WORKPLACE RESEARCH CENTRE
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Contents

1 wage trends

wage increases in September quarter 2007 agreements

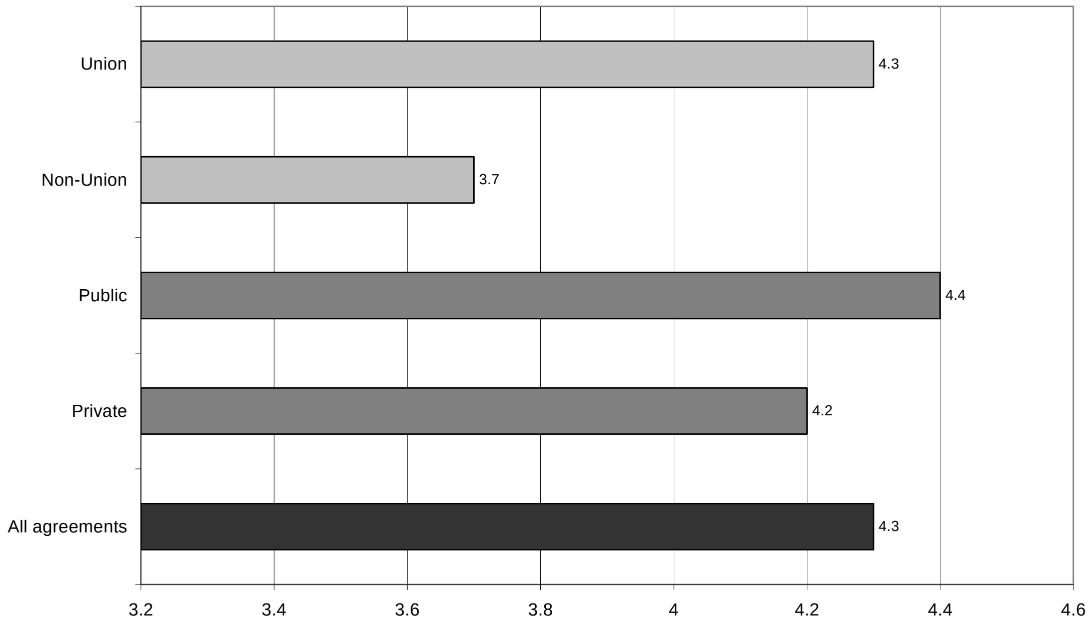
This report examines the wage outcomes using a sample of 218 federal and state agreements lodged or registered during the September 2007 quarter. This sample includes the first batch of federal agreements that have undergone the *Fairness Test* process.

In the September quarter, the average annual wage increase (AAWI) across all agreements was 4.2%, up by 0.3 percentage points from the June quarter. The margin between union agreements and non-union agreements increased further since the June quarter (0.6% difference compared with 0.4% in June quarter). Union agreements are now delivering an AAWI of 4.3% compared with 3.7% in non-union agreements. The slightest of margins between public and private sector agreements is now evident, delivering an AAWI of 4.3% and 4.2% respectively. Figure 1.1 below depicts these trends.

The proportion of agreements made under the *Work Choices* legislation that provide for a quantifiable wage increase has increased in the September quarter (63% of agreements in the September quarter compared with 57% in the June quarter). However, it is important to note that there were a higher proportion of union agreements released by the Workplace Authority in this quarter. Past issues of the *ADAM Report* identified that union agreements are far more likely to provide a quantifiable wage increase compared to non-union agreements.

One very notable finding was the stark contrast in the proportion of agreements that relied on increasing wage rates in line with AFPC standards. In the previous *ADAM Report*, 16% of all agreements (ie. pre *Fairness Test*) stated that future wage increases were to be in line with AFPC movements. This compares with only 6% of agreements that have since passed the *Fairness Test*. Similarly, 5% of all pre *Fairness Test* agreements left wage increases open ended and subject to employer prerogative, compared with less than 1% of agreements subjected to the *Fairness Test*.

figure 1.1: September 2007 quarter average annual percentage wage increase



Source: ADAM Database, 2007, WRC, University of Sydney
Note: Government Business Enterprises and Non-profit agreements have been grouped within the public sector due to small sample size

high wage outcomes in September quarter 2007 agreements

High wage outcomes are classed as agreements that offer an annual average wage increase greater than 5%. This quarter there were a total of 24 agreements from the sample that were deemed high wage outcome agreements, delivering average annual wage increases as high as 8.79%. Seven of these high wage outcome agreements were selected for closer examination. These seven agreements spanned across the range of high wage increases, some nearer the highest increase of 8.79% and others closer to 5%. The jurisdictional coverage of this selection was predominantly federal, save for one state agreement. The diminishing number of newly registered agreements in the state jurisdictions is mainly the result of *Work Choices*. Table 1.1 outlines the key features of these agreements.

One pattern in the building and construction industry accounted for seven of the 24 high wage outcome agreements. This aside, no other specific industry patterns were identified for the quarter. Overall, most of the high wage outcomes were from “traditional” labour markets – either highly unionized blue collar work such as manufacturing, transport or construction, or publicly funded sectors that have had recent changes in the value of work performed – e.g. Health care or child care.

On the whole, similar themes amongst the high wage agreements were identified in the previous quarter’s analysis (refer to ADAM 54, June quarter high wage outcomes). Wage increases still appear to be used as a way of securing certain assurances by employees to accept any necessary changes as a way of remaining competitive. The mining industry is an example of this. There is also a continuance of high wage outcomes appearing in nursing and child care work, areas well known for their difficulties in retaining employees due to a lack of public funding and the resultant increasingly demanding workload.

One distinct feature prevalent in several high wage outcome agreements was the timing of the final wage increase. It appears that the parties are increasingly including one final wage increase installment towards the expiry date of a collective agreement. Typically, such wage increase installments were used as the first wage increase under the newly negotiated agreement, and delivered on signing (or lodgment). The short term effect of this new trend is the blowing out of wage increase ‘averages’. However, it is masking the real intention of such clauses. Part of the reason for this change in the timing of wage increases appears to be the result of increasingly protracted negotiations and bargaining activity between the parties from one agreement to the next. Anecdotal evidence has shown that in several instances, the negotiating parties have experienced delays of one year and even longer between the expiry of one collective agreement and the lodgment of the next. Such delays have significant implications for both parties, with the most obvious being the lag in employees’ earnings. In the past, collective agreements simply ‘back dated’ the first wage increase applicable under the newly negotiated agreement to combat the longer term effects on employee’s earnings. More recently, the parties are showing a preference to include a final wage increase towards the end of the life of an agreement.

Table 1.1: key features of higher than average wage increases in September 2007 quarter enterprise agreements

Industry (AAWI)	Key Provisions
Engineering Services (AAWI 5.45%)	• This union collective agreement provides three wage increases over the three year term, with a total of 16.36% on average • The second and third wage increase installments were 4% each, the first adjustment varied across ten occupational levels, and ranged from increases of 5.75% to 10.75% (averaging at 8.36%) • The agreement is read in conjunction with the industry award in order to provide a set of core employment conditions across more than one agency • The agreement states that should the agreement continue beyond the nominal expiry date, then wages (and some allowances) will be adjusted as per State Wage Case Decisions. In lieu of state wage cases, a guaranteed increase of 3% or CPI will be enforced on the first day of each year. • Paid parental leave increases from 10 weeks to 14 weeks over the life of the agreement • Employees are entitled to leave without the loss of pay for cultural and ceremonial purposes, subject to mutual agreement and credited leave available • Purchased leave scheme also available, allowing employees to buy up to eight weeks of leave per year in exchange for their wages or, defer a percentage of their wages over a 5 year period so that they can take a leave of absence for 12 months
Health Services Sector (AAWI 7.73%)	• An initial wage increase of 14.2% is followed by two wage installments of 4.5% in this 3 year union collective agreement, giving a total of 23.2% throughout the term. • The first wage increase installment of 14.2% is part of a once-off realignment of wages and earnings across certain occupational categories. • The increases are applicable to all occupations (both Enrolled and Registered Nurses). • The agreement stipulates that no further increases will be sought until the anniversary of the last installment under this agreement (this final wage increase installment also applies closer towards expiry date of the agreement).
Construction Industry (AAWI 6.24%)	• This union negotiated agreement provides for three wage increases over a 25 month period. However, it explicitly notes that the last of the wage increases (occurring one month prior to the expiry of the agreement) will be the only wage increase for the coming 12 months. This effectively negates any real impact or likelihood of a 'higher than average wage increase'. • The agreement incorporates all the provisions of the industry award. • This agreement is also part of a similar pattern of more than 7 federal agreements identified within our sample, all providing for the same annual wage increases and also the majority of employment conditions. • The agreement also supports the implementation of high levels of OH&S practices, procedures and training. Parties are committed to achieving productivity gains without compromising such health and safety standards.

Mining Industry (AAWI 5.29%)	• This 34 month agreement provides three wage increase installments of 5% each. • It operates to the exclusion of the award, but includes an appendix where award provisions are modified in a manner which is deemed to constitute part of the agreement. • Parties agree that flexibility is required in rostering arrangements to meet client needs, and by the agreement, the parties' commitment to this flexibility will ultimately extend the economic life of the facility.
Metal Manufacturing (AAWI 5.75%)	• This two year federal agreement provides 2 wage increases, totaling 11.5% over the life of the agreement. • This agreement is the first from this organization to be lodged in the federal jurisdiction, previously having certification in the state of South Australia. • The sole purpose of the agreement is for the parties to negotiate a more equitable pay structure. • All other entitlements are as per the parent (state based) award.
Transport Industry (AAWI 5.05%)	• Wages for this union collective agreement span 44 months with increases totaling 18.5% over the life. The agreement replaces all other awards and agreements and excludes all protected award conditions. • An 8% increase is initially offered, with two further adjustments by the greater of 5% and 5.5% respectively (or CPI, whichever is the greater). • With the agreement covering workplaces in Perth, the CPI figures used are based on Perth, rather than the national figure. This is particularly the case given the recent rise in the cost of living in Perth relative to other parts of Australia. • The wage increases operate to the exclusion of AFPC rulings unless they provide for a higher rate than those specified in the agreement. • The agreement specifically states a clear trade off for the stipulated wage increases as being a commitment to flexible working arrangements and productivity gains.
Childcare Services (AAWI 8.46%)	• This union collective agreement provides for an average total of 19.04% in wage increases over a 27 month term. • The first wage increase differed across occupations, ranging between 5% and 18% (averaged at 11.04%). Two further increases of 4% at six and eighteen month intervals are also provided. • Averaging of ordinary hours is introduced. Any hours worked in excess of 38 per week are accrued towards a day off. Such time off can be arranged to devise a work cycle around a regular rostered day off (akin to a 19 day month). • There is also a facilitative provision regarding this accrued day off, whereby employers and employees can request to substitute this day for another upon mutual agreement.

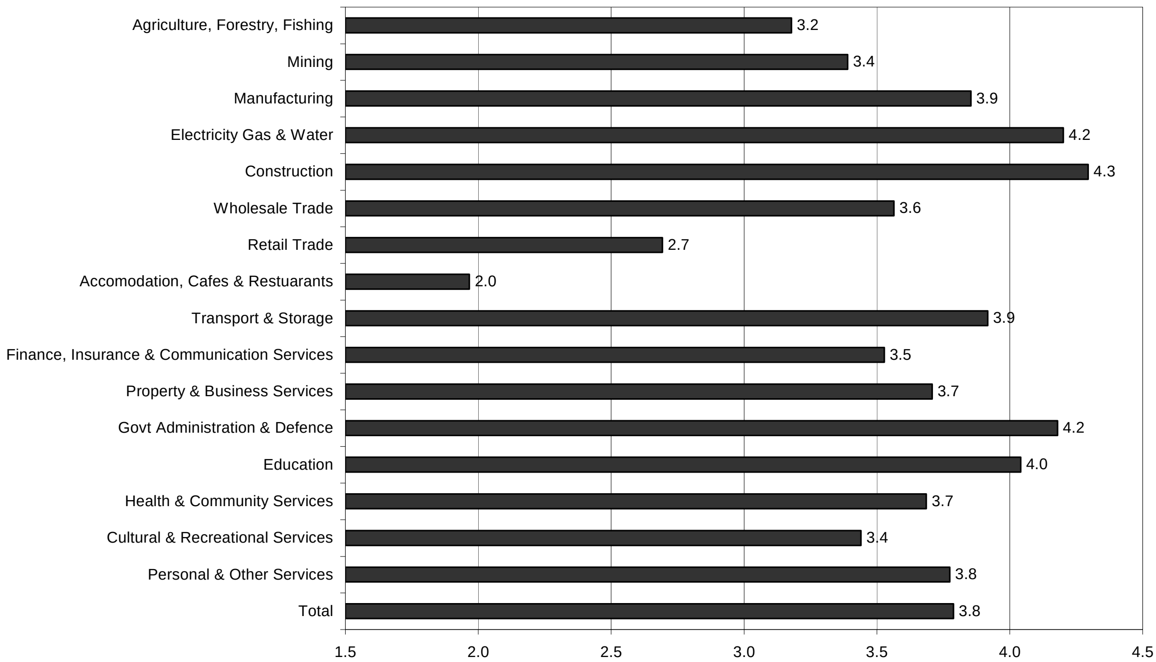
Source: ADAM Database, 2007, WRC, September 2007 Quarter, University of Sydney.
Note: High wage agreements are defined as those delivering an AAWI of 5% or above.

wage outcomes in current collective agreements

There are 1943 currently operating agreements in the ADAM Database as at 30 September 2007. These agreements are deemed 'active' and have yet to reach their nominal expiry date. Across all industries the average annual wage increase for currently operating agreements with a specified increase remains at 3.8%. Delivering 4.3% per annum, the construction industry has leapt ahead as the industry delivering the highest wage increases per annum. 'Electricity gas and water' and 'government administration and defence' follow closely, both delivering 4.2% per annum.

While the AAWI in active agreements is unchanged from those as at 30 June 2007, some changes in AAWI were identified within industries as at 30 September 2007. The accommodation, cafés and restaurants industry has reached a new low, delivering an average annual wage increase of 2% (down from 2.2%). Other industries experiencing a drop in AAWI in active agreements include; electricity gas and water (from 4.4% to 4.2%), mining (3.5% to 3.4%), retail trade (2.8% to 2.7%), finance insurance and communication services (3.6% to 3.5%), and property and business services (3.8% to 3.7%). Increases in AAWI for all active agreements were found in the cultural and recreational services sector (from 3.2% to 3.4%), manufacturing (3.8% to 3.9%), construction (4.2% to 4.3%), and government administration and defence (4.1% to 4.2%). Figure 1.2 below depicts the industry breakdown of the average annual wage increases in currently operating agreements.

figure 1.2: wage increases in currently operating agreements, by industry



Source: ADAM Database, 2007, **WRC**, September 2007, University of Sydney.
* Current agreements are those agreements yet to reach their nominal expiry date as at 30 September 2007

2 special issue: is the *Fairness Test* fair? – a preliminary study

The outgoing Federal Government's *Work Choices* legislation generated considerable controversy. One of the major issues of contention was the shift from awards to legislation as the basis for defining minimum legal standards. This gave employers the ability to reduce employment conditions. This was also more likely to impact on workers with limited bargaining power. The government's opportunity to affect such radical change arose partly because of the comprehensive nature of awards and the relative minimalism of the new legislated standards. Awards covered 18 broad areas of employment conditions, whereas the minimum standards specified in the *Work Choices* legislation covered only the following five matters:

- Wages
- Annual leave
- Personal/carers leave
- Parental leave
- Definition of ordinary weekly hours as 38 hrs, but this could be averaged over 52 weeks and no penalties or loading had to be paid.

Initial data from the then OEA (released officially and unofficially) revealed that many AWAs stripped out several, if not most, award entitlements.[1] A review of the *Work Choices* legislation by a Senate Committee prompted the introduction of a *Fairness Test* from the 7th May, 2007. The *Fairness Test* acted as a replacement for the previously discarded 'No Disadvantage Test' (NDT) and was to be applied to all collective agreements and AWAs in award covered industries. The *Fairness Test* differs to the old NDT in that it only refers back to the protected award conditions of the award and only if any of the those specific conditions have been modified or excluded by the agreement. The test applies to the agreement as a whole and takes account of "the work obligations of the employee(s) and the monetary and non-monetary compensation provided by the agreement for the removal or modification of protected conditions" (Workplace Authority Statement). This special issue of the *ADAM Report* examines the impact of the *Fairness Test* on the first batch of collective agreements released since its inception. It compares the content of collective agreements lodged under *Work Choices* prior to the *Fairness Test* with those lodged after the introduction of the *Fairness Test*. The analysis examines how the outcomes of the testing affected the incidence and content of entitlements surrounding wage increases, hours of work and penalty rates.

The primary question of interest is:

How, if at all, did the content of federally registered collective agreements change after the introduction of the Fairness Test?

methodology and profile of sample

Only a few months after the introduction of the *Fairness Test*, the Workplace Authority revealed that processing of agreements was taking a considerable amount of time. This resulted in a large backlog of agreements awaiting official scrutiny prior to registration. In a report issued by the Workplace Authority on the 5th September 2007, there were 110,000 agreements awaiting processing and not publicly available (this figure included AWAs and collective agreements). As a result of this backlog, the ability of the WRC to access and collect data to report on the current climate of enterprise bargaining in the federal jurisdiction was curtailed. Despite these limitations, the WRC was able to collect a reasonable sample for the purpose of this analysis.

This study splits the ADAM data collected from agreements lodged in 2007 into the following two periods for the purpose of this analysis:
1) pre-*Fairness Test* (agreements lodged between 1st Jan 2007 to 6th May 2007)
2) post-*Fairness Test* (agreements lodged after the 7th May 2007 to end Sept 2007).

[1] See initial testimony provided by Peter McIlwain to Parliament and then data published by Mark Davis, "Revealed: how AWAs strip work rights", *Sydney Morning Herald*, 17 April 2007. Mark Davis, "Most AWAs stripped penalties, holiday pay" *Sydney Morning Herald*, 20 February 2007.

A total of 324 agreements were used in this study – 220 pre-*Fairness Test* and 104 post-*Fairness Test*. Table 2.1 below outlines the industry breakdown of the sample.

table 2.1: size of agreement sample, by industry, pre and post *Fairness Test*

Industry Group	Number of Agreements in 2007 ADAM Database		
	Pre *Fairness Test* (1st Jan – 6th May '07)	Post *Fairness Test* (7th May – 30th Sept '07)	Total
Manufacturing	104	57	161
Construction	95	34	129
Retail	21	13*	34
TOTAL	220	104	324

Source: ADAM Database, 2007, WRC, University of Sydney.
* This was a full count of published post *Fairness Test* retail agreements available at the time of data collection – March 2008
Note: sample of agreements for manufacturing and construction drawn at random from those registered with the Workplace Authority.

The data was disaggregated into 3 significant industry groups; manufacturing, construction and retail. The purpose of this was to provide a foundation for comparison, to determine whether trends or patterns occurred across all agreements and/or whether they were subject to industry factors or union presence. The retail industry was chosen as it was one of the industries most affected by the backlog of the *Fairness Test* process, whilst still providing adequate numbers to meet the *ADAM Report* sampling protocol. It was also one of the industries analysed in the *Lowering the Standards* report issued by the WRC in 2007, thus enabling a comparison of the effect of the *Fairness Test* on '*Work Choices* affected' conditions.[2] The manufacturing and construction industries were chosen because they were more than sufficiently represented in the pool of agreements available for analysis at the time of sampling. They also reflect an entirely different employee skill set and working structure to that of the retail industry. Finally, whereas the retail industry is categorized as an industry with low union density, the manufacturing and construction industries are amongst the most unionized sectors of the Australian workforce.

[2] Evesson, Buchanan, Bamberry, Frino, and Oliver, 2007, *Lowering the Standards: From Awards to Work Choices in Retail and Hospitality Collective Agreements*, report prepared for the Qld, NSW and Victorian State Governments, September.

An important issue of interest is the frequency of union involvement in agreement making pre and post the *Fairness Test*. According to a 2006 DEWR Report, approximately three-quarters of both construction and manufacturing agreements lodged between 2004 and 2006 were union collective agreements, compared with only 25 percent in the retail industry.[3] When compared to the sample of agreements in this study, the increasing union involvement from the pre-*Fairness Test* to the post-*Fairness Test* period is immediately noticeable across all three industries. Table 2.2 outlines the proportion of agreements in this study that have a union as a party.

table 2.2: union party to agreement, pre and post *Fairness Test*

Industry Group	Union is a party to Agreement	Proportion of Agreements				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change (%)
		%	Freq.	%	Freq.	
Manufacturing	Yes	60.6	63	84.2	48	+23.6
	No	39.4	41	15.8	9	-23.6
	TOTAL	100	104	100	57	
Construction	Yes	48.4	46	88.2	30	+39.8
	No	51.6	49	11.8	4	-39.8
	TOTAL	100	95	100	34	
Retail	Yes	9.5	2	30.8	4	+21.3
	No	90.5	19	69.2	9	-21.3
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

Increased union presence is most obvious in construction industry agreements where the proportion with unions as a party almost doubles, increasing from 48.4 to 88.2 percent. In the retail sector, there is an increase of over 20 percentage points between periods (from 9.5 percent to 30.8 percent). It should be noted, however, only a very small number of retail industry agreements were involved in both periods. Importantly, the incidence of agreements where the union is a party to the agreement in retail is still significantly lower (some 50 percentage points below the other two industries), accounting for only 30.8% of registered retail agreements in the post-*Fairness Test* period. In the Post-*Fairness Test* period, the proportions of union coverage in all three industries are higher than those in the DEWR report covering the period 2004-2006 – indicating perhaps that union collective agreements are more likely to pass the *Fairness Test* because they tend to provide for wages and conditions above the minimum standards. These results are important to keep in mind in understanding the analysis that follows as union coverage may be a key factor affecting outcomes between the two periods.

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3 Department of Employment and Workplace Relations: *Agreement making in Australia under the Workplace Relations Act, 2004-2006,* Table 2.1.4, p27.

fundamentals of the *Fairness Test*

The *Fairness Test* is a comparison between the value of the protected conditions removed or modified and the compensation in the agreement for such removal or modification based on the work obligations/working patterns of the employee(s). According to the *Fairness Test* Policy Guide, an agreement is subject to testing if it excludes or modifies any one or more of the following protected award conditions:

- Rest breaks
- Incentive based payments and bonuses
- Annual leave loading
- Observance of public holidays and entitlements to payments in respect of those days
- Substituted public holidays or a procedure for substituting public holidays
- Monetary allowances for:
    - Expenses incurred in the course of employment
    - Responsibilities or skills that are not taken into account in the employee’s rate of pay
    - Disabilities associated with performance of particular tasks or work in particular locations or conditions
- Loadings for working shift work or overtime
- Penalty rates.

The above award conditions can be modified or excluded from bargaining as part of the amendments to the *Workplace Relations Act* (*Work Choices* legislation). The role of the *Fairness Test* is to determine whether the agreement provides fair compensation in lieu of the protected conditions that are excluded or modified. In order to pass the *Fairness Test*, an agreement must provide employees with full monetary compensation or provide an alternative benefit of the same value (such as extra holidays, child care, gym membership, or a non-monetary form of compensation that is of significant value to an employee). The wage rates are based on the work obligations/typical working patterns of the employee(s), with consideration also given to the Fair Pay and Conditions Standard.

The new agreement terms and conditions are compared with one of the following three industrial instruments (whichever would have applied if no agreement was in place);

1. the terms of a federal award;
2. the terms of a Notional Agreement Preserving State Awards (NAPSA) as at 27 March 2006; or,
3. the terms of a State award or State or Territory law that would have applied in a preserved State agreement (as at 27 March 2006).

It is important to note that this analysis only focuses on those conditions and entitlements dealt with by the *Fairness Test*. Many other award conditions and entitlements are not considered by the *Fairness Test* and therefore not subject to this analysis. Such matters include (but not limited to) redundancy entitlements and severance pay, casual loadings above 20%, and various provisions that impact on the rights determining patterns of hours worked, particularly for part-time workers. Consequently, these provisions also may or may not be lost as a result of *Work Choices*, but are beyond the confines of this analysis. The *Lowering the Standards* report found that such entitlements were actually reduced or lost under *Work Choices*.

The following extract is a typical example of a collective agreement *removing* protected award conditions in their entirety. Such a clause is typical of agreements that seek to modify or exclude all protected award matters.

EXTRACT 1: EXAMPLE OF REMOVAL OR EXCLUSION OF PROTECTED AWARD CONDITIONS

Further this Agreement shall operate to the exclusion of protected award conditions.
In this clause, 'protected award conditions' means the terms of any award that would have effect in relation to the employment of any employee whose employment is subject to the agreement to the extent that those terms are about, incidental to or machinery provisions in respect of the following matters:

- *rest breaks;*
- *incentive based payments and bonuses;*
- *observance of public holidays, payment in respect of work on public holidays and days to be substituted for (or a procedure for substituting) public holidays;*
- *annual leave loadings;*
- *monetary allowances;*
- *loadings for working overtime or shift work;*
- *outworker conditions; and*
- *penalty rates.* [4]

[4] CAUN072871349 *Shell Aviation - Melbourne Airport Agreement 2007*

Extract 2 below illustrates how an agreement may *modify* protected award conditions, replacing them with an alternative provision or arrangement. The agreement also happens to exclude 3 particular protected award conditions.

EXTRACT 2: EXAMPLE OF MODIFICATION OF PROTECTED AWARD CONDITIONS

5.2 All Protected Award Conditions included in Awards and notional agreements preserving State Awards that would otherwise apply to employees covered by this Agreement are comprehensively dealt with in this Agreement. Schedule 2 lists specific Award conditions which have been expressly modified by including replacement provisions in this Agreement and specific Award conditions which have been expressly excluded from this Agreement.

SCHEDULE 2 PROTECTED AWARD CONDITIONS
The following protected award conditions have been expressly modified by replacing them with the specified provisions in this Agreement:

- *rest breaks – replaced by Sections 27 and 31;*
- *annual leave loadings – replaced by the relevant provisions in Section 40;*
- *observance of days declared by or under a law of a State or Territory to be observed generally within that State or Territory, or a region of that State or Territory, as public holidays by employees who work in that State, Territory or region, and entitlements for employee to payment in respect of those days – replaced by Sections 32 and 33;*
- *days to be substituted for, or a procedure for substituting, days referred to in the above dot point – replaced by the relevant provisions in Section 32;*
- *monetary allowances for expenses incurred in the course of employment, or responsibilities or skills that are not taken into account in rates of pay for employees, or disabilities associated with the performance of particular tasks or work in particular conditions or locations – replaced by Sections 20 and 26 and Part G;*
- *loadings for working overtime or for shiftwork – Sections 24, 25 and 28 to 30.*

The following protected award conditions have been expressly excluded from this Agreement:

- *incentive-based payments and bonuses;*
- *penalty rates; and*
- *outworker conditions.* [5]

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[5] CAUN072131753 *Shell Logistics Western Australia and Northern Territory Distribution Agreement, 2007 - 2010*

evidence from agreements

This section examines the incidence of agreements which exclude protected award conditions and analyses whether and how such provisions and entitlements changed with the introduction of the *Fairness Test*.

Table 2.3 outlines the incidence of agreements that either exclude or modify any protected award conditions in each of the three industries. The table shows that there are moderate declines in the prevalence of manufacturing and construction industry agreements which stipulate that any one or more of the protected award conditions are explicitly excluded. Differences of 15.4 and 26.8 percentage points respectively are evident since the introduction of the *Fairness Test*. Little change was evident in the retail sector. While the change was minimal, it is important to note the particularly high incidence of protected award condition exclusions in retail relative to manufacturing and construction. Given the minimal change, one would expect that such agreements may contain more notable improvements in areas such as wages, hours and penalty rates in order to pass the *Fairness Test*. This will be examined later in the paper.

table 2.3: Incidence of provisions excluding or modifying 'Protected Award Conditions', pre and post *Fairness Test*

Industry Group	Agreement excludes or modifies PACs	Proportion of Agreements				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change (%)
		%	Freq.	%	Freq.	
Manufacturing	Yes	36.5	38	21.1	12	-15.4
	Silent / No	63.5	66	78.9	45	+15.4
	TOTAL	100	104	100	57	
Construction	Yes	47.4	45	20.6	7	-26.8
	Silent / No	52.6	50	82.4	28	+26.8
	TOTAL	100	95	100	34	
Retail	Yes	85.7	18	84.6	11	-1.1
	Silent / No	14.3	3	15.4	2	+1.1
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.
Note: Statistics represent all agreements which exclude or modify *any one or more* of the Protected Award Conditions.

While 'protected award conditions' concern a number of matters, analysis of the agreements in these industries revealed that most change related to working time arrangements and wages. In reporting on developments in the three industries, most of the analysis therefore focuses on issues associated with change affecting hours of work and rates of pay.

hours of work

Arguably the most thorough-going change associated with 'enterprise bargaining' since the early 1990s has been the recasting of rights and obligations concerning hours of work. This trend has, if anything, intensified with each successive wave of labour law 'reform' in the last decade and a half. The key changes have involved:

- the number of ordinary hours per week specified in agreements
- the days designated as 'ordinary weekly work days'
- the daily span of 'ordinary' hours
- the period of time over which 'ordinary hours' can be averaged.

Considered as a whole, the following tables reveal that the first round of agreements released after the *Fairness Test* appear to have moderated or tempered the incidence and degree of changes concerning these matters. The most common provisions concerned the ordinary weekly hours of work. At least 85 percent of agreements in the industries examined had such a provision. Table 2.4 provides details about the incidence and level of these provisions.

table 2.4: ordinary weekly hours of work, pre and post *Fairness Test*

Industry Group	Ordinary Hours per week	Proportion of Agreements				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change (%)
		%	Freq.	%	Freq.	
Manufacturing	< 38 hrs	13.5	14	8.8	5	-4.7
	= 38 hrs	73.1	76	75.4	43	+2.3
	> 38 hrs	3.8	4	1.8	1	-2.0
	Silent	9.6	10	14.0	8	+4.4
	TOTAL	100	104	100	57	
Construction	< 38 hrs	44.2	42	61.8	21	+17.6
	= 38 hrs	50.5	48	35.3	12	-15.2
	> 38 hrs	-	-	-	-	-
	Silent	5.3	5	2.9	1	-2.4
	TOTAL	100	95	100	34	
Retail	< 38 hrs	4.8	1	-	-	-4.8
	= 38 hrs	95.2	20	100	13	+4.8
	> 38 hrs	-	-	-	-	-
	Silent	-	-	-	-	-
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

It is clear from Table 2.4 there was little change in manufacturing and retail agreements on this matter. In construction, however, there was dramatic change. In the pre-*Fairness Test* agreements 44.2 percent of agreements contained provisions specifying ordinary hours as less than 38. Post the *Fairness Test* this proportion had increased to 61.8 percent.

The second most common working time issue found in the agreements examined concerned ordinary weekly work days. Traditionally awards have designated these as being Monday to Friday. The advent of enterprise bargaining had changed this dramatically. Table 2.5 shows that there are considerable industry differences in agreements examined.

table 2.5: ordinary working week, pre and post *Fairness Test*

Industry Group	Ordinary Weekly Work Days	Proportion of Agreements				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change (%)
		%	Freq.	%	Freq.	
Manufacturing	Mon – Fri	46.2	48	49.1	28	+2.9
	Mon – Sat	9.6	10	5.3	3	-4.3
	Mon – Sun	20.2	21	12.3	7	-7.9
	Other	1.0	1	1.8	1	+0.8
	Silent	23.0	24	31.6	18	+8.6
	TOTAL	100	104	100	57	
Construction	Mon – Fri	67.4	64	76.5	26	+9.1
	Mon – Sat	5.2	5	-	-	-5.2
	Mon – Sun	13.7	13	2.9	1	-10.8
	Other	-	-	2.9	1	+2.9
	Silent	13.7	13	17.6	6	+3.9
	TOTAL	100	95	100	34	
Retail	Mon – Fri	4.8	1	23.1	3	+18.3
	Mon – Sat	4.8	1	30.8	4	+26
	Mon – Sun	71.4	15	30.8	4	-40.6
	Other	-	-	-	-	-
	Silent	1.9	4	15.4	2	+13.5
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

Table 2.5 indicates that the notion of the standard Monday to Friday working week is still widespread in the construction agreements examined. Indeed, the incidence of provisions specifying this increased pre and post the *Fairness Test* from over two-thirds (67.4 percent) to over three quarters (76.5) of agreements examined. Many agreements in manufacturing pre- and post- the *Fairness Test* did not specify this, thereby deferring to the prevailing award and statutory standards. Where ordinary weekly work days were specified they overwhelmingly embodied the Monday to Friday standard. The provisions in retail agreements differ dramatically from the traditional standard. Prior to the *Fairness Test*, most agreements (71.4 percent) designated Monday to Sunday as 'ordinary weekly work days'. Amongst all the agreements registered in the first five months after the *Fairness Test*, less than one third (30.4 percent) contained such a provision. It is important to remember, however, that the absolute number of retail agreements post the *Fairness Test* was small (ie N = 13).

The span of ordinary daily hours is a matter that was noted in between one half and three quarters of agreements examined. In all industries, daily spans equal to or greater than 12 hours were particularly common (See Table 2.6).

table 2.6: daily span of hours, pre and post *Fairness Test*

Industry Group	Daily Span of Hours	Proportion of Agreements				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change (%)
		%	Freq.	%	Freq.	
Manufacturing	< 12 hrs	8.7	9	7.0	4	-1.7
	= 12 hrs	37.5	39	35.1	20	-2.6
	> 12 hrs	26.0	27	29.8	17	+3.8
	Silent	27.9	29	28.1	16	+0.2
	TOTAL	100	104	100	57	
Construction	< 12 hrs	4.2	4	2.9	1	-1.3
	= 12 hrs	53.7	51	85.3	29	+31.6
	> 12 hrs	24.2	23	8.8	3	-15.6
	Silent	17.9	17	2.9	1	-15.0
	TOTAL	100	95	100	34	
Retail	< 12 hrs	4.8	1	-	0	-4.8
	= 12 hrs	4.8	1	30.8	4	+26.0
	> 12 hrs	42.9	9	38.5	5	-4.4
	Silent	47.6	10	30.8	4	-16.8
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

Table 2.6 shows that there was little change pre and post the *Fairness Test* in manufacturing, while the small number of retail agreements mean little can be made of the changes in that sector. Significant change was, however, apparent in construction. Prior to the *Fairness Test* a little over half (53.7 percent) of the agreements specified a daily span equal to 12 hours. Amongst the post *Fairness Test* agreements the proportion of agreements noting a span equal to 12 hours increased to 85.3 percent.

One of the most dramatic changes associated with *Work Choices* was its specification that 'ordinary hours' could be calculated with reference to an averaging period of 52 weeks. The incidence of such provisions differed dramatically between industries studied. Details are provided in Table 2.7.

table 2.7: averaging of hours arrangements, pre and post *Fairness Test*

Industry Group	Period of Averaging Ordinary Weekly Hours	Proportion of Agreements				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change (%)
		%	Freq.	%	Freq.	
Manufacturing	4 weeks	28.9	30	35.1	20	+6.2
	52 weeks	5.8	6	3.5	2	-2.3
	Other averaging cycle	12.5	13	-	-	-12.5
	Silent	52.9	55	61.4	35	+8.5
	TOTAL	100	104	100	57	
Construction	4 weeks	17.9	17	5.9	2	-12.0
	52 weeks	14.7	14	11.8	4	-2.9
	Other averaging cycle	1.1	1	5.9	2	+4.8
	Silent	66.3	63	76.5	26	+10.2
	TOTAL	100	95	100	34	
Retail	4 weeks	14.3	3	46.2	6	+31.9
	52 weeks	42.9	9	7.7	1	-35.2
	Other averaging cycle	19.0	4	30.8	4	+11.8
	Silent	23.8	5	15.4	2	-8.4
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

Table 2.7 shows that the incidence of any averaging provisions fell after the *Fairness Test* in manufacturing (down from 47.1 to 38.6 percent) and in construction (down from 32.7 to 24.5 percent). The incidence of such provisions increased in retail from 76.2 to 84.6 percent. It is important to note, however, that the period over which averaging occurred fell. Where most agreements with averaging provisions in retail previously referred to a 52 week cycle, following the *Fairness Test* the most commonly referred to cycle was 4 weeks.

It is possible to summarise these developments on an industry basis.

Manufacturing agreements examined suggest that the *Fairness Test* has had little impact on the content or incidence of arrangements of working hours in the manufacturing sector. This may be attributed to the high level of union involvement in the sector and the traditional blue-collar work structure that the industry is founded upon.

Construction showed a consistent shift to improved working conditions for employees under the *Fairness Test* process. Employees in construction are more likely to be working Monday to Friday, with a daily span of 12 hours, and a standard (pre-overtime) working week of less than 38 hours. Given the notably large increase in union involvement in agreements under the post-*Fairness Test* period, these outcomes may not be surprising.

The nature of agreement provisions dealing with hours of work in the retail sector has changed quite drastically as a result of the *Fairness Test*. The agreements that passed the *Fairness Test* in many instances have had the hours of work arrangements curtailed. There are fewer agreements with longer working weeks, fewer agreements with a longer daily span of hours, and a smaller proportion of agreements are averaging hours over a long period of time (such as 52 weeks). Effectively, flexible working arrangements still exist for employers while maintaining some form of acceptable standard for workers. When compared with the construction and manufacturing agreements, however, the retail sector still contains a high element of more flexible hours of work arrangements. It is important to remember, however, that our results are only indicative in retail because only 13 retail agreements had cleared the *Fairness Test* in the first period after their release.

wage increases, overtime and penalty rates

With the passing of time the number of registered agreements containing quantifiable wage increases has declined. Previous issues of the *ADAM Report* have shown that this has been particularly common in non-union agreements and those in the private services sector. The situation pre and post the *Fairness Test* is summarised in Table 2.8.

table 2.8: incidence of quantifiable wage increases in agreements and AAWI (%), pre and post *Fairness Test*

Industry Group		Wage Increase				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		% Change
		%	Freq	%	Freq	
Manufacturing	No of agnts with a wage increase	65.4%	68	68.4%	39	+3.0%
	AAWI (%)	3.7	-	4.0	-	+0.30
Construction	No of agnts with a wage increase	51.6%	49	55.9%	19	+4.3%
	AAWI (%)	4.0	-	4.7	-	+0.63
Retail	No of agnts with a wage increase	-	0	15.4%	2	+15.4%
	AAWI (%)	n/a	-	4.1	-	n/a

Source: ADAM Database, 2007, WRC, University of Sydney.
Note: AAWI stands for Average Annual Wage Increase

The table shows that the proportion of agreements containing explicitly quantified wage increases hardly changed between the two periods in manufacturing and construction. The quantum of increase provided, however, increased marginally in both: up 0.3 percent in manufacturing and 0.7 percent in construction. A marginal increase was identified in the proportion of retail agreements with a quantifiable wage increase – from none to two agreements. The average annual increase in those two agreements registered under the *Fairness Test* was 4.1 percent.

Abolition of additional loadings or penalty payments for overtime or weekend work was a matter that received particular attention following the introduction of *Work Choices*. Table 2.9 reports on how the level and incidence of additional payment for overtime changed in the pre and post-*Fairness Test* agreements analysed.

table 2.9: overtime penalty rates, pre and post *Fairness Test*

Industry Group	Rate of Payment	Overtime				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change %
		%	Freq	%	Freq	
Manufacturing	> 100%	74.0	77	73.7	42	-0.3
	Other	2.9	3	-	-	-2.9
	Silent	23.1	24	26.3	15	+3.2
	TOTAL	100	104	100	57	
Construction	> 100%	70.5	67	64.7	22	-5.8
	Other	2.1	2	-	-	-2.1
	Silent	27.4	26	35.3	12	+7.9
	TOTAL	100	95	100	34	
Retail	> 100%	42.9	9	76.9	10	+34.0
	Other	-	-	-	-	-
	Silent	57.1	12	23.1	3	-34.0
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

Table 2.9 found little change in manufacturing. In construction the number of agreements that were silent on the issue increased, indicating that award standards were to prevail. In retail the proportion mentioning overtime increased from 42.9 to 76.9 percent. The fact that more agreements dealt with the issue merely meant that they ensure additional payment for overtime hours worked. The overtime penalty rate ranged from 110 to 250 percent in agreements with overtime provisions. It must be remembered that the award rate for overtime in this sector commonly starts at 150 percent of standard rates.

The incidence and level of penalty rates for Saturday work are summarised in Table 2.10.

table 2.10: saturday penalty rates, pre and post *Fairness Test*

Industry Group	Rate of Payment	Saturday Penalty				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change %
		%	Freq	%	Freq	
Manufacturing	> 100%	51.9	54	43.9	25	-8.0
	Other	3.9	4	-	-	-3.9
	Silent	44.2	46	56.1	32	+11.9
	TOTAL	100	104	100	57	
Construction	> 100%	56.8	54	14.7	5	-42.1
	Other	2.1	2	-	-	-2.1
	Silent	41.1	39	85.3	29	+44.2
	TOTAL	100	95	100	34	
Retail	> 100%	19.1	4	7.7	1	-11.4
	Other	9.5	2	7.7	1	-1.8
	Silent	71.4	15	84.6	11	+13.2
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

In reading Table 2.10, the key issue to note here is that the number of agreements silent on this issue increased dramatically in all in three industries: from 44.2 to 56.1 percent in manufacturing, 41.1 to 85.3 percent in construction, and 71.4 to 84.6 percent in retail. This indicates a swing back to relying on award provisions on this issue in post *Fairness Test* agreements.

Increased reliance on award rates for Sunday penalties were evident in two of the three industries, as shown in Table 2.11. Again the increased reliance was more pronounced in construction (54.7 pre to 76.5 percent post) than manufacturing (ie. from 42.3 to 54.4 percent). Interestingly, the change was in the opposite direction for retail agreements, implying greater variation of award provisions in this sector for this aspect of enforceable rights. Previously 81 percent of such agreements were silent on the matter, whereas amongst post-*Fairness Test* agreements 53.8 percent relied on the award.

table 2.11: sunday penalty rates, pre and post *Fairness Test*

Industry Group	Rate of Payment	Sunday Penalty				
		Pre *Fairness Test* (1st Jan – 6th May '07)		Post *Fairness Test* (7th May – 30th Sept '07)		Change %
		%	Freq	%	Freq	
Manufacturing	> 100%	54.8	57	45.6	26	-9.2
	Other	0.9	1	-	-	-0.9
	Silent	42.3	44	54.4	31	+12.1
	TOTAL	100	104	100	57	
Construction	> 100%	45.3	43	23.5	8	-21.8
	Other	-	-	-	-	-
	Silent	54.7	52	76.5	26	+21.8
	TOTAL	100	95	100	34	
Retail	> 100%	19.0	4	38.5	5	+19.5
	Other	-	-	7.7	1	+7.7
	Silent	81.0	17	53.8	7	-27.2
	TOTAL	100	21	100	13	

Source: ADAM Database, 2007, WRC, University of Sydney.

summary – does the *Fairness Test* pass the test?

It appears that the *Fairness Test* is proving to be effective, with demonstrable improvements in the content of federally registered collective agreements. The most notable changes were evident in those agreements where union presence was low or did not exist. Across the three industry groups examined, the retail sector demonstrated the most notable differences in the content of agreements, with a marked improvement in hours of work arrangements and associated penalty payments. The construction industry also experienced a positive impact with a return to more traditional working time arrangements in that industry.

The following conclusions can be drawn about the impact of the *Fairness Test* on the content of federally registered collective agreements in relation to wage increases, hours of work and penalty rates.

- The manufacturing industry agreements were the least affected from the application of the *Fairness Test* showing marginal changes in the incidence and content of certain provisions. This can probably be put down to the traditional arrangement of work and compensation in this industry and the high level of union involvement in bargaining.
- Construction industry agreements were somewhat ameliorated by the *Fairness Test*. The agreements in our sample that had passed the *Fairness Test* showed large increases in union participation and declines in the incidence of protected award conditions 'exclusions'. As a result, hours of work arrangements showed a return to a more traditional Monday to Friday working week, and ordinary weekly working hours less than 38.
- The findings from the retail sector indicate a more significant impact resulting from the *Fairness Test*. Much of the stripping back of wages and entitlements that were uncovered in the WRC's *Lowering the Standards Report* appear to be less common in agreements post the *Fairness Test*.[6] Although the sample size was not as large as the other industries the data did show signs of improvement – namely in the areas of averaging of ordinary hours (shifting from a 52 week to a 4 week period), and an increase in the incidence and quantum of overtime penalty rates and Sunday penalty rates. It is important to remember, however, that the retail industry is still a fair way behind in the incidence and level of enforceable rights at work. This was particularly evident on matters such as more clearly defined and quantifiable wage increases and provision of some weekend penalty rates.

Overall, the *Fairness Test* appears to have mitigated some of the harsher changes commonly associated with the *Work Choices* legislation. The major underlying trends evident since the late 1980s (especially the recasting of working time entitlements) have, however, continued.

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6 With significant exceptions for conditions that are not deemed protected award matters. For example loss of redundancy rights and severance pay, loss of minimum hours for a shift start, reductions in rostering notification, reductions in casual loadings, and loss of consultation provisions for changing part time hours contracts.

3 innovative clauses

The September quarter of 2007 culminated in a number of innovative clauses surrounding leave, bonuses and rewards, remuneration, wage adjustments and part-time and casual work entitlements. A large proportion of these clauses were found in agreements representing the manufacturing, mining, health care and transport industries. In the high wage outcomes chapter we discussed the attraction and retention difficulties experienced by the health care and mining industries. A subsequent effect of this appears to be the need for organizations, especially in these industries, to be more innovative around employment conditions and entitlements.

innovations in sick leave

Many agreements in this quarter are manipulating sick leave provisions as a way of offering incentives to employees to reach a certain period of service. The first extract covers workers in the manufacturing industry and rewards loyal employees with access to a higher number of accrued sick leave entitlements per year. The agreement establishes a system of leave capping, where the employee is allowed (subject to management approval) up to a certain amount of leave per annum. The annual limit increases based on years of service.

The second extract also comes from the manufacturing industry and refers to an instance where an employee has accrued a high level of sick leave hours over their service. The clause states that employees who have accumulated over 104 sick leave hours will not be required to obtain a medical certificate to prove such leave. Furthermore, an employee may elect to have accrue sick leave credits in excess of 114 hours to be taken or paid out (either into a Superannuation fund, or paid out on anniversary of accrual).

Extract 3, again from the manufacturing industry, provides employees with a choice to join a sick leave bonus scheme. The scheme involves creating a ‘bank’ of 15 days of sick leave credits, allowing employees to convert any days that accrue in excess of this bank into a payment at the date of the next anniversary. These additional days paid out to the employee, then become available to the employee as sick leave without pay. The balance of this sick leave bank will also be paid out to an employee upon resignation, retirement or redundancy. So there are potentially two benefits that come with this clause – firstly, as an opportunity to receive payment for high levels of accrued sick days, and secondly as a way to guarantee entitlements upon termination.

The final extract is from a business services company and outlines a protocol to manage absenteeism. The clause is specific about the purpose of accumulated sick leave in protecting employees in case of recurrent illness, while the remainder of the clause explains the ramifications should abuse of such accumulated leave occur. This procedure is agreed to by both parties and defines what is referred to as "acceptable attendance" with respect to patterns of absence. This organization is more protective of accumulated leave than other innovations surrounding sick leave this quarter and may be a precautionary measure to reduce absenteeism.

EXTRACT 1 (NON-METAL MANUFACTURING INDUSTRY)

15.4.5 SICK LEAVE
B. Company Sick Pay Plan,
Sick Leave in excess of the above entitlements will be available, subject to Factory Manager approval in accordance with the following Schedule. Special sick leave can only be taken by an associate because of personal illness, or injury, of the associate.

LENGTH OF SERVICE	*MAXIMUM PERIOD FOR WHICH BENEFITS IS PAYABLE PER ANNUM (including all accrued entitlements)*
Less than 1 year	*6 weeks*
1 through to 2 years	*10 weeks*
2 through to 4 years	*18 weeks*
5 years or more	*26 weeks*

The Company reserves the right to review each individual case and where not satisfied of the genuineness of the claim refuse to make payment from the Sick Pay Plan.

EXTRACT 2 (NON-METAL MANUFACTURING INDUSTRY)

7.3 Sick Leave
Employees will be required to obtain a medical certificate for any sick leave except in the following cases:
** the employee has at least 104 sick leave hours accumulated*
** the first two sick days in any sick leave year shall not require a medical certificate*
Employees covered by this EBA may reach agreement at the enterprise level for sick leave credits over 114 hours to be taken or paid out.
An employee may elect in writing to have their accrued sick leave dealt with by any of the following methods of taking accrued sick leave which are available to each employee.
1 Pay out at anniversary of service all sick leave credits in excess of 114 hours or
2. Pay at anniversary all sick leave credits in excess of 114 hours into the employees Superannuation fund,
3. Payment will be made at the employees ordinary rate of pay at the time of taking accrued sick leave.

EXTRACT 3 (NON-METAL MANUFACTURING INDUSTRY)

26.4 Sick leave bonus scheme
26.4.1 All employees shall have the option of either joining the sick leave bonus scheme (the scheme) or continuing under other provisions in clause 26..

26.4.2 For those employees who choose to join the scheme, the following shall apply:
26.4.2(a) An employee in their first year of employment shall accrue paid personal leave entitlements for each complete four (4) week period of continuous service with the employer of 1/26 of the number of nominal hours worked by the employee during that four week period. In the second and subsequent years an employee will be entitled to 10 days each year, with the leave credited in advance on each anniversary date of the commencement of employment.
26.4.2(b) An employee with an existing bank of more than 15 days sick leave at the date of this agreement taking effect shall have 15 days allocated to create the bank and therefore be entitled to bonus payments for accrued sick leave in excess of 15 days at the next anniversary date.
26.4.2(c) An employee who at the date of this agreement does not have a minimum of 15 days in the bank shall have any days accrued at their anniversary date allocated to the bank.
26.4.2(d) An employee may only access the existing accrued sick leave to create the bank once.
26.4.2(e) Any sick leave remaining from the bank which existed prior to the commencement of the scheme shall be available to the employee should illness or injury require an absence or absences in excess of 15 days.
26.4.2(f) The value of any sick leave which accrues after the commencement of the scheme and which exceeds 15 days at the date of the next anniversary, shall be paid to the employee.
26.4.2(g) The days paid as a bonus shall be available to the employee as sick leave without pay.
e.g. Employee has 17 banked sick days at commencement of scheme
- 15 into scheme bank
- 2 into reserve bank
In the next twelve months the employee accrues 8 sick days and uses 2 of those.
The remaining days will be paid as a bonus but will then be added to the scheme bank as unpaid

days. The employee's total bank will then consist of:

- 15 paid days in the scheme bank

- 6 unpaid days in the scheme bank

- 2 paid days in the reserve bank

In the event of illness the employee would access the paid days in the scheme bank first, then the paid days in the reserve bank and finally the unpaid days.

26.4.3 When an employee resigns, retires or is made redundant by the Company, the balance of the sick leave bank shall be paid out to the employee.
26.4.4 There will be no entitlement to the bonus bank if an employee is summarily dismissed

EXTRACT 4 (BUSINESS SERVICES)

26.8 Absence Management Procedure
26.8.1 The parties recognise that sick leave is to be used principally in case of sickness and that the purpose of accumulated sick leave is to protect employees in case of protracted or recurrent illness. This does not prevent the use of sick leave for carers leave in accordance with Clause 29.
26.8.2 The parties agree to the following procedure set out below with respect to absence management. This procedure shall stand alone and aside from the normal disciplinary process.
(a) "Early warning" counselling for poor attendees
Employees identified as having an attendance record which may lead to disciplinary action shall be counselled prior to a breach of disciplinary guidelines.
(b) The parties agree that the Operator may require that absences on the day preceding and following a public holiday be supported with a medical certificate from a registered health practitioner or, if this is not reasonably practicable, a statutory declaration made by the employee for the period of absence.
(c) Definition of breach of acceptable attendance
An "unauthorised absence" is where an employee:

- *is absent without notification or*
- *is absent without satisfactory evidence or*
- *notified sick and did not claim sick pay where entitlement existed*

An "unacceptable pattern of absence" is:

- *a pattern of absence on the same weekday, whether on paid leave, unpaid leave or in part or full days or*
- *a pattern of absence in taking single day absences, paid or unpaid.*
- *a pattern of absence in taking part day absences, paid or unpaid.*

(d) Discipline for breach of acceptable attendance
The Operator shall discipline employees who breach the standard of acceptable attendance in accordance with the following procedure:

For employees with less than three months service:

TYPE OF BREACH	*OCCASIONS*	*DISCIPLINARY ACTION*
Unauthorised absence	*2 in 5 weeks*	*First Warning*
	3 in 10 weeks	*Dismissal*

For employees with more than 3 months service:

TYPE OF BREACH	OCCASIONS	DISCIPLINARY ACTION
Unauthorised absence	2 in 5 weeks	First Warning
	3 in 10 weeks	Final Warning
	4 in 20 weeks	Dismissal
Unacceptable pattern of absence	5 in 21 weeks	First Warning
	6 in 31 weeks	Final Warning
	8 in 41 weeks	Dismissal

The numbers of occasions shown in the tables above are cumulative and are not separate blocks of occurrences. Their timing commences on the date of the absence which triggered the first warning. A first warning shall not be given unless the employee has been issued with an early warning.

(e) Cumulative disciplinary action

Disciplinary action progresses in stages through the procedure from early warning to dismissal, if unacceptable absence occurs within one year of previous disciplinary action. No stage in the procedure may be skipped.

(f) If the discipline free period exceeds one year then action shall be taken as follows:

LAST DISCIPLINARY ACTION	DISCIPLINE FREE PERIOD (years)	DISCIPLINARY ACTION FOR ANY NEW OCCURRENCE
First Warning	Greater than one	First Warning
Final Warning	One to two	Final Warning
Final Warning	Greater than two	First Warning

A first warning shall lapse after two discipline-free years and a final warning after three.

(g) Notation of all warnings, including an early warning, shall be placed on the affected employee's personnel file. Such notation shall identify the status of the warning, the facts which necessitated it and the date on which it was given.

(h) Retrospective Medical Certificates

Retrospective or altered certificates are unacceptable and incapable of proving that an employee was unable on account of illness or injury to attend for duty on the day or days for which sick leave is claimed.

A "retrospective certificate" means a certificate which contains a statement to the effect that the patient was unfit for duty on account of personal illness or injury by accident and the expected duration of the disability from a date earlier than the date upon which the patient was examined, provided that in the case of a retrospective certificate, such certificate will be deemed not to be retrospective if the medical practitioner provides written supplementary remarks on the said certificate which explains the inconsistency between the date of examination and the date of the commencement of the unfitness for duty.

The Operator shall accept retrospective medical certificates in regard to 1 day retrospectivity only.

Disputes arising from the application of this clause shall be dealt with in accordance with the Procedure for the Avoidance of Industrial Disputes contained within this Agreement.

good practice in other forms of leave

Innovations around other arrangements and entitlements also spanned across leave associated with long service leave, parental leave, compassionate leave, professional development leave, and annual Leave.

The first extract (extract 5) comes from the retail industry and allows employees to cash out part, or all of their accrued Long Service Leave after seven years of continuous service. If, however, the employee chooses to have this leave paid out, they forego their right to take the time off work (paid or unpaid). Extract 6, from the public sector, outlines another innovation in long service leave, where employees are able to take part or all of the accrued leave in a 'compacted form' on a basis of two for one. This means that employees can request that two week's pay be paid to them for each week of leave from work – essentially 'double-pay', as opposed to a more common 'half-pay' scenario. In addition, this clause provides an entitlement for employees to cash out any part of accrued long service leave in excess of 13 weeks, and with approval from the employer.

The following two clauses, Extracts 7 and 8, refer to parental leave The first of these is from a business services sector where the amount of paid parental leave varies from 6 weeks to 12 weeks for the primary carer, based on the length of continuous service of the employee. The partner of the primary carer is also entitled to one week's paid parental leave immediately following the birth/adoption of the child to provide support. Extract 9, from the non-metal manufacturing industry, provides for 'Birth Leave' of three days paid leave following the birth of the employee's child. This leave is to be requested and taken within ten weeks of the birth and are in addition to the existing paid Maternity leave entitlement (Paternity leave is unpaid under this agreement).

Extracts 9 and 10 both involve special entitlements for compassionate leave. The first of these comes from the creative arts sector and states that the three days' compassionate leave provided will be in addition to reasonable traveling time on full pay. This entitlement becomes more significant should the death occur interstate, or even overseas. The second extract (number 10) is from the wholesale sector. The clause provides for an explicit entitlement of two days unpaid compassionate leave per occasion, but this is in addition to a provision for two days paid compassionate leave. Additional unpaid leave may also be granted by agreement with the employer.

Extract 11, from the state government administration sector, provides for Professional Development Leave of up to 12 months at the discretion of the employer. Such leave is subject to the area of development of the employee's expertise and also must also serve the needs or be of value to the organization. It is not clear whether such leave is paid or unpaid, and it is also dependent upon 'individual circumstances' (determined by the employer). It may include fees or expenses associated with such leave.

The final extract, from the non-metal manufacturing sector, provides employees with the option to purchase an additional week of annual leave, as long as their total leave balance does not exceed six weeks. The additional week does not include leave loading, and a proportion of the 38 hours of extra leave (a week's worth of hours) will be deducted from each week's pay spanning a year.

EXTRACT 5 (RETAIL INDUSTRY)

> *13.4. Long Service Leave*
> *Employees are entitled to Long Service Leave. The relevant legislation is the Victorian Long Service Leave Act 1992. In addition, the employer and employee may mutually agree to cash out a proportion of or, all accrued Long Service Leave after seven (7) years continuous service with the employer. If the employee cashes out their Long Service Leave they forfeit their right to take the time off.*

EXTRACT 6 (STATE ADMINISTRATION AGREEMENT)

> *21. LONG SERVICE LEAVE*
> *Compaction of leave*
> *21.1 Where an employee has accrued long service leave, with the approval of the employer, the employee may take some or all of that leave in compacted form, on the basis of payment of two weeks' pay for each week of leave actually cleared, providing that no portion of entitlement cleared is less than two weeks i.e. a minimum of one week of leave actually taken.*
> *21.2 Where an employee has accrued long service leave in excess of 13 weeks of entitlement, with the approval of the employer, the employee may cash out any part of that entitlement in excess of 13 weeks, provided that the employee does this before the nominated expiry date of this agreement.*
> *21.3 In addition to the provisions of subclauses 21.1 and 21.2, if any of an employee's entitlement to long service leave has been accrued whilst employed wholly or partially on a part time basis, that employee may request to compact the period of leave entitlement due to the equivalent of full time ordinary hours.*

EXTRACT 7 (BUSINESS SERVICES)

30. PARENTAL LEAVE

Employees, including eligible casual employees, are entitled to parental leave in accordance with Part 7 Division 6 of the Workplace Relations Act 1996. In addition, eligible employees are entitled to paid maternity, paternity and adoption leave and to work part-time in accordance with provisions set out in the following sub-clauses.

30.1 Parental leave (including maternity, paternity and adoption leave) is for parents to take on a shared basis to care for their newborn child or newly adopted child under the age of five years. Other than one week at the time of the birth (or three weeks in the case of adoption), both parents cannot be on parental leave at the same time.

Eligibility for paid parental leave benefits will be conditional on a minimum of 12 months continuous service with [Company].

A further minimum qualifying period of 12 months continuous service will apply before an employee can become re-eligible for paid parental leave should they seek to take parental leave again for the birth or adoption of another child.

30.3 The level of paid parental leave benefit will be linked to a minimum continuous service with [Company] at the time an employee, who is acting as the primary carer on the birth or adoption of their child, commences leave with the following incremental increases:

Less than 12 months service - up to 52 weeks unpaid leave

1 year to less than 2 years of service - 6 weeks paid + up to 46 weeks unpaid leave;

2 years to less than 5 years of service - 8 weeks paid + up to 44 weeks unpaid leave

5 or more years of service - 12 weeks paid + up to 40 weeks unpaid leave

Permanent part-time employees who have been employed continuously for a period of twelve (12) months with [Company] will be entitled to pro-rata paid leave based on the abovementioned formula.

One week's paid parental leave will be granted to an employee who is the partner of the primary carer to provide support to the primary carer immediately following the birth or adoption of their child.

30.6 In the case of an adoption, an employee may be granted a further two days paid leave so that he/she may attend any compulsory interviews or examinations that are a necessary part of the adoption process

30.7 Employees proceeding on maternity leave shall be provided with a summary of the relevant provisions of the Act at the time they give notification of their intention to take leave under this clause.

EXTRACT 8 (NON-METAL MANUFACTURING)

6.7.1 Birth Leave

Birth leave will be approved subject to production of satisfactory evidence.

An employee who requests to take Birth leave shall be entitled to three (3) days paid leave following the birth of the employee's child. Birth leave may be taken within ten weeks of the birth.

EXTRACT 9 (CREATIVE ARTS SECTOR)

25.1 Compassionate leave
25.1.1 An employee required to be absent by reason of the death of that employee's wife, husband, mother, father, brother, sister or child shall be entitled as a minimum to three days' compassionate leave in addition to reasonable travelling time on full pay.

EXTRACT 10 (WHOLESALING)

28. COMPASSIONATE LEAVE
28.1. Paid leave entitlement
An employee is entitled to use two (2) days compassionate leave for each occasion on which a member of the employee's immediate family or household:
contracts or develops a personal illness that poses a serious threat to his or her life; or
sustains a personal injury that poses a serious threat to his or her life; or dies.
When an employee takes paid compassionate leave, the employer must pay the employee the amount the employee would reasonably have expected to be paid if the employee had worked during the period of compassionate leave.
…
28.4. Unpaid leave entitlement
The employee is entitled to take up to two (2) days unpaid compassionate leave per occasion. An employee may take additional unpaid compassionate leave by agreement with the employer.

EXTRACT 11 (STATE INFRASTRUCTURE)

8.3 Professional Development Leave
At Main Roads' discretion professional development leave for up to 12 months may be provided to an employee to increase their expertise. This will be subject to the development being relevant to the employee's area of expertise and to Main Roads' needs.

Leave may be paid or unpaid depending on individual circumstances. Assistance may also be provided with fees and other expenses. Conditions for each individual case will be negotiated between Main Roads and the employee. Agreed conditions will be confirmed in writing by Main Roads and signed by the employee.

EXTRACT 12 (NON-METAL MANUFACTURING)

> *6.4.2 Purchasing Additional Annual Leave*
> *Employee have the ability to purchase one week (38 hours) additional leave per year providing they do not have a total leave balance (including voluntary time banking entitlements) exceeding 6 weeks (228 hours). The purchasing of additional leave does not include leave loading.*
>
> *Employees must complete an application to purchase one week's additional leave by the 15th of November each year. The additional leave will be credited to the employees leave entitlements and a weekly deduction (equal to 38 hours divided by 52 weeks) will be made effective from the first pay period on or after the 15t of December each year.*
>
> *If employment is terminated by the employee or company before the purchased leave is repaid then the balance owing will be deducted from the employee's final payment.*
>
> *The request to take purchased annual leave is in accordance with the company's existing leave approval process.*

remuneration options

This quarter's innovative clauses have identified a number of agreements that have offered some alternative arrangements when dealing with wages. The first of these, extract 13, from the mining industry, provides employees with the option to offset their annual salary by what is referred to as 'non-Agreement' benefits. Such benefits may include superannuation contributions that exceed statutory requirements, but ultimately is to be decided upon by mutual agreement. Should employees choose to offset the annual salary with non-Agreement benefits, the parties must then agree on the value of the benefit. This includes the tax payable by the employer. Such an arrangement is by no means binding in a contractual capacity, and the employer can terminate such an arrangement via written notice. However, the provision is silent on the employee's responsibility in accepting of non-Agreement benefits, other than a reduction in annual salary.

Extract 14 from a chemical manufacturing firm and shows two interesting remuneration options. Firstly, employees are delivered a lump sum gratuity – with the value dependent on service – in addition to a fairly standard wage adjustment schedule. This may be to reward loyalty of service in an industry experiencing a skills shortage. The second facet relates to the flexibility in work tasks, as the employer aims to encourage the development of skill levels by rotating employees through different work areas. The agreement explicitly states that employees shall not suffer a reduction in pay levels as a result, and that a lack of commitment to this skills development by result in re-classification. Typically, movement to another work area would constitute a re-classification, but not in this agreement. This is an innovative way to create and maintain a task-mobile workforce.

Extract 15 shows how entitlements other than wages can be used to give employees a favourable outcome in wage negotiations. This agreement, from a plastic manufacturer, provides an additional 12 hours of annual leave for 3 consecutive years, giving a total of 36 hours extra accrued annual leave over the term of the agreement. Furthermore, there is a corollary that states the employer will have the option of buying back the additional leave, in exchange for an equivalent increase to the hourly rate.

The final innovation associated with remuneration is extract 16, from the transport industry. This agreement contains a clause that acts as a deterrent for industrial action by threatening the loss of future pay increases should there either be lost time from work meetings or if the Dispute Avoidance Procedure is not upheld. The value of the reduction is capped at 1.5% of the total wage increases of 18.5% over the life of the agreement. It is an interesting example of how employers are attempting to curtail unwanted employee behaviour by linking it to wage increase entitlements.

EXTRACT 13 (MINING INDUSTRY)

11.4 The minimum Agreement rate of annual salary for an adult or junior employee may be offset by the provision of non-Agreement benefits, subject to the following:
the employer and the employee must agree on:
the non-Agreement benefit(s) to be provided; and
the value of the benefit(s), including any tax payable by the employer, as a monetary offset against the minimum Agreement rate of annual salary;
there is no obligation on either the employee to accept non-Agreement benefits or on the employer to provide non-Agreement benefits, unless Agreement is reached between the employer and the employee:
the agreed non-Agreement benefits may include the contribution of superannuation amounts by the employer, which are in addition to those amounts which the employer is already legally obliged to contribute on behalf of the employee;
the employer may establish a procedure for negotiating Agreements with employees in respect of the provision of non-Agreement benefits;
the nature and value of the non-Agreement benefits(s) agreed may only be varied by Agreement between the employee and the employer;
in the event that legislation, tax determinations, tax rulings or other policy measures of government impact on the employer's capacity to participate in any Agreement for the provision of non-Agreement benefits, the employer is entitled to terminate the relevant Agreement by giving written notice to the employee(s) concerned.

EXTRACT 14 (NON-METAL MANUFACTURING)

18.2 Wage Increase

The following wage rates shall apply:
[table excluded]

Within 7 days of lodgement of this Agreement with the Workplace Authority, all employees with 12 or more years service shall receive an ex gratis payment of $2,000.00, and all employees with between 5 and 12 years service shall receive an ex gratia payment of $500.00.

18.3 Flexibilities I Classifications
The parties to this Agreement acknowledge the importance of developing and maintaining skills which are part of the classification level achieved by each employee. As a means of developing and maintaining skill levels, the employees agree to rotate as directed, throughout the work areas. Refusal to abide by this commitment may result in the employee being re-classified. However, no employee shall suffer any reductions to their pay levels.

The parties to this Agreement acknowledge the need for the company to achieve flexibility by being able to cover short-term needs by transferring employees with appropriate skill from one segment - work area to another.
These transfers are to be on the basis of filling a genuine need and will not be utilised as any sort of disciplinary measure.

The parties will set up a Review Group, involving management and employees to monitor all issues relating to the introduction of the Skills Structure in Appendix A and the implementation of flexibilities Any employee with concerns should raise those concerns with a member of this group_ Any issue not resolved by this group shall then be processed according to the disputes procedure in this Agreement.

EXTRACT 15 (NON-METAL MANUFACTURING / STORAGE)

22.2 Wage Increase
The actual wage rates for all employees shall be increased as follows:
3.0% from the first pay period on or after 1 July 2007.
A further increase will be applied from the first pay period on or after 1 July 2008, at rate of 3.0%.
A further increase will be applied from the first pay period on or after 1 July 2009, at rate of 3.0%.

In addition to the wage rate rises, there will be extra annual leave credited each year. For each year, 2007/8, 2008/9 and 2009/10, an additional 12 hours of annual leave will be accrued, for a total of 36 hours over 3 years.

Further to this, the employer will have the option of "buying back" this additional annual leave up to a maximum of 36 hours. In return, the employee will receive the equivalent percentage increase on their hourly rate.

Further "bonus/productivity" payments will be payable for years 2007-08, 2008-09 and 2009-10 – see Appendix F of this Agreement.

NB See Appendix C & D of this Agreement for wage rates.

EXTRACT 16 (TRANSPORT INDUSTRY)

29. SITE PRODUCTIVITIES
There will be no lost time resulting from stop work meetings or industrial action without following Clause 28, Dispute Avoidance and Settlement Procedures.
Failure to follow this subclause will result in pay increases in this Agreement being reduced as follows:
6 months = less .5%
18 months = less .5%
30 months = less .5%

bonuses & reward payments

There were a variety of innovations regarding bonus and reward payments in the September quarter 2007. The first of these is extract 17, from the financial markets sector, which uses a commission based system of remuneration. This commission payment appears to forms large part of the employee's salary structure, in turn servicing as a form of employee motivation as it is geared towards rewarding employees who generate significant levels of brokerage and fee income. In order to provide employees with a more regular income source, employees may elect to receive a salary retainer as a prepayment of their incentive commission.

Extract 18 was found in a manufacturing industry agreement and outlines a Bonus/Productivity Payment in addition to standardized annual wage increases. The structure allocates a different weighting to each productivity measure, with such measures spanning production levels, lost time injuries and customer returns, amongst others. The total productivity payment available, should all categories be achieved, is an additional 5.5% per annum. There is also an additional individual criteria for absenteeism, attracting up to a $1000 bonus should the targets be met.

Extract 19, from the Mining Industry, highlights two different types of bonus arrangements. The performance bonus is aimed at improved productivity levels, while the loyalty bonus is geared towards retaining staff in an industry experiencing critical labour shortages. The performance bonus is pooled collectively and based on the amount of material removed from the mine per month. The bonus is distributed to employees based on the number of rostered shifts that each employee works. The agreement states that criteria for the group's performance may be varied in consultation with the workforce to accommodate changes in technology, work structuring and market demands. There are also monthly bonuses of $100 available, one for no recordable injuries, and another for no equipment damage. All of these bonuses are available pro-rata should the employee not work the entire month. The loyalty bonus, on the other hand, has one sole criteria, that the employee complete the full year's employment at the site. An annual payment of $4,680 is given at the completion of the full year.

The final extract from the agricultural industry looks at performance related bonuses and involves the use of Key Performance Indicators based on the previous year's results. Employees can potentially yield an increase of 2% to wages should all four measures of safety, quality, scheduled attainment and financial performance be achieved. Each KPI has an equal weighting of 0.5%. This performance bonus is only applicable to years 2 and 3 of this agreement (not the first as there is no comparison for the targets) and is in addition to a guaranteed 4% wage increase for both years respectively. The implementation of this incentive to achieve targets may be the result of the strengthening Australian dollar, making imported goods cheaper than domestic produce and therefore creating tighter margins for local dairy producers. The agricultural industry may therefore be resorting to genuine productivity gains and business efficiencies to remain competitive.

EXTRACT 17 (FINANCIAL SERVICES INDUSTRY)

12. CALCULATION OF REMUNERATION
12.1 An Employee's remuneration shall be calculated by reference to the Commission System set out in Schedule 1 and the Commission Grid set out in Schedule 2 of this Agreement ("Incentive Based Remuneration").
12.2 An Employee may with the consent of the Company elect to receive a salary retainer, payable fortnightly, as a prepayment of their Incentive Based Remuneration ("Salary Retainer Component").
12.3 On termination of employment, an Employee must repay to the Company any overpayment of their Incentive Based Remuneration and Salary Retainer Component in accordance with Company practice and procedure.

SCHEDULE 1 - COMMISSION SYSTEM
The Company offers a production-based Incentive Commission System for the Employees. The Incentive System is designed to reward Employees who generate significant levels of brokerage and fee income.
Payment of Incentive Commission will be made to the Employee's nominated bank account via electronic transfer by the 7th of the month following the entitlement month. Incentive Commission payments are subject to the deduction of applicable tax and applicable superannuation.

Definitions
Production: is the total brokerage and fee income generated by the Employee as calculated pursuant to Schedule 2 less deductions
…

SCHEDULE 2 - COMMISSION GRID

Production (as defined)					
	Table A	*Table B*	*Table C*	*Table D*	*Table E*
Production to $350,000	*40%*	*45%*	*35%*		
Production $350,001 to 600,000	*45%*	*50%*	*40%*		
Production in excess of $600,001	*50%*	*55%*	*45%*		
Production to $300,000				*40%*	*50%*
Production in excess of $300,001				*50%*	*55%*

The commission grid is based on cumulative production, which will be calculated from 1 July to 30 June annually, as per the grid structure above.

EXTRACT 18 (NON-METAL MANUFACTURING INDUSTRY)

22.2 Wage Increase

Further "bonus/productivity" payments will be payable for years 2007-08, 2008-09 and 2009-10 – see Appendix E of this Agreement.

…

APPENDIX E

PRODUCTIVITY / BONUS STRUCTURE

Productivity Measure	Weighting = 100%	% of Target - bonus %
1. Reclaim Levels		
2007-08 - Maintain levels at less than 11.5%	14%	0.80%
2008-2010 – Maintain levels at less than 11.0%		
2007-2010 – Achieve levels less than 10.5%, add 0.5%	5%	0.25%
2. Credits – Customer Returns		
2007-08 – reduce to less than 0.75% of Sales.	18%	1.0%
2008-10 – reduce to less than 0.5% of Sales .		
3. Lost Time Injuries		
2007-10 – to be 2 or less LTI's per year.	7%	0.4%
2007-10 – LTI's – each to be less than 2 days.		
SHIFT BONUS – Nil LTI's per year	9%	0.5%
**2007-2010 – Total NIL LTI's & less than 4 MTI's	9%	0.5%
4. Medical treated Injuries		
2007-10 - to be less than 7 per year.	7%	0.4%
2007-10 - MTI's to be 75% of work load & at least 75% of time.		
SHIFT BONUS – Nil MTI's	4%	0.2%
5. Production Levels Against Monthly Budgets		
2007-10 – achieve at least 100% of forecast, with labour cost < $0.30/kg	9%	0.5%
6. Variance – greater than 1.75% of yearly production.	4%	0.25%
7. Remill Production		
2007-10 – achieve greater than 100% of budget	5%	0.25%
- recycle >75% of conversion cores	5%	0.25%
- recycle > 4,000kg of Extrusion Reclaim	4%	0.20%
8. Absenteeism*		
2007-10 - no more than 2 days per annum	$1000	TOTAL
- no more than 3 days per annum	$500	5.5%

** This productivity criteria will be based on individual performance – date to commence from November 30th each year.*

*** See above - An additional bonus will be paid if a 0 LTI's per year with less than 4 medical treated injuries (75% of time at work – cleared in maximum of 4 weeks) is achieved.*

1. *To be paid yearly – once, then reviewed*
2. *Based on $$ or Kgs – which ever is lower. Pay annually.*
3. *Based on all shifts – Pay annually. Shift Bonus*
4. *Based on all shifts – Pay annually. Shift Bonus*
5. *Forecast to be confirmed at the start of each month. No increase in overtime costs for 2007-10. Labour cost to be held < $0.30/kg. Pay annually.*
6. *Based on yearly production – Pay annually.*
7. *Quality must be 100% - require extrusion feedback – Pay annually.*

NOTES: - Should any KPI be a negative result (i.e. higher/worse than the previous year eg 2006-07), a decrease will result but not more than % of target.
- All bonus payments to be applied on Normal wages and planned Xmas leave shutdown only.

EXTRACT 19 (MINING INDUSTRY)

9.4 Performance Bonus
(1) [The Company] will pay a monthly performance bonus. The bonus will be a pooled bonus, shared by all Employees covered by this Agreement.
(2) The total monthly pooled bonus shall be the sum of bank cubic metres of overburden and coal (total material) removed during the month multiplied by the nominated rates. The performance criteria is not static and may be varied by [the Company] in consultation with the workforce to cater for changes in mining methods, market demands, changes in technology or with the introduction of additional or different equipment.
(3) The total pooled bonus will be divided by the number of rostered [person]shifts during the month to establish a rate per shift. Each Employee shall receive this amount for each rostered shift that he or she works in the month or is on approved annual or sick leave.
(4) In the event that there are no recordable injuries in any given month, a bonus payment of $100 per Employee will be made. Any Employee who is not employed for a complete month will receive pro rata payment of this bonus if applicable.
(5) If in any given month there is no equipment damage, a bonus payment of $100 per Employee will be made. The equipment damage figure will be derived from the project cost ledger. Any Employee who is not employed for a complete month will receive a pro rate payment of this bonus if applicable.

9.5 Loyalty Bonus
(1) An annual Loyalty Bonus of $4,680 per year will be paid after each anniversary of this Agreement to Employees who have a full year's employment at Site in the previous year.
(2) An Employee who is entitled to a future Loyalty Bonus may, at their discretion, elect to have their Loyalty Bonus paid into their Superannuation fund subject to the age-based deduction limits set out in the Income Tax Assessment Act 1936 (Cth). This election must be made in writing by the Employee concerned, and received by [Company], prior to any period of service that brings about an entitlement to a Loyalty Bonus.
(3) For the avoidance of doubt, an Employee will only be able to elect to have that portion of their Loyalty Bonus that is accrued after they make the election, paid into their Superannuation fund.

EXTRACT 20 (AGRICULTURAL INDUSTRY)

(b) Performance Related Bonuses – Years 2 & 3
In Years 2 and 3 of the Agreement, the wage rates outlined in Clause 10(a) can be increased by an additional 2% based on the achievement of site-specific Key Performance Indicators (KPIs).
These KPIs are:

Measure	*Description*	*Proportion of 2% attributed to this measure*
Safety	*LTIFR (or another indicator that is adopted across Fonterra)*	*0.50%*
Quality	*Complaints per 10,000 unit sold*	*0.50%*
Scheduled Attainment	*Domestic Product = 95-105%* *Export Product = 100%*	*0.50%*
Financial Performance	*Site meets budget*	*0.50%*

Specific targets for each year will be determined by the previous year's results.
Consultation will take place with the Consultative Committee each year on the setting of the KPIs.
Increases to hourly rates of pay in accordance with this subclause will be in addition to the guaranteed 4% wage increase in Years 2 and 3 of this Agreement.
Where the Year 2 and Year 3 actual wage increase is above 4% (in accordance with Clause 10(b)), the rates of pay in Clause 10(a) will be increased and a new schedule of rates and allowances will be provided by Fonterra to each employee and the NUW.

conditional wage adjustments

The following clauses highlight a new trend in relation to method, timing, or reasoning behind the setting of wage increases. While in the past agreements displayed a predictable pattern around when wages were to be adjusted (such as on the day of certification followed by each anniversary thereafter), agreements are now showing some interesting innovations upon which such wage increases are being delivered.

The first of these clauses (Extract 21) from the government administration sector, provides three wage increase installments over the life of the agreement. However, the third and fourth increases of 1.5% each are contingent upon the achievement of certain 'pre-conditions'. Importantly, such pre-conditions are not contingent on an employee's performance, and rather more administrative in nature as they are based on the completion of certain workforce procedures. These pre-conditions are three-fold and each worth 0.5 percentage points of the total 1.5% wage increase. Each pre-condition is expected to be achieved via a workforce participation rate of 95%. They are; the completion of two performance reviews (mid-cycle and end of cycle) and attendance at scheduled training that each employee has previously nominated.

Extract 22 is a clause from the aged care sector and shows an interesting way of adjusting wages. Essentially, the agreement provides a 3.5% increase per annum over the life of the three year agreement. However the agreement first and foremost follows the direction of the Australian Fair Pay Commission each July, before making an adjustment 6 months later should the AFPC ruling prove to be shy of a 3.5% increase. So, for example, if the AFPC ruling was to increase wages by 2.5% each July for the three years of the agreement, then there would actually be six adjustments in total over the term, with three additional increases in January of 1.0% to make up the shortfall of the AFPC rulings.

The transport industry agreement (extract 24) specifically dictates what is to happen to wages if the agreement is not replaced by a new agreement upon its nominal expiry date. Should this occur, the agreement stipulates that wages will be adjusted according to CPI (weighted average of the eight capital cities) each year on 30 September. This clause is particularly significant in light of the ability for agreements under the *Work Choices* legislation to remain in force beyond its nominal expiry date (with no subsequent wage adjustments).

The final manufacturing industry clause, Extract 25, is the antithesis of all the above agreements. The agreement explicitly states that employee's wage rate shall not be set or adjusted by the AFPC. Indeed, employees' wage rates are fixed as per the wages schedule and not subject to review. The last adjustment for this agreement occurs more than a year before the agreement's nominal expiry date. So should no new agreement immediately proceed this one, it is likely to create a lag in wage adjustments relative to national wage movements.

EXTRACT 21 (FEDERAL GOVERNMENT ADMINISTRATION)

47. Salary Increases
In recognition of the ongoing commitment demonstrated by employees to the initiatives outlined in this Agreement and the associated increase in productivity, the following increases will apply:
(a) base salary increase of 4.1%, effective from the date of lodgement of this Agreement;
(b) base salary increase of 2.6% payable from 1 July 2008 and 1 July 2009; and
(c) a further base salary increase of up to 1.5% payable from 1 July 2008 and 1 July 2009 subject to achievement of pre-conditions as specified in clause 48.

48. Components of the Pre-conditional Salary increase
The salary increase specified in clause 47 above will be payable from 1 July 2008 and 1 July 2009 subject to achievement of the following pre-conditions:
0.5% ~ completion by 95% of employees of their mid-cycle performance reviews in accordance with established time frames and applicable eligibility criteria;
0.5% ~ completion by 95% of employees of their end of cycle performance reviews in accordance with established time frames and applicable eligibility criteria; and
0.5% ~ 95% attendance at scheduled training for which employees have nominated prior to 31 May.

EXTRACT 22 (AGED CARE SECTOR)

9. WAGES
(a) Wages will be determined as follows:-
(i) From the first pay period on or after 1 July 2007 wages shall be adjusted by the determination of the Australian Fair Pay Commission ruling.
(ii) From the first pay period on or after 1 January 2008 wages shall be adjusted if required to ensure an increase of not less than 3.5% from the wages applicable prior to the adjustment specified in subclause (a)(i) above.
(iii) From the first pay period on or after 1 July 2008 wages shall be adjusted by the determination of the Australian Fair Pay Commission ruling.
(iv) From the first pay period on or after 1 January 2009 wages shall be adjusted if required to ensure an increase of not less than 3.5% from the wages applicable prior to the adjustment specified in subclause (a)(iii)above.
(v) From the first pay period on or after 1 July 2009 wages shall be adjusted by the determination of the Australian Fair Pay Commission ruling.
(vi) From the first pay period on or after 1 January 2010 wages shall be adjusted if required to ensure an increase of not less than 3.5% from the wages applicable prior to the adjustment specified in subclause (a)(v)above.

(b) The allowances prescribed in Clauses 30 and 31 of this Agreement shall be increased in accordance with subclauses (a)(ii), (a)(iv) and (a)(vi).

(c) Payment of Wages will be by electronic transfer into the employee's nominated financial institution account at the end of each fortnightly pay period, along with hard copy pay advice slips. Wherever practicable such payment shall be available for withdrawal by employees on the designated pay day. Any other form of payment will be at the discretion of the employer by agreement with the employee..
(d) If a public holiday falls on a normal payroll processing day, payment may be delayed by one day.

EXTRACT 23 (TRANSPORT INDUSTRY)

4.1.2
(d) Thereafter, if this agreement is not replaced by a new agreement, the wages shall be adjusted each year in line with the CPI adjustment for each year ending on 30 September. These adjustments shall take effect for the first pay period on or after
31 March of each year.
(e) NOTE: The consumer price index (CPI) means the Australian Bureau of Statistics (ABS) published percentage change in the weighted average of eight capital cities all groups consumer price index for the 12 month period ended 31 March, discounted by any ABS identified impact of the goods and services tax.

EXTRACT 24 (NON-METAL MANUFACTURING)

7 Remuneration and Incentive- Based Payment or Bonus Scheme
7.1 Employees shall be paid their wages in accordance with their applicable wage rate for the classification that applies to that employee. The applicable wage rates are as specified in Schedule A to this Agreement.
7.2 During the term of this Agreement (as defined in clause 1 of this Agreement), the employee's wage rate as specified in Schedule A of this Agreement shall not be set and/or adjusted by the Australian Fair Pay Commission.
7.3 The Employee agrees that during the period of this Agreement, the employee's wage rates as specified in Schedule A to this Agreement are fixed and not subject to review.
7.4 The Company will pay the employee's wage into the employee's nominated bank account on a weekly basis or at any other nominated period by the Company from time to time.

other innovations

The following selection of extracts identify innovations in areas of part-time and casual entitlements, and also examples of self-directed work teams. The first comes from the mining industry where the agreement deals with two different types of part-time workers – fixed roster and flexible roster. A fixed roster part-time worker holds what is considered the more traditional part-time employment arrangements. Their hours are to be less than a full-time worker (38 hours) and have a minimum work load of 10 hours per week. Under this agreement, if a fixed roster part-time employee has hours set between 10 and 19 hours per week then a loading of 5% will apply to their ordinary rate to compensate for the lack of work. A flexible roster part-time worker is the modern approach to part time work, whose hours may be changed (by mutual agreement) with as little notice as the day before the day of duty. Such part time workers are afforded a loading of 15% on all ordinary hours worked. It appears that this employment category falls somewhere between a traditional part-time worker and a casual worker. Essentially, a form of casual employment that still has leave entitlements.

Extract 26 is a clause from an agreement covering a distribution and storage facility. The clause provides casuals performing a regular pattern of work with the opportunity to convert to a more permanent position. Should a pattern of work of 16 hours of more per week continue for more than three months, then the employee will be offered weekly employment consistent with the regular pattern of hours. There is also an understanding of the parties that casual employment should not exceed 30 per cent of total ordinary hours per week unless the needs of the business require an exception to this rule.

Extract 27 (from the retail industry) is another example of extra ordinary entitlements for casual employees, providing 3.3 hours of sick leave for every 152 hours worked. When compared to the statutory standard of sick leave for permanent employees (10 days, or roughly 76 hours per annum), this entitlement equates to just over 50% of the full time equivalent should the casual work a full year.

The final two extracts (28 and 29) both look at work teams within their respective organizations and the responsibility that they have in administering their own performance. Extract 28 (from the manufacturing sector) allocates responsibility to the team for recording and monitoring performance measures. Extract 29, from the construction industry, takes autonomy further where the teams are responsible for completing the whole job cycle, ensuring not only that the job is completed in the most efficient manner, but also must factor in safety, quality and environment issues. This form of self directed work groups has been argued to not only improve work cycles and the labour process but also increase job satisfaction via a greater sense of ownership by the employees.

EXTRACT 25 (MINING INDUSTRY)

8.8 Hours of work for a fixed roster part time employee are to be less than 38 hours per week and more than 10 hours per week. Where the set hours are between 10 and 19 hours per week a loading of 5% will apply to the ordinary hourly rate for such hours.

8.9 Hours of work for a flexible roster part time employee may be changed by agreement between an employer and the Company no later than at the completion of the duty period of the employee concerned if such change is to take effect on the next working day. A flexible part time employee will be paid a loading of 15% on the ordinary hourly rate.

EXTRACT 26 (DISTRIBUTION & STORAGE)

6.3 Casual Employment
The role of casuals is to cater for peaks in demand for labour and for exceptional circumstances, for example to provide flexibility to facilitate periods of major change. Casual employment will not be used to replace full-time or part-time permanent employment unless exceptional circumstances exist.
(2) Casuals employed on a regular pattern of work for 16 or more hours a week on the same work roster, for a continuous period of more than 3 months, will be offered weekly employment consistent with that employee's regular pattern of hours. The company may extend this 3 month period in exceptional circumstances and in consultation with the union.
(3) It is the intention of the company and the understanding of the union and employees, but not a requirement on the company, that casual employment should not account for more than 30 percent of total ordinary hours worked per week, except in exceptional circumstances. The overriding concern of the company in determining casual numbers shall be the needs of the business.

EXTRACT 27 (RETAIL SECTOR)

23.1.2 Casual team members shall be entitled to 3.3 hours of sick leave for every 152 hours worked.

EXTRACT 28 (NON-METAL MANUFACTURING INDUSTRY)

5.1 WORK PERFORMANCE REVIEWS
Work performance will be monitored both on a team and individual basis and will be utilised to assist all employees achieve their maximum potential.

Teams will be responsible for recording and monitoring performance measures, including attendance, safety, housekeeping, communication, quality and efficiency. The performance measures are to be recorded using the processes provided by the Company.

Individual employee performance will be monitored and formal feed back to the individual will be provided during probation (at least on three occasions) and thereafter as a minimum on a yearly basis. Performance assessment and employee feedback is to be documented in accordance with the Performance Assessment Review (PAR) form provided by the Company.
This process will involve the direct Supervisor/Team Leader and the employee.

EXTRACT 29 (CONSTRUCTION INDUSTRY)

15. Self Directed Work Teams
The parties agree that Work Teams will be an important organisational concept.

Work teams are groups of Employees or subcontractors who have the responsibility for completing an element of work. The Team is given the task of completing the whole job cycle and whilst taking into account the safety, quality and environment issues, will ensure that the works are carried out in the most expedient and proficient manner possible, in accordance with this Agreement.

Each work team will be based upon the field or fields of work of the Plumbing and Mechanical Services sector of the Service Stream in which the Company operates.

4 technical notes

method for calculating average annual percentage wage increases (AAWI) per agreement

The total wage increase granted over the life of the agreement is divided by the number of months for which the enterprise agreement operates. This figure is then multiplied by twelve to generate an estimate of what the increase would be over a twelve month (annual) period. Estimates of average wage increases are calculated for those agreements that provide for a quantifiable wage increase. Not all agreements provide sufficient information to calculate annual wage increases embodied in them. The majority, however, report either what the rate of increase is or provide sufficient information to calculate it. Flat dollar increases are converted to a percentage by using the weekly rate of pay that applied prior to the new rates under the new agreement to calculate the equivalent percentage amount. Where prior rates are not specified and the wage increases are not quantifiable, the agreements are excluded from analysis. Other non-quantifiable wage increases within an agreement, such as those that rely on award increases, inflationary (CPI) movements, or individual staff appraisals to determine quantum wage increases, are not included in these calculations. Where different quantum wage increases are given for different groups of workers within the same agreement, an average quantum wage increase is calculated and used. WRC also uses a simple rather than compound percentage wage increase.

The wage increases are those that affect ordinary weekly earnings (base rates of pay). AAWI figures do not include payments in addition to base rates (such as overtime, bonus payments, one-off annualisation of salaries, performance pay, profit-sharing, allowances etc). Wage agreements whose average percentage increase could not be quantified (eg, those introducing a new salary structure) are also excluded from these estimates.

Due to delays in the registration process, some agreements will only run officially for a couple of months. Where is it apparent that the official duration of the agreement is unduly short (ie. less than 9 months), such agreements are excluded from the calculations so as not to artificially raise the estimate of average annual increases contained in all agreements.

sample

As at September 2007, the ADAM Database has information on 17, 423 registered enterprise (collective) agreements from the Federal and State jurisdictions as follows:
Federal (10, 141), NSW (2,287), SA (1,099), Queensland (2,548), WA (1,348).

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about the Agreements Database

Since 1993, **WRC** has maintained the Agreements Database and Monitor (ADAM), Australia's most comprehensive and authoritative database of enterprise agreements. With detailed up-to-date information on over 17,000 federal and state enterprise agreements and over 1,200 federal AWAs, ADAM is an invaluable resource that is frequently used by IR/HR practitioners, economic analysts, researchers, policy makers, and academics.

For more information or a no obligation customised quote contact Betty Frino on:

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about WRC, University of Sydney

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