")
- 11 Public Holidays at 7.6 hours per day
- to arrive at a weekly average for 52 weeks of the year.

Whereby Employees do not take their expected total of AL or SL in a designated year, Employees will be reimbursed. This will be calculated on an annual anniversary date and may consist of outstanding shift and or overtime payments.

29.1 Pay Structure (as at 28/10/98)

Ordinary hours per week	38
-------------------------	----

	Hourly	Weekly
Ordinary Base Rate	14.1463	\$537.56
Shift at 30%		\$161.27

Employees work an average of 42 hours per week based on an 8-week cycle. The 8-week cycle consists of 4 weeks of 4-day weeks and 4 weeks of 3 day weeks. The eight-week rotation is illustrated as follows:

Cycle A							
Week 1	12	12	12	12	R	R	R
Week 2	R	12	12	12	12	R	R
Week 3	R	R	12	12	12	12	R
Week 4	R	R	R	12	12	12	12
Cycle B							
Week 5	R	R	R	R	12	12	12
Week 6	12	R	R	R	12	12	12
Week 7	12	12	R	R	R	R	12
Week 8	12	12	12	R	R	R	R

2 hours a week of overtime on each of the 4 day weeks are transferred to the 3 day weeks to complete the 38 ordinary week in the 3 day week. The balance of 8 overtime hours on the 4 day week is then divided between the 4 and 3 day week as follows:

Week	Ordinary Hours	Overtime Hours	Total Hours
4 Day Week	38	10	48
3 Day Week	36	0	36
Transfer Hours	2	-2	0
Total	76	8	84
Weekly Average	38	4	42

Overtime hours per week are then divided into 1 hour of time and a half (1 ½) and 3 hours double time (2x).

Weekly earnings are calculated as follows:

Weekly Base Rate	WBR	\$537.56
Ordinary Base Rate	OBR	14.1463
Ordinary Time & 1/2	ORD1.5	21.2195
Double Time	ORD2X	28.2926
Shift Rate	SR	30%
Weekly Shift	WS	161.2680

Annualised weekly earnings in the AWS are calculated as follows:

					Weeks	
Ordinary Week	537.56	161.27	106.10	804.93	45.00	36,221.85
Annual Leave	537.56	161.27		698.83	5.00	3,494.15
Sick Leave	537.56			537.56	2.00	1,075.12
Public Holidays (11 days x 7.6 hrs *OBR/52 wks)				22.74	52.00	1,182.48
Total						41,973.60
Weekly Average						\$807.18

Ordinary Hours:

For both 4 & 3 day weeks, ordinary hours will equal the number of days times standard ordinary hours per day. Total ordinary hours are then adjusted to average the weekly earnings to 38 hours. In a 4 day week, 5.428

hours will be deducted to be paid in a 3 day week and vice a versa if the 3 day week falls in advance. Both total hours and hours deducted or advanced are to be displayed on the payslip for the pay period plus a year to date total.

A day of ordinary time will consist of 10.857 hours (the balance of the 12 hour day is overtime). This is derived from totalling 8 weeks times 38 ordinary hours (8 x 38 = 304hrs) divided by 3.5 days per week (8 x 3.5 = 28) to arrive at 10.857 ordinary hours per day (304/28 = 10.857).

The value of annualised ordinary hours do not reflect the Ordinary Base Rate of \$14.1463 as this rate must be annualised. This is calculated as follows:

Averaged weekly pay	807.18
Less Shift Allowance	161.27
Less Overtime Payments	106.10
Less Weekly Public Holiday Payment	22.74
Weekly Average Base Rate (annualised ordinary)	517.08
Hourly Average Base Rate	\$13.6074

This rate is applicable for:

Ordinary hours worked as part of the rostered week,

The first 190 hours of AL per year,

The first 76 hours of SL per year.

**Annual Leave:**

Employees are required to take 190 hours (this is the equivalent of 5 weeks of 38 hours) of AL each year. Each day of AL will consist of 10.857 hours (the annualised week equals 3.5 days). The first 190 hours will be paid at the Hourly Average Base Rate (as described above) with no further deduction of rostered overtime required.

Whereby an Employee does not take 190 hours of AL, the balance of overtime underpaid under the AWS will be reimbursed at an agreed annual anniversary date. Conversely if AL over the course of the year exceeds 190 hours there will be a reduction in the routine weekly overtime payment in the pay period concerned. For details of the reduction please refer to the section headed Shift Allowance and Rostered Overtime.

New Employees, Employees with no accrued AL or Employees with less than 190 hours accrued at the commencement of the AWS will also be paid at the weekly average base rate. Similarly these Employees will be reimbursed any shortfall on overtime at the agreed anniversary date.

Pay weeks made up entirely of AL or part thereof will continue to have the normal 5.428 or 5.429 hours deducted or added to arrive at the standard 38 hours per week. AL exceeding 190 hours will be paid at the Hourly Average Base Rate.

AL hours paid (as shown on the payslip) will reflect the hours taken off their leave balance. Employees leave balances will not be reduced until the leave is taken.

**Sick Leave:**

Employees are assumed to take 76 hours of SL each year. Each day of SL will consist of 10.857 hours. The first 76 hours will be paid at the Hourly Average Base Rate (as described in Ordinary Hours above) with no further deduction of shift allowance or rostered overtime required.

Whereby an Employee does not take 76 hours of SL, the balance of overtime and shift allowance underpaid under the AWS will be reimbursed at an agreed annual anniversary date. Conversely if SL over the course of the year exceeds 76 hours there will be a reduction in the shift allowance and rostered overtime payments in the

pay period concerned. For details of the reduction please refer to the section headed Shift Allowance and Rostered Overtime.

Pay weeks made up entirely of SL or part thereof will continue to have the normal 5.428 or 5.429 hours deducted or added to arrive at the standard 38 hours per week. SL exceeding 76 hours will continue to be paid at the Hourly Average Base Rate.

New Employees, Employees who have utilised their SL or have less than 76 hours available at the commencement of the AWS will also be paid at the Hourly Average Base Rate. Similarly these Employees will be reimbursed any shortfall on overtime or shift allowance at the agreed anniversary date.

SL hours paid (as shown on the payslip) will reflect the hours taken off their leave balance. Employees leave balances will not be reduced until the leave is taken.

Shift Allowance ("SA") and Rostered Overtime ("ROT")

SA is calculated on 30% of the weekly Base Rate (refer above). SA will be paid in full whereby an employee attends to commence his shift.

ROT payments are still based on the Ordinary Base Rate (refer above). The first 1.143 hours of an employees shift is deemed to be overtime with the remaining time being ordinary hours. For example an employee who retires sick after two hours of a 12 hours shift will receive 10 hours sick leave and have 10 hours deducted from his SL accrual. No ROT would be deducted in this instance.

Each weeks payment of both SA and ROT will be recorded on the payslip in units of days. The standard week will consist of 3.5 units (days) of ROT and SA. Any adjustments to SA and ROT will be based on the daily rate or a percentage of. The daily rate is calculated as follows:

APS PAYS LIP	(4 DAY WEEK)		
Payslip Nor./Adj.	A	-5.428	
Payments		Units \$	YTD Units
Ordinary Ann.	0	-	
Annual Leave Ann.	0	-	x.xxx
Sick Leave Ann.	4	43.428	x.xxx

SA and ROT standard weekly payments will not vary except where:

AL paid exceeds 190 hours for the year, 1 day of ROT deducted per day (10.857hrs) of excess annual leave;

SL paid exceeds 76 hours for the year, 1 day of ROT and SA deducted per day (10.857hrs) of excess sick leave;

Payment of Long Service Leave, 1 day of ROT and SA deducted per day (10.857hrs) of Long Service Leave;

Leave without pay, 1 day of ROT and SA deducted per day (10.857hrs) of leave without pay;

In general the above deductions are in line with current practice with the exception whereby an Employee does not attend for any of the total 3 or 4 shifts for the week due to AL, SA or LSL. In this instance the number of days absent will continue to be deducted off the applicable ROT or SA.

For example where SL is taken for all 4 days of the week and the Employees incidence of SL for the current year exceeds 76 hours, an Employees ordinary wages will be reduced below the Weekly Average Base Rate. This is a result of 4 days SA and ROT being deducted from the standard 3.5 ROT and SA. Similarly in the example of a three day week where SL is taken for all 3 days of the week, ROT and SA are deducted for 3 days. Hence an Employee will receive his Weekly Average Base Rate plus half a days ROT and SA. Please refer to Annexure 2 for a detailed example of both scenarios.

Long Service Leave ("LSL"):

LSL will be paid at the Hourly Average Base Rate. No SA or ROT will be paid when in receipt of LSL. For example a days LSL will mean a reduction in 1 days ROT and SA.

Pay weeks made up entirely of LSL or part thereof will continue to have the normal 5.428 or 5.429 hours deducted or added to arrive at the standard 38 hours per week.

Compassionate Leave:

Compassionate Leave will be paid at the Hourly Average Base Rate. No SA or ROT will be paid when in receipt of Compassionate Leave. For example, a days Compassionate Leave will mean a reduction in 1 days ROT and SA.

Pay weeks made up entirely of Compassionate Leave or part thereof will continue to have the normal 5.428 or 5.429 hours deducted or added to arrive at the standard 38 hours per week.

Workers Compensation:

Workers Compensation will be paid as per the Workers Compensation legislation as may be in place at such time.

Public Holidays:

Public Holiday payments of 7.6 hours per day to a total of 11 days have been totalled and are to be paid over the term of the year on a weekly basis. These payments will continue to be paid weekly regardless of the make up of the pay, including time off without pay in the short term.

Beyond the short term, continuation of Public Holiday payments will be at management discretion based on individual circumstances. Management will review this approach at completion of the trial period.

Other principles applying to Public Holidays are a follows:

Employees rostered off on a Public Holiday will receive payment as per Award Clause 17.6 and 17.7, already being paid in weekly instalments.

Employees rostered to work will receive an additional 4.4 hours at single time based on the Ordinary Base Rate.

Employees engaged on a Public Holiday but not rostered to work will be paid at time and a half for all hours worked, as per Award Clause 17.8 based on the Ordinary Base Rate.

Where a Public Holiday falls on a rostered day during an employees period of AL, 10.857 AL hours will be paid and deducted from the Employees accrual.

In the event of an additional Public Holiday being declared, this will be paid during the corresponding pay week as follows:

Employees rostered off will receive payment as per Award Clause 17.6, 7.6 hours at the Ordinary Base Rate;

Employees rostered to work will receive single time extra at the Ordinary Base Rate for all hours worked as per Clause 17.7.

Leave Without Pay:

No ROT and SA will be paid when on leave without pay.

Anniversary Date Review:

Once a year at an agreed date Employees will have their year to date leave reviewed and any outstanding payments will be reimbursed. These will include:

ROT where AL taken for the year is less than 190 hours.

ROT and SA whereby SL taken for the year is less than 76 hours.

Hourly Average Base Rate times the balance of hours less than -22 hours on the Employees ordinary accrual. This may occur whereby an Employee changes shifts during the year or works in a relieving position.

Similarly at this anniversary date the Company will recoup overpayments to Employees. This will include:

Hourly Average Base Rate times the balance of hours greater than 22 hours on the Employees ordinary accrual. This may occur whereby an Employee changes shifts during the year or works in a relieving position.

Outstanding payments or reimbursements from Employees are to be settled within one month of the anniversary date. This period is to allow sufficient time for the balance to be calculated by the pay office as many anniversary dates will fall simultaneously.

Whereby an Employee finishes with the Company midway through the year, any outstanding payments or overpayments will be settled in the employees final pay.

### 30. Casual & Temporary Employees

- 30.1 A Casual Employee is an employee engaged for a minimum of four and a maximum of twelve ordinary hours per day.
- 30.2 Casual Employees may be engaged on any roster or shift system operating at the workplace if he or she agrees in writing upon commencing with the Company.
- 30.3 When engaged on roster or shifts Casual Employees receive the appropriate shift penalties based on their ordinary hourly rate of pay for all ordinary hours.
- 30.4 A Casual Employees' ordinary hourly rate is 120% of a Weekly Employees' hourly rate for the grade job for which they are competent.
- 30.5 Ordinary hours for a Casual Employee will be as per the rostered shift length he or she is engaged upon.
- 30.6 Casual Employees will work no more than 40 hours in a pay week.
- 30.7 A Temporary Employee is one engaged for a specific period of at least 38 ordinary hours. Where an employee is engaged on a short term temporary basis, ie between 1 and 3 weeks duration, there shall be a maximum of 5 such engagements per calendar year, unless agreed vacancies or business needs require.
- 30.8 Union Delegates and Management will monitor casual and temporary work on a regular basis.
- 30.9 As provided for in the *Annual Holidays Act 1944*, Casual Employees will be paid an additional 1/12th of their ordinary earnings as pro-rata annual leave at the end of the period of engagement.
- 30.10 As provided for in the *Annual Holidays Act 1944*, Temporary Employees will accrue pro-rata annual leave entitlements. The balance of untaken leave shall be paid at the end of the period of engagement.

### 31. Superannuation

As required by the *Superannuation Guarantee (Administration) Act 1992*, the Company shall for each Employee, contribute to a scheme, the appropriate amount as detailed in the Nestlé Australia Ltd (Superannuation) Award 1987 and the Consent Order of 1990 (C No. 20238 of 1990). ie:

- 31.1 Weekly Employees: The Company shall in respect of Weekly Employee contribute to a Scheme, of which the employee is a member and to which the Company is bound to contribute pursuant to the relevant Trust Deed of Adherence, an amount equal to 3% of the ordinary time earnings of such employee.
- 31.2 Casual Employees: The Company shall in respect of each Casual Employee who has been employed by the Company for at least 38 hours over a 6 monthly period contribute to a general industry scheme of which the Employee is a member and to which the Company is bound to contribute pursuant to the relevant Deed of Adherence, an amount equal to 3% of the ordinary time earnings of such Employee.
- 31.3 "Scheme" means the Nestlé Australia Retirement Plan, the Meat Industry Employees Superannuation Fund or any other fund or scheme that comply with the Australian Governments Operational Standards for Occupational Superannuation Funds.
- 31.4 "Ordinary Time Earnings" means the ordinary periodic salary wages or other remuneration being paid by the Company to the Employee each week including, where applicable, shift penalties, tool allowance and leading hand allowance, but not including any bonuses, commission, payment for overtime or other extraordinary payment, remuneration or allowance.
- 31.5 Choice of Fund: Superannuation contributions made by the Company on behalf of the Employees under this agreement may only be made to the Meat Industry Employees Superannuation Fund or the Nestlé administered fund, NAGSF. Employees shall have the choice to have contributions directed to an appropriate fund. This choice may be exercised as a 1st January each year. The cost of any change will be the responsibility of the Employee.

### 32. Redundancy

This Clause is applied in respect of Permanent Employees of the Company who are employed in the classifications set out in this Award.

#### 32.1 Consultation and Process:

Prior to any redundancies occurring, there shall be consultations in accordance with the relevant award/agreement to ensure all circumstances have been considered and alternative opportunities examined.

Wherever possible, the Company shall endeavour to minimise the need for redundancies by utilising:

- (a) natural attrition
- (b) redeployment of Employees into other roles/areas accompanied by necessary training
- (c) utilisation of Employees to provide relief cover for Employees on annual leave, long service leave or undergoing training before voluntary redundancies are sought.

The Company will arrange, wherever possible, for an Employee who is to be redeployed into another area within their current location, to gain experience and/or commence training in the new area prior to the permanent redeployment occurring.

Where confirmation has been given that the employment of an Employee is to be terminated as a consequence of their job being redundant, and a vacancy exists which would not normally constitute a suitable alternative to the Employee's previous position, an Employee may elect to trial such position for a period no longer than the notice period.

If at the completion of the trial period the Employee does not wish to continue in that position, then the Employee will be made redundant.

Where redundancies are necessary, the Employees directly affected will receive the first opportunity to accept a redundancy package. This will be subject to the Company retaining the experience and skills necessary to meet its business requirements. Where there are more volunteers than redundancies, Employees with longer service will have preference in accessing a package.

If, during the term of this agreement, the Company has to invoke a redundancy, the Union may seek further discussions with the Company to ensure all aspects of such a move were fully addressed.

### 32.2 Redundant Employees:

Where a decision is taken that a job currently being at the Smithtown Factory is not to be done by anyone that job will become redundant.

Where the employment of any Employee(s) to whom this Agreement applies is terminated as a consequence of jobs being made redundant a redundancy benefit shall become payable. A redundancy benefit shall not become payable in the following circumstances:

- (a) Where an Employee is dismissed for other than redundancy.
- (b) Unless an earlier date is agreed, where an Employee leaves of his/her own accord prior to the Company nominated date of termination.

This clause does not apply in the case of Probationary Employees, Casual Employees, apprentices or employees engaged for a specific period of time or for a specified task or tasks.

### 32.3 Timing of Departure:

Where the employment of an Employee is to be terminated as a consequence of jobs being made redundant, the Employee concerned will, wherever possible, receive confirmation of this two months prior to the nominated date of termination.

Once the date of termination has been confirmed, should the Employee request an earlier date of departure due to an offer of alternative employment, the Company will endeavour, wherever reasonable to facilitate this either through the use of casual, temporary or existing permanent staff. If this is not possible, the Employee should be notified at the earliest opportunity.

Where an earlier date of departure is agreed, calculation of the redundancy benefit shall be to date of departure.

### 32.4 General Assistance:

During the notice period, the Company will consult with each Employee and provide relevant assistance. Examples of this might include attendance at a job search and/or resumé writing workshop; retirement seminar; financial or individual counselling; skills expansion training. Employees will be given a reasonable amount of time off to attend such programmes.

### 32.5 Redundancy Benefit:

Each redundant Employee shall be entitled to a payment equal to three weeks' ordinary pay as a severance payment (see definition of "ordinary pay" in Clause 32.6).

Each redundant Employee shall also receive a service payment, which shall be calculated as follows:

A redundant Employee with 3 years service or less will be paid on termination 3 weeks ordinary pay for each year of service or part thereof.

A redundant Employee with more than 3 years service will be paid 4 weeks ordinary pay for each year of service or part thereof.

An age allowance will apply to the above payments as follows:

45 years of age, to 49 years of age	an additional 5%.
50 years of age, to 54 years of age	an additional 10%.
55 years of age, to 59 years of age	an additional 15%
60 years of age and above	an additional 20%

Years of service will be calculated with any part year treated as a whole year.

Where an Employee has had a break in service, years of service will be calculated on actual service deemed to be continuous with the current period of service according to the *Long Service Leave Act 1955* and the applicable award/agreement.

### 32.6 Ordinary Pay:

In this Agreement, "ordinary pay" means the remuneration for the Employee's normal weekly number of ordinary hours of work calculated at the ordinary time rate of pay at the time of receiving notice of their redundancy, including shift penalties.

The calculation of the shift penalties will be as follows:

For the Employee on a fixed shift it would be the appropriate shift penalties.

For an Employee on a rotating shift it would be the average of the shift penalties over a normal cycle. In the absence of a normal cycle it will be the average over the previous six (6) months.

In cases where the Employee has worked shift within the past twelve (12) months but on the date of termination is not working shift and therefore not in receipt of shift penalties the calculation is to consider the period of time that shift was worked within the past twelve (12) months on a pro rata basis.

### 32.7 Annual Leave:

Redundant Employees shall receive payment of pro rata annual leave.

Redundant Employees shall receive the applicable annual leave loading, as prescribed in their respective award, on all annual leave both accrued and pro rata on termination.

### 32.8 Long Service Leave:

Redundant Employees shall receive a pro rata payment, which shall commence after one (1) year of continuous employment.

### 32.9 Superannuation:

Redundant Employees' superannuation benefits shall be calculated in accordance with the relevant Superannuation Trust Deeds and relevant awards/agreements.

## 33. Trade Union Training

A pool of ten (10) days in total, without loss of ordinary pay, in any one calendar year will be allowed for Union Delegates to attend Company approved Trade Union Courses at an agreed time. A request for leave is to be made at least three months in advance unless otherwise mutually agreed.

## 34. Leave to Attend Union Business

The Company may grant leave of absence without loss of pay to Union members to attend Union business.

The Company will grant unpaid leave of absence to Union members to attend Union business if it is advised 14 days prior to the leave the intended duration of the absence, and the Company is satisfied as to the relevance of the business to the Smithtown Factory.

Paid or unpaid leave to attend Union business shall be granted to only one Employee at a time unless agreed between the parties.

### 35. Area Incidence and Duration

This Award rescinds and replaces the Nestlé Smithtown Enterprise Award 1998 published on 16 June 2000 (316 I.G. 574).

It shall apply to all employees of the classifications specified herein.

It shall take effect on and from 17 October 2001 and shall remain in force until 29 April 2004.

### 36. No Extra Claims

No claims will be pursued except where consistent with the State Wage Case Principles current during the period covered by this agreement.

### 37. Grade Wage Rates

**Table 1 - Grade Wage Rates**

Grade 1	\$564.57
Grade 2	\$575.95
Grade 3	\$593.34
Grade 4	\$611.07
Grade 5	\$653.07

**Table 2 - Allowance**

1. Emergency Team Allowance	\$5.67 per week
2. First Aid Allowance	\$7.92 per week
3. Meal Allowance	\$4.90 per meal
4. Team Co-ordinator	\$42.00 per week

## APPENDIX 1

Module	Stream		
	Laboratory	Manufacturing	Packaging
<b>Skill Level 1 - Compulsory</b>			
Apply safe work procedures	50	50	50
Apply basic food safety practices	20	20	20
Apply basic Q.A. practices	20	20	20
Communicate in the Workplace	20	20	20
Apply basic mathematical concepts	20	20	20
	130	130	130
<b>Skill Level 2</b>			
Work in a team to achieve designated Goals	20	20	20
Locate industry & company products & processes	20	20	20
Manually clean & sanitise equipment		10	10
Use manual handling equipment		20	20
Shift materials safely		20	20

Operate a container washing process		15	
Apply sampling techniques	20		
Pack product manually			10
Conduct routine tests	30		
	220	235	230
<b>Skill Level 3</b>			
Collect, present and apply workplace information	30	30	30
Implement OH&S principles and procedures	30	30	30
Implement the quality system	30	30	30
Implement the food safety plan	30	30	30
Participate in teams		20	20
Measure and calculate routine workplace data	30		
Operate palletising equipment			15
Conduct minor routine preventative maintenance	40	40	40
	410	415	425
<b>Skill Level 4</b>			
Implement environmental procedures	30	30	30
Apply sampling techniques			20
Pest prevention and control	40	40	40
Operate a packaging process			40
Participate in a HACCP team	50	50	50
Diagnose and rectify equipment faults	50	50	50
	580	585	655
<b>Skill Level 5</b>			
Plan to meet work requirements	20	20	20
Analyse and convey workplace information	40	40	40
Facilitate teams		40	40
Calculate and present statistical data	40		
Food Chemistry	60		
Food Microbiology	60		
Manufacturing:		120	
Malt Extract/Milo/Nesquik			
Conduct routine preventative maintenance			50
	800	805	805

**APPENDIX 2**

(Effective 29.4.2001)

CBT Skill Level	Total Module Points For Skill Level			Current Employees			Employee \$ Per Point		
				Lab	Manuf	Pack	Lab	Manuf	Pack
Induction		0		564.57	564.57	564.57			
Level 1		130		576.57	576.57	576.57	0.086	0.086	0.086
	Lab	Manuf	Pack						
Level 2	220	235	230				0.043	0.043	0.043
Level 3	410	415	425				0.042	0.042	0.042
Level 4	580	585	655				0.041	0.041	0.041
Level 5	800	805	805				0.097	0.097	0.097

**38. Signatures of Parties**

Signed on behalf of  
Nestlé Australia Limited:

Date:

Witness:

Australasian Meat Industry  
Employees Union:

Date:

Witness:

R. W. HARRISON *D.P.*

Printed by the authority of the Industrial Registrar.  
(1634)

**SERIAL C1264**

## **TOMAGO ALUMINIUM SMELTER AP22 CAPACITY EXPANSION PROJECT CONSENT AWARD 2002**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by The Australian Industry Group, New South Wales Branch, an industrial organisation of employers.

(No. IRC 2355 of 2002)

Before the Honourable Mr Deputy President Harrison

6 and 16 May 2002

### **AWARD**

#### **Arrangement**

Clause No.	Subject Matter
1.	Title
2.	Preamble
3.	Parties to Consent Award
4.	Definitions and Interpretation
5.	Wages
6.	Application and Scope of Consent Award
7.	No Extra Claims
8.	No Reduction Clause
9.	Duration of Consent Award
10.	Contract of Employment
11.	On Site Register
12.	Induction
13.	Site Practices
14.	Hours
15.	Shift Work
16.	Rest Period, Meal Allowances and Crib Time
17.	Overtime and Special Work
18.	Weekend Work
19.	Public Holidays
20.	Sick Leave
21.	Parental Leave
22.	Carer's Leave
23.	Bereavement Leave
24.	Anti-Discrimination
25.	Annual Leave Payment and Annual Leave Loading
26.	Superannuation

27. Inclement Weather
28. Caravan Allowance
29. Living Away - Distant Work
30. Safety
31. First Aid
32. Occupational Health and Safety
33. Workers' Compensation
34. Fitness for Duty Policy
35. Top-Up/24 Hour Income Protection Insurance
36. Rehabilitation
37. Amenities
38. Plant and Equipment
39. Union Membership
40. Shop Steward/Delegates
41. Shop Stewards Meeting
42. Meetings of Employees
43. Joint Monthly Meeting
44. Settlement of Disputes
45. Community Standards
46. Temporary Electrical Installation
47. Testing Electrical Equipment
48. Entry to and Movement Within Construction Site
49. Termination Pay
50. Consent Award Not to be Used as Precedent
51. TAC-Construction Hand-Over - TAC Acceptance

Appendix 1 - Travel and/Or Living Away from Home  
Declaration

Appendix 2 - Sites Rules

Appendix 3 - Interface Agreements

Appendix 4 - Authority to Obtain from DIMA Details of  
Immigration Status

Appendix 5 - Building Trades Group of Unions Drug and  
Alcohol Safety Rehabilitation Program

### **1. Title**

This consent award shall be known as the Tomago Aluminium Smelter AP22 Capacity Expansion Project Consent Award 2002

### **2. Preamble**

The parties have mutually agreed that wages and conditions of workers engaged on construction work as specified above shall be set out herein and that this agreement shall be embodied in this consent award.

The parties are committed to the engagement of employees on a weekly basis and accordingly the use of casual employees and/or supplementary labour employees is to be kept to a minimum.

It is recognised by all parties from time to time that unions may be directed to involve their members in national, state wide or industry sector campaigns. Any such involvement to the extent that it breaches the award will not void this consent award, provided that the dispute resolution procedure prescribed in clause 44, Settlement of Disputes, including referral of any disputes to the Industrial Relations Commission, is adhered to by all parties. The parties are committed to resolving all disputes, including demarcation disputes, in accordance with the procedures set out under this consent award.

### **3. Parties to the Award**

The parties bound by this award are:

- (a) The Australian Industry Group, New South Wales Branch, on behalf of all contractors engaged on work which falls within the application and scope of this consent award.
- (b) All employees of contractors engaged on work which falls within the application and scope of this consent award, whether members of the organisations listed in subclause (c) of this clause or not.
- (c) The organisations which represent the employees defined in subclause (b), namely:
  - (i) The Labor Council of New South Wales
  - (ii) The Newcastle Trades Hall Council
  - (iii) The Australian Workers' Union, New South Wales
  - (iv) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, New South Wales Branch
  - (v) The Construction, Forestry, Mining and Energy Union (New South Wales Branch)
  - (vi) The Electrical Trades Union of Australia, New South Wales Branch
  - (vii) The New South Wales Plumbers and Gasfitters Employees' Union
  - (viii) The Transport Workers' Union of Australia, New South Wales Branch.

#### **4. Definitions and Interpretation**

In this consent award, except where the context otherwise requires:

- (a) "Contractor" means any contractor, subcontractor or supplementary labour provider engaged on the site.
- (b) "Construction Work" means work directly related to the construction and expansion in respect of the AP22 Capacity Expansion Project and/or any other work that is contracted to TAC-Construction by Tomago Aluminium Company Pty Limited during the life of this award.
- (c) "TAC" means Tomago Aluminium Company Pty Limited.
- (d) "Site" means that area known as the Tomago Aluminium Smelter AP22 Capacity Expansion Project Construction Site and in other areas of the existing plant where work is directly associated with construction and expansion in respect of the AP22 Capacity Expansion Project at the smelter and is work contracted to TAC-Construction by TAC.
- (e) "TAC-Construction" means the Project Manager or its representatives.
- (f) "Unions" and/or "Affiliated Unions" means unions affiliated with the Labor Council of New South Wales and/or the Newcastle Trades Hall Council as listed in subclause (c) of clause 3, Parties to Consent Award.
- (g) "Peak Union Councils" means the Labor Council of New South Wales and the Newcastle Trades Hall Council.
- (h) "AIG" means The Australian Industry Group, New South Wales Branch.
- (i) "Employer" means any contractor or subcontractor, including a supplier of supplementary labour engaged on the site.
- (j) "Employee" means an employee of a contractor or subcontractor, including a supplementary labour hire employee, engaged on the site and in receipt of the rates of pay and conditions of this consent award.

- (k) Words importing the singular number shall include the plural number and words importing the plural number shall include the singular number.
- (l) Words importing the masculine gender only shall include the feminine and neuter genders.
- (m) Words importing persons shall include bodies corporate and trusts and words importing bodies corporate shall include natural persons.
- (n) References to any statutory/award enactment shall include the same as amended and modified and any enactment repealing or replacing the same, from time to time.

### 5. Wages

The following wage rates shall apply from the beginning of the first full pay period commencing on or after the dates specified in Columns 1 - 4.

Group	Classification	1 13/05/02	2 20/11/02	3 20/05/03	4 20/11/03
AA	Electrical Instrument Fitter Mechanical Plant Operator Groups F, G & H Mobile Cranes over 70 tonnes (add: \$1.73 for every 5 tonnes in excess of 90 tonnes) Tower Cranes Mechanical Tradesperson - Special Class	\$918.80	\$941.80	\$965.30	\$989.40
A	Tradespersons, Engineering and others Mobile Cranes up to 70 tonnes Mechanical Plant Operator C, D, & E Transport Worker Grades 6, 7 and 8 Batch Plant Operator/Allocator	\$875.00	\$896.90	\$919.30	\$942.30
B	Riggers Agitator Driver Mechanical Plant Operator Groups A & B Field Sampler Concrete Tester Transport Worker Grades 4 & 5 Dogmen Steel Fixers Concrete Finishers Scaffolders Clerk Labourers Group A & 2 (CFMEU) Labourers Group 3 & 4 (AWU) Ganger	\$831.30	\$852.10	\$873.40	\$895.20
C	Trades Assistant Labourer - Group 2 (AWU) Labourer - Group 3 (CFMEU) Crane Chaser Transport Worker Grades 1, 2 & 3 Storeperson Survey Field Hand Steel Erector Field Clerk Lagger Asphalt Paver/Gang	\$787.50	\$807.20	\$827.40	\$848.10

- (a) The rates prescribed in Groups AA, A, B and C are in substitution for those rates and allowances which, but for this consent award, would apply to employees of contractors engaged on the site and are for all purposes of this award.

Such rates shall only be varied during the term of the consent award in accordance with the schedule as set out above. The parties may, by agreement, include additional classifications within the groupings set out in this clause. Any dispute as to the appropriate grouping for a particular classification shall be dealt with in accordance with the provisions of clause 44, Settlement of Disputes.

- (b) The rates of pay set out in subclause (a) of this clause do not include refractory allowance and towers allowance but are inclusive of amounts in lieu of over-award payments, industry allowance, construction allowance, fares and travelling (excluding excess fares where applicable) and site disability payments such as space, height, dirt, etc., award special rates such as confined space, wet work, etc., follow-the-job loadings, compensation for travel pattern mobility requirements, etc., inclement weather, wind, dust, etc., but exclude those allowances contained separately under this consent award.

- (c) Higher Duties

Where any employee on any day performs two or more classes of work to which a differential rate fixed by this consent award is applicable, such person, if employed for more than four hours on the class or classes of work carrying the higher rate, shall be paid in respect of the whole time during which the employee works on that day at the same higher rate.

This rate shall be at the highest rate fixed by this consent award in respect of any such classes of work and, if employed for four hours or less on the class or classes of work carrying the highest rate, the employee shall be paid at such highest rate for four hours.

- (d) Allowances

The following allowances shall be payable in addition to Group A rates where applicable for all purposes of the consent award:

- (i) Specialist Skills - Electrical

Electrical employees who are qualified and required to perform such work shall receive the following all-purpose allowance:

Electrical Licence	\$26.00
Electrical Special Class	\$43.80
Electrical Instrument Fitter	\$43.80
Instrument, Complex Systems	\$43.80

- (ii) Specialist Skills - Mechanical

Mechanical employees (as defined) who are qualified to project standards and are required to perform such work shall receive the following all purpose allowance:

Instruments	\$43.80
Instrument, Complex Systems	\$43.80

Other Allowances:

- (iii) Tool Allowance

A tool allowance of \$20.90 per week shall be paid for all purposes to all tradespersons.

- (iv) Leading Hand Allowance

A person specially appointed to be a leading hand shall be paid an additional amount which shall form part of the employee's weekly all purpose wage.

In charge of not more than one person	\$11.40
In charge of two and not more than five persons	\$26.60

In charge of six and not more than ten persons	\$34.20
In charge of more than ten persons	\$45.60

## (v) First Aid Allowance

An employee who holds an appropriate first aid certificate and who is appointed by their employer as a first aid attendant shall be paid an additional allowance of \$2.00 per day, such allowance to be paid for all purposes of this consent award.

## (vi) Excess Fares and Travel

Employees who reside and travel by road for more than 50 kilometres from the site shall be paid a minimum travel time payment of 30 minutes each day. If the time spent travelling beyond 50 kilometres totals more than 30 minutes each day, then the additional time beyond the 30 minutes minimum is paid for in 15 minute increments.

Mileage of 40 cents per kilometre is payable to the driver of the vehicle required to travel more than 50 kilometres. This 40 cents per kilometre payment shall not apply where the company provides or offers to provide transport to and from site.

## (vii) Refractory Bricklaying Allowance

Refractory Bricklayer	\$1.33 per hour (all purpose)
Refractory Bricklayer's Assistant	\$1.14 per hour (all purpose)

## (viii) Towers Allowance

An employee working on a chimney stack spire, cooling tower, water tower or silo, where the construction exceeds 15 metres in height, shall be paid, for all work above 15 metres, 43 cents per hour, with 43 cents per hour additional for work above each further 15 metres.

## (ix) Plumbing Allowances

Plumbing Licence	\$38.20
Plumbing Registration	\$19.00

## (e) Apprentices

The provisions of subclause (a) and paragraphs (iii) and (vii) of subclause (d) of this clause shall apply proportionately to all apprentices employed on the site and they shall be paid the appropriate percentage of the wage rate prescribed for Group A classifications as specified hereunder:

1st year	42%
2nd year	55%
3rd year	75%
4th year	88%

Apprentices who attend a TAFE course on a prescribed rostered day off shall be afforded an alternative day to be mutually agreed between the contractor or subcontractor and the apprentice concerned.

The parties to this consent award encourage contractors to adopt a ratio of one apprentice to five tradesmen as a minimum. However, no contractor is bound to employ additional apprentices if that decision would displace other employees already employed.

All contractors will, when engaging labour, give preference to apprentices from a union-approved community-based apprenticeship scheme, i.e. Hunter Group Training and Hunter Valley Training Company.

In relation to apprentices, existing industry practices shall prevail, including payment for time spent in training.

## (f) Definitions

- (i) "Electrical Instrument Fitter" means a tradesperson, not necessarily an electrical fitter, who is required to design, test and/or repair and maintain electrical and/or electro-pneumatic measuring and/or recording appliances and/or scientific instruments and/or electrical instruments.
- (ii) "Mechanical Tradesperson - Special Class" means a mechanical tradesperson who is mainly engaged in any combination of installing, repairing and maintaining, testing, modifying, commissioning or fault-finding on complex machinery and equipment which utilises hydraulic and/or pneumatic principles and who, in the course of such work, is required to read and understand hydraulic and/or pneumatic circuitry which controls fluid power systems.

To be classified as a mechanical tradesperson - special class, a tradesperson will have:

- (a) had a minimum of two years' on-the-job experience as a tradesperson working predominantly on fluid power systems as will enable the tradesperson to perform such work under minimum supervision and technical guidance; and
- (b) satisfactorily completed a prescribed post-trades course or the achievement to the satisfaction of the employer of a comparable standard of skill and knowledge by other means, including in-plant training or on-the-job experience referred to in subparagraph (a) of this paragraph.

For the purpose of this definition:

- (aa) "mainly engaged" means regularly over a period or intermittently during a week;
- (bb) the following courses are deemed to be prescribed post trade courses:

Course	Syllabus Number
Victoria- Industrial Hydraulics	AJ02A
Industrial Pneumatics	AJ03A
Fluid Power Technology	AJ04A
South Australia- Hydraulic	-
Pneumatics	-
Fluid Power	-
Tasmania- Industrial Pneumatics	85-461
Industrial Hydraulics	85-450
Queensland- Service Course in Fluid Power	CN859
New South Wales- Industrial Hydraulics	5721
Industrial Pneumatics	5268

### 6. Application and Scope of Consent Award

- (a) This consent award shall apply to employees of contractors who are engaged on site. "Construction Work" referred to herein means construction work and/or modification work on plant which has been contracted to TAC-Construction.
- (b) This consent award shall stand on its own and shall not, except as specifically provided for in this consent award, be affected by external wage or condition movements.

- (c) For the purposes of this consent award, the site offices of TAC and TAC-Construction are excluded from the areas referred to in subclause (a) of this clause.
- (d) All contractors shall observe the terms of this consent award. Where this consent award does not make specific provision, the appropriate parent award shall apply irrespective of whether or not there are weekly or hourly employees engaged as at the date of this consent award.
- (e) This consent award shall not apply to statutory employees, employees and contractors of TAC security, supervisory, site catering or management and supervisory personnel and associated staff or to personnel engaged in deliveries to and from the site. The parties agree that this exclusion shall not apply to employees who, upon delivering materials and equipment from off site to the Project, perform construction work on the Project, e.g. employees who deliver scaffolding to the Project and who then erect the scaffolding are covered by this consent award in respect of the work performed on the Project.
- (f) This consent award shall have no application to plant commissioning, operations or maintenance or to any work after turnover of plant to TAC or to any other activities for which TAC-Construction is not responsible.
- (g) The parties to this consent award commit themselves to the achievement of efficiency and productivity during the course of the construction project and agree that no party will take any action which adversely affects the efficiency or productivity of the Project.
- (h) All suspected breaches of this consent award shall be reported to TAC-Construction for immediate investigation. If found to be correct, such breaches will be immediately rectified.

#### **7. No Extra Claims**

It is a term of this consent award that the Peak Union Councils and their affiliated unions undertake that, for the period of this consent award as specified in clause 9, Duration of Consent Award, they will not pursue any extra claims, award or over-award. This includes claims relating to changes arising from award variations or decisions of the Australian Industrial Relations Commission or the Industrial Relations Commission of New South Wales, other than changes that are consistent with the terms of this consent award.

Where employees employed under this consent award on the Project are receiving terms and conditions greater than this consent award as a result of an enterprise agreement or other arrangement, this shall not be used as a basis of a claim by unions or employees of other contractors engaged on the Project.

Where an enterprise or certified agreement of a contractor expires during the term of this consent award, employees will continue to work normally under their existing enterprise or certified agreement and this consent award and shall be paid or afforded all additional benefits of any new or replacement enterprise or certified agreement retrospectively to the date of the new agreement.

#### **8. No Reduction Clause**

No reduction in either rates of pay or conditions of employment as at date of this consent award will occur as a result of the making of this consent award, provided that, where this consent award offsets parent award or enterprise or certified award conditions, the provisions of this consent award shall prevail.

#### **9. Duration of Consent Award**

This consent award shall operate from the first pay period on or after 13 May 2002 and shall remain in force until 20 February 2004.

#### **10. Contract of Employment**

- (a) The contract of employment for all employees other than casual employees shall be by the week.

- (b) For other than casual employees, either party shall give a week's notice of termination of the employment engagement exclusive of accrued rostered days off or one week's pay shall be paid or forfeited in lieu thereof.
- (c) Applicants for positions on the Project shall be required to complete an Authority to Obtain from DIMA Details of Immigration Status (see Appendix 4) to authorise their potential employer to obtain from the Department of Immigration and Multicultural Affairs details of their immigration status. No person shall be allowed to undertake any work on the project unless it is verified they have the right to work. Copies of this authority shall be made available to the Labor Council upon request.
- (d) A casual employee is employed on an hourly basis and paid as such with a minimum payment of four hours. Casual employees shall be paid a 20% casual loading in compensation for other benefits under this consent award to which a casual employee has no entitlement. The casual employee is entitled to pro rata redundancy payments as set out under clause 49, Termination Pay.
- (e) Where casual employees are engaged on the Project, such engagement shall not exceed four weeks' duration. However, where an agreement is reached between the parties to the award, then such engagement of a casual employee may be extended for a further two weeks. Agreement to such extension of engagement shall not be unreasonably withheld.
- (f) Nothing in this clause shall affect the right of a contractor to dismiss an employee, without notice, for misconduct or refusing lawful duty.
- (g) Nothing in this clause shall affect the right of a contractor to dismiss an employee for breaches of site rules, safety rules or regulations, subject to appropriate investigation having been made, counselling extended and the dispute settlement procedure being effectively processed.
- (h) Nothing in this clause shall affect the right of an employee to pursue a claim for unfair or unlawful termination through the relevant State or Federal tribunal.
- (i) A contractor may deduct payment for any day upon which an employee cannot be usefully employed because of any strike by or participation in any strike by any member of a union employed by the contractor or because of any strike by or participation in any strike by any other union, organisation or association or by any branch thereof, or by any members thereof who are employed by the contractor or, because of any stoppages of work (other than for site conditions within the allowance prescribed in clause 27, Inclement Weather), by any cause, including breakdown of machinery or failure/lack of power, for which cause the contractor is not responsible.
- (j) A tradesperson shall be allowed one hour prior to termination to gather, clean, sharpen, pack and transport his/her tools.

### 11. On Site Register

TAC-Construction shall require that all contracts with contractors be in writing and include the following terms and conditions:

- (a) The conditions contained within the consent award shall form part of such contracts and bind all such contractors.
- (b) Contractors will be required to meet all statutory, award and legal obligations for their employees in addition to those binding under the consent award.

The Peak Union Councils will be kept advised of contractors coming on site. The contractors will ensure that employees hold the necessary qualifications to enable work to be performed in a safe and efficient manner.

The practice of all-in payments, cash-in-hand payments or pyramid contracting will not be tolerated on site.

All contractors shall supply a declaration that they will abide by the provisions of the consent award.

A register containing relevant information of every contractor and their employees engaged on site shall be kept by TAC-Construction. Prior to commencing work on site, each contractor and their employees must provide and certify as correct the following information:

From employees-

- (a) name and address of employee;
- (b) name and address of employer (contractor/subcontractor);
- (c) classification and certificate details;
- (d) induction date;
- (e) union and ticket number (where applicable);
- (f) superannuation scheme name and employee number;
- (g) long service leave number;
- (h) WorkCover ticket-permit numbers;
- (i) ACIRT, MERT or other redundancy scheme number;
- (j) CTAS or equivalent scheme number; and
- (k) other information that may be reasonably required from time to time by either TAC-Construction or the Peak Union Councils.

Failure to comply or repeated breach with this clause may result in employees being removed from the site.

From employers-

- (a) registered business name and address of employer and ACN/ABN number;
- (b) workers' compensation policy number, underwriter and currency certificate;
- (c) public liability policy number, underwriter and currency certificate;
- (d) superannuation fund name and employer number;
- (e) long service leave employer number;
- (f) redundancy scheme details;
- (g) CTAS or equivalent scheme number;
- (h) rehabilitation particulars pursuant to WorkCover General Program Regulation 1988; and
- (i) other information that may be reasonably required from time to time by either TAC-Construction or the Peak Union Councils.

Failure to comply or repeated breach with this clause may result in persons and/or contractors being removed from the site.

The relevant information will be provided by the contractors to TAC-Construction on a daily basis so that TAC-Construction can update the register. The information in the register will be available to the parties to this consent award on request.

### 12. Induction

- (a) Contractors shall ensure that all of their employees conform to the requirements of the Occupational Health and Safety Regulation 2001, Chapter 8, Construction Work, Part 8.2-OH&S Training, and provide written confirmation to TAC-Construction prior to requesting a site induction.
- (b) All employees shall, before entering the site area or commencing work on the site, attend and complete a Site Induction Program on safety rules and regulations, site rules (see Appendix 2) and this consent award.
- (c) The program will be conducted at a central location by TAC-Construction on behalf of the contractors. TAC-Construction reserves the right to alter the duration of the program and to conduct further induction and/or refresher programs.

Each employee shall receive a Site Safety Booklet and a copy of this consent award and shall sign an acknowledgement of receiving same.

- (d) After successful completion of the Site Induction Program, each employee shall be issued with a Project Identity Pass which will allow entry to and exit from the site.

The pass will bear a photograph of the employee together with other pertinent information contained in clause 11, On Site Register.

Should an employee lose their Project Identity Pass, they must immediately notify their employer, who will in turn immediately notify TAC-Construction. A replacement pass will be available at a charge of \$10.00 to the contractor.

### 13. Site Practices

- (a) All persons on site will be required to conform to the Site Safety Practices as outlined in the Site Safety Booklet and all relevant site safety statutes applicable in New South Wales. The *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001 shall be strictly observed on site.
- (b) All employees shall be conversant with this consent award and, if necessary, ask their respective union officials to explain, and further:
  - (i) No alcohol is permitted on the site at any time.
  - (ii) No narcotic drugs of addiction, non-prescribed drugs or illegal substances are permitted on site at any time.
  - (iii) The parties to this consent award are encouraged to adopt the Construction Industry Drug and Alcohol Policy (see Appendix 5) as a guide when dealing with such problems on site.
- (c) All workers shall, at all times, use the facilities provided by virtue of the terms of this consent award.
- (d) All employees shall be required to conform with the safety rules and regulations and site rules as specified.

### 14. Hours

- (a) Except as provided elsewhere in this consent award, the ordinary working hours shall be 38 consecutive hours each Monday to Friday inclusive, between the hours of 6.00 a.m. and 6.00 p.m., with the first 0.4

of an hour of each day worked, plus 0.4 of an hour for each day on paid leave, accruing as an entitlement to be taken, except as specified in paragraph (v) of subclause (d) of this clause, on the fourth Monday in each cycle as a paid day off, as though worked.

Provided further that up to five rostered days off may be accrued by agreement between the contractor and the employee and must be taken during the course of the job.

- (b) There shall be a cessation of work and of working time for the purpose of a meal on each day of not less than 30 minutes, to be taken between noon and 1.00 p.m., subject to operational demands.
- (c) Notwithstanding the provisions of subclauses (a) and (b) of this clause, where it is established custom and practice for a contractor and his or her employees to work ordinary hours of work within an alternative spread of hours, e.g. 5.00 a.m. to 5.00 p.m., and take an alternative meal break, that established custom and practice may apply on site on the approval of the TAC-Construction Manager.
- (d) The method of payment for hours worked, paid leave, etc., shall be as follows:

- (i) Normal Working Days

An employee shall be paid the daily rate for working the eight ordinary hours on a normal working day. The daily rate shall be calculated by dividing the ordinary weekly wage by five.

Where an employee works part of the ordinary hours on a normal working day, they shall be paid at the hourly rate for the time worked, less 0.4 of an hour.

- (ii) Sick Leave

An employee absent on paid sick leave shall be paid for each day absent at the daily rate. Where an employee is absent on paid sick leave for part of a day, they shall be paid at the hourly rate for such time absent, i.e. the difference between time worked and eight hours.

Where an employee is off for part of a day on paid sick leave, their sick leave credit in respect of that day shall be the difference between 7.6 hours and the time that they were paid sick leave, e.g. an employee has ten days' accumulated sick pay and takes four hours off on sick pay: their accumulated sick leave would therefore become nine days 3.6 hours.

The sick leave credits prescribed in this award shall be converted from hours to days on the basis of each eight hours credit becoming one day's sick leave or portion thereof.

- (iii) Public Holidays and Other Paid Leave

An employee absent on public holidays or other paid leave shall be paid the daily rate of each day of absence, provided always that the employer shall be obliged to pay no more 38 hours per week ordinary time.

An employee entitled to four weeks' annual leave shall be paid, in addition to their annual leave, an annual leave loading and payment of their accrued entitlement for the rostered prescribed day off that would have otherwise been due if they had not been on annual leave.

- (iv) Prescribed Rostered Day Off

For the prescribed rostered day off, an employee shall be paid the daily rate less 0.4 of an hour for each day the employee did not attend for work because of an absence of unpaid leave during the 19 day cycle.

An employee who works for part of a 19 day cycle on the site (as defined in subclause (a) of this clause) and part of the cycle at another work location of the same employer shall be entitled to receive payment at the rate applicable under this consent award for the proportion of time worked on the site when payment is made to such employee in respect of their rostered day off.

### New Employees

A new employee on site shall take the rostered day off and be paid a pro rata payment for the prescribed rostered day off, calculated on the basis of 0.4 of an hour's pay for each day worked within the cycle and for each other day on which the employee has been absent on paid leave. However, as provided by this clause, up to five rostered days off may be accrued by agreement between the contractor and the employee and must be taken during the course of the job.

(v) Working on the Prescribed Rostered Day Off

The accrued rostered day off shall be taken as a paid day off, provided that this day may be worked where that is required by the employer and such work is necessary to allow other employees to be employed productively or to carry out out-of-hours maintenance or because of unforeseen delays to the Project or a section of it or for other reasons arising from unforeseen or emergency circumstances on the Project, in which case, in addition to accrued entitlements (i.e. leave accrued may not be discharged by payment in lieu), the employee shall be paid for work performed in ordinary hours the penalty rates and provisions for Saturday work only. Any proposed work on rostered days off where possible shall be notified to the unions whose members are intended to carry out the proposed work. Such notification shall be provided not later than on the last normal working day prior to the rostered day off. This clause shall not apply where rostered days off are accrued as provided by subclause (a) of this clause.

(vi) Overtime Rates

All time worked outside the ordinary working hours outlined in subclauses (a), (b) and (c) of this clause shall be paid at the rate of time and one half of the first two hours and double time thereafter.

(vii) Termination of Employment

In addition to all other entitlements (pro rata annual leave, annual leave loading, etc.), the employee shall be entitled to a pro rata payment of 0.4 of an hour's pay for each ordinary day worked and for each other day that the employee was absent on paid leave within the 19 day cycle.

## 15. Shiftwork

The following conditions shall apply to employees engaged on shiftwork.

(a) For the purposes of this clause:

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

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

"Morning Shift" means a shift finishing after 12.30 p.m. and at or before 2.00 p.m.

"Early Afternoon Shift" means a shift finishing after 7.00 p.m. and at or before 9.00 p.m.

(b) Provided that the employee is employed continuously (inclusive of public holidays) for five shifts Monday to Friday, the following rates shall apply:

Afternoon and night shift - ordinary time plus 50%.

Morning and early afternoon shifts - ordinary time plus 25%.

- (c) Broken Shift
  - (i) A broken shift is any shift that does not continue for five consecutive working days Monday to Friday.
  - (ii) All hours worked on broken shifts shall be paid as though they were overtime hours, excepting where the reasons for a broken shift eventuating are as a result of employee actions or reasons.
- (d) An employee shall be given at least 48 hours' notice of a requirement to work shift work.
- (e) The hours of shift workers, when fixed, shall not be altered except for breakdowns or other causes beyond the control of TAC-Construction/contractors, provided that notice of such alteration shall be given to the employee not later than ceasing time for the previous shift.
- (f) For all work performed on a Saturday, Sunday or holiday the provisions of clause 17, Overtime and Special Work, shall be applicable in lieu of the rates prescribed in this clause.
- (g) Work in excess of shift hours, Monday to Friday, other than holidays, shall be paid for at double time, provided that these rates shall be based, in each case, on ordinary hours.
- (h) Shift work hours shall be worked between Monday to Friday inclusive, provided that an ordinary night shift commencing before, and extending beyond, midnight Friday shall be regarded as a Friday shift.

#### **16. Rest Period, Meal Allowances and Crib Time**

- (a) There shall be allowed, without deduction of pay, a rest period of ten minutes mid-morning and mid-afternoon. This may be varied by agreement between TAC-Construction, contractors and the unions.
- (b) Where an employee is required to work overtime for at least one and a half hours after working ordinary hours, they shall be paid by the employer an amount of \$9.30 to meet the cost of a meal. This provision shall not apply to an employee who is provided with board and lodgings and provided with a suitable meal. Where an employee is required to work overtime after the usual ceasing time of the day or shift for two hours or more, they shall be paid by the employer an amount of \$17.90 to meet the cost of a meal in lieu of any other applicable meal allowances and crib times, and thereafter, after each four hours of continuous work.
- (c) No apprentice under the age of 18 years shall be required to work shift work unless they so desire. No apprentice shall, except in an emergency, work or be required to work shift work at times which would prevent their attendance at TAFE College, as required by any statute, award or regulation applicable to them.
- (d)
  - (i) An employee who works overtime between the termination of ordinary work and the commencement of ordinary work on the next day and has not had at least ten consecutive hours off duty between these times and who, if on the instructions of their employer, resumes or continues to work without having had such ten consecutive hours off duty, shall be paid at double rates until released from duty for such period and shall then be entitled to be absent until they have had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.
  - (ii) An employee who works continuously (except for meal and crib times allowed by this award) for 20 hours shall not be required to continue at or recommence work for at least 12 hours.

#### **17. Overtime and Special Work**

- (a) All contractors shall require their employees to work reasonable overtime.

- (b) All time worked beyond the ordinary time of work as prescribed in clause 14, Hours, shall be paid for at the rate of one and a half times ordinary rates for the first two hours thereof and at double time thereafter.
- (c) An employee recalled to work overtime after leaving their employer's business premises (whether notified before or after leaving the premises) shall be paid for a minimum of four hours' work at the appropriate rates for each time so recalled, provided that, except in the case of unforeseen circumstances arising, the employee shall not be required to work the full four hours if the job they were recalled to perform is completed within a shorter period. This subclause shall not apply in cases where it is customary for an employee to return to their employer's premises to perform a specific job outside their ordinary working hours or where the overtime is continuous (subject to a reasonable meal break) with the completion or commencement of ordinary working time.
- (d) If an employer requires an employee to work during the time prescribed by clause 14, Hours, for cessation of work for the purpose of a meal, the employer shall allow the employee whatever time is necessary to make up the prescribed time of cessation and the employee shall be paid at the rate of double time for the period worked between the prescribed time of cessation and the beginning of the time allowed in substitution for the prescribed cessation time, provided that the employer shall not be bound to pay in addition for the time allowed in substitution for the said cessation time.
- (e) No apprentice under the age of 18 years shall be required to work overtime unless they so desire. No apprentice shall, except in an emergency, work, or be required to work, overtime at times which would prevent attendance at TAFE College, as required by any statute, a ward or regulation applicable to them.
- (f) When an employee, if they have not been regularly rostered and not given 24 hours' notice of their requirement to work overtime, after having worked overtime, finishes work at a time when reasonable means of transport are not available, the employer shall provide them with a conveyance to their home or to the nearest connecting public transport.

#### **18. Weekend Work**

- (a) Overtime work on Saturday shall be paid for at the rate of time and a half for the first two hours and double time thereafter, provided that all overtime worked after 12 noon on Saturday shall be paid for at the rate of double time.
- (b) All time worked on Sunday shall be paid for at the rate of double time.
- (c) An employee required to work overtime on a Saturday or to work on a Sunday shall be afforded at least four hours' work at the appropriate rate.
- (d) An employee working overtime on Saturday or working on a Sunday shall be allowed, without deduction of pay, a rest period of ten minutes mid-morning and mid-afternoon. This may be varied by agreement between TAC-Construction, contractors and the unions.
- (e) An employee working overtime on a Saturday, or working on a Sunday, shall be allowed a crib time of 20 minutes after four hours' work without loss of pay, but this provision shall not prevent any arrangements being made for the taking of a 30 minute meal period, the time in addition to the paid 20 minutes being without pay.

In the event of an employee being required to work in excess of a further four hours, they shall be allowed to take a crib time of 30 minutes without loss of pay.

#### **19. Public Holidays**

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

New Year's Day, Australia Day, Good Friday, Easter Saturday, Easter Monday, Anzac Day, Queen's Birthday, Labour Day, Christmas Day, Boxing Day, Newcastle Show Day.

Picnic Day - first Monday in December and one other additional day to be agreed between TAC-Construction and the unions

- (b) Where an additional or substituted public holiday is proclaimed by Order in Council or otherwise gazetted by authority of the Australian or New South Wales Government under any Act throughout New South Wales or part thereof, such day shall, within the defined locality, be deemed to be a holiday for the purposes of this consent award, provided that an employee shall not be entitled to the benefit of more than one holiday upon such occasion.
- (c) Provided that:
- (i) An employer who terminates the employment of an employee except for reasons of misconduct or incompetence (proof of which shall lie upon the employer) shall pay the employee a day's ordinary wages for each holiday which falls within ten consecutive days after the day of termination.
  - (ii) Where any two or more of the holidays prescribed in this consent award occur within a seven day span, such holidays shall, for the purposes of this consent award, be classed as a group of holidays. If the first day of the group of holidays falls within ten working days after termination, the whole group shall be deemed to fall within the ten consecutive days, e.g. Christmas Day, Boxing Day and New Year's Day shall be regarded as a group.
  - (iii) No employee shall be entitled to receive payment from more than one employer in respect of the same public holidays or group of holidays.
  - (iv) An employee who has worked as required by their employer the working day immediately before and the working day immediately after such a holiday, or is absent with the permission of their employer, or is absent with reasonable cause, shall be entitled to payment for the public holiday. An absence arising by termination of employment shall not be reasonable cause.
- (d) All employees shall, as far as practicable, be given and shall take Picnic Day on the first Monday in December and shall therefore be paid eight hours' work at the rate of pay prescribed in clause 5, Wages.
- (i) Any employee required to work on this day shall be paid at the rate of double time and a half, provided that an employee who attends for work as required on this day shall be paid for not less than four hours' work
  - (ii) Where a parent award so provides, an employer shall require from an employee evidence of their attendance at the picnic and production of proof of evidence issued for the picnic shall be sufficient evidence of such attendance. Where such evidence is requested by the employer, payment need not be made unless the evidence is produced.
  - (iii) It is agreed between the parties that no employee shall be required to work on Picnic Day other than in the circumstances of an unforeseen emergency arising.
- (e) All work performed on any of the holidays prescribed in this clause or substituted in lieu thereof shall be paid for at the rate of double time and a half.
- (f) An employee required to work on a holiday shall be afforded at least four hours' work or paid for four hours at the appropriate rate.

## 20. Sick Leave

An employee who is absent from their work on account of personal illness or injury, other than that covered by workers' compensation, shall be entitled to leave of absence, without deduction of pay, provided that:

- (a) Within 24 hours of the commencement of such absence, the employee shall inform the employer of their inability to attend for duty and, as far as practicable, state the nature of the injury or illness and the estimated duration of the absence.
- (b) The employee shall prove to the satisfaction of their employer that they were unable on account of such fitness or injury to attend for duty on the day or days for which sick leave is claimed.
- (c) An employee during their first year of employment with an employer shall be entitled to sick leave entitlement at the rate of one day on one calendar month from the first day of employment and one day on the first of each calendar month for the following nine months.

Provided that an employee who has completed one year of continuous employment shall be credited with a further ten days' sick leave entitlement at the beginning of their second and each subsequent year which, subject to subclause (g) of this clause, shall commence on the anniversary of engagement.

- (d) In the case of an employee who claims to be allowed paid sick leave in accordance with this clause for an absence of one day only, such employee, if in the year they have already been allowed paid sick leave on two occasions for one day only, shall not be entitled to pay for the day claimed unless they produce to the employer a certificate of a duly qualified medical practitioner certifying that the employee was unable to attend for duty on account of personal injury or fitness.

An employer may agree to accept from the employee a statutory declaration stating that the employee was unable to attend for duty on account of personal illness or injury in lieu of a medical certificate.

Nothing in this subclause shall limit the employer's right under subclause (b) of this clause.

- (e) Sick leave with an employer shall accumulate from year to year so that any balance of the period specified in subclause (c) of this clause which in any year has not been allowed to an employee by that employer as paid sick leave may be claimed by the employee and, subject to the conditions herein prescribed, shall be allowed by that employer in a subsequent year, without diminution of the sick leave prescribed in respect of that year.

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

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

The period of interruption shall not be counted as service for the purposes of sick leave.

## **21. Parental Leave**

Employees shall be entitled to parental leave in accordance with the *Industrial Relations Act 1996*.

## **22. Carer's Leave**

- (1) Use of Sick Leave
  - (a) An employee, other than a casual employee, with responsibilities in relation to a class of person set out in subparagraph (ii) of paragraph (c) of this subclause, who needs the employee's care and support, shall be entitled to use, in accordance with this subclause, any current or accrued sick leave entitlement provided for in clause 20, Sick Leave, for absences to provide care and support for such persons when they are ill. Such leave may be taken for part of a single day.

- (b) The employee shall, if required, establish either by production of a medical certificate or statutory declaration the illness of the person concerned and that the illness is such as to require care by another person. In normal circumstances, an employee must not take carer's leave under this subclause where another person has taken leave to care for the same person.
- (c) The entitlement to use sick leave in accordance with this subclause is subject to:
- (i) the employee being responsible for the care of the person concerned; and
  - (ii) the person concerned being:
    - (a) a spouse of the employee; or
    - (b) a de facto spouse who, in relation to a person, is a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; or
    - (c) a child or an adult child (including an adopted child, a stepchild, a foster child or an ex nuptial child), parent (including a foster parent and legal guardian), grandparent, grandchild or sibling of the employee or spouse or de facto spouse of the employee; or
    - (d) a same sex partner who lives with the employee as the de facto partner of that employee on a bona fide domestic basis; or
    - (e) a relative of the employee who is a member of the same household, where for the purposes of this subparagraph:
      - (1) "relative" means a person related by blood, marriage or affinity;
      - (2) "affinity" means a relationship that one spouse because of marriage has to blood relatives of the other; and
      - (3) "household" means a family group living in the same domestic dwelling.
- (d) An employee shall, wherever practicable, give the employer notice, prior to the absence, of the intention to take leave, the name of the person requiring care and that person's relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(2) Unpaid Leave for Family Purpose

An employee may elect, with the consent of the employer, to take unpaid leave for the purpose of providing care and support to a member of a class of person set out in subparagraph (ii) of paragraph (c) of subclause (1) who is ill.

(3) Annual Leave

- (a) An employee may elect, with the consent of the employer, subject to the *Annual Holidays Act* 1944, to take annual leave not exceeding five days in single day periods or part thereof, in any calendar year at a time or times agreed by the parties.
- (b) Access to annual leave, as prescribed in paragraph (a) of this subclause, shall be exclusive of any shutdown period provided for elsewhere under this consent award.
- (c) An employee and employer may agree to defer payment of the annual leave loading in respect of single day absences until at least five consecutive annual leave days are taken.

- (4) Time Off in Lieu of Payment for Overtime
- (a) An employee may elect, with the consent of the employer, to take time off in lieu of payment for overtime at a time or times agreed with the employer within 12 months of the said election.
  - (b) Overtime taken as time off during ordinary-time hours shall be taken at the ordinary time rate, that is, an hour for each hour worked.
  - (c) If, having elected to take time as leave in accordance with paragraph (a) of this subclause, the leave is not taken for whatever reason, payment for time accrued at overtime rates shall be made at the expiry of the 12 month period or on termination.
  - (d) Where no election is made in accordance with the said paragraph (a), the employee shall be paid overtime rates in accordance with the award.
- (5) Make-up Time
- (a) An employee may elect, with the consent of the employer, to work "make-up time", under which the employee takes time off ordinary hours and works those hours at a later time, during the spread of ordinary hours provided in the award, at the ordinary rate of pay.
  - (b) An employee on shift work may elect, with the consent of the employer, to work "make-up time" (under which the employee takes time off ordinary hours and works those hours at a later time), at the shift work rate which would have been applicable to the hours taken off.
- (6) Rostered Days Off
- (a) An employee may elect, with the consent of the employer, to take a rostered day off at any time.
  - (b) An employee may elect, with the consent of the employer, to take rostered days off in part day amounts.
  - (c) An employee may elect, with the consent of the employer, to accrue some or all rostered days off for the purpose of creating a bank to be drawn upon at a time mutually agreed between the employer and employee, or subject to reasonable notice by the employee or the employer.
  - (d) This subclause is subject to the employer informing each union which is both party to the award and which has members employed at the particular enterprise of its intention to introduce an enterprise system of rostered day off flexibility and providing a reasonable opportunity for the union(s) to participate in negotiations.

### 23. Bereavement Leave

- (a) An employee shall, on the death within Australia of a person prescribed in paragraph (c) of subclause (1) of clause 22, Carer's Leave, be entitled on notice to leave up to and including the day of the funeral of such relation (or, where made necessary because of travel arrangements, the day after the funeral). Provided that for the purpose of bereavement leave, the employee need not have been responsible for the care of the person concerned.
- (b) Such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary days of work.
- (c) Proof of such death shall, if required, be furnished by the employee to the satisfaction of their employer.
- (d) Bereavement leave may be taken in conjunction with other leave available under clause 22, Carer's Leave. In determining such a request the employer will give consideration to the circumstances of the employee and the reasonable operational requirements of the business.

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

#### 24. Anti-Discrimination

The company shall not discriminate on the basis of sex, marital status, pregnancy, age, race, religion, colour, national origin, disability, political conviction, homosexuality, transgender identity and responsibilities as a carer.

Entry into the company, selection for specific jobs and career progression will be determined by personal merit and criteria related to the effective performance of the job.

- (a) It is the intention of the parties bound by this consent award to seek to achieve the object in section 3(f) of the *Industrial Relations Act* 1996 to prevent and eliminate discrimination in the workplace. This includes discrimination on the grounds of race, sex, marital status, disability, homosexuality, transgender identity, age and responsibilities as a carer.
- (b) It follows that, in fulfilling their obligations under the dispute resolution procedure prescribed in clause 44, Settlement of Disputes, the parties have obligations to take all reasonable steps to ensure that the operation of the provisions of this award are not directly or indirectly discriminatory in their effects. It will be consistent with the fulfilment of these obligations for the parties to make application to vary any provision of the consent award which, by its terms or operation, has a direct or indirect discriminatory effect.
- (c) Under the *Anti-Discrimination Act* 1977, it is unlawful to victimise an employee because the employee has made or may make or has been involved in a complaint of unlawful discrimination or harassment.
- (d) Nothing in this clause is to be taken to affect:
  - (i) any conduct or act which is specifically exempted from anti-discrimination legislation;
  - (ii) offering or providing junior rates of pays to persons under 21 years of age;
  - (iii) any act or practice of a body established to propagate religion which is exempted under section 56(d) of the *Anti-Discrimination Act* 1977;
  - (iv) a party to this agreement from pursuing matters of unlawful discrimination in any State or Federal jurisdiction.
- (e) This clause does not create legal rights or obligations in addition to those imposed upon the parties by the legislation referred to in this clause.

#### NOTES:

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

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

#### 25. Annual Leave Payment and Annual Leave Loading

- (a) Each employee, before going on annual leave, shall be paid in advance the wages which would ordinarily accrue to them during the currency of annual leave.

- (b) In addition to the payment prescribed in subclause (a) of this clause, an employee shall receive during a period of annual leave loading for each week of annual leave.

An employee who applied for their annual leave whilst engaged on this site shall be entitled to any benefits applicable to such annual leave contained in this consent award. If their employer transfers the employee to another location for a period not exceeding one month, this clause shall apply.

Any benefits shall be on a pro rata basis for period worked on this site for each week's annual leave due.

- (c) The loading prescribed above is calculated on the basis of 20.4% of the group wage rates set out in clause 5, Wages, and, if those rates are further increased as a consequence of the provisions of subclause (a) of clause 5, the annual leave loading shall also be increased by the same percentage formula and from the same date as the wage rate is increased.
- (d) The loading prescribed above shall also apply to proportionate leave due to an employee whose services are terminated by an employer through no fault of the employee.
- (e) Except as provided in subclause (d) of this clause as to the payment of loading on proportionate leave on termination, the provisions of the appropriate parent award shall apply.

#### **26. Superannuation**

- (a) Employees of contractors and subcontractors covered by this consent award shall, whilst they are engaged on this site, be covered by an appropriate superannuation scheme such as C + BUS or other union-approved superannuation schemes.
- (b) Construction work to be performed under this consent award falls under the definition of construction work contained in the Trust Deed or Deed of Adherence of the C + BUS Superannuation Scheme.
- (c) Contractors shall contribute \$75.00 per week on behalf of employees into a recognised industry scheme. From the first pay period commencing on or after 20 May 2003, this amount shall increase to \$80.00 per week.
- (d) Provided that such contribution shall not be in addition to any contributions made in accordance with legislation or an enterprise agreement.

#### **27. Inclement Weather**

Employees of contractors and subcontractors shall be employed on a weekly basis, provided that this shall not affect the engagement of casual or temporary employees.

The inclement weather provisions of the National Building and Construction Industry Award 2000 shall apply in respect of all employees engaged under the provisions of this consent award.

Where employees under a weekly contract of employment feel that they are experiencing inclement weather conditions, they should approach their Site Management, who shall consult with the employees and inspect work areas. Site Management shall consult with the TAC-Construction Manager to ensure that the provisions and intent of this clause are being applied in a consistent manner to the project in total. Site Management will then decide whether the employees should or should not cease work and return to their site amenity huts or relocate to unaffected areas. No employee shall have the right to cease work or leave the site without the permission of their Site Management.

#### **28. Caravan Allowance**

- (a) A caravan allowance of \$147.00 per week or \$21.00 per day or the cost of the caravan site, whichever is the greater, shall apply to an employee who resides in a caravan (either owned or rented) for the purpose of following their employment from site to site, providing that:

- (i) The employee has been directed by their employer to reside in a caravan in order to work at the employer's site; or
- (ii) The employee elects to reside in the caravan because it is impracticable to travel to and from the employer's site and their original place of residence.

NOTE: The employee's original place of residence shall be taken to mean their residence immediately prior to becoming a caravan dweller.

The employee, having established at the commencement of employment at a particular site that they are not a caravan dweller, will not be eligible for the benefits of this clause whilst working at that site.

- (b) The caravan allowance shall take into account all expenses incurred by the employee in connection with their occupation of the caravan and shall not be wages for the purposes of this consent award.
- (d) This allowance payable pursuant to subclause (a) of this clause shall be in substitution for and not additional to any payment otherwise due pursuant to Country Work or Camping Area clauses of the Plant, &c., Operators on Construction (State) Award published 16 November 2001 (329 I.G. 625), as varied, provided that the employee shall not be entitled to the allowance prescribed in subclause (a) of this clause for any working day in which they are absent from duty except in cases of sickness or for any reason beyond their control.
- (e) This clause will not apply to any employee whose employer is paying an allowance for the use of the employee's caravan following custom and practice or agreement under conditions not less favourable than the provisions of this clause.

### **29. Living Away - Distant Work**

- (a) Entitlement
  - (i) The employer shall provide a distant worker with either reasonable board and lodging at no cost to the employee or pay the living away from home allowance when employed on a construction site at such distance from their usual place of residence that they cannot reasonably return each night or as otherwise defined in the employee's parent award.
  - (ii) The employer shall provide an itinerant worker with acceptable board and lodging at reasonable cost.
- (b) Procedure
  - (i) The employer shall advise applicants for employment of their entitlement under this clause at the time of the interview.
  - (ii) The employer shall determine whether the employee is correctly defined as a "distant worker", "itinerant worker" or "local worker". The appropriate definition shall be shown on the employee's records when the employee completes the Travel and/or Living Away From Home Declaration (see Appendix 1) made at the pre-employment interview.
  - (iii) Any employer shall not, under any circumstances, attempt to persuade or induce applicants for employment to provide a local address as their usual place of residence in an effort to avoid the employer's obligations under this clause.
- (c) Disputes

Disputes arising from application of this clause will be subject to resolution in accordance with clause 44, Settlement of Disputes. In the event of a dispute all relevant documentation will be made available to the tribunal dealing with the matter.

(d) Definitions

- (i) "Distant Worker" means an employee who has provided satisfactory evidence that, due to engagement on the site, they are unable to reasonably return home each night or as otherwise defined in the relevant award.
- (ii) "Itinerant Worker" means an employee with no fixed address.
- (iii) "Usual Place of Residence"
  - (a) The employer shall obtain, and the applicant for employment shall provide, a statement in writing of residence at the time of engagement, provided that documentary evidence of the applicant's usual place of residence, such as motor vehicle driver's licence, may be provided and accepted in lieu of the statement in writing.
  - (b) The employee's usual place of residence and not the place of employment shall determine the applicability of this clause.
  - (c) An employee shall notify the employer in writing of any subsequent change to their usual place of residence. No subsequent change to an employee's usual place of residence shall entitle an employee to provisions of this clause, unless the employer agrees.
- (iv) "Reasonable Board and Lodging" means lodging in a well-kept establishment with three adequate meals per day, adequate furnishing, good lighting and heating and hot and cold running water, in a single room or a twin room if a single room is unavailable.
- (v) "Living Away from Home Allowance" means an allowance payable weekly. Such allowance shall not be wages, provided that, in the case of broken parts of a week occurring at the beginning or end of employment, the allowance shall be divisible by seven.

A living away from home allowance of \$441.60 per week of seven days shall apply where an employee has satisfied the requirements of this clause.

Provided further that, if the employee satisfies the employer that they reasonably incurred a greater outlay than any prescribed, the allowance shall be increased to match the outlay.

The allowance payable pursuant to this paragraph shall be in substitution for additional payments provided to employees for travel to and from the Project, i.e. payments available under paragraph (vi) of subclause (d) of clause 5, Wages.

### 30. Safety

The *Occupational Health and Safety Act 2000* and *Occupational Health and Safety Regulation 2001* shall be the means by which safety matters will be addressed on this project. Conditions of implementation not specified in the *Occupational Health and Safety Act 2000* and *Occupational Health and Safety Regulation 2001* shall be observed as set out in TAC-Construction's Safety Rules and Regulations.

- (a) It is also accepted by the parties to this consent award that the procedures of the Building Industry Safety Codes shall be the procedures by which safety matters are handled and, whilst these are being followed, there shall be no stoppage of work in respect of the matter being considered, except in the area or matter under consideration.
- (b) A Safety Committee, consisting of a TAC-Construction representative and one alternate TAC-Construction member, four elected employee representatives and three appointed contractors'

representatives, shall be formed and will operate in accordance with the provisions of the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001.

Frequency of site safety inspections and other matters pertinent to the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001 will be determined by the Safety Committee in consultation with TAC-Construction.

- (c) Each employer shall provide to their employees all appropriate safety equipment free of charge as necessitated by the tasks in accordance with any existing regulation(s) or regulation(s) implemented during the life of the consent award.

- (d) Rectification Work

Contractors shall engage qualified personnel and/or subcontractors for the purpose of performing hazard prevention and rectification work such as erecting handrails and toeboards around the perimeter of floors, openings, penetrations, up stairways, covering up openings, fixing of ladders, building walkways, ramps, etc.

- (e) Scaffolding/Formwork

Employees carrying out scaffolding/formwork duties must be in possession of the appropriate Certificate of Competency issued by the New South Wales Department of Industrial Relations and Employment.

### 31. First Aid

- (a) An emergency vehicle will be located on site at all times.
- (b) First aid boxes shall be provided by contractors as required in accordance with the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001.
- (c) Contractors shall make provision in accordance with the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001 as to the provision of personnel in administering this obligation under the said Act.

### 32. Occupational Health and Safety

- (a) A comprehensive Safety Management Plan for the Project will be developed, implemented and communicated by the Project Manager and contractors.

The provisions of the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001 or their successors shall apply to and regulate all work covered by this consent award.

A first aid room, complying with the Act, regulations and industry standards, will be provided.

- (b) Upon commencement on the Project, employees will be issued with the following protective clothing, equipment and footwear:
- (i) One pair of approved safety footwear.
- (ii) For employees who are assigned to the project for more than one month, two pairs of standard-issue long pants and two standard-issue long-sleeved shirts or two pairs of long-sleeved overalls. Shirts and overalls shall have high visibility day/night glowtape attached front and back in accordance with "Clutha Pattern". Colour to be advised by TAC-Construction.
- (iii) One white hard hat (with substantial add-on shade 'brim') designating the employee's employer and name.

- (iv) One pair of approved safety glasses (either tinted or non-tinted - employee choice). Employees with prescription glasses will be issued with monogoggles or have their prescription safety glasses face-hardened (employee choice).
- (v) Each employee on commencement of employment on site shall be eligible to be issued with one "bluey" type warm jacket which will be issued between 1 May and 1 September.

It is a condition of issue and of employment that the issued equipment shall be worn whilst on site. Replacement of issued equipment that is lost by the employee is the responsibility of the employee.

An employee who resigns within three months of receiving the issue may have the pro rata cost withheld from their final pay.

Hard hats, safety glasses and safety footwear must be worn at all times other than whilst in offices and crib sheds.

Replacement of any articles shall be on the basis of fair wear-and-tear, provided that the worn-out item is produced for replacement. An employee who loses parts of the issue will be required to purchase necessary replacements.

Where an employee transfers:

- (i) to the Project with the same employer; or
- (ii) between Project employers;

and has already received an issue of approved protective safety footwear, they will only be eligible for any re-issue on the basis of fair wear-and-tear provided the worn-out item is produced for replacement.

Employees who receive their issue of protective safety footwear as part of their employer's policy will not be entitled to additional issues under this clause.

The employer shall issue, on a loan basis, all safety equipment and protective clothing necessary for specific work tasks. Requisite safety equipment shall be worn.

The employer shall make available sunscreen (SPF 30+) and mosquito repellent for personnel engaged in outside work.

- (c) Where an individual who has been issued with required protective safety equipment, including safety footwear, helmets, harnesses and adequate clothing, is found not to be wearing same on the job, then such employee shall be counselled in the presence of the Site Safety Committee elected representative.

Further infractions in relation to the non-wearing of the said protective equipment referred to in this clause shall result in the individual being required to show cause to the Site Safety Committee why the said individual should not be removed from the site.

Exemption from this clause is to be from the recommendation of the Site Safety Committee only.

### **33. Workers' Compensation**

TAC-Construction shall instruct all contractors that it is a term and condition of their contract that they shall ensure that all workers they engage to work on the site are covered by New South Wales Workers' Compensation Insurance and are aware of their responsibilities under the legislation which is current at the time. Proof of such insurance will be required by TAC-Construction (see clause 11, On Site Register).

TAC-Construction shall instruct all contractors that it is a term and condition of their contract that, provided an injured worker (or their representative if the injured worker is unable to do so) reports an injury and complies with claims requirements and the insurer and employer are satisfied that such injury is compensable, the

employer shall pay to the injured worker the back payments within two days of acceptance of liability and weekly payments of compensation will thereafter be made on normal pay days.

The employer will provide all necessary information to the insurer within 24 hours of the injury occurring or their being notified of a possible claim for workers' compensation.

In all other respects the provisions of the *Workers' Compensation Act 1987* (as amended) will apply.

TAC-Construction must be immediately notified of all accidents on site. All contractors and employees must ensure all injuries are reported in both the employer's Accident Book and the Site Accident Book.

### **34. Fitness for Duty Policy**

Under no circumstances will any employee affected by alcohol and/or affected by any other drug be permitted to work and/or operate any equipment on the Project. Supervisors will be responsible for reporting such incidents.

If an employee is affected by alcohol or any other drug and is sent home to recover, they will not be paid for the lost time. Incidents concerning drugs or alcohol shall be dealt with in accordance with the Building Trades Group of Unions Drug and Alcohol Safety Rehabilitation Program (see Appendix 5).

Further, the parties agree that no alcohol/drugs will be permitted on the Project.

Consultation with the relevant Site Safety Committee or Company Consultative Committee will take place to review and monitor this policy and compliance.

### **35. Top-Up/24 Hour Income Protection Insurance**

Each employer shall provide Top Up/24 Hour Income Accident Insurance with the CTAS or other scheme with comparable benefits, provided the rates for the comparable scheme are also comparable, to provide cover of up to \$1,200.00 per week with a 21 day waiting period for any claims.

### **36. Rehabilitation**

In accordance with the WorkCover General Program Regulation 88 (as amended), TAC-Construction and contractors will implement their respective rehabilitation policies.

### **37. Amenities**

- (a) Amenities as prescribed in the relevant consent award and/or legislation and WorkCover codes are to be provided.
- (b) All lunch sheds shall contain reverse cycle air-conditioning.
- (c) Refrigerators shall be provided in crib sheds.
- (d) Outside/inside hand washing.
- (e) Each contractor shall ensure that amenities are provided and comply with subclauses (a), (b), (c) and (d) of this clause.
- (f) Hot and cold water shower block(s).
- (g) Hot and cold water in toilet blocks.

### **38. Plant and Equipment**

- (a) All mobile plant and equipment shall, prior to commencement of work on site, be certified and have a certificate of currency as complying with the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001.
- (b) Every part of the structure, working gear and anchoring and fixing of every crane, joist and scaffolding winch and of all other hoisting machines, ropes and slings, whether metal or non-metal, and gear shall, as far as is reasonable practicable, be examined in position by a competent person:
  - (i) at least once in every month; or
  - (ii) at such more frequent intervals as are necessary to ensure that the hoisting machine or gear is in safe working order (*Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001).
- (c) A competent person shall inspect all chains, ropes, slings and other gear used for hoisting or lowering or as a means of suspension:
  - (i) at least once every month; or
  - (ii) at such more frequent intervals as are necessary to ensure that the scaffolding is safe.
- (d) A report signed and dated by the competent person (as defined above) shall be lodged with TAC-Construction immediately following such inspection at intervals of not less than one calendar month. Should such written reports not be submitted in accordance with this clause, there shall be no cessation of work. TAC-Construction shall take all appropriate steps to ensure that the report is obtained or another inspection undertaken within two working days of the expiration of the previous certificate (*Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001).
- (e) All hire cranes required on site shall come from a recognised crane yard.
- (f) Crane drivers and dogmen will be suitably qualified.
- (g) When engaging the most appropriate plant, preference will be given to plant fitted with ergonomic R/C air filtered/conditioned cabs with Roll Over protection.

### **39. Union Membership**

To the extent that the appropriate legislation permits, contractors and subcontractors shall give favourable consideration to the employment of financial members of the appropriate union respondent to this consent award.

Union membership shall not of itself in any way limit the operation of clause 5, Wages, of this consent award with respect to the duties of any employee.

### **40. Shop Steward/Delegates**

- (a) An employee appointed as a shop steward shall, upon notification by the union to the employer, be recognised as the accredited representative of the union to which they belong and they shall be allowed all necessary time during working hours to submit to the employer matters affecting the employees they represent and shall be allowed reasonable time during working hours to attend to job matters affecting their union.
- (b) Delegates from each union shall be allowed time off with pay for up to six days in any one year to attend Approved Trade Union Training Schools, providing that reasonable notice is given to the respective employer of the day or days that a course will take place and adequate discussion in relation to the total numbers attending has taken place with TAC-Construction.

- (c) The contractors shall ensure that, where possible, where previous arrangements have been made with individual contractors/subcontractors for a delegate to attend an approved Trade Union Training Course, those arrangements are upheld.
- (d) Job delegates shall be allowed access, upon request, to a telephone for union business related to the site.
- (e) Prior to dismissal or transfer, two days' notice shall be given to any shop delegate and their appropriate union.
- (f) Payment in lieu of notice shall not be given.
- (g) In the event of the union disputing the decision of management to transfer or terminate the services of a shop steward, they shall remain on the job, during which time the dispute resolution procedure prescribed in clause 44, Settlement of Disputes, shall be invoked.

#### **41. Shop Stewards' Meetings**

As a means of achieving better industrial relations on site, accredited site stewards shall be entitled to attend combined site stewards' meetings on six occasions each year during alternate months, without deduction of pay, for a maximum period of three hours on each meeting.

The meetings shall be convened by the Peak Union Councils on behalf of affiliated unions and shall be held on dates and commence at times to be mutually agreed between TAC-Construction and the Peak Union Councils.

#### **42. Meetings of Employees**

- (a) Subject to subclause (b) of this clause, one hour per month shall be allowed employees between 11.00 a.m. and 12.00 noon to discuss union affairs at a time to be agreed upon between the parties. Once established, no alteration is to be made to the scheduled date and time for such meeting unless a change is requested on behalf of all unions by the Peak Union Councils.
- (b) The granting of time to discuss union affairs is to be reviewed by TAC-Construction every three months, while any time lost during ordinary working hours by attendance at unauthorised meetings shall not be paid.
- (c) The right to hold meetings as prescribed by this clause may be withdrawn at any time should any group of employees attend meetings outside the times and dates so prescribed.

#### **43. Joint Monthly Meeting**

A monthly meeting shall be held between nominated shop stewards, their union officials, Site Management (including the site safety supervisor) and, where possible, an official of both Peak Union Councils, to discuss site matters, with particular emphasis on accident prevention. This meeting shall be held immediately after (where practicable) the monthly meeting of employees.

#### **44. Settlement of Disputes**

- (a) Where an employee or the shop steward has submitted a request concerning any matter directly connected with employment to a supervisor or a more senior representative of management and that request has been refused, the employee may, if they desire, ask the shop steward to submit the matter to management and the matter shall then be submitted by the shop steward to the appropriate executive of the employer concerned.
- (b) If not settled at this stage, the matter shall be formally submitted to a state official of the union to the employer.
- (c) If not settled at this stage, the matter shall then be discussed between such representatives of the union as the union may desire and the employer, who may be accompanied by or represented by such officers or representatives of AIG as TAC-Construction may authorise.

- (d) If the dispute is still not resolved, the Peak Union Councils shall be advised to enable the Councils to assist in the resolution of the dispute.
- (e) If the parties fail to resolve the dispute in accordance with subclause (d) of this clause, they shall refer it to the Industrial Relations Commission of New South Wales for conciliation and mediation.
- (f) If the parties fail to resolve the dispute in accordance with subclause (e) of this clause, they may, by agreement, request the Commission to assist in resolving the matter by arbitration.
- (g) Where the procedures from subclauses (a) to (f) are being followed or where it is agreed to proceed to arbitration, work shall continue normally. This condition shall be strictly enforced by the Peak Councils.
- (h) In the event that a dispute appears likely to remain unresolved, or that stoppages of work, bans and limitations have been placed on the performance of work, and the dispute is unlikely to be resolved by resort to the procedures prescribed in this clause, nothing in this clause shall restrict a union or contractor referring the matter to the Industrial Relations Commission of New South Wales for resolution.

No party shall be prejudiced as to final settlement by the continuance of work in accordance with this subclause.

#### Demarcation Disputes

#### Settlement within the Union Movement

- (i) Demarcation disputes should be resolved by agreement between the unions concerned.
- (ii) Where agreement cannot be achieved directly between the unions concerned, the unions will notify the Newcastle Trades Hall Council in Newcastle or The Labor Council of New South Wales.
- (iii) Affiliated unions will not refer demarcation disputes to industrial tribunals unless there has been a reasonable opportunity to discuss the issued within the union movement.
- (iv) Work shall continue while a demarcation dispute is resolved on the pre-dispute basis. Any dispute as to what constitutes the pre-dispute basis shall be referred to the Industrial Relations Commission for determination as a threshold question and the Commission may make a recommendation to the parties for resolution of the dispute.

### **45. Community Standards**

The parties acknowledge that during the term of this consent award significant changes to community standards in respect of terms and conditions of employment may occur.

In the event that such a change/s does occur, other than to wages and allowances, but including casual loadings, the parties to this consent award shall discuss this change and the implications of a possible variation to this consent award.

If the parties are unable to resolve any issue arising out of these discussions, the issue shall be processed through the dispute resolution procedure prescribed in clause 44, Settlement of Disputes.

This shall not constitute a re-opening of negotiations on the terms and conditions of this consent award.

The operation of this clause is subject to no industrial action being or having been taken by employees engaged on the project in relation to the change.

### **46. Temporary Electrical Installation**

All temporary electrical installations set up by contractors on site must conform with the following Codes of Practice under the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001:

Electrical Practices for Construction Work

Low Voltage Electrical Work

#### **47. Testing Electrical Equipment**

All flexible extension cords, portable tools and electrical plant used on voltages above 32 volts must be inspected, tested and tagged monthly by a licensed electrician in accordance with details set out in the Codes of Practice.

All extension cords, portable tools and electrical plant brought on to the site by the contractor must bear the correct monthly tag.

Contractors are required to keep a log book of all inspections of the equipment. The Principal's representative shall be able to inspect these log books on a random basis to ensure that safety requirements are being adhered to.

Any equipment found without a valid inspection tag will be disconnected and the contractor advised to remove the equipment from the site until the equipment has been re-inspected and a new inspection tag attached. No extensions of time will be granted due to electrical equipment not having a valid inspection tag.

All temporary electrical work and installations must conform with the *Occupational Health and Safety Act 2000* and Occupational Health and Safety Regulation 2001 and the *Electrical Safety Act 1945*.

#### **48. Entry to and Movement Within Construction Site**

The following procedures shall apply in relation to the entry to and movement within the construction site of visiting union officials after they have undertaken the Site Safety Induction:

- (a) A union official, on entering the site, shall advise their name and the union they represent to the gatekeeper at the construction gate.
- (b) The gatekeeper will notify a representative of TAC-Construction of a union official's arrival and that representative will arrange for the union official to proceed to TAC-Construction site office.
- (c) A union official who wishes to visit a contractor on the construction site is to notify their intention to TAC-Construction's representative at the time of entering the site. The contractor's manager or his/her representative will then arrange for the official to be issued with a Visitor's Pass.
- (d) Union officials visiting the site will be permitted to park their cars in a designated visitors' car parking area adjacent to the site entrance. If necessary, and upon request, transportation to various contractors' locations will be arranged by TAC-Construction's representative.

In the case of emergency or in circumstances where TAC-Construction has given authority, a union official may be permitted to take their car into the construction area.

- (e) Before entering a workplace a union official is to report to the representative of the contractor within the construction area.
- (f) A union official is required while in the construction area to observe all safety rules and established site policy, which includes, as a minimum, the wearing of hard hats, adequate foot protection and safety glasses.
- (g) Subject to job requirements and authority being given by an authorised representative of a contractor, a union official may converse with their job delegate during the course of their visit.

- (h) A union official shall not hamper or hinder other employees during their visit.
- (i) Any contractor's representative on site shall not unreasonably withhold permission for a union official to meet with the official's representative/members on the site.

#### **49. Termination Pay**

In lieu of a ward termination and redundancy payments otherwise payable, contractors and subcontractors shall contribute into ACIRT, MERT or an Occupational Redundancy Fund approved by the parties an amount of \$70.00 per week per employee, in respect of each completed week of employment at the construction site. From the first pay period to commence on or after 20 May 2003, this amount shall increase to \$75.00 per week.

An employee engaged on site from time to time for less than a completed week of employment shall be paid \$1.90 per hour 'flat' for all ordinary hours worked to a maximum of 38 ordinary hours per week, in lieu of the required contributions on behalf of employees into ACIRT, MERT or an Occupational Redundancy Fund approved by the parties. Such amounts are to be shown separately on the employee's pay advice.

#### **50. Consent Award Not to Be Used as Precedent**

The Peak Union Councils on behalf of their affiliated unions and the AIG on behalf of contractors agree that this consent award was made having regard to the special circumstances existing on the Tomago Aluminium Smelter AP22 Capacity Expansion Project Construction Site and that the contents herein are not to be used as a precedent by either party.

#### **51. TAC-Construction Hand-Over - TAC Acceptance**

- (a) Items of plant, equipment or areas related to the Tomago Aluminium Smelter AP22 Capacity Expansion Project Construction Site and/or any of its systems may be accepted by TAC upon completion at any time during the course of the construction project. Such items shall, subject to subclause (c) of this clause, be deemed to be pre-commissioned for the purposes of this consent award with the result that TAC employees may involve themselves with the use and operation of such equipment and facilities.
- (b) It is the responsibility of TAC-Construction to issue a statement of practical completion to TAC and the responsibility of TAC to issue a certificate of practical completion. Any item of work embraced by subclause (a) of this clause shall be clearly identified by area or by other means (such as tags). Subsequent to such identification all such areas, equipment, systems, faculties, etc. will become the responsibility of TAC.
- (c) It is the responsibility of TAC to declare industrial acceptance on any item of work as embraced in subclause (a) of this clause. TAC reserves the right to pass back to TAC-Construction any item of work which it determines requires major design changes after acceptance. Further, TAC reserves the right to utilise vendors for equipment that is under warranty to modify or correct any defects/deficiencies that may occur to the equipment once industrial acceptance is effected.

### **APPENDIX 1**

#### **TOMAGO ALUMINIUM SMELTER AP22 CAPACITY EXPANSION PROJECT CONSENT AWARD 2002**

#### **TRAVEL AND/OR LIVING AWAY FROM HOME DECLARATION**

Name of Applicant:

An Employee of:

Name of Employer:

make application to be classified as:

either-

A local worker

Signature of Applicant:

or-

An itinerant worker, that is, defined as an employee with no fixed address

Signature of Applicant:

or-

A distant worker, that is, it is unreasonable for me to return home each night

Signature of Applicant:

either-

As a distant worker, I also make application for accommodation to be provided for me free of charge  
(tick one box)

Yes

No

or-

As a distant worker, I also make application for excess fares and travelling time  
(tick one box)

Yes

No

I, the applicant, have read the Tomago Aluminium Smelter AP22 Capacity Expansion Project Consent Award 2002 (including clause 29, Living Away - Distant Work) and understand my entitlements.

Signature of Applicant:

Date:

Recommendation by Employer:

## APPENDIX 2

### TOMAGO ALUMINIUM SMELTER AP22 CAPACITY EXPANSION PROJECT CONSENT AWARD 2002

#### SITE RULES

THE SITE RULES ARE FOR YOUR PROTECTION AND SAFETY.

ADHERENCE IS MANDATORY FOR ALL, INCLUDING TAC-CONSTRUCTION STAFF, EMPLOYERS AND EMPLOYEES, WHILE ON SITE.

1. A breach of the following will be considered serious and may lead to an official warning, summary dismissal and/or legal action:  
Reporting for work in an unfit condition.

Possession or use of alcohol, drugs of addiction or non-prescribed drugs on the site is strictly forbidden.  
Committing any act of violence, fighting or horseplay.

Unauthorised removal from the site of TAC, TAC-Construction, contractors' or another employee's property.

Wilful damage to TAC, TAC-Construction, contractors' or other employees' property.

Breach of safety rules and regulations.

Illegal gambling.

Refusal of duty.

Sleeping on the job.

Breaches of site security procedures.

Transporting personnel in vehicles in breach of RTA regulations.

Travelling in vehicles in breach of RTA regulations.

We want you to enjoy your employment on the site and to achieve job satisfaction. Your assistance in maintaining project performance and behaviour standards will help make the site a safe place to work.

2. Bag and vehicle inspections leaving the site

From time to time you may be requested to open your bag and or vehicle for routine inspection by the security officers at the plant and/or construction gate. You will be expected to allow the inspection in the interests of overall security of TAC, TAC-Construction, contractors and employee property.

Random bag and/or vehicle inspections apply to all TAC, TAC-Construction, contractors' staff and employees and you should not feel that you have been treated differently from others.

3. Personal Property

Whilst every effort is made to keep your property safe, TAC, TAC-Construction or the contractors take no responsibility for personal belongings left in crib huts, amenities or other parts of the site.

4. Where to park your car

Parking is available in the construction site car park. Employees' personal cars are not permitted on the site.

Please take care whilst using the car park to avoid damage to your own or other vehicles. Signs are provided to show directions and speed limits (Low Speed / No "Wheelies").

Always lock your vehicle whilst it is parked. TAC, TAC-Construction or the contractors will not accept liability for theft of or from or damage to your vehicle whilst it is parked in the car park.

## 5. Canvassing

Canvassing monies or goods for charity or other purpose is not permitted on site, in the car park or outside the plant gates without written permission from TAC-Construction.

## 6. Cameras

Cameras of any sort are not permitted on the plant or site without prior written permission from TAC-Construction.

## 7. Mobile Phones, Radios and Records

Mobile phones and radios are permitted to be used in crib sheds only and must not be used on site whilst driving or operating any type of vehicle or equipment.

## 8. Firearms

Firearms are not permitted on site under any circumstances.

## 9. Animals

No animals are permitted on site.

## 10. Fire-fighting Equipment

Any employee found to have misused fire extinguishers or fire-fighting equipment will be subject to summary dismissal.

## 11. Shirts and Trousers

Proper long-sleeved shirts in designated areas must be worn at all times on site.

## 12. Plant Area

Employees are not permitted in the existing plant areas without authorisation.

TAC-Construction reserves the right to amend the site rules as deemed necessary during the duration of the consent award of which this document forms part.

### **APPENDIX 3**

#### **TOMAGO ALUMINIUM SMELTER AP22 CAPACITY EXPANSION PROJECT CONSENT AWARD 2002**

##### **INTERFACE AGREEMENT**

Following discussions between the Australian Industry Group, and the Labor Council of New South Wales and the Newcastle Trades Hall Council, on behalf of affiliate trade unions, it is agreed that during construction activities for the expansion of the AP22 Capacity Expansion Project members of affiliate trade unions will not make any claims or take any action on behalf of their members employed as maintenance or production

workers at Tomago Aluminium Smelter which would extend or allow construction wage rates or conditions to flow to such employees.

The parties to this Interface Agreement expect that normal Smelter expansion/activity will continue uninterrupted (as will normal industrial activities between Smelter management and affiliate trade unions, namely the AMWU, AWU and CEPU) and remain separate from construction work.

**APPENDIX 4**

**TOMAGO ALUMINIUM SMELTER AP22 CAPACITY EXPANSION PROJECT CONSENT AWARD  
2002**

**AUTHORITY TO OBTAIN FROM DIMA DETAILS OF IMMIGRATION STATUS**

I (Family Name)	Given Names:
Date of Birth:	Nationality:
Visa Number:	Passport Number:
authorise the Department of Immigration and Multicultural Affairs (DIMA) to release by fax to:	
Name of Employer Representative:	
details of my immigration status and entitlement to work legally in Australia.	
This information will only be made available to a representative of the Principal at the Tomago Aluminium Smelter AP22 Capacity Expansion Project and authorised trade union officer on request.	
I also understand that the abovenamed will only use this information for the purpose of establishing and verifying only my legal entitlement to work in Australia and for no other purpose.	
Signed:	Dated:
Name of Employer:	Phone No:
Fax No:	Please send or fax this form to:
The Department of Immigration and Multicultural Affairs	
Phone: (02) 9258 4730	Fax: (02) 9258 4763

**APPENDIX 5**

**TOMAGO ALUMINIUM SMELTER AP22 CAPACITY EXPANSION PROJECT CONSENT AWARD  
2002**

**BUILDING TRADES GROUP OF UNIONS DRUG AND ALCOHOL SAFETY REHABILITATION  
PROGRAM**

**POLICY AND PROGRAM OUTLINE**

1. Principle
 

People dangerously affected by alcohol and/or other drugs are a safety hazard to themselves and all others present in the workplace.
2. Focus
  - (a) Site safety and involvement of the Site Safety Committee.
  - (b) Peer intervention and support.
  - (c) Rehabilitation.
3. Objectives
  - (a) To inform workers of the Building Trades Drug and Alcohol Safety and Rehabilitation Program and to have the program adopted as site policy.

- (b) To increase the awareness of workers of the harmful effects of drugs and alcohol, both in the workplace and society.
- (c) To provide Site Safety Committees with the skills to effectively intervene in the event of unsafe work practices caused by alcohol and/or other drugs.
- (d) To inform workers of the availability of drug and alcohol referral/assessment and treatment services.

#### PROGRAM POLICY

1. A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
2. The decision on a person's ability to work in a safe manner will be made by the Safety Committee or, on projects with no Safety Committee, by a body of at least equal numbers of employee/employer representatives.
3. There will be no payment of lost time to a person unable to work in a safe manner.
4. If this happens three times, the worker shall be given a written warning and made aware of the availability of treatment/counselling. If the worker refuses help, he/she may be dismissed the next time he/she is dangerously affected.
5. For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
6. A worker having problems with alcohol and or other drugs:  
  
Won't be sacked if he/she is willing to get help.  
  
Must undertake and continue with recommended treatment to maintain the protection of this program.  
  
Will be entitled to sick leave or leave without pay while attending treatment.

#### GUIDELINES FOR SAFETY COMMITTEES

##### What To Do On Building Sites

1. Worksite Discussions
  - (a) All Safety Committee members should complete the Building Trades Group of Unions Drug and Alcohol Committee Course on drug and alcohol safety in the workplace. This can be presented on your site or as part of an approved four day safety training course. It should be co-ordinated with the Building Trades Group of Unions Drug and Alcohol Project Officer.
  - (b) Have the policy endorsed by the workers.
  - (c) The policy should be raised and discussed at every available opportunity, e.g. mass meetings, safety meetings, etc.
  - (d) Make sure all workers on site are aware of the policy.
  - (e) Make sure that all Drug and Alcohol Committee resources, i.e. posters, stickers etc., are clearly displayed on site.
2. Worksite Alcohol/Drug Problems

If A Worker Appears To Be Affected By Alcohol Or Drugs To Such A Degree That He/She Is A Safety Hazard:

The Chairman and at least one other member of the Safety Committee should ask the affected worker to leave the site because the safety of the site and other workers is being put at risk.

Avoid using judgemental terms like "You're too drunk" or "You're too stoned"; the worker is simply unsafe.

Be brief, firm and calm and don't be provoked into a debate with the affected worker. Avoid confrontation. Tell the worker you will speak to him/her when he/she returns to work unaffected.

Keep your emphasis on the safety factor and the risks to the worker and his/her workmates. Make suitable arrangements to ensure the worker gets home safely.

If There Is No Co-Operation From The Affected Worker:

The Chairman and Co-Chairman of the Safety Committee must notify the delegate and the employer.

If further persuasion fails, the area near the affected worker should be declared unsafe and the affected workers' union official notified.

The Involvement Of The Site Delegate Is Essential In This Process, As The Affected Worker Will Not Be Paid For Any Period Of Disruption Or Absence.

### 3. After The Incident

When The Worker Returns To Site Unaffected By Alcohol Or Drugs, The Safety Committee Should Provide Information About Treatment Or Counselling If Necessary. This May Include:

Assistance of the Building Trades Group of Unions Drug & Alcohol Committee.

Alerting the worker to the availability of treatment through the recognised drug and alcohol agencies.

Informing the worker that a agreement to have treatment means accrued sick leave can be used or an application for sickness benefits can be made.

### 4. Further Incidents

The disciplinary procedure is followed, i.e. one more verbal and one more written warning.

The employer should be aware of any intervention that results in lost time. Any action re. dismissal/transfer should be closely monitored to ensure adherence to the policy.

In the case of dismissal/transfer ensure the worker has treatment and counselling information.

R. W. HARRISON *D.P.*

Printed by the authority of the Industrial Registrar.

(113)

**SERIAL C1381**

**PHARMACY ASSISTANTS (STATE) AWARD**

INDUSTRIAL RELATIONS COMMISSION OF NEW SOUTH WALES

Application by Shop, Distributive and Allied Employees' Association, New South Wales, and another, industrial organisations of employees.

(Nos. IRC 3530 and 3531 of 2002)

Before Commissioner McLeay

8 July 2002

**VARIATION**

1. Delete clause 16, Arbitrated Safety Net Adjustment, of the award published 13 October 2000 (319 I.G. 285), as varied, and insert in lieu thereof the following:

**16. Arbitrated Safety Net Adjustment**

- (a) The rates of pay in this award include the adjustments payable under the State Wage Case 2002. These adjustments may be offset against:
  - (i) any equivalent overaward payments; and/or
  - (ii) award wage increases since 29 May 1991 other than safety net, State Wage Case, and minimum rates adjustments.
- 2. Delete subclause (c) of clause 17, Supported Wage, and insert in lieu thereof the following:

Supported Wage Rates -

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

Assessed Capacity (subclause (d))	% 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 \$57.60 per week).

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

- 3. Delete Table 1 - Wages, of Part B, Monetary Rates, and insert in lieu thereof the following:

**Table 1 - Wages**

Description	Former Rate Per Week \$	SWC 2002 \$	Total Rate Per Week \$
Pharmacy Assistant Adult			
Grade I (first six months)	462.10	18.00	480.10
Grade I (thereafter)	472.40	18.00	490.40
Grade II	482.60	18.00	500.60
Grade III	492.90	18.00	510.90
Grade IV	505.10	18.00	523.10

- 4. Delete Item 5 of Table 2 - Other Rates and Allowances, of the said Part B and insert in lieu thereof the following:

Item No.	Clause No.	Brief Description	Amount \$

5	34(ii)	Living Away from Home Allowance	8.10 per day
---	--------	---------------------------------	--------------

5. This variation shall take effect from the first full pay period to commence on or after 9 July 2002.

J. McLEAY, Commissioner.

---

Printed by the authority of the Industrial Registrar.