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CUMULATIVE CONTENTS AND DIGEST APPEAR AT THE END OF THIS PUBLICATION

INDUSTRIAL APPEAL COURT— Appeal against decision of Full Bench—

JURISDICTION: WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT.

CORAM: ROWLAND J (Acting Presiding Judge)
FRANKLYN J.
ANDERSON J.

DELIVERED: 25 SEPTEMBER 1996.

FILE NO/S: APPEAL IAC 4 of 1996

BETWEEN:

BURSWOOD RESORT (MANAGEMENT) LTD

Appellant

AND

THE AUSTRALIAN LIQUOR, HOSPITALITY &
MISCELLANEOUS WORKERS UNION,
MISCELLANEOUS WORKERS DIVISION, WESTERN
AUSTRALIAN BRANCH

First Respondent

THE FEDERATED LIQUOR & ALLIED INDUSTRIES
EMPLOYEES UNION OF AUSTRALIA, WESTERN
AUSTRALIAN BRANCH, UNION OF WORKERS

Second Respondent

JUDGMENT—

ROWLAND J (Acting Presiding Judge):

For the reasons to be published by Anderson J, I would dismiss this appeal and I publish a note to that effect. Franklyn J has authorised me to say that he is of precisely the same view and I publish a note to that effect.

ANDERSON J:

I would dismiss the appeal for the reasons which I now publish.

Catchwords:

Industrial relations—Industrial agreement—Registration—Nature of obligation to register—*Industrial Relations Act 1979*, ss41(1) and (2), s41A.

Industrial relations—Full Bench—Jurisdiction—Officials of appellant union not properly elected—Jurisdiction to hear appeal.

Representation:

Counsel:

Appellant : Mr H J Dixon & Mr L J Levine

First Respondent : Mr D H Schapper & Mr N D Ellery

Second Respondent : Mr E L Fry, industrial advocate

Solicitors:

Appellant : Parker & Parker

First Respondent : Derek Schapper

Case(s) referred to in judgment(s):

Bligh v Tredgett 5 De G & Sm 74

Cape Breton v Fenn [1881] 17 Ch D 198

Coulton v Holcombe (1986) 162 CLR 1

Fricker v Van Grutten [1896] 2 Ch 649

Geilinger v Gibbs [1897] 1 Ch 479

Paltara Pty Ltd v Dempster (1991) 6 WAR 85

Re Construction Forestry Mining Energy Union; ex parte W J Deane & Sons Pty Ltd (1994) 181 CLR 539

Re Tramways case (No 2) (1914) 19 CLR 43

Squire v Rogers (1979) 27 ALR 330

The Water Board v Mustakis (1988) 68 ALJR 209

United Grocers Tea & Dairy Produce Employees Union of Victoria v Linaker (1916) 22 CLR 176

University of Wollongong v Metwally (No 2) (1985) 59 ALJR 481

Case(s) also cited:

Nil

ROWLAND J:

I have read in draft the reasons for judgment to be published by Anderson J. I agree with those reasons and with the order proposed.

FRANKLYN J:

I have had the benefit of reading in draft the reasons to be published by Anderson J. I agree with those reasons and have nothing further to add.

ANDERSON J:

This is an appeal from a decision of the Full Bench of the Industrial Relations Commission handed down on 3 April 1996 in which it ordered that the registration by Gifford C of an industrial agreement made between the appellant and the second respondent be quashed.

The history of the proceedings is that in August 1995 the appellant applied to register an agreement which had the effect of varying and renewing the *Burswood Resort Casino Employees Industrial Agreement 1993*. The subject agreement was styled *Burswood Resort Casino Employees Industrial Agreement 1993 Amendment Agreement 1995*. The parties to the 1993 Agreement had been the appellant and the second respondent, and the second respondent was respondent to the appellant's application to register the new agreement.

The application came on for hearing on 22 August 1995 and the first respondent sought leave to intervene. The notice of intervention contained grounds which may be summarised as being that the first respondent had constitutional coverage of the relevant employees and its rights to represent and protect the interests of its members and potential members covered by the proposed agreement would be adversely affected by the agreement.

On the hearing of the application for leave to intervene, Mr Dixon, counsel for the present appellant, submitted in effect that leave to intervene should not be granted unless the proposed intervenor stipulated what purpose was sought to be achieved by the intervention—and if the purpose was to oppose the registration of the agreement, leave to intervene should not be granted unless the intervenor was prepared to state and fully particularise the grounds of its opposition. That is not exactly how it was put to Gifford C but that is the essence of it, I think.

After hearing submissions Gifford C granted unconditional leave to intervene, without requiring the first respondent to state in advance why it wished to intervene. The Commissioner held that it was a sufficient reason to grant unconditional leave to intervene, that the intervenor had a sufficient interest in the subject matter of the proceeding ie the registration of the industrial agreement.

An issue which had to be resolved was whether the Commissioner had a discretion to refuse to register the agreement and if so what was the nature and extent of that discretion. Submissions were made on that issue by all parties. The relevant provisions of *The Industrial Relations Act* are as follows:

- “41(1) An agreement with respect to any industrial matter or for the prevention or resolution under this Act of disputes, disagreements, or questions relation thereto may be made between an organisation or association of employees and any employer or organisation or association of employers.
- (2) Subject to subs(3) and s41A, where the parties to an agreement referred to in subs(1) apply to the Commission for registration of the agreement as an industrial agreement the Commission shall register the agreement as an industrial agreement.
- (3) Before registering an industrial agreement the Commission may require the parties thereto to effect such variation as the Commission considers necessary or desirable for the purpose of giving clear expression to the true intention of the parties.
- 41A(1) the Commission shall not under s41 register an agreement as an industrial agreement if—
- (a) the agreement applies to more than a single enterprise; and
- (b) any term of the agreement is contrary to this Act or any General Order made under s51, or any principles formulated in the course of proceedings in which a General Order is made under s51.”

The advocate for the first respondent, Ms Jackson, accepted that s41(2) imposed a mandatory obligation upon the Commissioner to register a s41(1) agreement, but submitted the obligation did not arise [to use her words] “...until the Commission has a *bona fide* agreement which is not contrary to the Act which the parties seek to register as an industrial agreement... If it is not a valid agreement then s41(2) does not require you to register it. Equally if the agreement or purported agreement is contrary to the terms of the *Industrial Relations Act* itself you do not have an obligation...to register the agreement”.

Mr Dixon objected to the development of these submissions, contending that the right of intervention did not carry with it the right to argue the issues sought to be raised by Ms Jackson. In effect this contention was upheld. Gifford C ruled that as s41(2) did impose a mandatory obligation there was for Ms Jackson “...no further scope...to put any submission in this matter”. He held that the matters sought to be presented by Ms Jackson did not “modify” the mandatory obligation. He put it thus:

“...the issues that have been raised by Ms Jackson...are not matters that should cause me to put to one side, to hold back or to in any other respect modify this mandatory obligation that exists upon me in the first place”.

He then declined to hear further submissions from Ms Jackson and the matter proceeded to the making of an order that the agreement be registered.

The first respondent then appealed to the Full Bench against the decision to register the agreement. Various grounds of appeal were stipulated in the notice of appeal. In particular it was contended that the Commissioner had denied natural justice to the first respondent in that, having granted the first respondent unconditional leave to intervene, the Commissioner's subsequent conduct of the hearing amounted to a refusal to hear from the first respondent on important matters including whether the agreement was in truth a *bona fide* industrial agreement. The grounds of appeal also included complaints that the Commissioner erred in law in failing to rule that there was in fact no proper agreement and if there was, the agreement was in truth, in certain respects, contrary to the Act.

On the hearing of the appeal to the Full Bench the present appellant sought to be heard on an issue which was said to be jurisdictional. The argument Mr Dixon sought to advance was that the Full Bench had no jurisdiction to hear the appeal because the first respondent's officers had not been duly elected and were not authorised to bring the appeal on behalf of the Union. The Full Bench determined not to entertain this submission. The present appellant then applied for an adjournment of the appeal to enable it to bring an appeal to this Court against the refusal of the Full Bench to entertain argument on the preliminary issue. That application for adjournment was refused. The Full Bench then proceeded to hear, and to uphold, the appeal.

In upholding the appeal the Full Bench decided that the Commissioner had erred in his approach to s41 and s41A in that he had failed to appreciate that the mandatory requirement in s41(2) ie the requirement to register, was qualified by the threshold requirements that the agreement be an agreement as to an industrial matter, that it be an agreement made between an organisation or association of employees and an employer or organisation or association of employers and that it be made for the purposes of s41 and not for some extraneous or unlawful purpose.

This conclusion was, with respect, plainly correct. In deciding that he had to register the agreement, regardless of such matters, the Commissioner misdirected himself in point of law. Plainly he could not register an agreement that did not meet the threshold requirements of s41.

That would however still leave the question whether his decision to register the agreement ought to be quashed. The Full Bench has a discretion as to the remedy where the Commission at first instance has erred in law in its disposition of the matter. *Industrial Relations Act* s49(5)

In this case the appellant contends that the Full Bench ought not to have quashed the decision below and ought not to have made orders requiring the application for registration to be heard afresh because no useful purpose will be served by so doing. Mr Dixon tried to persuade us that the Full Bench proceeded to order a re-hearing of the registration application without turning its mind to the question whether to do so would be futile. As “futility” is a relevant consideration in considering whether to grant a discretionary remedy, he submitted that the failure to consider the issue of futility vitiated the decision.

I do not think it is at all obvious that the Full Bench did not consider whether any useful purpose would be served by ordering a re-hearing of the registration application. Anyway, the submission involves the proposition that even if the Com-

missioner had approached the exercise of his powers properly it is inevitable that registration of the agreement would have been ordered. I do not think that is so self evident and so unarguable that this Court can say no purpose was to be served by the Full Bench sending the matter back to the Commission at first instance for proper consideration. I am not persuaded that the decision by the Full Bench to send it back was wrong. Even if the Full Bench did not turn its mind to the question of futility I would not be prepared to allow the appeal on that ground.

The appellant contended that the Full Bench should not have exercised its discretion to grant the first respondent, as intervenor, leave to appeal, because the first respondent declined to fully particularise—to lay out before the Full Bench—the basis on which it contended the agreement ought not to have been registered. I do not think the Full Bench was required to go into that matter. As long as it appeared that the first respondent was *bona fide* in its wish to present arguments below that the agreement ought not to be registered and had been wrongly denied the right to do so, I do not think it was obligatory on the Full Bench to hear the arguments itself for the purpose of being satisfied they had some prospects of success before sending the matter back to be properly dealt with. Once it was decided that the Commissioner had wrongly acted on the basis that he did not have to consider matters which it was plainly necessary for him to consider before ordering registration of the agreement the Full Bench was perfectly entitled to require that the proceedings be re-heard according to law without itself entering upon an evaluation of the arguments and the materials which the opponents of registration wished to bring forward. Whilst no doubt in the exercise of its own discretion the Full Bench had the power to embark on a determination of the strength of the case in opposition to registration I cannot see how the failure to exercise the power vitiates its decision to order a re-hearing.

There is another matter upon which the appellant relies. This arises out of the refusal by the Full Bench to hear Mr Dixon's submission that the appeal was incompetent because the first respondent's officers had not been properly elected. The appellant's argument was that there was no validly authorised appeal before the Full Bench because the officers of the first respondent who were promoting and conducting the appeal in the name of the first respondent were not validly authorised to do so. The Full Bench took the view that this question of authorisation should have been argued below and that all the relevant evidence should have been canvassed below. I am not persuaded this was wrong. An appeal tribunal is entitled to refuse to allow matters which ought to have been agitated below to be raised for the first time before it at least where the matters involve disputed factual issues. This is a rule of broad application, applied in the interests of expedition and the finality of legal proceedings. *Coulton v Holcombe* (1986) 162 CLR 1 at 7; *University of Wollongong v Metwally* (No 2) (1985) 59 ALJR 481 at 483; *The Water Board v Mustakis* (1988) 68 ALJR 209; *Paltara Pty Ltd v Dempster* (1991) 6 WAR 85 at 99.

Although in one sense the issue of authority to bring the appeal did not arise until the appeal stage, that would be taking too technical a view of the principle. The appeal proceeding was part of the intervenor proceedings and the issue whether the intervenor proceedings generally were properly authorised and whether the people purporting to file appropriate documents were authorised to do so raised substantial factual issues which could have been settled at first instance. I am not persuaded the Full Bench was wrong to decide the present appellant should be held to the conduct of its case below. There was plainly an opportunity before the Commissioner to challenge the authority of those purporting to represent the first respondent in the intervenor proceedings and the failure to take advantage of that opportunity, whether it was deliberate or inadvertent, entitled the Full Bench to say that should be the end of the matter.

As the appellant's argument was developed before us it seemed to me to be firmly based on the proposition that because this issue of due authorisation went to the jurisdiction of the Full Bench to hear the appeal the Full Bench had no discretion to decline to entertain argument on the point and its refusal to do so therefore constituted fatal error. I am unable to accept this proposition. In the first place I am not sure the

rule that an appeal tribunal may refuse to allow a point to be raised for the first time in the appeal where contested issues of fact are involved does not apply even where questions of jurisdiction arise. See the comments of Deane J in *Squire v Rogers* (1979) 27 ALR 330 at 337. But anyway the appellant's case on this issue seems to take as its starting point the proposition that there was no proper party before the Full Bench as appellant. This I think overlooks the distinction between the existence of an industrial union as an entity *sui juris* and the existence of authority in certain persons to act on behalf of that union in prosecuting proceedings before the Commission. Whether an individual has the authority to place the seal of the union on procedural documents and to bring those documents to the Commission for filing and to address the Commission on behalf of the union does not seem to me to be a jurisdictional question once a matter is before the Commission. The problem has arisen quite often in courts of law, where a solicitor has commenced proceedings without authority of the plaintiff. Far from it being the case that the court was deprived of jurisdiction, the old rule used to be that the plaintiff was fully bound by the orders made in the proceedings commenced without his authority and insofar as these placed any liability on him he had to discharge that liability in obedience to the orders of the Court and seek relief over against the solicitor. *Bligh v Tredgett* 5 De G & Sm 74. This practice changed and now the practice is to allow the defendant to apply for the action to be dismissed as having been instituted without authority, and for the costs of the action to be paid by the solicitors who commenced it. *Cape Breton v Fenn* 17 [1881] Ch D 198 at 210. Where the plaintiff who had not given authority is only one of several plaintiffs the action is not dismissed but appropriate stay orders are made insofar as the action involves the subject plaintiff, and if costs orders have been made against that plaintiff, the solicitor is substituted as the party liable to pay those costs. *Fricker v Van Grutten* [1896] 2 Ch 649; *Geilinger v Gibbs* [1897] 1 Ch 479. I am not aware of any case on this subject in which it has been suggested that the absence of authority in the persons who bring the action in the name of the plaintiff deprives the Court of jurisdiction in the sense that the proceedings are void for want of jurisdiction.

As to the position in the Industrial Relations Commission I see no reason in principle why it should be any different. Mr Dixon on behalf of the appellant relied heavily on three decisions of the High Court: *Re Tramways case (No 2)* (1914) 19 CLR 43; *United Grocers Tea & Dairy Produce Employees Union of Victoria v Linaker* (1916) 22 CLR 176 and *Re Construction Forestry Mining Energy Union; ex parte W J Deane & Sons Pty Ltd* (1994) 181 CLR 539. However I think these cases can be distinguished. In the *Tramways* case and the *Construction Forestry Mining Energy Union* case the question was whether a log of claims served by persons purporting to have the authority of unions to serve the log, but who did not have any authority to do so, could give rise to an "industrial dispute" for the purposes of the *Commonwealth Act*. In each of these two cases it was held that it could not because in order to create an industrial dispute by means of non-acceptance of a log of claims put forward by a union it is necessary that the demand for compliance with the log of claims should be made with the authority of the union. Unless the demand was authorised by the union the industrial dispute was not of the requisite kind ie a real and genuine dispute extending beyond the limits of one state, created by means of non-acceptance of a log of claims by a union. As the demand was not (for want of authority) a valid demand, effective at the time when it was made, it did not give rise to a dispute or a dispute extending beyond the limits of more than one State and hence the Commission did not acquire jurisdiction.

In the *United Grocers* case the question was whether a person had become a member of the union. The union was seeking to recover dues from him. Although he had acted as if he was a member for a number of years he was able to show that the rules of the union had not been complied with as regards his entry into membership. He had not paid the entrance fee of one shilling. The Court concluded that on a proper construction of the rules of the union, payment of the entrance was a condition precedent to membership. As he had never paid the entrance fee he had not become a member "in contemplation of the rules" (per Barton J at 180). There was therefore no basis upon which the dues could be recovered from him.

Those cases are very different from this case. This is not a case where it can be said that a fundamental jurisdictional fact, such as the existence of an industrial dispute, is absent; or a case in which it can be said that the very basis of the claim does not exist. Here there is no doubt about the first respondent's existence as a union and there is no question that the first respondent has standing to be an intervening party.

In my opinion the Full Bench was perfectly entitled to take the view that as it did not affect its jurisdiction and could have been raised below, it was too late to raise an issue about the authority of the officers of the Union to bring the proceedings. This is not to say that, should the application for registration be re-heard, and should the first respondent again seek to intervene, the appellant may not take the point in those fresh proceedings.

I would dismiss the appeal.

WESTERN AUSTRALIAN
INDUSTRIAL APPEAL COURT
Industrial Relations Act 1979.
Appeal No. IAC 4 of 1996.

IN THE MATTER of an appeal against the decision of the Full Bench of the Western Australian Industrial Relations Commission in Matter Numbered 1075 of 1995 dated the 3rd day of April 1996.

BETWEEN
Burswood Resort (Management) Limited
Appellant
and
The Australian Liquor Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
First Respondent
and
The Federated Liquor and Allied Industries Employees
Union of Australia, Western Australian Branch, Union of
Workers
Second Respondent

BEFORE:
JUSTICE ROWLAND (ACTING PRESIDING JUDGE),
JUSTICE FRANKLYN,
JUSTICE ANDERSON.

25 September 1996.

Order.

HAVING heard Mr H J Dixon and Mr L J Levine (of Counsel) for the appellant, Mr D H Schapper (of Counsel) and Mr N D Ellery for the first respondent and Mr E L Fry for the second respondent, THE COURT HEREBY ORDERS that the appeal be dismissed.

[L.S]

(Sgd.) J. G. CARRIGG,
Clerk of the Council.

FULL BENCH— Appeals against decision of Commission—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of
Australia, WA Branch

(Appellant)

and

Bristile Clay Tiles

(Respondent)

No. 500 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

11 October 1996.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission at first instance delivered on 12 March 1996 in application No CR 276 of 1995, and brought under s.49 of the Industrial Relations Act 1979 (as amended).

By that decision, the Commission at first instance dismissed an application by the appellant which claimed that three of its members, Mr Peter John Bastian, Mr Grant James Clatworthy and Mr Joseph Theodorus Michaels, were unfairly dismissed from their employment with the respondent employer as a result of a "redundancy situation" in which they were selected for redundancy in preference to other employees and contrary to the respondent's own specified criteria for selecting employees to be made redundant.

Orders were sought that these three persons be re-employed by the respondent and other remedies were sought including compensation.

It is against that decision that the appellant now appeals on the following grounds—

1. The Learned Commissioner erred in law by drawing conclusions not based on the evidence in that she took into account in her decision statements made by the respondent during conciliation conferences of the parties.
2. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by Ray Masters and thereby erred in law by
 - (a) drawing conclusions which were not supported by the evidence and/or which were against the weight of the evidence and/or contrary to the evidence.

PARTICULARS

All conclusions based on a conflict between Ray Master's evidence and the respondent's witnesses where the evidence of the respondent's witnesses was preferred, especially conclusions based on Lex Mathew's (sic) evidence in preference to Ray Masters and John Agnew.

- (b) manifestly failing to give due and proper weight to the evidence of Ray Masters.

PARTICULARS

The following conclusions by the Learned Commissioner against the credibility of Ray Masters failed to take into account the context and the circumstances which existed at the time of the events and the circumstances under which Ray Masters came to give his evidence:

- (a) That Ray Master's evidence was "somewhat self-serving".

- (b) That Ray Master's evidence as to his participation in the meeting with Des Newman on 11 September 1995 and the meeting of 12 September 1995 did not demonstrate his concern as to the "fairness of the process" being undertaken by the respondent.
 - (c) That Ray Masters lacked credibility "because he participated all the way through the process and did not protest in respect of any alleged unfairness or flaws in the process or express any reservations about the questions in the survey".
3. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by John Agnew and thereby erred in law by
- (a) drawing conclusions which were not supported by the evidence and/or which were against the weight of the evidence and/or contrary to the evidence.

PARTICULARS

All conclusions based on a conflict between John Agnew's evidence and the respondent's witnesses where the evidence of the respondent's witnesses was preferred, especially conclusions based on Lex Mathew's (sic) evidence in preference to Ray Masters and John Agnew.

- (b) failing to give due and proper weight to the evidence of John Agnew.

PARTICULARS

The following conclusions by the Learned Commissioner failed to take into account the context and the circumstances which existed at the time of the events and the circumstances under which John Agnew came to give his evidence:

- (i) That John Agnew's evidence was "somewhat equivocal" and that "He was an unsure witness and appeared to be lacking in confidence in his answers".
 - (ii) That "He was not stifled from expressing an opinion regarding the process or the choices".
 - (iii) That for the reasons referred to in (i) and (ii) hereof John Agnew's evidence thereby warranted less weight being accorded to it.
4. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by Des Newman and thereby erred in law by
- (a) drawing conclusions which were not supported by the evidence and/or which were against the weight of the evidence and/or contrary to the evidence.

PARTICULARS

- (i) The Learned Commissioner's conclusion that "the survey form was for the purpose stated by Mr Newman and that ... it was an aide to discussion and no more." was contrary to the evidence of the supervisors who were of the understanding that consideration of the survey results was an important part of the process.
- (b) failing to draw conclusions which were open on the evidence.

PARTICULARS

- (ii) As Des Newman did nothing to disabuse the supervisors of their misunderstanding concerning the importance of the surveys it was open on the evidence to find that the supervisors were thereby misled into believing that the

process was objective or scientific and thus "fair" and the Learned Commissioner erred in failing to draw that conclusion from the evidence.

- (iii) The Learned Commissioner erred further in failing to find that the misleading or deceptive conduct on the part of Des Newman referred to in (ii) hereof, even if innocent, constituted industrial unfairness.
- (iv) The Learned Commissioner erred in failing to draw the conclusion which was open on the evidence that Des Newman had deliberately misled the supervisors who were concerned at the legality/industrial fairness of what they had done.
- (v) The Learned Commissioner erred further in failing to draw the conclusion on the evidence that Des Newman's misleading or deceptive conduct constituted industrial unfairness.
- (b) (sic) giving Des Newman's evidence more weight than it ought properly to have been accorded.

PARTICULARS

- (vi) The Learned Commissioner failed to give any or any due consideration to the issue of Des Newman's credibility as demonstrated by his manifest failure to recall even the most basic details of discussions with Ray Masters concerning the surveys and his manifest failure to generally recall events and matters upon which put his credibility could be put to the test.
 - (vii) The Learned Commissioner failed to give due and proper consideration in considering the weight to be given to Des Newman's evidence to the fact that he, as the respondent's nominated representative, was permitted to sit in court and to listen to the evidence of all the applicant's witnesses before he was called to give evidence so was aware of previous evidence given by the applicant's witnesses.
5. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by Grant Clatworthy and thereby erred in law by
- (a) drawing conclusions which were not supported by the evidence and/or which were against the weight of the evidence and/or contrary to the evidence.

PARTICULARS

- (i) The conclusion that because Clatworthy's evidence as to a feud between his father and Des Newman was not supported that his evidence was not to be believed.
- (ii) The conclusion that Clatworthy's evidence, where it conflicted with other evidence, was not reliable.
- (b) failing to draw conclusions which were open on the evidence.

PARTICULARS

- (iii) The Learned Commissioner failed to draw the conclusion which was open on the evidence that Des Newman did harbour a strong enmity towards Clatworthy's father.
- (iv) The Learned Commissioner failed to draw the conclusion which was open on the evidence that Des Newman did harbour enmity towards Clatworthy

which was evidenced by his conduct towards Clatworthy in the factory after the EBA negotiations.

- (b) (sic) failing to give due and proper weight to Grant Clatworthy's evidence.

PARTICULARS

- (v) The Commissioner failed to take into account the admission by Des Newman that he had failed to pay Clatworthy's father on his last day of work after 40 year's service with the company, which corroborated Clatworthy's evidence as to Des Newman's enmity towards Clatworthy's father.

6. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by Peter Bastian and Gavin Howarth and thereby erred in law by

- (a) drawing conclusions which were not supported by the evidence and/or which were against the weight of the evidence and/or contrary to the evidence.

PARTICULARS

- (i) All conclusions based on a conflict between Peter Bastian's and Gavin Howarth's evidence and the respondent's witnesses where the evidence of the respondent's witnesses was preferred.

- (ii) The conclusion that "there was room for some misinterpretation" by Peter Bastian and Gavin Howarth as to the intent behind Les Mathew's (sic) discussion with them.

- (b) giving Les Mathews evidence more weight than it ought properly to have been accorded when compared to the evidence of Peter Bastian and Grant Clatworthy.

PARTICULARS

- (iii) The failure to give any adequate weight to the fact that Les Mathews was permitted to sit in court to hear all the evidence of all the other witnesses, notwithstanding a ruling by the Learned Commissioner that all witnesses were to be excluded from court.

- (iv) The failure to give any or any due consideration or weight to Peter Bastian's and Gavin Howarth's evidence as to the probable reason why Gavin Howarth was not put on the redundancy list.

7. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by Les Mathews and thereby erred in law by

- (a) drawing conclusions which were not supported by the evidence and/or which were against the weight of the evidence and/or contrary to the evidence.

PARTICULARS

- (i) The conclusion that Les Mathew's (sic) attendance at the meeting of supervisors was not "sinister" or a threat.

- (b) giving Les Mathew's (sic) evidence more credibility and weight than it ought properly to have been accorded

PARTICULARS

- (ii) The conclusion that Les Mathew's (sic) evidence was credible and to be preferred to that of the applicant's witnesses when he was permitted to sit in court to hear all the evidence of all the other witnesses, notwithstanding a ruling by the Learned Commissioner that all witnesses were to be excluded from court.

8. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by Lex Mathews and thereby erred in law by

- (a) drawing conclusions which were not supported by the evidence and/or which were against the weight of the evidence and/or contrary to the evidence.

PARTICULARS

- (i) All conclusions based on a conflict between Lex Mathews evidence and the applicant's witnesses where the evidence of Lex Mathews was preferred.

- (b) failing to draw conclusions which were open on the evidence.

PARTICULARS

- (ii) The Learned Commissioner failed to properly draw the conclusion which was open on the basis of the Registrar's report to her that Lex Mathews was a person who interfered with potential witnesses in order to advance his employer's case.

- (iii) The Learned Commissioner failed to properly draw the conclusion which was open on the evidence before her that Lex Mathew's (sic) evidence was likely to be coloured by an intent to advance his employer's case which would make his evidence unreliable.

- (c) giving Lex Mathew's (sic) evidence more weight than it ought properly to have been accorded.

PARTICULARS

- (iv) The Learned Commissioner failed to give any or any due weight to the fact that Lex Mathews, apparently with the imprimatur of Les Mathews and/or Des Newman, stopped Ray Masters and John Agnew from attending to give evidence at the initial hearing by approaching them in the precincts of the Commission and directing them to return to work to prevent them giving evidence.

9. The Learned Commissioner found that Peter Bastian "must have received some negative consideration over his enterprise bargaining involvement" and yet failed to properly draw the conclusion find that this constituted an industrial unfairness.

10. The Learned Commissioner manifestly failed to undertake any adequate assessment of the evidence given by Mark Sattell and thereby erred in law by

- (a) giving his evidence more weight than it ought properly to have been accorded.

PARTICULARS

- (i) The Learned Commissioner failed to give any or any adequate weight to evidence that Mark Sattell (sic) was a person who was quick to anger and to take repressive measures against subordinates who upset him.

- (ii) The Learned Commissioner failed to give any or any adequate weight to evidence that Mark Sattell (sic) had "a problem" with Peter Bastian prior to the meeting on 12 September 1995.

- (b) failing to draw conclusions which were open on the evidence.

- (iii) The Learned Commissioner erred by failing to properly draw the conclusion on the evidence that Mark Sattell (sic) was more likely than not to select Peter Bastian for redundancy irrespective of his qualities as an employee.

- (iv) The Learned Commissioner failed to properly draw the conclusion on the evidence that Mark Sattel (sic) was unusually critical of Peter Bastian in the supervisor's meeting.
- (iv) (sic) The Learned Commissioner erred further by failing to draw the conclusion which was open on the evidence that Sattel (sic) did not assess Peter Bastian fairly or on his merits as an employee."

APPLICATION TO EXTEND TIME

There were was an application to extend the time within which to file and serve appeal books. The justice of our making such an order lay clearly with the applicant and such an order was made.

BACKGROUND

The respondent is a manufacturer of clay tiles. In 1995 there was a fall in demand for clay tiles. The respondent decided to reduce by eight the number of its employees engaged in production. The General Manager, Mr Leslie Frank Mathews, discussed with Mr Desmond Joseph Newman, the Operations Manager, the need for retrenchments to be made, and suggested to Mr Newman that he get the supervisors together and resolve a process for choosing employees to be made redundant. Mr Leslie Frank Mathews said that he told Mr Newman that the process should be fair and just.

There was at the respondent's factory an Enterprise Bargaining Committee which prompted the decision to proceed with the selection process and to finalise the names of the employees who were to be retrenched within three weeks of 23 August 1995.

Mr Newman, with assistance, prepared a document entitled "Employee Profile" (hereinafter referred to as "the profile"). The form included details of service, length of service, absenteeism rate and a point scale with numbers allotted for various attributes such as performance, work attitude, skill levels and reliability. There were 14 questions in all. One question related to membership of committees, including the Safety Committee and the Enterprise Bargaining Consultative Committee.

This document was distributed to each of the supervisors in the production area. They were required to complete the profile in respect of those with whom they had had contact, and not just those employees whom they supervised.

All of the supervisors, except Mr John Adam Agnew, completed and returned these survey forms prior to 12 September 1995. Mr Agnew did so on the morning of 12 September 1995. Mr Newman said in evidence that they were completed as a preliminary step to a meeting which took place on 12 September 1995. He intended to sort the forms into four piles. These were classified "excellent", "good", "average" and "less than average".

On the afternoon of 11 September 1995, Mr Newman asked Mr Raymond Stanley Masters, a supervisor, to see him. He did so, he said, because Mr Masters was a senior supervisor and he required his assistance. They discussed production and staffing needs. They discussed all of the persons as Mr Newman went through each pile. Mr Masters said in evidence that he suggested that one particular person's name (Mr Bob Kiernan's) ought to be moved from one pile to another, but Mr Newman replied that the person's supervisor, Mr Len Patten, would be unhappy with that. Mr Masters said that he was then of opinion that his views were not required and he made no further comment. The name was not therefore moved. It is obvious that the employees had been classified by Mr Newman in the first place from the profiles.

The next day, Mr Newman and four of the five supervisors Mr Masters, Mr Agnew, Mr Dexter Ross Mathews (now Production Manager) and Mr Patten met in the respondent's boardroom to discuss the process to be used, and then to select those persons who were to be made redundant.

Mr Agnew arrived late, not having handed in his forms in advance as all the others had. His forms were not then allotted to the four piles to which I have referred above, which were in the boardroom.

A number of things happened during the meeting. There was one attempt at a ballot, but the ballot was not completed.

It had been first thought that no employees from an area supervised by Mr Mark Anthony Sattel were likely to be made redundant. However, Mr Richard Hilsley, an employee supervised by Mr Sattel, was found to be "a candidate" for redundancy. The meeting was then adjourned to enable Mr Sattel to participate. He joined the meeting and participated fully in the proceedings and discussions.

During the meeting, which lasted six hours, Mr Newman wrote on a whiteboard 15 names from the pile of least satisfactory employees, the less than average employees. There were eight employees to be chosen. Three casuals were chosen as the first step. That left five persons from whom to select the remaining persons for redundancy.

After discussion, there was a first formal ballot. It was a secret ballot and all votes were collected and tabulated by Mr Newman. Those employees who had received one vote or no votes were deleted from the selection process. The first employees' names to come off the board were those of Mr Alan Franich, Mr Bruce Trussell and Mr Clatworthy. Four were left after the ballot. These were Mr Michaels, Mr Scrimshaw, Mr Bastian and Mr Short. There were two inconclusive attempts to select the final two employees.

Mr Leslie Frank Mathews, the General Manager, entered the room and watched the final process. He had also been talking to some at least of the persons engaged in this process during breaks in the process.

There was some deadlock over the selection of the final two employees.

The meeting then resolved that the method of selection for the final two employees to be selected to be made redundant was as follows. The group would assess each of the four employees on the basis of the questions asked in the employee profile (14 questions) by allocating an agreed numerical value to each question for each employee. There was some discussion and debate about each employee. Mr Masters spoke favourably about Mr Bastian. Mr Sattel did not. I should observe that in 1994 Mr Clatworthy, Mr Gavin Edward Howarth and Mr Bastian were members of the Enterprise Bargaining Committee. Mr Howarth was described as vocal, and Mr Bastian's activities on the Committee were described as destructive by Mr Leslie Frank Mathews. Mr Leslie Frank Mathews had had a discussion with them over their activities in this regard which they interpreted as threats. He denied that he had threatened their employment. The issue of Mr Bastian's involvement in the Enterprise Bargaining Committee was noted and he received three points in recognition of this involvement.

There were suggestions that Mr Bastian and Mr Clatworthy were made redundant because they had been members of the Enterprise Bargaining Committee. There were also suggestions, denied by Mr Newman, that Mr Clatworthy was made redundant because of longstanding ill-feeling between Mr Newman and the father of Mr Clatworthy, Mr Maxwell Clatworthy. That this was the case was denied by Mr Newman.

Further, when an impasse was reached, Mr Bastian and Mr Howarth wrote direct to the "head office" of the respondent, bypassing Mr Newman and Mr Leslie Frank Mathews. It was put to Mr Newman and Mr Leslie Frank Mathews that this embarrassed them, and by inference that such embarrassment played a part in the decision to make Mr Bastian redundant.

At the end of the meeting, the supervisors with Mr Newman reached agreement to choose the following to be made redundant, namely Mr Bastian, Mr Michaels, Mr Franich, Mr Clatworthy and Mr Trussell.

Mr Leslie Frank Mathews, the General Manager, after the process was completed, asked the participants if they felt that the outcome was fair and just. His evidence was that some answered "Yes" and others nodded in approval. No dissent was expressed.

However, Mr Agnew and Mr Masters sought to be assured that what occurred was a fair and legal process. Mr Newman undertook to seek such advice. He rang Mr John Robert Bainbridge, the appellant's Secretary. He did not explain to Mr Bainbridge what he sought to know. Accordingly, no assurance that the respondent union regarded the process as fair and legal was given by Mr Bainbridge. What Mr Bainbridge

conveyed, according to Mr Newman's evidence, was that if the process was fair and there were no complaints it was not an issue for the union. Mr Newman reported back that the process was legal.

Mr Bastian was subsequently offered another position which became vacant.

In due course, employees, including those the subject of this appeal, it having been decided to retrench them, were dismissed.

FINDINGS, CONCLUSIONS AND OBSERVATIONS OF THE COMMISSION AT FIRST INSTANCE

The Commission at first instance made the following findings and observations and reached the following conclusions—

- (1) (a) That Mr Lester Ross Mathews (now the Production Manager and formerly a supervisor at the material times) was "a most credible witness".
 - (b) That he believed that the process was fair.
 - (c) That the outcome was not based on any preliminary assessment by Messrs Masters and Mathews (see page 299 of the transcript at first instance).
- (2) That, having observed Mr Newman, the Commission was satisfied that he was of good intent and that he did not attempt to influence the outcome of the selection process. Further, the Commission found that Mr Newman genuinely desired to see a fair and equitable outcome. The Commission accepted his evidence that the primary objective of the process was to make certain that all the supervisors had reviewed, to the best of their ability, the circumstances of each employee, such that they were mentally prepared to go through the process of selection of such people as they had to make redundant.
- (3) The Commission ordered witnesses out of court, but Mr Leslie Frank Mathews, the General Manager, remained in the court room apparently on the assumption that he would not be giving evidence.
- (4) Because of this, he was present or able to be present for all of the evidence.
- (5) This evidence included that of Mr Bastian and Mr Howarth as to a conversation which he was alleged to have had with them during conflict associated with the enterprise bargaining process. The Commission, having heard submissions, determined that Mr Leslie Frank Mathews could be called and found that his evidence was credible.
- (6) That Mr Howarth's and Mr Bastian's interpretation of the discussion with Mr Leslie Frank Mathews was not justified.
- (7) That Mr Leslie Frank Mathews made no attempt to influence the outcome of the selection process.
- (8) (a) That Mr Masters' evidence was self-serving and that in the end he was not alleging that the process was not fair and legal.
 - (b) That such expressions as given by himself and Mr Agnew were simply those which were understandable from people undertaking a "traumatic and unsought after process of having to choose employees to be sacked and that they sought some reassurance and comfort that what they had done was right."
- (9) (a) That the Commission was satisfied that, at the end of the meeting, when Mr Newman contacted the respondent union, he did not seek to clarify what he was asked to do, and did not accurately report back to the meeting.
 - (b) That this failure on his part did not make the process or the choices made previously in the meeting unfair.
 - (c) After a long and stressful meeting, Mr Newman was anxious for the matter to be finished.
- (10) That Mr Agnew's evidence was somewhat equivocal.
- (11) (a) That there was nothing to support Mr Clatworthy's assertion that some alleged feud existed between his father and Mr Newman, and that this was visited upon him as part of Mr Newman's choice of him for termination.
 - (b) That Mr Clatworthy's evidence, where it conflicted with other evidence, was not reliable.
- (12) (a) That the onus rested on the applicant to demonstrate that the process and/or the outcomes were unfair.
 - (b) That the process included a number of aspects which provide room for criticism, but was not unfair.
 - (c) That the survey form was for the purpose stated by Mr Newman and was an aide to discussion and no more.
 - (d) That a tallying of results without consideration of the comments made and the discussions which took place is of little value.
 - (e) (i) When the 15 names were selected for consideration for redundancy, the supervisors were invited to add or subtract names.
 - (ii) Whether they did decide to change the list is immaterial, because they did, all six, discuss and decide on each suggested change and on each person chosen.
- (13) That the Commission was satisfied that this participation resulted in Mr Bastian being chosen for redundancy or acted against his interests during the selection process.
- (14) (a) That there was room for criticism of Mr Newman not voting at the outset, but then voting when Mr Sattell was included, and for the failure to have Mr Sattell there from the outset.
 - (b) However, Mr Newman asked the others if they could be included and they agreed.
- (15) That, in reviewing the evidence of the various witnesses, there was a significant amount of discussion during the day as to the relative merits of the particular employees.
- (16) (a) That Mr Newman and the supervisors undertook a difficult, stressful and unpleasant task without fear or favour.
 - (b) That the process was not actually unfair.
 - (c) That there was no dissent expressed by any of the participants as to process or the final outcome.
 - (d) That the supervisors gave evidence that they were not placed under any pressure or intimidation in this process.
- (17) That the evidence of Mr Bainbridge was that the relationship between the company and the union "is generally positive".
- (18) (a) That the letter (exhibit H2) was not misleading or intended to mislead.
 - (b) That the Commission was not satisfied that it was intended to deliberately mislead anyone, or implied certain things which it failed to achieve.
- (19) During conciliation conferences before the Commission, the respondent clearly indicated that the employee profile forms were not determinative before it provided copies of those forms for examination by the union.
- (20) (a) That the evidence of employees who claimed that they were unfairly chosen was both very limited and subjective.
 - (b) That the Commission was not satisfied that they were unfairly selected.
- (21) That allegations that Mr Leslie Frank Mathews and Mr Newman had advised Mr Masters and Mr Agnew

to return to work because they had not been properly served with summonses to witness to attend the proceedings at first instance did not require investigation.

LEAVE TO RE-OPEN

On 19 January 1996 Mr Hocking (of Counsel) sought leave to re-open to call the evidence of Mr Agnew and Mr Masters. These gentlemen did not appear in the court, although Mr Hocking had advised the Commission at first instance that they were expected to appear. Subsequently, the Associate to the Commission at first instance received a telephone call from someone who indicated that the witnesses had attended but had been turned away when they reached the court building. The proposal had been, according to what Mr Hocking said, that they would be served with summonses to witness when they arrived at the Commission.

Subsequent to that, a conference was convened in Chambers by the Commission to discuss the situation, and no agreement was reached (see page 224 of the appeal book (hereinafter referred to as "AB")).

The Commission then directed the Registrar to conduct an investigation. On 21 December 1995 the Registrar provided the Commission with a written report of the result of his investigations into the matter. This revealed that conduct monies had not been provided to Mr Masters and Mr Agnew, that they had not arrived at the court and were met by the Production Manager, Mr Lester Ross Mathews, formerly a supervisor, who asked them if they had been given a summons and any money to which they replied "No". Mr Lester Ross Mathews then told them to return to work as there was no-one to run the factory. Mr Masters and Mr Agnew explained that they had been called into the Commission and that they were to be given summonses when they arrived. Mr Masters and Mr Agnew returned to work, however, as they had been directed. The two witnesses were volunteers attending to appear at the Commission to give evidence. Because interference occurred, the applicant, the Commission at first instance decided, should be given the opportunity to re-open its case to call those two witnesses. The Commission gave leave to re-open the case to call Mr Masters and Mr Agnew (see pages 225-226 (AB)).

EVIDENCE, FINDINGS AND CONCLUSIONS

This was a discretionary decision as that is defined in Norbis v Norbis 65 ALR 12 (HC).

Accordingly, the Full Bench may not substitute its decision for that of the Commission at first instance, unless the appellant establishes that there has been a miscarriage of the exercise of discretion as referred to in House v The King [1936] 55 CLR 499 (HC) (see, too, Gromark Packaging v FMWU 73 WAIG 220 (IAC)).

The application related to the making redundant of employees. In order to establish that a termination of employment for redundancy was unfair (see AMWSU and OPDU v Australian Shipbuilding Industries (WA) Pty Ltd 67 WAIG 733 per Brinsden J at page 734 and per Olney J at page 738 (IAC)), the appellant had at first instance to establish that the selection of those workers selected for redundancy was unfair in comparison with other workers. Further, if the process was such as to deny procedural fairness, it might also be said to be unfair (see Shire of Esperance v Mouritz 71 WAIG 891 (IAC)). For example, in a redundancy situation, where employees' conduct or performance was in question, it may be that they should be given an opportunity to defend themselves. However, it was not argued in this matter that that was denied because employees were not able to say why they should not be made redundant.

Further, where the Commission at first instance has made findings of fact based on credibility and has had the advantage of observing the witnesses in the witness box, the Full Bench should not interfere with those findings unless the Commission at first instance misdirected itself or misused the advantage which it enjoyed by seeing the witnesses (see Devries and Another v Australian National Railways Commission and Another 112 ALR 641 (HC)).

I will make some observations about the evidence in this matter. There were, it was suggested, no current allegations against which the employees needed to defend themselves. The employees were chosen because they were regarded as

the least valuable employees amongst a group of satisfactory employees whose number needed to be reduced. This was not an allegation about conduct or performance, but an assessment of relative merit.

The Commission at first instance made findings based to some extent upon its observation of the witnesses. What could properly be found upon the evidence of the witnesses, as I have summarised it above, was reasonably clear.

There was a process embarked upon by the respondent to select persons for redundancy. It does not seem to me to be in issue that this was a true redundancy situation. Unfairness was alleged in that some employees were selected and not others. The process commenced with the distribution of a profile for the purpose of having all of the supervisors involved by completing the same and taking part in the selection process. The selection of employees into groups of different standards from excellent to lower than average was made by Mr Newman. However, it was done by Mr Newman on the basis of the profiles consisting of the 14 questions being completed by all of the supervisors in relation to employees. Mr Agnew's profiles were not amongst them.

There was then a discussion of the classification of employees between Mr Newman and Mr Masters in which Mr Masters said that he had little say. However, there were discussions between them over the selections which took place for one and a half to two hours.

The next day, 12 September 1995, the 15 names selected in the lowest category of employee were written by Mr Newman on the whiteboard in the boardroom. The evidence was quite clear that all of those present had the opportunity to speak for the exclusion of names already on that list or the addition of others. There is no evidence from any witness that anyone did move to exclude any name from the list or suggest that others be added. Thus it was open to the Commission at first instance to find that those names selected by Mr Newman were approved by all of those present.

There was no evidence that any absence of Mr Agnew's profiles made any difference. In any event, he, like all of the others, had the opportunity to move to amend the list of 15 names on the whiteboard. Mr Hilsley, one of the employees supervised by Mr Sattell, was on the list, but was removed, it would seem.

In any event, it was open to the Commission to find that the list of names on the whiteboard, on which the vote (a "private vote") was taken, was approved by the five supervisors and by Mr Newman. They were those selecting. The results of the voting resulted in the elimination of some candidates.

In the end, the vote narrowed down to two candidates. These were considered by reference to the 14 questions in the profile being put to those present. The final selections were made.

There was concern amongst those present as to the legality of the process. Mr Masters certainly asked Mr Newman to check as to the legality of the process. Mr Newman did not check its precise legality with Mr Bainbridge, Secretary of the appellant, but received the conditional reply that the union would not be unhappy with the situation if the process had been carried out as fairly as it could be and if there were no complaints to the union. He did not ask Mr Bainbridge about legality or illegality. He did misleadingly tell the meeting that Mr Bainbridge was happy that there was no illegal process going on. That evidence was, in part, said to support a conclusion that Mr Newman should not have been believed.

There were a number of other criticisms of the process and the evidence. Firstly, there was evidence from all three employees made redundant that others should have been dismissed in their place. There was also evidence that Mr Bastian, Mr Michaels and Mr Clatworthy were not amongst the worst workers. There was a submission, at least as I understood it, that Mr Clatworthy and Mr Bastian were made redundant because they had been vocal members of the Enterprise Bargaining Committee. That such a finding should have been made was submitted to be based on other evidence, too.

Firstly, it was submitted that Mr Clatworthy and Mr Bastian were removed because of their activities on the Enterprise Bargaining Committee. Their evidence was that this was the case. Certainly they were involved in stormy meetings. Certainly they were cautioned (they alleged threatened) by Mr

Leslie Frank Mathews about their behaviour in this regard. Certainly, too, they went over the head of Mr Newman and Mr Leslie Frank Mathews and obtained what they wanted in relation to the enterprise bargaining agreement. Although it was denied by Mr Leslie Frank Mathews that this was an embarrassment, it was not unequivocally denied.

The opinion, as I understand it, was that Mr Howarth, the most vocal employee on the Enterprise Bargaining Committee, was not made redundant because it would not be palatable or credible if all three employee members of the Enterprise Bargaining Committee were selected for dismissal.

Next, it was submitted that Mr Clatworthy's evidence was that Mr Newman and his father, Mr Maxwell Clatworthy, had been on bad terms because Mr Clatworthy Senior had not been paid for working on a Saturday, having retired on the day before, the Friday. That was the evidence. Mr Newman, however, denied that he had any ill-feeling for Mr Grant James Clatworthy and said that he had almost forgotten the incident with Mr Clatworthy Senior. It was not clear from the evidence how Mr Newman could have borne resentment because he, as alleged, had been the cause of Mr Clatworthy Senior not being paid. It would seem to me that if the allegation were true then Mr Clatworthy Senior would be the one who bore resentment.

There was also evidence, on which submissions were based, that somehow Mr Sattell was brought in late after the first vote, in which Mr Newman did vote, to provide a bloc vote of two, Mr Newman and Mr Sattell. Mr Masters suggested this. However, there was no other evidence from Mr Lexter Ross Mathews and Mr Newman that Mr Sattell was asked in because a person supervised by him, Mr Hilsley, was on the list of 15 on the whiteboard and he should therefore have a say. Mr Agnew was not certain whether Mr Sattell was brought in to break a deadlock or because one of his supervisees was on the list of 15.

There was also a suggestion by Mr Masters that Mr Newman altered the names on the board after he and Mr Sattell came into the room, the name of either Mr Michaels or Mr Adrian Short being re-written on the board. Mr Masters asked those present if they had changed their vote and they denied it. That this occurred was not the subject of other evidence, and it would be correct not to attach much weight to it in the scheme of things.

It is quite plain that Mr Leslie Frank Mathews came into the meeting room, on his evidence, when the last two names were to be considered. He took no part in the vote. In addition, he did speak to persons in the corridor during breaks in the meeting, but as he was passing. He denied that he sought to influence the selection process. There is no evidence that he did.

Mr Newman denied that there was any mention of Mr Clatworthy being on the Enterprise Bargaining Committee in the discussions on 12 September 1995. There is no evidence that this was discussed. I do not think that the fact that employees were on any of the various committees at their place of employment could, on the evidence before the Commission, be interpreted as a factor militating against them. Mr Bastian received three points for it, on the evidence.

Next, some reliance was placed on the evidence of Mr Bastian and Mr Clatworthy that Mr Leslie Frank Mathews, the General Manager, had threatened them in that in future their employment might be in some jeopardy because of what he called destructive behaviour in relation to the proposed enterprise bargaining agreement. Mr Leslie Frank Mathews at page 367 (AB) said this—

"I gave the consideration — I said, "Bristle have always looked after their employees", and I said — I said, "Take the case of Johnny Lancer". He has — he has Parkinson's disease and things like that and he's off sick for long periods of time and things like that, and Bristle sees its employees right and pays them above and beyond, you know, what any award structure says we have to pay, and I gave them another example of one of our sales people at the time, I (sic) guy called Peter Reece, who was dying of cancer. I said, "Look, we don't see our employees down the — down the road, we look after them", and I said, "Now take your case here, because you're being so vocal and upsetting people and things like that, and you've got — and you have to work with these — the supervisors",

I said, "— imagine if you broke and (sic) leg and you were off work for a long time and the — and the supervisors came to me and said, 'Well, look, we've got to — do we keep carrying this fellow, you know, during his sickness and things like that?' ". In other words I would be looking for a recommendation from those supervisors about what — what we should be doing. I said, "You're not doing anyone any favours by getting all hot under the collar, being very vocal at meetings and also down in the factory", and I believe that's how it was taken completely out of context. I gave the example that if they broke a leg — not that I was going to break a leg."

I do read it as being in the nature of an indirect warning. I think that it is quite clearly that. However, there is no evidence that it was translated into influence over the selection process or any person involved in it.

There was no evidence, further, that Mr Leslie Frank Mathews sought to influence the selection process on 12 September 1995. Indeed, the evidence is that he did not.

I would add that, as Mr Newman conceded, his vote and Mr Sattell's vote could have had an effect, as they could have. In any event, as he also said, Mr Sattell's vote was one-sixth of the total decision made by the persons on 12 September 1995 who made the selections for redundancy. The aim of the process, Mr Newman said, was to select the best employees to remain. He said that he did not bring Mr Sattell in to influence the process and there is no evidence that he did, nor was it said by anyone at the time that, as a supervisor, he should not be there. In the end, there was clear evidence that the process was not complained about by those involved.

There was, as I have already observed, some evidence that Mr Bastian and Mr Clatworthy should have been rated differently, but that was by themselves and by individuals such as Mr Agnew and Mr Masters in relation to Mr Clatworthy Senior. There was no evidence at all that anything other than the selection process resulted in Mr Michaels being selected for redundancy.

There was clear evidence from Mr Masters that the process was not said by him to be unfair. What he said was that there had to be a better way. He also said that he had reservations about the way in which the survey was conducted, his reservations being that they filled the surveys out with the intention of going through them and using these to come up with redundancies. However, it is significant that he did not object to or criticise the placement on the whiteboard of any name which was there.

Indeed, further, Mr Masters agreed that everyone had an equal say in which employees from the 15 were to be made redundant and which were not. No-one had a disproportionate influence. At no stage did Mr Masters say that Mr Bastian, Mr Clatworthy and Mr Michaels should not be named amongst the 15 names on the whiteboard. Mr Masters admitted that he objected on 12 September 1995 to no person being selected for redundancy who was selected. Although he said that he thought that he had been used, he said that he was not stifled or thwarted.

Mr Agnew gave evidence that the process was fair and reasonable. This was corroborated by Mr Lexter Ross Mathews.

Further, Mr Leslie Frank Mathews gave evidence that at the end of the process, having said "Was a fair and just process done to select these employees to be made redundant?", he was answered by "Yes" or by nods of approval. He said that at that time and subsequently no person indicated dissatisfaction with the way in which the process was conducted. He was of opinion that it was a fair and just process.

There was a suggestion that Mr Leslie Frank Mathews' evidence should not be believed because he remained in court when witnesses were ordered out and was then called to give evidence. The Commission at first instance should have taken that into account, but, having done that, she was entitled to treat the evidence as she would that of any other witness considering its content and the witness's demeanour. There is no suggestion, upon a reading of Mr Leslie Frank Mathews' evidence, and, indeed, all of the evidence, that the Commission at first instance should have found differently as to his credibility.

There was also a submission that because Mr Newman and Mr Lexter Ross Mathews sent Mr Masters and Mr Agnew

away when they were coming to the Commission to give evidence that that was a factor to be taken into account. It may well have been. The problem, in any event, was corrected by Mr Masters and Mr Agnew being called. However, when one considers all of the evidence, such a factor, if it were relevant, could not affect the findings or the evidence as it was given at first instance.

There was nothing in the evidence which indicated that a fair result was not sought to be achieved and not achieved. There was nothing in the evidence to properly persuade the Commission at first instance (notwithstanding the evidence as to methodology from Mr Peter Paul Stanton and Mr Bainbridge), given that she was entitled to categorise the evidence of Mr Bastian, Mr Michaels and Mr Clatworthy as self-serving when they assessed their own worth, to justify a finding that any other person should have been made redundant.

The Commission at first instance was entitled to find that the process was fair and not subject to influence so as to taint it with unfairness or to achieve an unfair result. The Commission was entitled to find that the process was not affected or influenced by any external process.

Upon a reading of all of the evidence, it was open to the Commission at first instance to find as I have outlined above. The Commission did not, as the examination I have made of the evidence above demonstrates, misuse its advantage in seeing the witnesses nor misdirect itself as to the evidence so as to fall into error.

GROUND 1

By ground 1, it is alleged that the Commission at first instance erred in law by drawing conclusions not based on the evidence, by taking account in her decision by statements made during conciliation conferences.

Of course, the Commission did find that the employee profile forms were not determinative before it provided forms for examination by the respondent (see page 37 (AB)). The Commission had already observed on the same page and earlier that it was not satisfied that, by using the employee profiles in the way that it did, the company did mislead anyone or implied certain things which it failed to achieve. On the evidence, as my observations earlier in these reasons show, it is quite clear that that finding was open.

That ground is not made out.

GROUND 2

This ground alleges that the Commission at first instance failed to undertake any adequate assessment of the evidence given by Mr Masters where it was in conflict with that of Mr Lester Ross Mathews and otherwise. For reasons which I have demonstrated and will demonstrate, that was not so.

That ground is not made out.

FOUNDATIONS 3 AND 4

By ground 3, it is alleged that the Commission at first instance failed to undertake any adequate assessment of the evidence given by Mr Agnew. By ground 4, there is an allegation that the Commission at first instance inadequately assessed the evidence given by Mr Newman. Having regard to the findings of the Commission and my abovementioned observations, that was not the case.

Those grounds are not made out.

GROUND 5

This ground alleges that Mr Clatworthy's evidence was inadequately assessed. In particular, it was alleged that the Commission at first instance erred in not accepting the evidence that there was a feud between Mr Clatworthy Senior, the father of Mr Grant James Clatworthy, and Mr Newman, because Mr Clatworthy's evidence was not supported. The Commission also concluded that Mr Clatworthy's evidence where it conflicted with other evidence was not reliable.

Mr Newman's evidence was that Mr Clatworthy Senior was not paid on his last day of work after over 40 years' service. It was submitted that it should have been concluded that Mr Newman did harbour enmity towards Mr Grant James Clatworthy, which was evidenced by his attitude to him in the factory after the enterprise bargaining agreement negotiations. Mr Newman, in his evidence, acknowledged what had occurred with Mr Clatworthy Senior. However, he said that he had almost forgotten it, and that Mr Clatworthy Senior had

volunteered to work that day. Mr Newman denied any enmity towards Mr Clatworthy Senior or Mr Grant James Clatworthy.

I have seen nothing in the evidence to say that the Commission at first instance, having observed the witnesses, was wrong in the conclusion which it reached. Mr Clatworthy's evidence was not supported and the Commission did not believe him. The Commission was asked to draw the conclusion that there was enmity in Mr Newman against Mr Clatworthy Senior, too, and that such enmity carried on against Mr Grant James Clatworthy, and, as a result, he was dismissed.

The Commission did not err in the view it took. In any event, even if Mr Newman had such enmity there is no evidence that he so influenced or overawed the other members of the Committee that they chose Mr Clatworthy because of that enmity. That is the view which I have set out above in these reasons also.

That ground is not made out.

GROUND 6

The Commission at first instance is said to have erred, to summarise the ground, in that it failed to accept the evidence of Mr Bastian and Mr Howarth. It was submitted that it was an error to give Mr Leslie Frank Mathews' evidence more weight than it ought properly to have been given when compared to theirs. Further, it was submitted that no adequate weight was given to the fact that Mr Leslie Frank Mathews was permitted to sit in court to hear all of the witnesses and was then allowed to give evidence, even though witnesses had been ordered out of court.

The appellant complained that there was a failure to give any or any due consideration or weight to Mr Bastian's and Mr Howarth's evidence that Mr Bastian was dismissed because he had taken an active part in the Enterprise Bargaining Committee, and Mr Howarth was not dismissed because he was very outspoken. Presumably, a further inference was that because he was very outspoken the respondent would not wish to risk selecting him for redundancy. My above comments deal with that ground, too.

That ground is not made out.

GROUND 7

It was submitted, to put it shortly, that the Commission at first instance erred in deeming credible the evidence of Mr Leslie Frank Mathews and giving weight to that evidence. It was submitted, firstly, that the Commission erred in drawing the conclusion that Mr Leslie Frank Mathews' attendance at the meeting of supervisors was not sinister or a threat.

Having regard to the evidence of all those supervisors called to give evidence that they were not intimidated, there can be no substance in that submission.

It was also submitted that the Commission erred in law in giving more credibility and weight to the evidence of Mr Leslie Frank Mathews than it should have been given because he had sat through all of the evidence when he should have been excluded.

In my opinion, it was open to the Commission to consider that evidence when assessing credibility, but the fact that he sat in court was not fatal to his evidence being believed. It was one factor to be considered, along with the substance of his evidence and his demeanour, in assessing his credibility. My above comments dispose of that ground.

The Commission did not err. That ground is not made out.

GROUND 8

By this ground it is claimed that the Commission at first instance failed to undertake any adequate assessment of the evidence of Mr Lester Ross Mathews. It was submitted that Mr Lester Ross Mathews apparently with the imprimatur of Mr Leslie Frank Mathews and/or Mr Newman estopped Messrs Masters and Agnew from attending to give evidence, that he did so to advance his employer's case and that his evidence was likely to be coloured by an intent to advance his employer's case. As a result, his evidence would be unreliable, so the submission went.

That ground is not made out.

GROUND 9

It was submitted, in support of this ground, that the Commission at first instance found that Mr Bastian "must have

received some negative consideration over his enterprise bargaining involvement", and yet failed to properly draw the conclusion that this constituted an industrial unfairness. It seems to me that, unless that negative consideration would prove to be instrumental in Mr Bastian being selected for redundancy, then it could not be properly said to have constituted an industrial unfairness. Further, my reasons above demonstrate that that ground is not made out.

GROUND 10

By this ground, it was submitted that the Commission at first instance erred in giving weight to the evidence of Mr Sattell and failing to draw conclusions from that evidence, favourable to the appellant's case. This included failing to give adequate weight to evidence that Mr Sattell had "a problem" with Mr Bastian prior to the meeting on 12 September 1995, and therefore failing to draw conclusions that Mr Sattell was more likely than not to select Mr Bastian for redundancy irrespective of his qualities as an employee, failing to properly draw the conclusion on the evidence that Mr Sattell was unusually critical of Mr Bastian in the supervisor's meeting, and failing to draw the conclusion, which was open on the evidence, that Mr Sattell did not assess Mr Bastian fairly or on his merits as an employee. The answer to that is, of course, that the selection of Mr Bastian was made by six persons including Mr Sattell and there was no evidence of any dissent and no evidence that there was any coercion. I again refer to my comments earlier in these reasons.

That ground is not made out.

I should add that the Commission, in my opinion, did properly assess all of the evidence. It was not established either that the Commission erred in the weight which it attached to the evidence, or that it misused the advantage enjoyed by the Commission in seeing the witnesses; nor was its decision against the evidence or the weight of the evidence.

I have read and considered carefully all of the evidence. I have considered carefully all of the submissions. There was no miscarriage of the exercise of the Commission's discretion as I have found. The appellant did not establish that the dismissals were unfair, at first instance. No ground of appeal is made out. I would dismiss the appeal.

COMMISSIONER A R BEECH: I also would dismiss the appeal. The appellant in this particular case faces an extraordinarily difficult task in persuading the Full Bench that it should overturn the decision of the Commission at first instance. It is not inaccurate to summarise the appellant's case as turning upon arguments that the Commission at first instance should have preferred the evidence of some witnesses over the evidence of others and in failing to do so committed an error which the Full Bench should correct. However it is clear that when an appellate tribunal is considering questions of weight it should not regard itself as being in the same position as the Commission at first instance who has the advantage of seeing and hearing the evidence (*Lovell v Lovell* (1950) 81 CLR 513 at 519 as cited in *AMWSU v RRIA* (1989) 69 WAIG 985 by Kennedy J at 988). In the absence of the exclusion of relevant considerations, or the admission of irrelevant considerations, an appellant tribunal should not set aside an order made in the exercise of a discretion unless a failure to give adequate weight to relevant considerations really amounts to a failure to exercise the discretion actually entrusted to the Commission.

That is essentially the position here. The conclusion urged upon the Commission by Mr Hocking may well have been open on the evidence if the Commission at first instance had indeed seen the evidence in the way he described. However, that was not the case and there is no basis for finding that the discretion of the Commissioner at first instance erred. Thus, for example, the ground of appeal which alleges that Mr Masters' evidence was not given an adequate assessment disguises the fact that Mr Masters' evidence was dealt with during the course of the Reasons for Decision of the Commission at first instance. That the Commission did not see the need to separately scrutinise his evidence to properly reach her conclusion is not an error: there is no requirement on the Commission to deal with every item of evidence in reaching a conclusion (*FMWU v FCU and Others* (1985) 65 WAIG 2033 per Brinsden J at 2034).

Again by way of example, the appellant may be correct in its criticism of Mr Newman for allowing his managers to believe he had sought legal advice regarding the selection process when, in fact, he had not done so. However the fact remains that this was a circumstance taken into account by the Commission at first instance and no error is demonstrated of the kind which warrants correction on appeal. The Commission at first instance examined the evidence of the witnesses in a comprehensive manner and concluded that whilst there may be room for criticism of the process the Commission was not satisfied that it was actually unfair. I have not been persuaded that the Commission applied an incorrect test in reaching that conclusion and there is nothing in the proceedings before the Full Bench which would warrant any conclusion other than that the appeal should be dismissed.

COMMISSIONER R H GIFFORD: I agree with the draft Reasons for Decision of His Honour the President, and in turn agree that the appeal be dismissed.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Order accordingly.

Appearances: Mr G Hocking (of Counsel), by leave, on behalf of the appellant.

Mr M Beros on behalf of the respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of
Australia, WA Branch

(Appellant)

and

Bristle Clay Tiles

(Respondent)

(No 500 of 1996)

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
COMMISSIONER A.R. BEECH.
COMMISSIONER R.H. GIFFORD.

11 October 1996.

Order:

This matter having come on for hearing before the Full Bench on the 29th and 30th days of July 1996, and having heard Mr G Hocking (of Counsel), by leave, on behalf of the appellant and Mr M Beros on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 11th day of October 1996 wherein it was found that the appeal should be dismissed, it is this day, the 11th day of October 1996, ordered that appeal No 500 of 1996 be and is hereby dismissed.

By the Full Bench,

[L.S]

(Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Federated Brick, Tile and Pottery Industrial Union of
Australia, WA Branch

(Appellant)

and

Bristle Clay Tiles

(Respondent)

No. 500 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
COMMISSIONER A.R. BEECH.
COMMISSIONER R.H. GIFFORD.

11 October 1996.

Order.

This matter having come on for hearing before the Full Bench on the 29th and 30th days of July 1996, and having heard Mr G Hocking (of Counsel), by leave, on behalf of the appellant and Mr M Beros on behalf of the respondent, and the appellant herein having made application to extend time to file and serve appeal books, and reasons for decision being delivered on the 11th day of October 1996, it is this day, the 11th day of October 1996, ordered that time be and is hereby extended to and including the 10th day of May 1996 for the appellant herein to file and serve appeal books.

By the Full Bench,

[L.S]

(Sgd.) P.J. SHARKEY,
President.WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Douglas Bestall t/a Besta Interlocking
Modular Building Systems
(Appellant)

and

Ru Cai Zhang t/a C W Trading
(Respondent).

No. 1054 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER P E SCOTT.

4 October 1996.

Order.

THIS matter having come on for hearing before the Full Bench on the 4th day of October 1996, and having heard Mr D Bestall on his own behalf as appellant and there being no appearance by or on behalf of the respondent, and the Full Bench having made such an order as is necessary or expedient for the expeditious and just hearing and determination of the appeal herein, and the appellant herein having consented to waive his rights to speak to the minutes of proposed order, it is this day, the 4th day of October 1996, ordered that the hearing and determination of appeal No 1054 of 1996 be and is hereby adjourned sine die.

By the Full Bench

[L.S]

(Sgd.) P.J. SHARKEY,
President.WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Howard Flaherty
Appellant.

and

Siemens Australia Limited
Respondent.

No 439 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER R N GEORGE
COMMISSIONER R H GIFFORD.

18 October 1996.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Commission, constituted by a single Commissioner, and is brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act").

By the decision the Commission at first instance, on 26 February 1996, dismissed an application by the appellant wherein the appellant alleged unfair dismissal and sought an order for reinstatement and that he be paid benefits to which he was entitled under a contract of employment which had not been paid.

The background to the matter was this. The application at first instance was the second application brought by the appellant, Gary Howard Flaherty, in the Commission. There was an application in identical terms to application No 559 of 1995 made by him on 5 January 1995 which was more than 28 days after the date on which Mr Flaherty claimed that he was dismissed.

The respondent, Siemens Australia Limited (hereinafter referred to as "Siemens"), argued that the Commission did not therefore have the jurisdiction to entertain Mr Flaherty's application. The Commission upheld this submission, held that it had no jurisdiction, and dismissed Mr Flaherty's application (see *Flaherty v Siemens Australia Limited 75 WAIG 1676*) on 1 May 1995.

The relevant provisions of the Industrial Legislation Amendment Act 1995 then came into operation on 9 May 1995.

On 7 April 1995, which was before the decision of this Commission of 1 May 1995, the appellant lodged in the Industrial Relations Court of Australia an application claiming unlawful termination of employment under s.170EA of the Industrial Relations Act 1988 (Cth) (as amended) (hereinafter referred to as "the Federal Act").

That section, in its relevant parts, reads as follows—

"170EA (1) [Employee may lodge application with Commission] A person (the *employee*) may lodge with the Commission an application for relief in respect of termination of his or her employment.

170EA (2) [Trade union may lodge application] A trade union whose rules entitle it to represent the industrial interests of an employee (the *employee*) may, on the employee's behalf, lodge with the Commission an application for relief in respect of the termination of the employee's employment.

170EA (3) [Time limit for lodgment] An application under subsection (1) or (2) must be lodged:

- (a) within 14 days after the employee receives written notice of the termination; or
- (b) within such further period as the Commission allows on an application made during or after those 14 days."

S.170CD of the Federal Act reads as follows—

"70CD (1) [Employee not employed under award conditions] The following Subdivisions do not

apply to a termination of employment of an employee who is not employed under award conditions if:

- (a) in respect of an employee who was continuously employed by the employer during the period of 12 months immediately before the termination day—on the termination day the employee's relevant wages exceeded the applicable amount; or
- (b) in respect of an employee who was continuously employed by the employer for a period less than 12 months immediately before the termination day—on the termination day the employee's relevant wages exceeded the amount worked out using the formula:

$$\frac{\text{days employed}}{365} \times \text{applicable amount}$$

170CD (2) [Amount] The applicable amount for the purposes of subsection (1) is:

- (a) subject to paragraph (b), \$60,000; or
- (b) if regulations made in accordance with Subdivision CA prescribe a formula for the annual indexation of the amount referred to in paragraph (a)—the amount worked out using that formula as it applies from time to time.

170CD (3) [Non-award employee] For the purposes of this section, an employee is taken not to be employed under award conditions if wages and conditions of employment of the employee are not regulated by one or more relevant awards that bind the employer of the employee.

170CD (4) [Terms defined] In this section:

“**days employed**” means the number of days in the period for which the employee was continuously employed by the employer immediately before the termination day;

“**relevant award**” means an award or a State award;

“**relevant wages**”, in relation to an employee, means the total amount of the wages that the employee received, or was entitled to receive, from the employer in respect of:

- (a) if paragraph (1)(a) applies to the employee—the period of 12 months referred to in that paragraph; or
- (b) if paragraph (1)(b) applies to the employee—the lesser period referred to in that paragraph;

but, in relation to an employee whose contract of employment prescribes normal hours for the performance of work (whether by prescribing the number of hours in which, or the times at which, work is normally to be performed in a particular period), does not include any wages, additional to normal wages, in respect of additional hours of work performed or in respect of work performed at other times;

“**termination day**” means the day on which the employer terminated the employee's employment;

“**termination of employment**” means a termination of employment that occurred before, or occurs after, the commencement of this section, but does not include a termination of employment in respect of which an application was made to the Court before that commencement.”

The application remained, at that time, undetermined by the Industrial Relations Court of Australia.

The application which was therefore before the Commission at first instance was lodged as application No 559 of 1995 on

22 May 1995 ((ie) within 28 days of 9 May 1995 when the provisions of the Industrial Legislation Amendment Act 1995 came into operation).

The Commission dealt with some submissions which were not before us on this appeal. The Commission then went on to deal with the two separate heads of argument, the sole question before the Commission at first instance being whether it had jurisdiction to hear and determine application No 559 of 1995.

The Commission considered s.42(3) of the Industrial Legislation Amendment Act 1995, which reads as follows—

“(3) Notwithstanding section 29(2) of the principal Act, a referral by any employee in respect of a dismissal—

(a) that occurred before the coming into operation of this section; and

(b) that is, on the coming into operation of this section, the subject of an application under section 170EA of the Industrial Relations Act 1988 of the Commonwealth that has not been determined under that Act,

may be made under section 29(1)(b)(i) of the principal Act not later than 28 days after the coming into operation of this section.”

The Commission found that it was necessary that the application lodged pursuant to s.170EA of the Federal Act be an application which is capable of being determined under that Act because s.42(3) of the Industrial Legislation Amendment Act 1995 requires the application to be one which is capable of determination under that Act.

The Commission concluded that whether the application made pursuant to s.170EA of the Federal Act is capable of being determined is a matter which would be determined by the Industrial Relations Court of Australia.

Mr Clohessy, as agent, lodged a notice of discontinuance of that application on 10 August 1995. Mr Clohessy informed the Commission that this was done because there was an argument regarding jurisdiction because of Mr Flaherty's salary which would not exist if his application were brought by means of s.42(3) of the Industrial Legislation Amendment Act 1995 before this Commission.

The only evidence on oath or affirmation before the Commission was exhibit 1, the affidavit of Mark Baxter, Manager, Personnel, of the respondent, which was accepted in evidence by Mr Clohessy (see page 45 of the transcript at first instance (hereinafter referred to as “TFI”)).

Mr Flaherty was employed by the respondent from 1 March 1994 to 6 December 1994. His conditions of employment included an annual salary of \$56,268.00, a car allowance of \$9000.00 per annum, superannuation benefits, and payments pursuant to Siemens' incentive scheme of \$1000.00 per month. During September 1994 Mr Flaherty's car allowance was increased to \$11,000.00 and his annual salary was also increased to \$59,076.00.

The Commission at first instance found that “relevant wages” (as defined in the Federal Act) referred to Mr Flaherty's salary only and does not include the incentive payment, nor the car allowance (see Ardino v Count Financial Group Pty Ltd 126 ALR 49 (IRC of A)).

Mr Flaherty received or was entitled to receive \$59,076.00 per annum, which is less than the prescribed amount of \$60,000.00 per annum, so the Commission found.

Mr Flaherty was employed for less than 12 months and the relevant wages were then to be calculated in accordance with s.170CD(1)(b) of the Federal Act.

The Commission found that Mr Flaherty actually received \$46,351.71, applying the formula prescribed in s.170CD(1)(b).

On the evidence before the Commission, Mr Flaherty would not have been able to have his application determined pursuant to s.170EA of the Federal Act because the amount of wages which he received exceeded the applicable amount prescribed, so the Commission found, also.

The Commission then held that Mr Flaherty's claim that he was harshly, oppressively or unfairly dismissed was not one covered by s.42(3) of the Industrial Legislation Amendment Act 1995, and, accordingly, the Commission did not have the jurisdiction to deal with this claim.

After the Commission reserved its decision Mr Clohessy, the agent and advocate for the appellant (then the applicant), wrote to the Commission seeking to have the proceedings re-opened. In his letter he said that the affidavit of Mr Mark Baxter had not previously been known to Mr Flaherty and that Mr Flaherty disputed one of the monthly figures contained in attachment 4 to that affidavit. He forwarded to the Commission a facsimile of a document on Siemens' letterhead showing as at 5 December 1994 that Mr Flaherty's salary received was, in fact, \$44,008.02.

The application to re-open was opposed by Siemens, through their solicitors, Parker and Parker. The latter wrote to the Commission insisting that proof of the disputed amount had been sent to Mr Clohessy.

The Commission at first instance held that it had a discretion to re-open proceedings, but it should do so only if circumstances are such that the fresh evidence is so material that the interests of justice require it, that the evidence, if believed, would most probably affect the result, and, further, that the evidence could not by reasonable diligence have been discovered before (see *Watson v MTT* [1965] WAR 88 (SC of WA)). The Commission held that it should not re-open the proceedings. Mr Mark Baxter's affidavit had been admitted with the agreement of the parties and that was confirmed by Mr Clohessy (see page 45 (TFI)). Mr Flaherty had been clearly put on notice concerning these issues. Because of these findings, the Commission decided that it should not re-open proceedings, on the authority of *Watson v MTT* (op cit) (SC of WA) and said—

“In my view this is a clear example of circumstances where the fresh evidence now sought to be addressed could easily have been anticipated and, with due diligence, the evidence could have been produced to the Commission at the time.”

The Commission held that there was no jurisdiction to entertain Mr Flaherty's claim that he was harshly, oppressively or unfairly dismissed because it was lodged out of time and does not come within s.42(3) of the Industrial Legislation Amendment Act 1995.

The Commission held, too, that Mr Flaherty's claim pursuant to s.29(1)(b)(ii) of the Act was lodged after his employment with Siemens ended on 6 December 1994.

The Commission also found as follows. Before 9 May 1995, a claim by an employee after the termination of the employment, that he or she had not been allowed a benefit under the contract of employment was not an industrial matter unless there was also a claim for reinstatement (see *Coles Myer Ltd t/a Coles Supermarkets v Coppin and Others* 73 WAIG 1754 (IAC)). Thus, in relation to Mr Flaherty's first application before the Commission, once his claim that he was unfairly dismissed was held not to be before the Commission, then his claim for contractual benefits similarly lapsed because it was not an industrial matter. Also, Mr Flaherty's claim applies to events which occurred before s.7(1a) of the Act was amended on 9 May 1995 and the legislation was not retrospective in its operation. Therefore, Mr Flaherty could not rely on s.7(1a) of the Act to bring his claim to the Commission. For those reasons, the application was dismissed.

ISSUES AND CONCLUSIONS

The grounds of appeal in this matter were not the subject of proper particulars and the Full Bench directed that these be provided. Notwithstanding that some of the particulars were ambiguous, the Full Bench proceeded to hear the appeal. I should also add that ground 1 was abandoned.

It was at times difficult to ascertain whether all of the arguments for the appellant were directed to the grounds of appeal and the particulars of the appeal, or whether the arguments were arguments directed to different points.

However, the crux of the matter was this. The Act was amended by s.42(3) of the Industrial Legislation Amendment Act 1995, which came into operation on 9 May 1995. By that provision, a referral of a matter to the Commission in respect of a dismissal which occurred before the coming into operation of s.42(3) of the Industrial Legislation Amendment Act 1995, and which on the coming into operation of s.42(3) was the subject of an application under s.170EA of the Federal Act which had not been determined under that Act, might be made under s.29(1)(b)(i) of the principal Act ((ie) the Act). However,

it was competent to make such a referral, provided it was made no later than 28 days after the coming into operation of s.42(3) of the Industrial Legislation Amendment Act 1995 on 9 May 1995.

The application was made on 22 May 1995 and was therefore made within the requisite 28 days. The dismissal of the appellant occurred before the coming into operation of s.42(3) of the Industrial Legislation Amendment Act 1995.

The question before the Commission was whether, on the coming into operation of s.42 of the Industrial Legislation Amendment Act 1995, the dismissal was the subject of an application under s.170EA of the Federal Act which had not been determined. The Commission found and found correctly that the dismissal (or termination of employment) was the subject of an application made under s.170EA to the Industrial Relations Court of Australia and not determined as at the date that s.42 of the Industrial Legislation Amendment Act 1995 came into operation.

The Commission at first instance was required to determine whether it had jurisdiction to hear and determine the appellant's application. In order to do so, it was necessary to determine that all of the conditions precedent prescribed in s.42(3) of the Industrial Legislation Amendment Act 1995 had been complied with. One of those was the requirement that, as at 9 May 1995, there was an undetermined application under s.170EA of the Federal Act of which the subject of application No 559 of 1995 was also the subject. There was no doubt, as I have said, that that was the case.

The question was, firstly, whether it sufficed that there was an application made under s.170EA of the Federal Act or whether it was necessary that the application was competent or valid. The Commission held that the application under s.170EA must be one which is capable of determination under the Commonwealth Act. The Commission also held that it was unlikely that it was intended to apply to a dismissed employee whose dismissal occurred before the coming into operation of that section who was not able to have a claim for unlawful termination determined under that Act.

It seems to me obvious that the application under s.170EA of the Federal Act referred to in s.42(3)(b) of the Industrial Legislation Amendment Act 1995 would be required to be within jurisdiction before it could be said to be an application for the purposes of s.42(3)(b). Otherwise, the mere making of an invalid application could found jurisdiction in this Commission. That would lead to absurdity and defeat the provisions of s.42(3). In the context of the whole of the Act and of the Industrial Legislation Amendment Act 1995 that is a proper interpretation (see *Norton v Long* [1968] VR 221 per Winneke CJ (SC of Vic)).

It was submitted by Mr Clohessy that, determining whether the application by the appellant under s.170EA of the Federal Act was competent, was none of the Commission's business, and, as I understood his submission, that the mere existence of an application under s.170EA was sufficient to found jurisdiction in the Commission. For the reasons which I have set out above, that is not a submission which I would accept. In any event, the argument was not related to any ground of appeal, but to particular 2 of ground 2 which was not, as I understand it, a particular of any ground of appeal.

By virtue of s.170CD of the Federal Act the Industrial Relations Court of Australia did not, at the material time, have jurisdiction over a claim relating to termination of employment of an employee not employed under award conditions, if the termination of employment related to an employee continuously employed by the employer during the 12 months before the termination day whose relevant wages exceeded the applicable amount on the termination day. The relevant wage amount was prescribed at \$60,000.00. However, in the case of an employee employed for less than 12 months immediately before the termination day, there would not be jurisdiction where on the termination day the employee's relevant wages exceeded the amount worked out using the formula—

$$\frac{\text{“days employed”}}{365} \times \text{applicable amount”}$$

“Relevant wages” is defined as follows in s.170CD(4) of the Federal Act—

“**“relevant wages”**, in relation to an employee, means the total amount of the wages that the employee received, or was entitled to receive, from the employer in respect of:

- (a) if paragraph (1)(a) applies to the employee—the period of 12 months referred to in that paragraph; or
- (b) if paragraph (1)(b) applies to the employee—the lesser period referred to in that paragraph;

but, in relation to an employee whose contract of employment prescribes normal hours for the performance of work (whether by prescribing the number of hours in which, or the times at which, work is normally to be performed in a particular period), does not include any wages, additional to normal wages, in respect of additional hours of work performed or in respect of work performed at other times;”

The phrases “termination day” and “termination of employment” are also defined in s.170CD.

It was submitted that the Commission at first instance should not have taken into account what the appellant’s salary was prior to 30 June 1994, since \$60,000.00 was prescribed as the limit only on 30 June 1994 and any earnings prior to this date were irrelevant.

S.170CD of the Federal Act, read as a whole, makes it clear that on the termination day if the relevant wages exceeded the applicable amount of \$60,000.00 then there is no jurisdiction. “Relevant wages” are defined to mean the total amount which the employee received or was entitled to receive from the employer for the period of 12 months referred to in s.170CD(1)(a) or the lesser period referred to in s.170CD(1)(b). It is abundantly clear therefore that because of that prescription Mr Clohessy’s argument had no merit (see *Ardino v Count Financial Group Pty Ltd* (op cit) (IRC of A)). In addition, the definition of “termination of employment” (see s.170CD(4) above) supports that view.

The Commission at first instance calculated the relevant wages in accordance with the formula prescribed in s.170CD(1)(b) of the Federal Act, it being undisputed that the appellant was employed for less than 12 months prior to the termination of his employment. The affidavit of Mr Mark Baxter, the Manager, Personnel, of the Siemens, which was accepted in evidence, justified findings that the appellant was employed for a period of 281 days at an annual salary of \$56,268.00, increased in September 1994 to \$59,076.00 per annum. The relevant wages were therefore as calculated \$46,191.78, which meant, as the Commission at first instance found, that he was paid more than the relevant wage (see also annexure MB4 to the affidavit, exhibit 1).

(I should add that I am not persuaded that entitlements to commission are necessarily part of the relevant wage on the submissions made upon this appeal, although I may be persuaded to that view on another occasion).

Notwithstanding Mr Clohessy’s submissions, I can see no error in the calculations made by the Commission at first instance or its finding that the total amount received by the appellant or entitled to be received as a wage, was greater than the applicable amount prescribed by and calculated in accordance with s.170CD of the Federal Act. The Commission was therefore correct in finding that there was no competent application made in accordance with s.170EA, and that therefore there was no jurisdiction in the Commission under s.29 of the Act.

There was a further complaint in the grounds of appeal. That was that the appellant was not given leave to re-open to adduce further evidence.

On 27 November 1995 the appellant, through Union Industrial Advisory Services Pty Ltd, sought by forwarding a copy of a letter of that date forwarded to Parker and Parker, solicitors for the respondent, to the Associate to the Commission at first instance to obtain leave to re-open, at least by implication. This occurred after the Commission’s decision was reserved and after both parties had closed their cases on 24 November 1995. The bases seem to have been that the appellant now took issue with calculations and items set out in Mr Mark Baxter’s affidavit (exhibit 1) and the

annexures thereto. The affidavit had been tendered without objection and not challenged in the proceedings before the Commission at first instance. Indeed, (see page 45 (TFI)) it was admitted into evidence without objection (see also page 9 (TFI)). The letter signed by Mr Clohessy complained that the first time that the appellant became aware of the affidavit was on 25 November 1995 (see pages 68-69 of the appeal book (hereinafter referred to as “AB”)). Parker and Parker, solicitors for Siemens, did object to the forwarding of a copy of the letter to the Commission.

By letter dated 4 December 1995 Mr Clohessy formally sought leave to re-open the matter. That letter to the Commission did not indicate for what purpose such leave was sought. It contains no indication that the appellant would seek to adduce further evidence (see page 67 (AB)).

On 5 December 1995 the Acting Associate to the Commission at first instance replied in which, inter alia, the Acting Associate in the last two paragraphs said this (see pages 65-66 (AB))—

“On the 5th December the Commission received a further letter from Mr Clohessy which seeks to have the matter formally re-listed. It is not clear from the letter what reasons are relied on for making the application to re-open and whether the Commission should do so will depend upon the circumstances.

The Commission requests that a statement of the reasons relied on for the application to re-list the matter be forwarded to the Commission and the respondent. Following the receipt of the statement the Commission will hear from the parties formally on the application to re-list the matter.”

By letter dated 23 December 1995 the appellant’s advocate sought to re-open to challenge some facts in exhibit 1 and to argue that exhibit 1’s acceptance “ought to be qualified”.

On 11 January 1996 Parker and Parker wrote to the advocate for the appellant enclosing a copy of a letter to the Commission and forwarding a bank reconciliation statement to verify that amounts deposited to by Mr Mark Baxter in his affidavit as having been paid had been drawn on 14 April 1995 (see page 60 (AB)).

On 11 January 1996 the solicitors for the respondent wrote to the Commission referring to Mr Clohessy’s correspondence with them in which, inter alia, they submitted that the affidavit had been tendered without objection and with admissions as to its contents. There was an objection to any attempt to introduce new evidence.

The Commission, having considered this correspondence, then refused to allow the appellant to re-open, for the reasons which I have summarised above.

The appellant now alleges that that was an error, that it was denied natural justice and that, in so deciding, the Commission at first instance acted contrary to s.26 of the Act. It is not altogether clear whether the appellant wished to adduce new evidence or not. It seems that he wished to re-argue the weight and contents of the affidavit. In any event, if fresh evidence were to be adduced, it is not clear that it was so material that the interests of justice required it. More cogently, there was nothing which with reasonable diligence could not have been discovered before the application was heard or before the Commission’s decision was reserved (see *Watson v MTT* (op cit) (SC of WA)).

As the Commission observed, Mr Flaherty was clearly put on notice of all of the issues.

The matter had been listed for the determination of the jurisdiction only with seven weeks notice of hearing. Mr Mark Baxter’s affidavit was admitted with the agreement of the parties.

Further, it will only be in the most exceptional circumstances that a party will be permitted to raise a new argument after the case has been decided against him when he has failed either deliberately or inadvertently to put the argument during the hearing (see *Metwally v University of Wollongong* 60 ALR 68 (HC)). In this case, the case had not been decided against the appellant, but the principle, in my opinion, was still applicable. A nice question arises whether the doctrine of waiver or estoppel might have operated against the appellant which it is not necessary to answer (but see *Commonwealth of Australia v Verwayen* [1990] 170 CLR 394 (HC)).

The affidavit and its contents were not challenged when admitted, and the Commission at first instance was right not to allow a re-opening. In doing so, s.26 of the Act was complied with.

Further, the Commission, although it dealt with the application to re-open on the correspondence, clearly did so correctly with all of the relevant submissions before it which the parties wished to make, they having been given every reasonable opportunity to do so. (For myself, I would observe that it is probably, generally speaking, a better practice to deal with such a matter in open court unless the parties consent). For those reasons, there was no error in the Commission refusing to allow the appellant to re-open.

Next, I come to the question of whether the Commission at first instance erred in dismissing the claim for contractual benefits. The Commission correctly observed, on the authority of *Coles Myer Ltd t/a Coles Supermarkets v Coppin and Others* (op cit) (IAC), that once the claim for unfair dismissal was found not to be before the Commission, then the claim for a denied contractual benefit would not be an industrial matter. That is because the contract of employment having been terminated, the matter of a claim for contractual benefits claimed was not an industrial matter unless it was accompanied by a claim for reinstatement. It was not so accompanied once the claim for unfair dismissal was not within the Commission's jurisdiction. The situation could be changed by the introduction of s.7(1a) of the Act. However, s.7(1a) came into operation on 9 May 1995 after the events which gave rise to the appellant's claim. S.7(1a) reads as follows—

“(1a) A matter relating to—

- (a) the dismissal of an employee by an employer; or
- (b) the refusal or failure of an employer to allow an employee a benefit under his contract of service,

is and remains an industrial matter for the purposes of this Act even though their relationship as employee and employer has ended.”

In *Joyce Corporation Ltd v Lawson and Others* 76 WAIG 1653 (IAC) the Industrial Appeal Court held that s.7(1a) was not retrospective in its operation. Therefore, any claim for contractual benefits was not within jurisdiction. The Commission did not err in so finding.

No appeal ground has been made out. For those reasons, I would dismiss the appeal.

COMMISSIONER R N GEORGE: I have had the opportunity of reading the Reasons for Decision of His Honour, the President, in draft form. I agree for the reasons set out therein that no ground of appeal has been made out and have nothing to add. I would also dismiss the appeal.

COMMISSIONER R H GIFFORD: I have read the Reasons for Decision of His Honour, the President, and agree with them. I therefore agree that the appeal ought to be dismissed, and have nothing further to add.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Order accordingly

Appearances: Mr R Clohessy, as agent, on behalf of the appellant.

Mr L Levine (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Howard Flaherty
Appellant.

and

Siemens Australia Limited
Respondent.

No. 439 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER C B PARKS
COMMISSIONER R H GIFFORD.

21 June 1996.

Order.

This matter having come on for hearing before the Full Bench on the 21st day of June 1996, and having heard Mr R Clohessy, as agent, on behalf of the appellant and Mr L Levine (of Counsel) on behalf of the respondent, and the Full Bench having determined for the just and expeditious hearing and determination of the matter that it make the following orders, it is this day, the 21st day of June 1996, ordered and directed as follows—

- (1) THAT the hearing and determination of appeal No 439 of 1996 be and is hereby adjourned to a date to be fixed by the Full Bench.
- (2) THAT ground 1 of the grounds of appeal be and is hereby struck out.
- (3) THAT the respondent herein have leave to file and serve, within seven days of the 21st day of June 1996, a request for further and better particulars.
- (4) THAT the appellant herein file and serve answers to that request within a further seven days thereafter.
- (5) THAT the appellant herein give notice to the respondent, within seven days of the 21st day of June 1996, of all documents not in the appeal book upon which the appellant intends to rely and which the appellant wishes to add to the appeal book.

By the Full Bench,

[L.S]

(Sgd.) P. J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Gary Howard Flaherty
Appellant.

and

Siemens Australia Limited
Respondent.

No. 439 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
COMMISSIONER R N GEORGE
COMMISSIONER R H GIFFORD.

18 October 1996.

Order.

This matter having come on for hearing before the Full Bench on the 16th day of August 1996, and having heard Mr R Clohessy, as agent, on behalf of the appellant and Mr L Levine (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 18th day of October 1996 wherein it was found that the appeal should be dismissed, it is this day, the 18th day of October 1996, ordered that appeal No 439 of 1996 be and is hereby dismissed.

By the Full Bench,

[L.S]

(Sgd.) P. J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jacob Gilmore
(Appellant)

and

Cecil Bros, FDR Pty Ltd and Cecil Bros Pty Ltd
(Respondents).

No. 496 of 1996.

and

FDR Pty Ltd
(Appellant)

and

Jacob Gilmore
(Respondent).

No. 706 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER S A CAWLEY.
COMMISSIONER R H GIFFORD.

8th November 1996.

Reasons for Decision.

THE PRESIDENT: These are appeals against the decision of the Commission at first instance, constituted by a single Commissioner, such appeals being brought under s.49 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), the decision being one whereby on 5 March 1996 in application No 667 of 1995 the Commission—

- (1) Declared that Mr Jacob Gilmore was unfairly dismissed by FDR Pty Ltd on 1 June 1995.
- (2) Ordered—
 - (a) That FDR Pty Ltd forthwith pay to Mr Gilmore an amount of two months' salary as compensation for that unfair dismissal.
 - (b) That Cecil Bros and Cecil Bros Pty Ltd be struck out as parties to this matter.

APPEAL NO 496 OF 1996

Appeal No 496 of 1996 is made only against part of the decision, and the orders sought are as follows—

"... that the appeal be allowed and the decision varied:

- (a) to reinstate Mr Gilmore in this employment without loss of pay or benefits; or
- (b) in the alternative to increase the amount of compensation for his unfair dismissal."

The grounds of the appeal in appeal No 496 of 1996 are as follows—

- "1. The Commission erred in fact and law in finding that FDR Pty Ltd was Mr Gilmore's employer.
2. The Commission failed to have regard or sufficient regard for the conflicting evidence given by the witnesses for the Company in relation to:
 - (a) when the decision was made to make Mr Gilmore redundant;
 - (b) who made the decision to terminate;
 - (c) what information was taken into account in making that decision;
 - (d) what alternatives were considered;
 - (e) who was consulted in relation to that decision;
 - (f) when such persons were consulted; and
 - (g) what they were told.
3. The Commission erred in fact and law in finding that Mr Gilmore's dismissal was a redundancy.
4. The Commission erred in failing to have regard or sufficient regard to the manner in which Mr Gilmore was dismissed (summary dismissal) while finding that the dismissal was a redundancy.

5. The Commission erred in fact and law in finding that:
 - (a) the reason for Mr Gilmore's dismissal was to save costs;
 - (b) there is evidence to support the existence of a cost cutting plan prior to Mr Gilmore's dismissal;
 - (c) based on the operational requirements of the Company there was a valid reason for dismissal;
 - (d) Mr Gilmore did not identify cost savings which could have been introduced prior to his dismissal.
6. The Commission erred in fact and law in relying upon Exhibit 'P' to make the finding that the reason for the dismissal was to save costs, when Exhibit 'P' was a cost cutting plan prepared after Mr Gilmore's dismissal.
7. The Commission erred in:
 - (a) finding that Mr Gilmore's dismissal was a true redundancy based upon the cost saving on the reduction of the size of the workforce;
 - (b) failing to have regard or sufficient regard to the evidence that an additional employee was engaged after his dismissal to maintain production;
 - (c) finding that Mr Gilmore did not argue that other employees should have been made redundant ahead of him.
8. The Commission erred in fact and law in finding that:
 - (a) the decision to dismiss Mr Gilmore had "much to do with his performance ...";
 - (b) Mr Gilmore's dismissal was largely based on his performance and yet it was a true redundancy;
 - (c) the Company experienced difficulties with Mr Gilmore's conduct in all areas of his responsibility;
 - (d) Mr Gilmore did not make a profit for the Company on foreign exchange transactions;
 - (e) there was evidence that the current arrangements is not only more efficient from a financial point of view but also operates now without the problems in its day to day operations which were experienced when Mr Gilmore performed the functions.
9. The Commission failed to have regard or sufficient regard to the evidence of Mr Soto and Mrs Daniels in relation to Mr Gilmore's work performance, attitude and approachability.
10. The Commission erred in applying an onus to Mr Gilmore to identify other positions in which he could be employed within the Company to establish that his position was not redundant.
11. The Commission erred in law and fact in finding that:
 - (a) Mr Gilmore did not identify other positions in which he could be employed in the Company;
 - (b) there was no other position available for Mr Gilmore.
12. The Commission erred in failing to find that the dispute between the Company's Managing Director, Mr Danny Breckler, and his aunt, Mrs Leshem, had an ongoing effect on Mr Gilmore's employment and ultimately on the decision to dismiss Mr Gilmore.
13. The Commission erred in law and fact in failing to give weight or sufficient weight to the evidence of Mr and Mrs Leshem and Mr Gilmore in relation to Mr Gilmore's performance and the connection between the family dispute and Mr Gilmore's employment, promotion and dismissal.
14. The Commission erred in law and fact by finding that Mr Gilmore was given increased responsibility and received an individual wage increase.

15. The Commission erred in fact and law in finding:
 - (a) that the decision to dismiss Mr Gilmore was raised with the Board in approximately April 1995;
 - (b) no link between the removal of Andrew Breckler as a Director of Cecil Holdings Pty Ltd and Mr Gilmore's dismissal;
 - (c) the removal of Andrew Breckler was of no great moment.
16. The Commission erred in law and fact in failing to find whether there was in fact a ground upon which the dismissal was justified for the purposes of section 23AA of the Act.
17. The Commissioner erred in law and fact in finding that:
 - (a) reinstating Mr Gilmore was "impracticable";
 - (b) the Company has met the onus of establishing that reinstatement was impracticable.
18. The Commission erred in law in adopting a lesser test of "impracticable" because of the existence of section 26 of the Act.
19. The Commission erred in law and fact in disregarding the findings in precedents quoted by him which indicated that "the practicability of reinstatement does not depend upon notions of loss of confidence in the employee".
20. The Commission erred in having undue regard to the evidence as to Mr Gilmore's character and performance in determining whether reinstatement was "impracticable" when those matters were never raised with him in his employment.
21. In the alternative, the Commission erred in assessing the amount of compensation due to Mr Gilmore."

APPEAL NO 706 OF 1996

This is an appeal by the respondent at the first instance. The orders sought in appeal No 706 of 1996 are as follows—

- "1. The appeal be allowed and the finding that the Respondent's dismissal from employment by the Appellant was unfair be quashed, and
2. Further, and in the alternative, the order increasing the amount of compensation paid by the Appellant to the Respondent consequent upon his dismissal, such that the Appellant was required to pay a further two months' salary, be quashed."

The grounds of the appeal in appeal No 706 of 1996 are as follows—

- "1. The Commission erred in law in finding that the Respondent had been unfairly dismissed by reason of:
 - 1.1 The manner of his dismissal.
 - 1.2 There having been a denial of procedural fairness.
2. The Commission erred in law in ordering the Appellant to pay to the Respondent two months' salary as and by way of compensation for his unfair dismissal in the circumstances that:
 - 2.1 There was no claim for compensation.
 - 2.2 The Respondent refused to particularise why the payment made of twelve months' salary in lieu of notice by the Appellant to the Respondent was inadequate in all of the circumstances.
3. The Commission erred in law in holding that none of the twelve months' salary of \$120,000.00 paid by the Appellant for redundancy to the Respondent in lieu of notice and as compensation for redundancy eliminated any loss or damage occasioned to the Respondent by any breach of the requirements of the Minimum Conditions of Employment Act 1993.
4. The Commission erred in law because its order resulted in the total compensation paid to the Respondent being in excess of the maximum compensation which the Appellant could be ordered to pay the Respondent in terms of the Industrial Relations Act 1979, in any event."

BACKGROUND

The background to the matter was this.

By application No 667 of 1995, Mr Gilmore alleged that he was unfairly dismissed by Cecil Bros, in the alternative FDR Pty Ltd, or, in the alternative Cecil Bros Pty Ltd, on 1 June 1995. He alleged that the reason given for the dismissal was redundancy, and alleged for the particulars set out in the application that the dismissal was unfair. He claimed reinstatement and compensation.

By its answer and counter-proposal, the respondent at first instance denied that the dismissal was unfair, claiming that it was a redundancy.

Mr Jacob Gilmore, the appellant (hereinafter "Mr Gilmore") came from Israel with his wife and family in 1988 and took up employment in the Cecil Bros group of companies, following an approach by his in-laws to Mr Danny Breckler. It was in issue as to which company Mr Gilmore was employed by. The Commission at first instance found that he was, in fact, employed by FDR Pty Ltd and not Cecil Bros Pty Ltd. That finding is challenged in these proceedings.

There are, however, two holding companies in the group, namely Cecil Bros Pty Ltd and Alec Breckler Shoes Pty Ltd.

In any event, FDR Pty Ltd is a company which is part of the Cecil Bros group of companies which run a footwear retailing business in Western Australia and all other States and Territories of Australia, except Queensland. There are about 100 stores and 1000 employees. The business is a family company. Various family groups have interests in the group. Mr Gilmore's wife, Ruth, is the daughter of Mrs Shirley Leah Leshem, who is the Life Governing Director of the group of companies. Mr Shlomol Leshem is her husband. The Managing Director is Mr Danny Breckler, who is Mrs Ruth Gilmore's first cousin. Mr Andrew Breckler, a former Director, is the brother of Mr Danny Breckler. Various other cousins and members of the family are involved as Directors and/or in the management of the group. The company imports a quantity of its wares from overseas including from Brazil and from the Asian continent.

A number of witnesses gave evidence for the respondent. These included Mr David Rhine, the Finance Director for the group, Mr Marcus Rosenwax and Mr Ian Freedman, who are directors. Mr John Freedman is the Chairman of Directors. All of these persons are members of the family. There was evidence too, from Mr Andrew Barr and Mr Michael Sims, buyers employed by the company, as well as the group General Manager, Mr Ronald Alan Boskell and the Group Accountant, Mr Peter Ian Mackay, Ms Lynn Boskell an employee of the company, Mr Michael Trestrail an employee of the company who was the manager of the distribution centre also gave evidence. Neither Mr Mackay nor Mr Boskell is a member of the family.

Having commenced employment in March 1988, Mr Gilmore at first worked in retail outlets in the metropolitan area. In approximately 1990, he was brought into head office and given a number of tasks.

When his employment ended on 1 June 1995 he was, and had been, responsible for four areas. These were industrial relations, trade marks, foreign exchange and other financial aspects, and shipping of goods and letters of credit. He was known as the importing and industrial relations officer. Mr Gilmore's evidence was that he was directly responsible to Mr Danny Breckler in these areas, but the Commission at first instance found that he was responsible to Mr Boskell in relation to industrial relations and trade marks, and to Mr David Rhine, the Financial Director, for the foreign exchange and financial aspects, shipping and letters of credit. Along with the buyers of the shoes, he was responsible to various directors of ladies', men's and children's shoes sections. The organisation chart tendered as exhibit 'O' demonstrate his disparate responsibilities.

There were complaints about Mr Gilmore's performance and attitude on the evidence. These were complaints which he rejected then and rejected in evidence at first instance. There were substantial evidence about these matters which I will refer to in these reasons. In early 1995 the respondent and the group, experienced trading and profit reductions, as a result of which there were steps taken to reduce costs. These steps included, so it was said, a decision to abolish Mr Gilmore's

position and make him redundant. His salary package was about \$120,000.00 per annum.

On 1 June 1995, without any prior warning, Mr Gilmore was asked into Mr Danny Breckler's office. Mr Boskell was also present. Mr Danny Breckler informed Mr Gilmore that the company had encountered difficulties in retail trading, that it had been necessary to try and cut costs in as many areas as possible, and that Mr Gilmore's position was therefore redundant. He was handed a letter of termination and a cheque for approximately one year's salary. He was also required to leave the premises forthwith, which he did. He told Mr Breckler and Mr Boskell "this is not redundancy". Exhibit 25 is the letter confirming the termination of Mr Gilmore's employment. The letter is also dated 1st June 1995. It advises inter alia, that FDR Ltd and its associated companies were not in a position to redeploy Mr Gilmore or to offer him an alternative position to commensurate it with his current salary. This was after the letter advised him of the abolition of his position. Enclosed with the letter was a cheque for \$92,160.92. Mr Gilmore did not and does not accept that his position was redundant.

I would also add that it was very much a part of the respondent's case that it was impracticable to reinstate Mr Gilmore in his position.

COMMISSION'S FINDINGS

There was a great deal of evidence led before the Commission about this matter and much of the evidence was in dispute.

The Commission at first instance, however, made the following findings, and reached the following conclusions and I summarise them hereunder—

- (1) That the decision to terminate Mr Gilmore's employment was made by Mr Danny Breckler, he having raised Mr Gilmore's redundancy with the Board of the company in approximately April 1995 and received its approval.
- (2) The Commission regarded his evidence as being quite crucial, and the bulk of the evidence from other witnesses served to corroborate many of the issues upon which Mr Danny Breckler based his decision.
- (3) The Commission found that the financial circumstances of the company were such that it was necessary to initiate some significant cost savings, and that for the period April, May and June 1995, savings were effected by reducing store openings and refurbishments, reducing advertising, display, visual merchandising and general expenses.
- (4) That further expenses were saved by not replacing some staff in stores and not employing two trainee managers.
- (5) That in the three months following Mr Gilmore's dismissal, further savings were made in display, visual merchandising, staff training and general expenses, as well as in stores, the property department and the special department.
- (6) That some employees in the distribution centre were retrenched.
- (7) That the decision was taken to close the "Standard Shoes" group of stores within the group which resulted in the redundancy of the group manager, also a member of the extended family, Mr Les Sevel.
- (8) The Commission accepted that the company needed to reduce its costs, and furthermore that it was the responsibility of the company to decide what changes to make in order to achieve that outcome.
- (9) That a redundancy occurs where the employer decides to reduce the size of its workforce and where the employer wishes to amalgamate jobs, both of which circumstances applied in this case.
- (10) That where an employee who is dismissed by reason of redundancy alleges that the dismissal is unfair he is generally required to show that another employee should have been made redundant ahead of that employee.
- (11) That a dispute existed within the company between Mr Danny Breckler and Mrs Leshem, Mrs Leshem being Mr Gilmore's mother-in-law and Mr Danny Breckler's aunt.
- (12) That the evidence did not establish that Mr Gilmore's dismissal by the company was linked to this dispute.
- (13) That there was uncontroverted evidence of the need to cut costs and that the company took a number of steps to achieve that end.
- (14) That Mr Gilmore was not able to demonstrate that the restructure of his various duties was not consistent with that end, nor that the dispute between Mr Danny Breckler and Mrs Leshem was the true cause of his dismissal.
- (15) That the evidence did establish that Mr Gilmore's employment was affected by the dispute, but that this was three years prior to his dismissal and had at most a tenuous connection to his dismissal because in that period he was given pay increases, including one immediately afterwards, that is after June 1992, when he was required to return his keys and limit his after hours access to the premises because of litigation between Mr and Mrs Leshem and the company.
- (16) That, in addition, his responsibilities were increased, including the responsibility for the introduction of workplace agreements, and there were expressions of satisfaction about his work from Mr Danny Breckler.
- (17) The Commission accepted, too, that the removal of Mr Andrew Breckler as a Director of Cecil Holdings Pty Ltd in May 1995 by Mrs Leshem (exhibit 32) did not, on the evidence, reveal a link between the termination of Mr Gilmore's employment and the removal of Mr Andrew Breckler. Mrs Leshem removed Mr Andrew Breckler in a letter dated 26 April 1995, effective from 15 May 1995.
- (18) The Commission found, on the evidence of Mr Danny Breckler, that the decision to dismiss Mr Gilmore pre-dated the decision to remove Mr Andrew Breckler (see pages 394, 395 and 400 of the transcript at first instance (hereinafter referred to as "TFI")).
- (19) In any event, the Commission was satisfied that the company was required to take steps to reduce its expenditure and found that the change made in relation to the functions performed by Mr Gilmore had allowed those functions to be taken on by existing personnel so that the change was, on balance, of benefit to the company.
- (20) That it was the prerogative of the company to make those changes which it saw fit to do in the circumstances, provided that in doing so it did not act harshly, oppressively or unfairly toward an employee.
- (21) That redundancy is itself a sufficient reason for dismissal.
- (22) That based on the operational requirements of the company there was a valid reason for the dismissal.
- (23) That there was a ground therefore on which the Commission could find that the dismissal was justified.
- (24) That s.23AA(1) of the Act did not impose on the employer the burden of proving the existence of a valid reason for the termination of the employee's employment.
- (25) That it required the employer to prove the possibility of the existence of that reason and not to prove the existence of that reason (see Willcocks v Makfren Holdings Pty Ltd t/a Circuit Technology (Industrial Relations Court of Australia), Decision No 392 of 1995, 22 August 1995, at page 13).
- (26) That even if the employee established that the dismissal was harsh, oppressive or unfair, his claim was taken to have been established.
- (27) That Mr Gilmore was peremptorily dismissed and given no advance warning of his impending termination, but rather attended for work in the normal course of events.
- (28) That he was dismissed and required to leave the premises immediately with no offer of counselling or an outplacement service.

- (29) That a dismissal in that manner has many of the hallmarks of a summary dismissal, indeed even a summary dismissal for misconduct. This was so, notwithstanding that the company paid him a year's salary to cover payment in lieu of notice and a redundancy payment.
- (30) That Mr Gilmore's dismissal was effected in a most summary fashion where the circumstances did not warrant it, and it was a situation which surely should have been avoided.
- (31) That it seemed harsh and unfair that a person who is doing a job to the best of his ability and who is loyal to his employer and reasonably expects to complete a full working day should suddenly be told that his job no longer existed and to go home (see Cullen v Department of Energy and Minerals (Industrial Relations Court of Australia), 31 March 1995, page 8 (unreported)).
- (32) That there was no evidence of a practice within the company to retrench its employees at any level in such a summary fashion.
- (33) That in relation to a person of equal standing, Mr Sevel, the latter was allowed to work out his notice and complete the closure of the Standard Shoes group.
- (34) That there was simply no reason, in the circumstances, advanced by the company which would warrant such treatment.
- (35) That in a memorandum to company staff they were told of Mr Gilmore's dismissal, and that merely stated that he no longer worked for the company from a given date, and contained no explanation and no mention of redundancy.
- (36) That the manner of termination was but one factor, but in some cases it could be a most important circumstance, and in this case it was.
- (37) That by virtue of s.41 of the Minimum Conditions of Employment Act 1993, where an employer who has decided to make an employee redundant, the employee is entitled to be informed by the employer as soon as reasonably practicable after the decision has been made of the redundancy and discuss with the employer the likely effects of the redundancy and measures that may be taken by the employer or the employee to avoid or minimise a significant effect. This was not done, although Mr Danny Breckler's evidence was that the company had made the decision in approximately April 1995.
- (38) That the timing of the dismissal was left to Mr Danny Breckler and he had a discretion in the timing. He chose to effect the dismissal on 1 June 1995, the termination cheque having been made ready a week earlier.
- (39) That Mr Danny Breckler conceded that he would have had every opportunity to discuss the dismissal with Mr Gilmore (see page 451 (TFI)). The point that there was a breach of the Minimum Conditions of Employment Act 1993 was a factor which is able to be taken into consideration by the Commission in deciding whether or not, in all of the circumstances, a dismissal was harsh, oppressive or unfair.
- (40) That even if the Minimum Conditions of Employment Act 1993 did not apply, there was a growing body of authority that an employer had an obligation to consult with an employee who was to be made redundant (see, for example, Quality Bakers of Australia Ltd v Goulding and Another (1995) 60 IR 327, Shearer v Action Mercantile Pty Ltd (1993) 5 VIR 149 and also Budget Couriers Equity Management v Beshara (1993) 5 VIR 173).
- (41) That the failure to consult with Mr Gilmore prior to dismissing him constituted a further reason for finding that the dismissal was harsh or unfair.
- (42) That Mr Gilmore's dismissal was harsh or unfair because the decision to dismiss Mr Gilmore had as much to do with his conduct and complaints which had been made about his work performance and attitude by other staff of the company (see the evidence of Mr Danny Breckler at pages 454 and 455 (TFI)).
- (43) That whilst Mr Danny Breckler had specifically denied that this was not a true redundancy, the inescapable conclusion from the totality of the evidence was that the company experienced difficulties with Mr Gilmore's conduct in all four areas of his responsibility, and the Commission had no doubt that those problems contributed to the decision to dismiss Mr Gilmore.
- (44) That there was no evidence that Mr Gilmore was warned that his conduct and performance would jeopardise his future employment in the company. Only one incident was put in writing (exhibit 23) and it was not suggested that this was a "warning".
- (45) That Mr Danny Breckler's evidence was that Mr Gilmore's move to head office in 1990 was seen as a promotion.
- (46) The Commission was satisfied that Mr Gilmore's performance made Mr Rosenwax comfortable with the outcome that his job may be made redundant.
- (47) That Mr Gilmore had established that his dismissal was harsh or unfair.
- (48) That the employer was not able to overcome any deficiencies in the dismissal of the employee which rendered the dismissal harsh, oppressive or unfair merely by the payment at termination of a sum of money, and the Commission relied on Quality Bakers of Australia Ltd v Goulding and Another (op cit) where a termination payment of an amount equal for 26 weeks was made.
- (49) That the company bore the onus of establishing whether reinstatement or re-employment was impracticable.
- (50) That reinstatement is the primary remedy existing under s.23A of the Act, although the Commission has the power to order the employer to pay compensation to the claimant for loss or injury caused by the dismissal. It is not to do so unless the Commission is satisfied that reinstatement or re-employment of the claimant is impracticable.
- (51) That in considering the correct test to be applied in the matter, it must be remembered that the Commission is required to exercise jurisdiction in accordance with equity, good conscience and the substantial merits of the case.
- (52) That the Commission should be slow to fetter its discretion by the adoption of a test of "impracticable" which has been formulated in proceedings which do not necessarily take into account that requirement. In deciding whether it is "impracticable" to order an employer to reinstate a dismissed employee the Commission should take into account all of the circumstances of the case, relating to both the employer and employee and to evaluate the practicability of a reinstatement order in a commonsense way.
- (53) The Commission referred to Abbott-Etherington v Houghton Motors Pty Ltd (Decision No WI 0429R of 1994), 28 September 1995, Liddell v Lembke (trading as Cheryl's Unisex Salon) (1995) 127 ALR 342 and Nicolson v Heaven and Earth Gallery Pty Ltd (1994) 126 ALR 233.
- (54) That in none of those cases was the Industrial Relations Court faced with an employee dismissed for reasons of redundancy.
- (55) That the current arrangement is not only more efficient from a financial point of view but also operates now without the problems in its day-to-day operations which were experienced when Mr Gilmore performed the functions.
- (56) The Commission was not persuaded that the mere size of the company's operations is a complete answer to the issue of impracticability. The Commission noted that notwithstanding that scale of operation Mr Gilmore was not able to identify even one available position in which he could be employed.

- (57) The Commission accepted Mr Danny Breckler's evidence, borne out by the evidence of a number of other witnesses, that Mr Gilmore's character made it difficult to find an alternative position for him.
- (58) The Commission accepted that the group General Manager found Mr Gilmore so difficult to deal with that he, the group General Manager, sought professional assistance to enable him to cope, the group General Manager having been employed by the group for 30 years and not a member of the extended family.
- (59) That the group General Manger moved to request Mr Gilmore's removal from industrial relations duties because of his concern.
- (60) That the Commission gave credence to Mr Danny Breckler's assessment because it was borne out also by his own observations of the witnesses, they being that he found Mr Gilmore's evidence in relation to particular issues to be generally less persuasive than the corresponding evidence given by other witnesses. He preferred Mrs Boskell's evidence to that of Mr Gilmore. He gave weight to the assessment of Mr Ian Lindsay Colmer that when Mr Gilmore was in the stores he was not prepared to take advice or listen; to the evidence of Mr Andrew Barr that he could "never get a straight answer" from Mr Gilmore, that Mr Mackay felt that there was "no profitable result to be obtained in discussing" with Mr Gilmore a memorandum which upset him, and that Mr Rosenwax found it frustrating to deal with Mr Gilmore. There was also the evidence of Mr Rhine that he reduced his exposure to Mr Gilmore and did not want to deal with him.
- (61) The Commission found that Mr Gilmore was well intentioned and company orientated, but did not really appreciate the effect that he was having.
- (62) When considering whether re-employment was impracticable, the Commission gave weight to the evidence of Mr Boskell that it would be very difficult to know where to place Mr Gilmore. If re-employment were to be considered in a commonsense way, the Commission held that a re-employment order was not feasible, since it would be likely to impose unacceptable problems or embarrassments, or seriously affect productivity or harmony within the company. It would be more than merely inconvenient or difficult.
- (63) Taking all of the circumstances into account, the Commission found that reinstatement or re-employment was impracticable.
- (64) The Commission decided to order compensation to be paid to Mr Gilmore, and, in assessing it, to take into account all of the circumstances.
- (65) The Commission found that Mr Gilmore received a payment of six months in addition to what was considered to be an appropriate period of payment in lieu of notice.
- (66) That the remedy of compensation was available to the Commission to compensate the employee for loss or injury caused by the dismissal and the statutory limit was a limit upon what the Commission could order by way of compensation, and not a limit upon what the employee could receive from the employer.
- (67) That even though Mr Gilmore had received an amount of 12 months' wages from the company, the Commission could require the payment of additional compensation, up to a maximum of a further six months' wages.
- (68) That if the Commission considered Mr Gilmore was entitled to greater compensation (and see *Liddell v Lembke* (trading as Cheryl's Unisex Salon) (op cit) per Gray J at page 368), the Commission did not see the limit of six months as the maximum amount to be awarded only in the most grievous or serious cases.
- (69) That once an assessment had been made, then, if there was a need to do so, the relevant limit should be applied to establish the cut-off point (see *Cox v South Australian Meat Corporation* (1995) 60 IR 293, *Perrin v Des Taylor Pty Ltd* (1995) 58 IR 254 and *Messervy v Maldoc Pty Ltd t/a Toongabbie Hotel* (No NI 795 of 1994), 30 June 1995 (unreported)).
- (70) In assessing the amount of compensation due to Mr Gilmore, the Commission took into account the payments made to him by the company.
- (71) The Commission found that Mr Gilmore received a redundancy component of approximately three weeks' wages for each year of service, and was paid six months' wages in lieu of notice.
- (72) The Commission was satisfied that there could be no part of the payment made to Mr Gilmore by the company which compensated Mr Gilmore for the unfairness of the dismissal which actually occurred.
- (73) The Commission found that the company believed that in dismissing Mr Gilmore it was acting fairly, even though it may not have liked what it was doing, and its payments were calculated accordingly.
- (74) The summary dismissal and the lack of any information to other employees that Mr Gilmore had been made redundant, or even that he had been made redundant with the payment of a total of 12 months' wages, would, the Commission found, do nothing to assist his future career prospects. He was not even given a reference.
- (75) That the term "injury" in this context can also include injury to pride or feelings (see *Norton Tool Co Ltd v Tewson* [1972] IRLR 86).
- (76) The Commission took into account the evidence of Mr Gilmore that he believed that he would be with the company in the long term and that his termination for redundancy was quite unexpected.
- (77) The Commission held that the calculation of compensation to be paid in these circumstances was not an exact science, and took into account that it had found that there was a ground on which the Commission could find that the dismissal was justified, as well as the payments made to Mr Gilmore.
- (78) The Commission decided to award Mr Gilmore an additional two months' wages as compensation for the injury suffered by his unfair dismissal.

CONCLUSIONS

This was a discretionary decision as that is defined in *Norbis v Norbis* 65 ALR 12 (HC), and the appeal is to be dealt with as prescribed by *House v The King* [1936] 55 CLR 499 (HC).

Unless the appellant establishes that the decision of the Commission at first instance miscarried according to the principles set out in *House v The King* (HC) (op cit), then the Full Bench is not entitled to substitute its decision for that of the Commission at first instance.

It is to be noted that a number of the grounds of appeal challenge findings of fact which were made by the Commission at first instance, having regard to the advantage it enjoyed in seeing and hearing the witnesses at first instance. Where that has occurred, then the Full Bench should not interfere, unless the Commission at first instance misdirected itself as to the evidence, or that it misused the advantage which it had in seeing and hearing the witnesses at first instance (see *Devries v Australian National Railways Commission 1992-93* [177 CLR 472]).

Devries v Australian National Railways Commission 1992-93 (op cit) is an important authority for this appeal. It is authority for these propositions—

1. A finding of fact by a trial judge, based on the credibility of a witness is not to be set aside because an appellate court thinks the probabilities of the case are against, even strongly against that finding.
2. If the finding depends to any substantial degree on the credibility of the witness, the finding must stand unless it can be shown that the judge has failed to use or has palpably misused his advantage, or has acted on evidence which was inconsistent with the facts incontrovertibly established by the evidence, or which was glaringly improbable.

Of course, the Full Bench is in as good a position as the Commission at first instance to draw inferences from the evidence and the findings at first instance (see Warren v Coombes and Another [1978-1979] 142 CLR 531 (HC)).

Another significant case is Abalos v Australian Postal Commission [1990] 171 CLR 167.(HC). That is authority for the proposition that, where a trial judge made a finding of fact contrary to the evidence of a witness but has made no reference to that evidence, an appellate court cannot act on that evidence to reverse the finding unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusions.

S.23A AND S.23AA OF THE ACT

The following relevant principles can be derived from those sections—

- (1) On a claim of harsh, oppressive or unfair dismissal, the onus is on the employer to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified.
- (2) If the employer does not show that there is a ground or are grounds on which the Commission could find that the dismissal was justified, the claim is taken to have been established.
- (3) If the employee establishes that, whether or not it was justified, the dismissal was harsh, oppressive or unfair, then the claim is taken to have been established.
- (4) For the purposes of s.23AA of the Act, a dismissal is justified if there was a valid reason, or were valid reasons, connected with the employee's capacity or conduct for the dismissal (see s.23AA(3)).
- (5) Further, by virtue of s.23AA(3), a dismissal is justified if there was a valid reason, or were valid reasons, based on the operational requirements of the undertaking, establishment or service, for the dismissal.
(I should note that the word "undertaking" is not defined in the Act).
- (6) Further, by virtue of s.23A(1) of the Act, most relevantly for the purposes of this appeal, the Commission may on a claim of harsh, oppressive or unfair dismissal—
 - (a) order the payment to the claimant of any amount to which the claimant is entitled;
 - (b) order the employer to reinstatement or re-employ a claimant who has been harshly, oppressively or unfairly dismissed;
 - (c) subject to section 23A(1a) and (4), order the employer to pay compensation to the claimant for loss or injury caused by the dismissal;
 - (d) make any ancillary or incidental order that the Commission thinks necessary for giving effect to any order made under this subsection.
- (7) By virtue of s.23A(1a), the Commission is prohibited from making an order under subsection (1)(ba), that is for compensation or loss or injury caused by the dismissal, unless it is satisfied that reinstatement or re-employment of the claimant is impracticable.
- (8) The amount ordered to be paid by way of compensation is not to exceed six months' remuneration of the claimant, and, for the purposes of this subsection, the Commission may calculate the amount on the basis of an average rate received during any relevant period of employment.(see s.23A(4)).

WHO WAS THE EMPLOYER?

The Commission at first instance found that the employer was the respondent, FDR Pty Ltd, and struck out the names of the other respondents at first instance. It was submitted for the appellant that, on the evidence of group certificates, the separation certificates and other documents, the employer was Cecil Bros Holdings Pty Ltd. However, the evidence was that FDR Pty Ltd employed all of the executives as the management company for the whole group, and the Taxation Department approved of Cecil Bros Holdings Pty Ltd as the employer for taxation purposes.

The Commission was entitled to find as it did.

In any event, Mr Gilmore was not concerned about this to any extent, observing that he merely wished to be reinstated to the employment of whichever company employed him.

No error therefore in the Commission's findings that FDR Pty Ltd was the employer has been established. I find ground 1 not to be made out.

A CRUCIAL FINDING

A crucial finding was made by the Commission in this matter. The Commission accepted, generally speaking, the evidence of the respondent's witnesses in preference to that of Mr Gilmore. That appears in the reasons for decision of the Commission at appeal book pages 21-22 (AB).

"Further, Mr Breckler gave evidence that Mr Gilmore's character made it difficult to find an alternative position for him and I accept that evidence. It was borne out by the evidence of a number of other witnesses. In particular I accept that the group General Manager found Mr Gilmore so difficult to deal with that he sought professional assistance to enable him to cope. I note that the group General Manager has been employed by the group for 30 years and is not a member of the extended family. He also moved to request Mr Gilmore's removal from industrial relations duties because of his concern. I do not intend to canvass(sic) all of the incidents referred to in the proceedings but I am inclined to give credence to Mr Breckler's assessment because it was borne out also by my own observations of the witnesses. I found Mr Gilmore's evidence in relation to particular issues to be generally less persuasive than the corresponding evidence given by other witnesses. For example, I was impressed by Mrs Boskell's evidence regarding Mr Gilmore's comment to her about "behaving like the military" in relation to workplace agreements and prefer her evidence to that of Mr Gilmore. While nothing of substance turns on that point of itself, I am therefore inclined to give weight to the assessment of Mr Colmer that when Mr Gilmore was in the stores he was not prepared to take advice or listen (transcript p.755), the evidence of Mr Barr that he would "never get a straight answer" from Mr Gilmore (transcript p.729), that Mr Mackay felt that there was "no profitable result to be obtained in discussing" with Mr Gilmore a memorandum which upset him (transcript p.812), that Mr Rosenwax found it frustrating to deal with Mr Gilmore (transcript p.836) and the evidence of Mr Rhine that he reduced his exposure to Mr Gilmore and did not want to deal with him (transcript pp.579). I think Mr Gilmore was well intentioned and company orientated (transcript pp.307, 711) but did not really appreciate the effect he was having. Hence his belief against the evidence that he made a profit on foreign exchange or that problems with letters of credit were not his fault (transcript pp.836, 846). This extends to his misconstruing a comment by Mr Barr as a compliment when it was tendered as a criticism."

Much of the Commission's decision revolves around this finding.

WAS THIS A GENUINE REDUNDANCY?

The Commission found that this was a genuine redundancy but that was very much challenged by the appellant both at first instance and upon appeal. The appellant's case was that he had been dismissed and dismissed unfairly and that was because he was not genuinely made redundant. (Redundancy occurs when a person's position as an employee is no longer required by the employer and is therefore abolished).

The appellant's case was that he was dismissed because of a dispute between Mr Shirley Leah Leshem, his mother-in-law, the Life Governing Director of Cecil Holdings Pty Ltd and the company to some extent, but particularly Mr Daniel Breckler, her nephew, his wife's first cousin, and the company's Managing Director. The dispute had apparently been going on since about November/December 1991. There had been attempts to settle the dispute but over the time of the hearing at first instance, no settlement had been achieved. It had got to the stage, on one occasion, where the solicitors for the respondent had drafted a deed to reflect an agreement to settle the dispute. This was in about 1994 (exhibit 'M' see page 306 (AB))

The draft deed contained a clause which provided that Mr Gilmore would not be treated differently from any other employee. There were a lot of events which preceded the dismissal which occurred, as I have said, on the 1st June 1995, and was confirmed by letter dated the same day.

The appellant sought to link his dismissal directly to Mrs Leshem's dismissal by letter dated the 26th April 1995 of Mr Andrew Breckler, brother of Mr Danny Breckler as a Director of the company. Such dismissal was to take effect as and from the 15th May 1995.

When Mr Gilmore first joined the group as an employee in 1988, he was working in the stores as distinct from head office. There, according to Mr Ian Lindsay Colmer, the Group Property Manager, he had difficulties with Mr Gilmore (see page 755 (TFI)). Mr Danny Breckler said that he thought that, at the time, there were some difficulties which arose because of Mr Gilmore's English. Mr Gilmore did however receive a commendatory letter from Mr David Skipper the State Manager of all the stores in 1989.

In 1990, in what was described as a promotion, Mr Gilmore was moved to a job in head office. There he took over duties which he denied constituted a cobbled together job, but which it was asserted by the respondent was in fact a "cobbled together" job. An organisation chart was tendered in evidence as exhibit 'O'. Mr Gilmore had responsibilities, for example, to different directors and different executives in disparate areas. The exhibit demonstrates this.

Mr Gilmore was responsible for producing information to enable the landed cost of goods to be calculated. He had responsibilities in the areas of industrial relations. He was responsible for opening letters of credit and attending to the registration of trademarks. He had responsibilities in the foreign exchange area, and was responsible for consolidating shipments from overseas. He also had other responsibilities.

The respondent's case was that, in early 1995, it became apparent that there was reduced trade and the likelihood of reduced profit. As a result, the budget committee of the respondent chaired by Mr Danny Breckler and of which Mr David Rhine, the Finance Director of the group and Mr Mackay, the Group Accountant were members, conducted, in February, March and April 1995, an examination of the situation with a view to discovering what measures could ought to be taken. The respondent's financial position required, as a major aim, the reduction of costs, called "getting costs out of the company". Mr Rhine's evidence was that there were still problems even at the time this matter was heard at first instance. On the evidence of the respondent's witnesses, profit dropped from more than \$4 million to something more than \$1 million from one financial year to the next. However, a number of measures were taken, on the evidence of Mr Breckler and Mr Rhine. These measures included closing down a whole shoe retail group, namely "Standard Shoes".

Another measure involved the making redundant of Mr Les Sevel who was married to but then separated from one of the family. Certainly, Mr Les Sevel remained on to oversee the closing down of the Standard Shoe Group but his position was abolished. He was, in the same manner, as Mr Gilmore, a member of the family.

Two trainee managers, whom it was proposed to employ, were not employed. Mr Ian Lindsay Colmer, the Property Manager was directed to approach landlords of shops leased by the respondent group and obtain from them what concessions and deductions he could. Five percent of staff numbers were proposed to be reduced by a process of attrition. Further savings were made by not replacing staff in stores, by reducing store openings and refurbishment, by reducing advertising and display and general expenses. Further, immediately after Mr Gilmore's dismissal, other expenses were cut and staff were retrenched from the distribution centre.

Mr Gilmore's position was proposed to be abolished and his duties distributed amongst other employees, which is what in fact, occurred. Exhibits 'P' and 'S' were tendered to support the evidence of the substantial downturn and the steps taken to address it. Exhibit 'P' projected savings of \$3.8 million for the financial year 1995—1996. There was no other documentary evidence such as balance sheets, monthly financial reports, and profit and loss accounts etcetera. Mr Rhine, Mr Ian Lindsay Colmer and Mr Breckler gave a great

deal of evidence between them about these matters. The criticisms of Exhibits 'P' and 'S' that they were prepared only in relation to the proceedings before the Commission, and after the event, has not been borne out by their contents. That is because they reflect the financial position of the company at the material times. (see also exhibit 'VV' the document produced by Mr Ian Lindsay Colmer).

In submissions for the appellant, the evidence of the economic difficulties and the need to reduced costs was attacked on the basis of lack of documentary evidence. However, that evidence was not controverted. And indeed, when Mr Gilmore was given an opportunity to comment on whether there were economic difficulties in the shoe retail trade, etcetera, and in this company in particular, he said that those matters could be commented upon by his wife, who was not called to give evidence. (see pages 101-102 (TFI)).

The appellant's case too was directed to persuading the Full Bench that the decision to dismiss Mr Gilmore was made by Mr Danny Breckler as a result of Mr Andrew Breckler's dismissal as a director. We were taken to evidence of Mr Rhine, Mr Freedman, Mr Breckler and Mr Rosenwax (another director) and their availability to attend meetings, that is formal meetings of directors, in May 1995.

The Commission held that the decision was made in approximately April 1995 which accorded with Mr Danny Breckler's recollections. However Mr Rhine, Mr Rosenwax and Mr Freedman had different recollections of when the decision was made, namely that it was made in May 1995. There was, in the evidence of Mr Boskell, however, reference to his instructions from Mr Danny Breckler to get legal advice. This, he obtained on the 30th May 1995 in relation to the proposed dismissal. The significance of the decision being made at a time which coincided with Mr Andrew Breckler being dismissed as a director, is what these submissions were directed to. Mr Danny Breckler denied specifically that there was any connection between the two events and denied that the redundancy was anything but a genuine redundancy.

The Commission accepted his evidence as corroborated by the evidence of other witnesses. The Commission did however, refer to Mr Gilmore's conduct and performance, and I will come to that in more detail later. I quote however the relevant parts of Mr Breckler's evidence from pages 454-455 of the transcript—

“Q: The evidence as you gave it suggested that you were dismissing Mr Gilmore partly because of what you described as these complaints. Would it be true that you were dismissing him because of his conduct? ... They are one and the same thing. I had received a number of complaints about his attitude and his approach to the way he did his job, the way that he spoke to people, the way he communicated to others in the operation.

Q: Would it then be your position that his conduct, or what you might describe as misconduct, was a major factor in your dismissing him? ... I don't know whether conduct is the right term or the wrong term. I can only express the way that ...

Q: His performance? ... Well his performance—Mr Gilmore performed to satisfaction in certain areas and we had some problems in other areas and, as I said, they were mainly in the area of communication and attitude.

Q: Are you saying that this was a true redundancy or is it just a bit of a coverup and you were dismissing him for misconduct or unsatisfactory conduct? ... I absolutely reject that proposition.

Q: It was a true redundancy, was it? ... As far as I am concerned I have clearly stated that it was a true redundancy for economic—and from an operational point of view it was necessary to get cost out of the business. The only question of his conduct, the way he conducted himself, the way he spoke with people, the way he came up on the basis of could we find him another position within the organisation having made the decision (sic).”

The question of the trading downturn was raised with Mr Gilmore in cross-examination.

The Commission did find that a decision to make Mr Gilmore redundant was made in April and left to Mr Danny Breckler to be executed. There was evidence that there were formal board meetings of the directors to discuss matters amongst themselves and the budget review committee considered matters relating to the downturn and the measures to be taken. What was decided was that the four "disparate" functions being performed by Mr Gilmore, were to be distributed amongst others within the company structure as I have said. They were to, of course, perform these in addition to their existing duties and this would occasion no extra cost and save the cost of Mr Gilmore's salary. It was also the evidence that there was no other position for him within the company, and further, that the functions which Mr Gilmore had performed, were now being performed more efficiently than by Mr Gilmore. Mr Gilmore was invited, in evidence, to comment on the question of the need to save costs, as I have said. The fact of the matter was the evidence of the need to cut costs was uncontroverted (see page 83 (TFI)). The evidence that a number of steps were taken to achieve that aim, was not controverted.

There was another factor. It was submitted and alleged in evidence that Mr Gilmore's employment had been affected by the dispute which clearly existed between Mrs Leshem and her family and Mr Danny Breckler in particular on the other side.

By letter dated 2nd June 1992, "the Directors of Cecil Brothers Pty Ltd" had required Mr Gilmore to return his keys and limit his after hours access to the premises whilst "the Company and its Directors are under continuing threat of legal proceedings at the suit of your parents-in-law" (see exhibit 20). That was three years immediately prior to the dismissal. The Commission found that event had a most "tenuous connection" to the dismissal. The Commission found that this was so because during that period Mr Gilmore had been given pay increases including one immediately after the event. He was given increased responsibilities, at least in respect to the introduction of workplace agreements, after that letter of 2nd June 1992. (see exhibit 20)

Further, in the document drafted to reflect, (unfortunately prematurely), the settlement of the dispute between Mrs Leshem and Mr Breckler (there was also some dispute over property involving Narla in which Mr Rhine was involved)(see exhibit 'M', page 306 at 309(AB)), there was a provision insisted on by Mr Danny Breckler that Mr Gilmore not be treated differently from any other employee being inserted in the draft agreement. This was said by him to have been necessary because Mr and Mrs Leshem wished to advance Mr Gilmore. On the other hand Mrs Leshem said, in evidence, that Mr Breckler linked Mr Gilmore's promotion to the satisfactory resolution of the dispute between them. This was denied by Mr Breckler.

The Commission did not prefer the evidence of Mr and Mrs Leshem to that of Mr Breckler on this point.

Mr Gilmore made allegations that Mr Mackay had admitted that there was unrest between different members of the family which was "linked to my summons" (see exhibit 23—Mr Gilmore's letter to Mr Rhine and Mr Boskell dated 16th December 1994). This was denied by Mr Mackay.

There was further evidence and there were findings which went to the question of the redundancy and its genuineness or otherwise, in particular, its links to the removal of Mr Andrew Breckler as a director of Cecil Holdings Pty Ltd by Mrs Leshem (see exhibit 32), to which I have referred above. That such a link existed was denied by Mr Danny Breckler. On his evidence, he was not clear when he raised the future of Mr Gilmore's employment and when exactly the decision was taken to make Mr Gilmore redundant. After some reference to February, March and April, he settled on April (see pages 394, 395 and 400 (TFI)).

If that was so, the decision to dismiss Mr Gilmore may have been taken, were it taken before the 26th April 1995.

However, Mr Rhine and Mr Freedman's evidence indicated that it may have been taken after the 15th May 1995, (see pages 571-2 and pages 876 (TFI)).

There was, the Commission found, no evidence to link the two events. There was certainly no primary evidence. The evidence of Mr Andrew Breckler's removal was of no great import (see pages 631 and 659 (TFI)). There was no evidence

that it was mentioned at any board meeting in connection with Mr Gilmore's dismissal. I would observe that an inference might be drawn from the primary facts to support the appellant's contentions depending on all of the evidence. The Commission, however, rightly observed that if there were not satisfactory evidence supporting the company's reasons for dismissal, then all of these circumstantial events would take on a greater significance.

However, the Commission made findings that the company was required to take steps to reduce its expenditure, that the change made in relation to the functions performed by Mr Gilmore had allowed existing functions to be taken on by existing personnel, and that that change was on balance, of benefit to the company. Those were findings clearly open on the evidence.

Of course, significantly, the decision, even if it were not made because Mr Breckler resented the treatment of his brother, and even if it were made by Mr Breckler alone, was approved by all of the directors. There was no evidence of any retreat by any director from the decision. There was no evidence of any disapproval by any director of the decision. There is no evidence, and this was conceded by Mr Gilmore in cross-examination, that any director had requested him to, or wished him to return. There was no evidence that the directors disagreed in any way with the decision. There was no evidence that the directors were in any way influenced by Mr Andrew Breckler's dismissal, even if Mr Danny Breckler were so influenced. There was evidence indeed to support the complaints made about Mr Gilmore's attitude and performance by Mr Ian Freedman and Mr Marcus Rosenwax who are both directors. The decision to make Mr Gilmore redundant was undoubtedly a decision of the respondent, not just of Mr Breckler. I can see no error in what the Commission decided.

It is not immediately apparent to me either that any inference can be drawn properly on the evidence, which is different to the inference which the Commission drew as to the connection between the two events.

I now turn to the lengthy evidence about Mr Gilmore's performance and attitude.

That evidence was relevant, with all the other evidence, to the question of credibility. However, it was also relevant to the question of whether there was another position available to Mr Gilmore within his employer's organisation and whether also it was impracticable to reinstate him. There were a number of heads of complaint if I can call them that. It is fair to say that Mr Gilmore denied that there were any significant problems, in evidence.

Mr Ian Linsay Colmer had referred to difficulties with Mr Gilmore in 1988-9.(see page 755 (TFI))

I turn firstly to the question of industrial relations. That area was part of Mr Gilmore's responsibilities. In June 1994, he had responsibility for introducing workplace agreements to the employees. In evidence he first of all said that the decision to introduce such agreements emanated from discussions between him and Mr Ronald Alan Boskell. However, later in evidence Mr Gilmore said that this was done at his initiative (see page 108 (TFI)).

He was said to have raised the question of which corporate entity was the employer of the employees in the operations of the group.

Mr David Rhine gave evidence that Mr Gilmore asked him to swear an affidavit as to these matters. Mr Rhine said that he was concerned about doing so, because to take this stance would be to aggravate the union. According to him, Mr Gilmore wanted to delay proceedings in the Federal Court so that more workplace agreements could be signed in the interim. Mr Rhine said that he agreed to swear the affidavit because its contents were true, but that he did have the misgivings to which I have referred.

The evidence was that the industrial organisation of employees the Shop, Distributive and Allied Industries Union (hereinafter "SDA") had some difficulties relating the introduction of workplace agreements. Mr Gilmore denied in evidence that he directed that the SDA be provided with fake information covering the companies structure.

Mr Thomas Mark Bishop, the SDA Secretary, was called to give evidence. He said that the SDA was concerned by the

tactics adopted by Mr Gilmore to put in doubt which entity it was which was the employer of the respondent's employees. There was also evidence, denied by Mr Gilmore, that he had given instructions to Ms Lynn Boskell amongst others, to show the workplace agreements to employees, and after they had read the agreements, to push the pen across to them to procure signatures. There was a prohibition upon employees taking these agreements home which was said to have been Mr Gilmore's instruction. In particular, there were complaints from employees to the SDA, some being from the Hay Street store and to the Commission of Workplace Agreements, that young people, in particular, were being deprived of the opportunities to discuss these agreements with their parents and obtain advice before signing. That was the evidence.

Ms Boskell raised this matter with Mr Gilmore. According to her evidence when she did so, he told her to "behave like the military".

Mr Gilmore said that he did not directly or intentionally direct any employee of the Cecil Bros group to present workplace agreements to staff and to ensure that the staff sign the agreements (see page 111 (TFI)).

He agreed that Ms Boskell had said that she thought that each person presented with a workplace agreement should have time to study it and said that he had the same opinion.

Mr Gilmore denied rejecting Ms Boskell's suggestion in this regard. He denied demanding that all successful applicants with the respondent should sign workplace agreements before they left the building or they would not get a job.

He did however say, "I said that they won't get a job until they sign the agreement because we can't employ people without the agreement" (see page 113 (TFI)).

Mr Gilmore denied generally Ms Boskell's evidence about these matters. Mr Gilmore said that it was Mr Ronald Alan Boskell's "attitude" that pressure be put on employees.

Mr Ronald Alan Boskell, the Group General Manager and an employee for 30 years (and not a member of the family) took the extraordinary steps of requesting Mr Gilmore's removal from the area of industrial relations.

Mr Gilmore referred to a commendation from a South Australian Industrial Commissioner commending him for his work in relation to workplace agreements in South Australia. (see exhibit 21) However, the relevant evidence related to what occurred in Western Australia. There were some suggestions, also, that the bulk of the work in relation to workplace agreements in South Australia had been done by the South Australian manager of the respondent. Mr Boskell's evidence, also, was that he found Mr Gilmore so difficult to bear with that he sought and obtained advice from a firm of management consultants as to how to deal with him. The report from the management consultants was tendered as exhibit 'KK'.

There was evidence too, from Mr Bishop, that Mr Gilmore had promulgated a document comparing award entitlements and workplace agreements which Mr Bishop said was erroneous and misleading.

In relation to trademarks, Mr Mackay said that when Mr Gilmore went on leave in 1995 he found that there were matters not attended to by Mr Gilmore. Mr Gilmore denied this.

Next there was the question of consolidation. Consolidation is a process which occurs to enable shipments coming from one port, at different times, to be put together as one shipment from that port. This of course, of necessity, involves the delaying of the first shipment so as to enable the second shipment to be consolidated with it. The obvious advantage is that costs are saved. However, according to Mr Andrew Barr, a buyer for the company, difficulties arose because Mr Gilmore would not consult with the buyers as to whether to consolidate shipments or not. The priority in these matters is to ensure that wares to sell are in the shops and that there is sufficient of them at all times. Selling is geared to some extent to events such as "Back to School", Christmas and other events.

According to Mr Andrew Barr, the import division was required to obtain approval from the buying division before a shipment was delayed to enable consolidation to occur. This was so that supply problems would not arise. Mr Andrew Barr gave evidence that he had a number of problems because Mr Gilmore consolidated shipments without checking the needs of the buyers. He was not the only buyer who was effected by this, he said.

Mr Andrew Barr's evidence was criticised because, in cross-examination, he was not able to refer to particular instances. However, he was quite firm in his evidence and explained the difficulty, which he had in getting any answers about these problems from Mr Gilmore. The fact that a conference or meeting of buyers with Mr Gilmore was necessary, is some further evidence, if it were needed. (see page 729 (TFI)).

In February 1995, there was a conference of the buyers, with Mr Gilmore to attempt to resolve problems, which Mr Gilmore said were not his fault. Mr Ian Freedman and Mr Marcus Rosenwax who are directors were also present. Mr Gilmore denied that concern was expressed about delivery dates at this meeting. He also denied that Mr Rosenwax complained about a delivery of children's shoes being six weeks late in coming from Brazil.

There were also said to be problems with the opening of letters of credit.

In order to pay for goods ordered through suppliers, letters of credit had to be opened 45 days before shipment. However, sometimes letters of credit were required to be opened earlier than that, to ensure supply. Deliveries will not occur until the letters of credit are opened. Mr Gilmore said that his instructions were to open some letters of credit ahead of the 45 day period.

Difficulties arose with important suppliers such as Mr John Lahood of Global Trading Service Pty Ltd, and Woodroffe's of Brazil because Mr Gilmore would not open letters of credit on time, on the evidence. In the case of Mr Lahood, on the evidence of Mr Ian Freedman, this almost caused a rupture in a long standing business relationship. Tensions arose with Woodroffe too. Mr Barry Cheetham of Pentmark (Australia) Pty Ltd also complained. On one occasion, because of Mr Gilmore's failure to open letters of credit on time, Mr Freedman came to Mr Danny Breckler, who was very angry and criticised Mr Gilmore on the evidence, in strong terms. Mr Gilmore was then called in and was told by both of them emphatically that this was not to occur again. Mr Gilmore's explanation was that the fault lay with the suppliers and also the buyers. Mr Gilmore said that these problems arose because pro forma invoices would remain in their area, that is the buyers area, "for months" and not get to him. He denied that he was a source of complaint by Mr Freedman and others for delays. Indeed he denied that at the meeting with buyers and directors in February 1995 he was criticised for failing to open letters of credit on time.

A number of faxes were tendered as evidence of these problems. They were tendered as evidence of faxes which were sent before the dismissal of Mr Gilmore occurred, even though they were procured after the dismissal.

In any event, there was evidence from Mr Gilmore that the originals of these faxes would usually have been kept in his office.

There were also difficulties referred to, in evidence, in relation to the area of foreign exchange. There was a policy devised by the finance director, Mr David Rhine, whereby spot buying of foreign currency and forward buying were each to occupy 50 per cent of foreign currency transactions. This was a policy approved by the ANZ Bank. Foreign currency transactions constituted over 20 per cent of the group's turnover. Mr Gilmore, said in evidence, that the policy had been jointly devised by Mr Rhine and by him. Mr Gilmore retreated from that statement in evidence and conceded that the policy document itself was Mr Rhine's.

Mr Gilmore, on the evidence, breached this policy in order to make a profit for the company, judging for himself that that was what he ought to do. The company policy was not to trade in foreign currency, and according to the auditors, Arthur Anderson and Co., Mr Gilmore did not achieve a profit in any event. It was clear on the evidence that Mr Rhine raised these matters with Mr Gilmore on a number of occasions but no written criticism was made of Mr Gilmore.

The problem of delays in Mr Gilmore promptly calculating the landed costs for goods was also raised in evidence. Mr Gilmore denied that this was his fault saying that sometimes he had to wait for the relevant information. He gave details of the information which he had to wait for.

A problem arose in 1994 because Ms Yvonne Pollard, known as "Polly", a person employed in the payroll area was called upon to do some of Mr Gilmore's work while he was on leave. She was a subordinate of Mr Peter Mackay, the Group Accountant. There was a complaint that she had not been properly instructed on how to do the job. Mr Gilmore denied these matters. Mr Gilmore denied, too, that he had been instructed before he went on leave not to delegate work to Ms Pollard.

Later, in November 1994, Mr Mackay heard that Ms Pollard had been rung by Mr Gilmore, who was absent in Adelaide, and asked to attend to some matters for him. The extra work caused Ms Pollard to suffer distress. Mr Gilmore said that he rang from Adelaide to ask Mr Mackay to attend to something. When he was not able to contact Mr Mackay, Mr Gilmore said that he spoke to Ms Pollard who was happy to do what he wanted her to do. Mr Mackay said that this occurred without his consent.

Mr Marcus Rosenwax said that he found it frustrating to deal with Mr Gilmore (see page 836 (TFI)). Mr Rhine said that he did not wish to deal with him (see page 579 (TFI)). Mr Mackay and Mr Boskell were critical of Mr Gilmore. Mr Mackay was of opinion that there was no "profitable result to be obtained in discussing a memorandum which upset him" (see page 812 (TFI)). There was also a complaint that Mr Gilmore had countermanded a direction from Mr Michael Trestrail, whose responsibility it was, not to receive a 40 foot container. Mr Gilmore gave an explanation and said that Mr Trestrail apologised after the event.

I now turn to the "November Memoranda".

Exhibit Z1 (see page 366(AB)) is a memorandum written by Mr Peter Mackay to Mr David Rhine concerning imports and trademarks and complaining about the problems which he alleged occurred involving Ms Pollard when Mr Gilmore was on leave in 1994, to which I have briefly referred above. Exhibit Z2 (see page 368(AB)) is a further memorandum which detailed what Mr Mackay alleged occurred when Mr Gilmore went to Adelaide and asked Ms Pollard to handle some import work even though Mr Mackay had told him before hand that she would be unavailable to handle any of Mr Gilmore's duties while he was away. Exhibit 'AA' (see pages 371-374(AB)) is a memorandum to Mr Rhine from Mr Boskell dated 21st November 1994. It is the memorandum in which Mr Boskell outlines list of problems which he alleged were cause by Mr Gilmore. In the memorandum he asked that he, Mr Gilmore, be relieved of all duties relating to industrial relations and that these duties be assigned to Ms Rowena Stock.

Inter alia, the memorandum states—

"2(c) The difficulty of moving Koby from his point of view has become his trademark and has resulted in most of Head Office staff steering clear of him because of the likely confrontation.

The inability of Koby to admit that he may be incorrect is a problem that must be faced."

Following Mr Boskell's memorandum being forwarded to Mr Rhine, Mr Rhine and Mr Boskell had a discussion with Mr Gilmore in which these matters were discussed. As a result Mr Gilmore agreed to provide weekly reports to Mr Rhine.

There was evidence from Mr Gilmore and Mrs Leshem that Mr Boskell and Mr Breckler said that "November was all history" but that was not the evidence of Mr Boskell and Mr Breckler.

Indeed, notwithstanding his evidence, Mr Gilmore still wrote his letter (exhibit 23) of the 16th December 1995.

It would seem that he was not subsequently relieved of his industrial responsibilities, prior to his dismissal.

I also turn to the submissions that, after the November memoranda and discussions, there was no real cause of complaint against Mr Gilmore. First, I would observe that, in February 1995, the meeting of buyers to discuss problems with Mr Gilmore occurred. It occurred after the events of November. Second, the evidence was clear that it was difficult because of Mr Gilmore's perceived failings to find an alternative place for him, when his position became redundant. I infer from that that he had not changed his ways. In any event, given that to find that his position was genuinely made redundant was not an error, which it was not, the nature of his conduct after

November 1994, was not so much relevant to the dismissal. There was evidence too, that Mr Danny Breckler and Mr Boskell said that the events were all history and I make the same comments in relation to that. In addition, there was evidence from Mrs Leshem that Mr Danny Breckler had told her husband and herself that Mr Gilmore was doing alright. However, as Mr Nisbet (of Counsel) submitted, this was a comment by a nephew to an aunt, in what one would call, relatively informal circumstances. It was not the assessment of directors of the company and of executives of the company, which was a different assessment.

Exhibit 23 (see pages 217-221(AB)) is a letter dated 16th December 1994, written by Mr Gilmore to Mr Rhine and Mr Boskell. The letter purports to connect their approach to family business dealings with members of his family, by Mr Rhine. The letter constitutes a reply to matters raised in the November memoranda. There were submissions to the Full Bench that Mr Gilmore was the only person made redundant, and that there was no program of redundancy.

After November 1994, Mr Gilmore reported weekly to Mr Boskell and this continued until he left the respondent's employ.

There was no such program on the evidence. Further, it was submitted that he was the only member of the family perhaps to have ever been made redundant. However Mr Sevel was of similar status, and a former, if not present member of the family, when he was made redundant. Further, some employees, who were not managerial employees, were made redundant in the distribution centre, as part of the cost cutting exercise.

It is noteworthy that Mr Gilmore (see page 79 (TFI)) was of opinion that he should be carried by the respondent because he was a member of the family even if he turned out to be incompetent.

There was, as I have said, evidence from Mr Michael Trestrail, the Distribution Centre Manager, and from Mr Mackay and others that the functions formerly carried out by Mr Gilmore were being satisfactorily and efficiently carried out without any difficulty or problem, by Mr Trestrail, Mr Mackay, Ms Heather Smith and Ms Rowena Stocks.

That evidence was not at all controverted, although Mr Gilmore criticised the abilities and qualifications of Ms Stocks, Ms Smith and Mr Trestrail.

I am also satisfied that Mr Gilmore did have all matters (which should have been put to him) properly put to him in cross examination. Even if this were not so, no correctable error was occasioned by any omission.

Further, I cannot find anything in the reasons for decision which would lead me to conclude that the Commission had not given proper weight (which may have been none) to any affidavits sworn and filed. Even if this was not the case, there is no evidence of any correctable error having been occasioned thereby.

There is no finding, under this head, which the Commission made, based on the evidence, which the Commission was not entitled to make. Above all the Commission was entitled to find that this was a genuine redundancy. There was no evidence at all, that any person, other than Mr Gilmore, should have been made redundant in his stead.

There was ample evidence that no alternative position was open. I have considered whether the Commission should have found that this was a dismissal disguised as a redundancy. On balance, I am inclined to find that it was a redundancy, as evidenced by the confluence of the need for austerity, the measures taken to coincide with this need and the uncontroverted evidence that the duties carried out by Mr Gilmore were assigned to other employees, so that there was a true abolition of his position. I agree that the Commission could have found that Mr Gilmore's conduct contributed to his dismissal. However, the effect of that conduct was to prevent the Commission finding that another position was available once Mr Gilmore was made redundant (see Mr Breckler's evidence (see pages 454-455 (TFI)))

There was reference in submissions to a list of items of expenditure which, it was submitted, should have been cut or reduced, if the redundancy of Mr Gilmore were genuine. These included the cost of maintaining a large expensive boat, and the salary of the person in charge of it, the payment of increases

in director's fees and bonuses, the employment of a member of the family, Mr Measey in managing a store, and of Mr Breckler's mother, Mrs Machlin, without her performing duties and the payment of an annual fee to a family owned company which provided computer services. None of these expenditures was relevant to the question of whether the position of Mr Gilmore was made redundant. It is fair to say that these decisions as to what expenditure was to be cut, and what expenditures were to be made were matters for the company, but, in any event, the increases in salaries for directors were apparently made following results achieved in the financial year 1993-4. Mr Measey is occupied in a job and his position was not sought to be abolished nor was it decided that it was necessary for it to be abolished. Further the company obviously required computer services.

It is also necessary to take into account the evidence of all the witnesses. Mr Nisbet submitted a list of transcript references which he submitted indicated Mr Gilmore's character and upon perusal of those references and the relevant page of the transcript it is fair to say that indeed, upon perusal of all of Mr Gilmore's evidence, it was very much open to the Commission to take the view which the Commission did, of the evidence. It was also open to the Commission to take the view which it did, of the evidence of the witnesses for the respondent.

It is necessary to consider what constitutes a valid reason for the purposes of a dismissal being justified under s.23AA(3) of the Act.

A reason in the context of s.170DE of the Federal Act is valid if it fits within what Northrop J said in Selvachandran v Peteron Plastics Pty Ltd [1996] 62 IR 371 as 373 per Northrop J. What His Honour said was cited with approval by Lee J in Nettlefold v Kym Smoker Pty Ltd (FC. unreported, delivered 4 October 1996 No. T195/1334/ at pages 5-6.

I quote what Northrop J said as follows at page 6—

"Section 170DE(1) refers to a quote 'valid reason, or valid reasons' but the Act does not give a meaning to those phrases or the adjective 'valid'. A reference to dictionaries show that the word 'valid' has a number of different meanings depending on the context in which it is used.' In the Shorter Oxford Dictionary, the relevant meaning given is: '2. Of an argument, assertion, objection, etc.; well founded and applicable, sound, defensible; Effective, having some force, pertinency, or value.' In the Macquarie Dictionary the relevant meaning is 'sound, just or well founded; a valid reason.'

In its context in s.170DE(1), the adjective 'valid' should be given the meaning of sound, defensible or well founded. A reason which is capricious, fanciful, spiteful or prejudice could never be a valid reason for the purposes of s.170DE(1). At the same time the reason must be valid in the context of the employee's capacity or conduct or based upon the operational requirements of the employer's business. Further, in considering whether a reason is valid, it must be remembered that the requirement applies in the practical sphere of the relationship between an employer and an employee where each has rights and privileges and duties and obligations conferred and imposed on them. The provisions must 'be applied in a practical, commonsense way to ensure that the employer and employee are each treated fairly, see what was said by Wilcox CJ in Gibson v Bosmac Pty Ltd [1995] 60 IR 1, when considering the construction and application of s.170DC."

Lee J. having quoted those dicta, then said "As Ld Denning stated in Woods v WM Car Services (Peterborough) Ltd [1982] ICR 693, it is an implied term of an employment contract that the employer be "good and considerate" to its employees."

His Honour then went on to say "By giving effect to the Convention the Act seeks to establish a balance between the right of an employer to duly manage an enterprise in which labour is employed and the right of an employee, and the community, not to have the assets represented by the capacity of employees who provide such labour, whether skilled or unskilled, depreciated by incompetent or capricious management of labour by an employer". I now turn to the question of what the phrase "operational requirements" means.

"...it is a broad term", as Lee J observed in Nettlefold's case (op cit), at pages 8-9

"...that permits consideration of many matters including past and present performance of the undertaking, the state of the market in which it operates, steps that may be taken to improve the efficiency of the undertaking by installing new processes, equipment or skills, or by arranging for labour to be used more productively, and the application of good management to be undertaken. In general terms it may be said that the termination of employment will be shown to be based on the operational ground of an undertaking if the action of the employer is necessary to advance the undertaking and is consistent with the management of the undertaking that meets the employer's obligation to employees."

I would adopt the above dicta of Lee J and Northrop J. Even though they refer to provisions in the Federal Act which differs in some material respects. They constitute apposite references to the phrases to which I am considering in the context of the whole of the Act and of the whole of s.23AA.

It is quite clear on the evidence that the Commission was entitled to find, that Mr Gilmore was made genuinely redundant as part of an exercise to cut costs which exercise was necessary for the financial well being of the respondent.

The action of the employer was necessary so as to advance the undertaking in terms of what Lee J referred to in Nettlefold's case (op cit). The decision to make Mr Gilmore redundant was consistent with management of the undertaking that met the employer's obligations to its employees in that regard. Whether it was, generally consistent with management of the undertaking that met the employer's obligation to employees in relation to the legality or manner of the dismissal, is another matter. There were obligations here to the employee to act fairly and not harshly and oppressively and to act according to law. Those questions were considered by the Commission when he considered the question of fairness in what he called the "manner of the dismissal."

WAS THE DISMISSAL UNFAIR?

The facts surrounding the actual dismissal itself were not much in issue.

As the Commission at first instance found, Mr Gilmore was peremptorily dismissed. He did, as the Commission found, attend for work in the normal course of events, with no advance warning of his fate. He was dismissed and required to leave the premises immediately. There was no offer of counselling or of assistance to find other employment. He was not provided with a reference. The evidence supports all of these findings.

As the Commission rightly observed, the dismissal had many of the hallmarks of a summary dismissal for misconduct. One difference was that he was paid a year's salary in lieu of notice and a redundancy payment.

The Commission took account of a number of other factors—

- (1) This was a situation which should have been avoided.
- (2) There was no evidence of any practice in the company to retrench its employees at any level in such a fashion.

In contradistinction, Mr Sevel, a person of similar standing, was allowed to work out his notice and complete the closure of the Standard Shoes group. An assistant in the property department was allowed to work out her notice for two weeks.
- (3) It was harsh and unfair that a person doing a job to the best of his ability, who, as the Commission found, was loyal to his employer, there in the normal course of events to do a day's work, should be suddenly told that his job no longer exists and to go home. The Commission so found.
- (4) (a) The Commission also found, as it was entitled to do, on the evidence, that company staff were told of the appellant's dismissal by a memorandum which stated that he no longer worked for the company from a given date.

(b) There was no mention of redundancy and no explanation.

- (5) There is nothing, as the Commission found, on the evidence, or which has been advanced, which could justify that treatment.

Firstly, let me say that all of those findings were open to the Commission on the evidence. What was found was consistent with the evidence and consistent with the preference of the Commission for the evidence of the respondent's witnesses.

The Commission held that the manner of termination was but one factor to have regard to in determining whether a dismissal is harsh, oppressive or unfair, but in some cases, the manner of dismissal may be a most important circumstance. The Commission relied on Shire of Esperance v Mouritz (1991) 71 WAIG 891 at 895 (IAC). The manner of Mr Gilmore's dismissal the Commission held to be a most important circumstance.

As I understood Mr Nisbet's submission, it was that the manner of dismissal could not cause a dismissal to be unfair, unless that manner of dismissal arose from the original sin of lack of procedural fairness for which Shire of Esperance v Mouritz (IAC) (op cit) was authority.

I agree that if procedural fairness was denied, that is a factor and may be a most important factor in deciding whether a dismissal was harsh, oppressive or unfair. (see Shire of Esperance v Mouritz (op cit)).

Those words used in s.29(1)(b)(i) of the Act are not words which require analysis or definition. They denote the absence of industrial fairness or of a "fair go all round" (see Miles and Others t/a Undercliffe Nursing Home v FMWU 65 WAIG 385 (IAC) and the cases cited therein).

The concept of harshness, oppressiveness or unfairness is not a test which has ossified. It does not prescribe what unfairness is for every set of facts.

Accordingly, a dismissal may be properly characterised as unfair merely because of the manner of its execution. That manner may have nothing to do with procedural unfairness. It may be so oppressive or unfair that it requires a remedy to be granted by this Commission, having regard to s.26(1)(a) of the Act.

In this case, for all of the reasons to which I have referred, and which the Commission at first instance referred to, the dismissal was manifestly unfair. However, the Commission found the dismissal to be unfair for other reasons, too.

The question arose whether Mr Gilmore should have been given the opportunity to hear of the proposal to dismiss him and the reasons therefor so that he might be able to put his own case and thereby persuade the company to change its mind. Alternatively, there would have had time to lessen the impact upon Mr Gilmore or even to assist him to find alternative employment within the organisation itself.

The Commission, at first instance, referred to s.41 of the Minimum Conditions of Employment Act 1993. S.41 provides that where an employer has decided to make an employee redundant, the employee is entitled to be informed by the employer as soon as reasonably practicable after the decision has been made and discuss the likely effects of the redundancy and measures that might be taken to avoid or minimise its effect. Nothing like this occurred.

Mr Danny Breckler's evidence was that the decision was made in approximately April 1995. However, even if it were made in mid or late May 1995, the effect is the same. Mr Danny Breckler, on behalf of the respondent, had a cheque made out to hand to Mr Gilmore on termination of his employment a week before the dismissal was effected on 1 June 1995. Mr Gilmore was available, were Mr Danny Breckler to have sought to discuss this matter. Mr Danny Breckler would have had plenty of opportunity to discuss the matter with Mr Gilmore, as he admitted (see page 451 (TFI)).

There was a mandatory requirement under the Minimum Conditions of Employment Act 1993 that Mr Gilmore be informed of his imminent dismissal. That he was not, constituted a breach of an Act governing his employment. That was a factor to be taken into account in deciding whether the dismissal was unfair. It was an important factor. The breach of the Act in the circumstances of this case, were, in my opinion, sufficient, on its own, to render the dismissal unfair.

The Commission at first instance then went on to observe that, even if the Minimum Conditions of Employment Act

1993 did not apply, then there was a growing body of authority which recognised the necessity for consultation with employees before they were made redundant as an essential element of fairness in the employer/employee relationship (see Quality Bakers of Australia Ltd v Goulding and Another (op cit) per Beazley J, also Budget Couriers Equity Management v Beshara (op cit) and Shearer v Action Mercantile Pty Ltd (op cit)) That is of course, so. There was no such consultation in this case, and that was unfair.

However, there was another duty on the respondent. It was to give him, as a matter of procedural fairness, the opportunity to defend him against the allegations made. S.170DC of the Industrial Relations Act 1988 (Cth) (as amended) (hereinafter referred to as "the Federal Act") requires that to occur mandatorily, otherwise the employee's employment cannot be terminated for reasons related to the employee's conduct or performance. That is a requirement of procedural fairness but a breach does not, ipso facto, render a dismissal unfair. (see Shire of Esperance v Mouritz (IAC) (op cit))

However, allegations on which it is proposed that a person or persons will be selected for redundancy, where a decision is to be made by accepting or rejecting a criticism of an employee, should be put to the employee. He/she must be given a chance to answer the criticism whatever be the reference point of the criticism (see Kenefick v Australian Submarine Corporation Pty Ltd (No 2) (1996) 65 IR 366 at 371-372 (FC FC) per Ryan, Beazley and North JJ).

In this case, it involved a redundancy which did not involve selection of some employees for redundancy out of a group of employees. However, it matters not that this case was a genuine redundancy. Mr Gilmore was not given an opportunity to answer criticisms of himself and was denied procedural fairness. As well as for the other reasons relied on by the Commission and mentioned by me, for this reason, in the circumstances of this case, the dismissal was manifestly unfair.

The Commission, at first instance also, in dealing with the question of whether there was a third reason which rendered the dismissal harsh or unfair considered some evidence.

The Commission found this:(see page 17(AB))-

"A substantial proportion of the case presented to the Commission by the company was designed to establish and reinforce the complaints that were made about Mr Gilmore's performance. While I note Mr Breckler's specific denial that this was not a true redundancy, as quoted above, the inescapable conclusion from the totality of the evidence is that the company experienced difficulties with Mr Gilmore's conduct in all four areas of his responsibility. I have no doubt that those problems contributed to the decision to dismiss Mr Gilmore."

The Commission held that, on the evidence of Mr Danny Breckler, it was Mr Gilmore's performance and conduct which were the relevant considerations in considering whether there was any alternative position into which Mr Gilmore could be placed, and he decided that there was not.

As the Commission observed correctly, there is no evidence at all that he received a warning that his conduct and performance would jeopardise his future in the company. There were discussions with him about complaints, the November memoranda, but these did not constitute such a warning.

Mr Gilmore was moved to head office in 1990. Mr Gilmore was told on occasions that he was doing a good job, but Mr Danny Breckler suspected that on others he was told if there were problems. There were, on the evidence, a number of complaints about his work and disquiet about it. There is no doubt that his poor performance, as the directors and senior staff saw it, was a reason for his employment being ended. If that were so, then the dismissal could not be a genuine redundancy, it would be something of a hybrid. His job was abolished, as it was, therefore he became redundant, but no other position was available because his performance was so bad that they did not wish to retain him. If that were so, as the evidence indicates, then it was unfair not to warn him that his job was in jeopardy and to do so in unequivocal terms (see Margio v Fremantle Arts Centre Press. 70 WAIG 2559 (FB)).

In any event, for any or all of those reasons, it was open to the Commission to find that the dismissal was harsh or unfair. I would add, although it is not necessary to so find, it not

having been argued, that there was an argument here that there was a breach of an implied term of the contract of employment that the employer be "good and considerate" to its employees (see *Woods v WM Carr Services (Peterborough)* (op cit) per Lord Denning, and see also *Nettlefold v Kym Smoker Pty Ltd* (op cit) per Lee J).

As the Commission at first instance also found, that the dismissal was unfair, could not and would not be negated by the payment of approximately 12 months' salary upon termination of the contract. That is because the Commission was required to determine whether the dismissal, qua dismissal, was harsh or unfair. The Commission was then required to reinstate the appellant unless it were impracticable to do so. Compensation is, as the Commission rightly held, not the primary remedy for an unfair dismissal (see *Quality Bakers of Australia Ltd v Goulding and Another* (op cit), and *Liddell v Lembke* (op cit) if authority were needed). The plain words of the statute are the source of that, proposition, in any event.

THE RELIEF SOUGHT

Just as is the case with s.170EE(2) of the Industrial Relations Act 1988 (the "Federal Act") so with s.23A of the Act, the remedy of compensation is only available if the remedy of reinstatement is impracticable. The appellant sought reinstatement. That remedy was opposed by the respondent. There was evidence that there were no positions available, that his own position was abolished, and that because of his performance and attitude, as I understand the evidence, it was impracticable to re-employ him.

Further, the respondent clearly bore the onus of establishing that reinstatement or re-employment is impracticable (see *Quality Bakers of Australia Ltd v Goulding and Another* (op cit)). There is no decision of this Commission as to the meaning of "impracticable". There is authority of the Federal Court which is of assistance (see *Nicolson v Heaven and Earth Gallery Pty Ltd* (op cit) (FC) per Wilcox CJ).

"Impracticable" is defined in *The Macquarie Dictionary* (2nd edition) to mean—

"1. not practicable; that cannot be put into practice with the available means: an impracticable plan. 2. unsuitable for practical use or purposes, as a device, material, etc."

In *Nicolson v Heaven and Earth Gallery Pty Ltd* (op cit) (FC) Wilcox CJ said at page 244—

"The word "impracticable" requires and permits the court to take into account all the circumstances of the case, relating to both the employer and employee, and to evaluate the practicability of a reinstatement order in a commonsense way. If a reinstatement order is likely to impose unacceptable problems or embarrassments, or seriously affect productivity, or harmony within the employer's business, it may be "impracticable" to order reinstatement, notwithstanding that the job remains available."

(See also *Cox v South Australian Meat Corporation* (op cit)).

In *Liddell v Lembke* (trading as Cheryl's Unisex Salon) (op cit) at page 360 the word "impracticable", as it appears in s.170EE(2) of the Federal Act was considered. There were some obiter observations on the meaning of the word by Wilcox CJ and Keely J. Their Honours observed—

"The precise meaning of "impracticable" in this context should be left to another day; the question is one of general importance and it was not fully argued in this case. But, although "impracticable" does not mean impossible, it means more than "inconvenient" or "difficult"."

Gray J said at page 368—

"Reinstatement is therefore required if it can be done. If the employer is still employing or able to employ someone to perform the same or similar tasks, then reinstatement will be practicable. Its practicability does not depend on notions of loss of confidence in the employee. Nor does it depend on the existence of grounds which would have justified termination but which were not relied on, because unknown to the employer at the time of the termination."

I agree that, in deciding whether it is impracticable to order an employer to reinstate a dismissed employee, the Commission should take into account all of the circumstances

of the case and evaluate the practicability in a commonsense way, having regard to s.26(1)(a) and s.26(1)(c) of the Act in particular.

The Commission must, however, remember that reinstatement is required if it can be done. In cases of true redundancy by their very nature, it will be impossible to order that a person be reinstated in the position which he or she occupied because that position would have been abolished. Something like that will, however, be possible where a person made redundant was wrongly or unfairly selected for redundancy. This case is an unusual case where only one employee was said to have been made redundant.

On the evidence, his position was plainly abolished and its functions allocated to the positions occupied by Mr Trestrail, Ms Heather Smith, Mr Mackay and Ms Rowena Stock. The evidence, as accepted, was that those functions are now being performed more efficiently.

Further, the evidence was, as the Commission at first instance accepted, that there was a necessity to reduce costs and this had been achieved. There was, too, uncontroverted evidence which the Commission accepted that the current arrangement was more efficient from a financial point of view, but also operated without the day to day problems which were experienced when Mr Gilmore performed these functions.

It was open to the Commission too, to find on the evidence that notwithstanding that Mr Gilmore claimed that the company had 100 stores with approximately 1000 employees and the scale of the operation was sufficient to find employment for him in, to conclude that re-employment was still impracticable. The Commission held that in the circumstances of the case it was not persuaded that the mere size of the company's operations was "a complete answer" to impracticability.

Mr Gilmore, as the Commission found, was not able to identify one available position in which he could be employed. I do not read that as thrusting an onus on Mr Gilmore to identify a position, but merely to make the observation that Mr Gilmore, who claimed that there was a position for him in the organisation, was unable to identify the existence of one.

In any event, if this were a true and genuine redundancy, as the Commission at first instance found, then Mr Gilmore was really faced with the task of establishing that someone else should be made redundant instead of him (see *Gromark Packaging v FMWU 73 WAIG 220 (IAC)*). He did not. Further, the Commission accepted the evidence that Mr Gilmore's character made it difficult to find an alternative position for him. The Commission did so for the reasons set out (see pages 21-22 (AB)) and quoted above.

Therefore, the Commission was entitled to do and gave weight to the evidence that it would be very difficult to know where to place Mr Gilmore (see page 699 (TFI)). Indeed it was quite clear on the evidence that that had been the case for some time.

The Commission, having preferred the evidence of Mr Boskell, amongst others, accepted that it would be difficult to know where to place Mr Gilmore (see page 699 (TFI)) (see his findings generally at pages 20-22 (AB) also).

There was no doubt on the evidence which the Commission accepted from Mr Mackay, Mr Trestrail, Mr Boskell, Mr Danny Breckler, Mr Freedman, Mr Rhine, Mr Rosenwax and others, that were Mr Gilmore to be reinstated, there would be unacceptable problems and embarrassments. Such an order would also seriously affect the productivity or harmony of the company. The effect would plainly be more than inconvenient or difficult. Indeed, there would be a continuation of the unsatisfactory state of affairs which pre-existed the termination of Mr Gilmore's employment.

There was ample evidence to conclude, as the Commission at first instance did, that a re-employment order was not feasible and that in fact, impracticable. That conclusion was open, having regard to the evidence and to the application of s.26(1)(a) and s.26(1)(c) of the Act.

For all of those reasons, the Commission at first instance did not err and was entitled to find that Mr Gilmore should not be reinstated.

COMPENSATION

Once the Commission had decided that reinstatement was impracticable then, and only then, could the Commission turn to the question of compensation.

“Only if reinstatement is “impracticable” is the court to turn its attention to the remedy of compensation” (see per Gray J in *Liddell v Lembke* (trading as Cheryl’s Unisex Salon) (op cit) at page 368).

I set out the following principles—

- (1) The Commission will not be able to adjust the measure of compensation according to its opinion of the conduct of the employer.
- (2) It is required to order the employer to compensate the employee as far as possible up to the limit specified in respect of any loss which the employee has suffered by reason of the termination.
- (3) The limit specified is a limit on what the court can order by way of compensation, not a limit on what the employee can receive from the employer.
Thus, even if an employer has already paid a sum of money designed to compensate the employee for dismissal, if the employee is entitled to greater compensation, the court must award it up to the limit specified (see *Liddell v Lembke* (trading as Cheryl’s Unisex Salon) (op cit) per Gray J at pages 368-369).
- (4) The Commission is able to order that compensation be paid for “loss or injury caused by the dismissal”, provided that the amount not exceed six months remuneration (see s.23A of the Act).
- (5) There must be a causal link between the dismissal and the loss or injury alleged to have been suffered.
- (6) The manner in which the Commission is to assess compensation is not prescribed otherwise by the legislation.
- (7) The Commission must assess compensation having regard to s.26(1)(a), s.26(1)(c), and perhaps from time to time s.26(1)(d) of the Act.

Following what I have said, the statutory limit is a limit upon what the Commission can order by way of compensation. The Commission may still order an amount up to the maximum of six months remuneration, even though the employer has already paid an amount which might be said to be “compensation” or was even designated as such. Of course, it will be a relevant factor to consider that a sum by way of compensation, if the Commission considers it to be compensation, has been paid. In the end, the Commission had the power to order that Mr Gilmore be paid an amount equal to as much as six months remuneration by way of compensation.

The phrase “loss and injury”, in my opinion, means loss occasioned by the employee by the unfair dismissal ((ie) actual loss of salary, benefits or other amounts which he/she would otherwise earn or to which he/she would have been entitled had he/she not been dismissed, including continuity for the purposes of long service and other entitlements).

As to injury, that is a general word which embraces not the loss but the actual harm done to the employee by the unfair dismissal. The word injury is a general and larger word and comprehends in itself a manner of wrongs (see *Cable v Rogers* (1625) 3 Bulst 311 at 312 per Dodderidge J).

Accordingly, “injury” includes humiliation, injury to feelings, being treated with callousness, for example. I have no need to decide here the interesting question of whether loss of reputation would constitute an injury for the purposes of the section. It is fair to say, however, that there seems nothing on the surface to suggest that such a view would be erroneous.

The Commission at first instance, in assessing the amount of compensation which Mr Gilmore should be paid, took into account—

- (1) The payments made by the company. (Twelve months wages was offered, (and indeed paid), because the company was unhappy about having to make the decision and “nobody enjoys having to do what we did” (see page 375 (TFI)).
- (2) His length of service (approximately seven years).
- (3) His need to have plenty of time to try and find employment elsewhere.
- (4) That Mr Gilmore received a redundancy component of approximately three weeks wages for each year of service and six months wages in lieu of notice.

- (5) That no part of the payment made to Mr Gilmore purported to represent compensation for the fairness of his dismissal. (A finding which, on the evidence, the Commission was entitled to make). The company certainly believed that what it did was fair, however.
- (6) That he was not given a reference.
- (7) The term “injury” in this context can also include injury to pride or feelings.
- (8) Mr Gilmore’s expectation that he would be with the company for a long time and he did not expect his dismissal.
- (9) That Mr Gilmore’s co-employees were not told that he was made redundant.

Further, the Commission was entitled to take into account the fact that the dismissal was peremptory summary in its characteristics, and obviously hurtful.

Like the assessment of an award for general damages, the assessment of compensation, under s.23A is not an exact science.

The Commission ordered that a sum, be paid by the respondent, by way of compensation, in an amount equal to two months salary. It has not been established to me that that represented a miscarriage of the exercise of discretion such that I would overturn it. It is certainly not manifestly excessive. The Commission did not therefore err.

APPLICATION TO EXTEND TIME ON THE CROSS APPEAL

There was an application to extend time on the respondent’s cross appeal. The decision appealed against was made on 5th March 1996, and deposited in the Registry on the 6th March 1996. The respondent filed its notice of appeal on 10th May 1996, 65 days after the time limit of 21 days had expired for the filing of a notice of appeal. The appellant’s notice of appeal had been filed on 27th March 1996, the final day on which the notice of appeal was able to be filed within time.

There was an attempt by the respondent to file a notice of appeal earlier. However, that notice of appeal was rejected by the registry.

It is true that the Act makes no provision for a cross appeal which can be filed outside the 21 day period prescribed by s.49 of the Act. One can only appeal, whether it is a cross appeal or not, and that appeal must be instituted within 21 days of the date of the decision against which the appeal is brought.(ie, within 21 days after the decision has been deposited in the Registry.)

In *Ryan v Hazelby and Lester t/a Carnarvon Waste Disposals 73 WAIG 1752 (IAC)* the granting of an extension of time is not automatic. The discretion to extend time is given for the sole purpose of enabling the court to do justice between the parties. This means that discretion can only be exercised in favour of an applicant upon proof that strict compliance with the rules will work an injustice on the applicant.

In order to determine whether the rules (in this case the Act) will work an injustice, it is necessary to have regard to the history of the proceedings, the conduct of the parties, the nature of the litigation, and the consequences for the parties of the granting or refusal of the application to extend time. When the application to extend time is an application to extend time within which to file a notice of appeal, it is always necessary to consider the prospects of the applicant and to bear in mind that in such an application upon expiry of the time for appealing, a respondent has a vested right to retain the judgment. There must be some material upon which the court can exercise its discretion.

In this case, there were always some reasonable prospects of success raised by the grounds of appeal. Further, by operation of the time limit under the Act and the appellant’s filing of the notice on the very last day, it was almost impossible for the respondent to institute its appeal in time.

The respondent could of course have filed its notice of appeal first. However, if the respondent were not given an extension of time, the respondent would lose its rights of appeal. Further, in terms of knowing the grounds of appeal, and being able to prepare to meet them in good time, no detriment has been suffered by the appellant. I have concluded that, in order to do

justice between the parties, the application to extend time should be granted up to and including the dates of the filing and service of the respondent's notice of appeal.

FINAL COMMENTS

Mr Gilmore's appeal rather relied on a close analysis of the evidence. The grounds of appeal were detailed and the submissions detailed.

The principle in *Abalos*' case (op cit) which I have referred to above, applies to the grounds such as ground 9 and to a number of the arguments put to us. Above all, on a consideration of all of the evidence, one cannot say that the Commission erred in fact or in law. The Commission did in fact find that the dismissal was a genuine redundancy.

The Commissioner applied the correct tests on the authorities to which I have referred above in deciding that reinstatement was impracticable. The Commission correctly found that to reinstate Mr Gilmore, would be likely to impose unacceptable problems or embarrassment or seriously effect the productivity or harmony within the respondent company (see page 22(AB)). The Commission took all of the circumstances into account and indeed there was evidence to that effect. Further difficulties experienced by other persons with Mr Gilmore were raised with him in the course of his employment by the company. Even if they had not been, the Commission was entitled to find as it did, there being ample evidence. Having regard to *Devries* case (op cit) upon consideration of the reasons of decision, the submissions and the evidence, I am satisfied that the findings of fact made by the Commission and based on the credibility of the witnesses were made with the advantage of seeing and hearing those witnesses. I am satisfied that those findings of fact should not be set aside by this Full Bench, even if the probabilities of the case were against those findings. In fact, given that the Commission, as it was open to it to do, accepted the evidence of the respondent's witnesses, the findings were not against the probabilities of the case in any event. The findings of fact (see pages 21-22(AB)) depended to a substantial degree on the credibility of the witnesses. Accordingly, on the authority of *Devries* (op cit), those findings must stand unless it can be shown that the Commission failed to use or palpably misused its advantage, or acted on evidence which was inconsistent with facts incontrovertably established by the evidence, or which was glaringly improbable. None of those vices has been established as applying to the reasons for decision in this matter, having regard to all of the evidence. Indeed, on a fair reading of the appellant's evidence, one can understand why his evidence was not preferred. That extract from the reasons of decision of the Commission which I have set out above under the heading "A Crucial Finding" encapsulates the reasons why the Commission was entitled to find as it did.

On consideration of the grounds of appeal and of the lengthy submissions in these appeals and of the evidence and the reasons for decision, I am satisfied that the findings of fact that the Commission made were all open to him and that none of the vices to which I have just referred afflicted the reasons of decision. Indeed, once he accepted the evidence of Mr Andrew Barr, Mr Danny Breckler, Mr David Rhine, Mr Peter Mackay, Mr Ronald Boskell, Mr Ian Freedman, Mr Marcus Rosenwax and others, as it was open for him to do, upon a reading of the evidence, it was very much open for the Commission to find as it did and having done so, to reach the conclusions which the Commission did. I have considered carefully all that was submitted and the evidence and other materials.

There was no miscarriage of the exercise of the Commission's discretion, such as to justify the interference of the Full Bench based on the principles of *House* and *The King* (op cit). There was no other error of law such as to otherwise require that the appeals be upheld. If there were any errors they were not such as to cause the Full Bench to find, in my opinion, that the decision was erroneous such that the appeals should be upheld. For those reasons the appeals are not made out and I would dismiss both of them.

COMMISSIONER CAWLEY: : The submissions in Matter No. 496 of 1996 filed by Jacob Gilmore (hereinafter "the Appellant") against the order issued by the Commission at first instant in his claim of unfair dismissal, as well as in relation to an application made by FDR Pty Ltd (hereinafter "the

Respondent") for an extension of time to lodge a (cross) appeal and that appeal (Matter No. 706 of 1996) were, by consent, heard together.

The order (decision) at first instant issued in March 1996. By it the Commissioner declared that the Appellant had been unfairly dismissed by the Respondent and ordered compensation amounting to two months' salary be paid to the Appellant by the Respondent. Having found that the employer was in fact FDR Pty Ltd, the Commissioner at first instant also struck out two other cited respondents.

The Appellant now seeks a variation to this decision so as to reinstate him in the position from which he was dismissed and without loss of pay or benefits or, in the alternative, an increase in the amount of compensation awarded.

The cross appeal by the Respondent, subject to success of its application for an extension of time for filing, seeks to quash the finding of unfair dismissal and further and in the alternative, to quash the order for compensation.

First the application for an extension of time. I have concerns about the length of time between the date the putative right of appeal lapsed and the date on which the Respondent sought to file an appeal. However I think in an exercise of discretionary judgement this would need to be weighed against the fact that the decision at first instance was to be the subject of wide scrutiny by virtue of the Appellant's appeal and the serious nature of the grounds sought to be raised by the Respondent. Having regard for these, I consider that on balance the Respondent's application should succeed and the cross appeal proceed. I note that counsel for the Respondent put a submission that a right of appeal for the Respondent existed in this instance in any event but in view of the conclusion above it is not essential to deal with this argument.

Before turning to the appeal and cross appeal I note that the claim before the Commission at first instance was strenuously argued over ten sitting days accounting for over 900 pages of transcript. Fifteen witnesses were called to give evidence and over 80 exhibits were produced. The task for the Commissioner was undoubtedly formidable. This point is taken up subsequently in reference to the reasons which issued.

The resulting decision now under challenge was one for discretionary judgement testing on the balance of probabilities having regard for all the evidence properly before the Commissioner.

In determining the appeal and cross appeal the Full Bench is bound by the principles expressed by the High Court in *House v King* [1936] 55 CLR 499. In essence, these amount to an onus on those who appeal to establish that the Commissioner reached conclusions which were not reasonably open to find on what was properly before him or erred in law such that the Full Bench must intervene. The errors must be manifestly wrong. And importantly, the Full Bench must respect the fact that the Commissioner has had the advantage of directly seeing and hearing the witnesses in a case and in judging credibility. Only a palpable error in such judgement would warrant an appellate bench such as the Full Bench arriving at different conclusions.

Most of the 21 grounds of appeal raised by the Appellant go to submissions that the Commissioner either was wrong in findings of fact based on the evidence of witnesses or had no or insufficient regard for evidence which, properly considered, would have resulted in different findings. So far as the latter is concerned I note that it is not sufficient to rely on the fact that the reasons for decision in a particular case do not expressly deal with each element of the totality of evidence for such a ground to succeed. Indeed, given the length and breadth of witness and documentary evidence before the Commissioner in this case, and the fact of the statutory emphasis on expedition in this jurisdiction, it could be said that such an approach was not only not mandatory but would have been inappropriate.

The main findings challenged by the Appellant can be summarised as follows:

- that the employer was FDR Pty Ltd;
- that the termination of employment was a redundancy based validly on a cost cutting decision by the management and considerations of the Appellant's performance;

- that having found unfairness, the remedy of reinstatement was impracticable;
- that the level of compensation awarded was a sum equivalent to two months' salary.

In support the Full Bench was taken exhaustively to parts of the transcript which, if relied upon, it was submitted should or would have resulted in opposite or different conclusions. But having had regard for the totality of what was before the Commissioner and not just the extracts raised I am not convinced by these submissions.

There is strong witness evidence that the employer was as the Commissioner found. It was open on the evidence to find that the position occupied by the Appellant was reasonably made redundant by management decision based on a need for cost cutting through a reallocation of work. No error has been sufficiently demonstrated in the Commissioner's conclusion that the decision to terminate the Appellant's employment involved considerations of his approach to and carrying out of the duties or in his reasoning which includes considerations of these aspects of the employment relationship going toward the finding of unfairness. The complaint that reinstatement should have been ordered is not made out. Having made a finding that the making of the Appellant's position redundant was valid, the Commissioner properly canvassed the question of remedy by reinstatement on the evidence before him. The Full Bench should not interfere with his conclusion. Nor am I convinced that his reasoning as to the amount of compensation awarded was in error.

Much of the Appellant's case at first instance sought to establish a family feud as sole or main motive for his unfair dismissal. Clearly though, the finding of a valid reason for redundancy of the Appellant's position and the imperative of cost cutting made the question of an alternative position one for a sufficient demonstration by the Appellant that the Respondent's decision to proceed to terminate the employment was an unfair one. The evidence brought by the Appellant can not be said to have done this. Nor is the ground that the Commissioner erred in his conclusion as to the award of compensation made out.

Having carefully considered the grounds of appeal in the context of all the evidence and the reasons for decision, I have concluded that no error has been established which would warrant intervention by the Full Bench.

The cross appeal involves four grounds.

Grounds 2.2, 3 and 4 largely go to the decision to award the Appellant a sum equivalent to two months' salary as compensation for being unfairly dismissed.

It was asserted that the Commissioner erred in that compensation had not been claimed; the payment of a year's salary to the Appellant on termination was not demonstrated to be inadequate; there was not proper consideration of the effect of the payment of \$120,000.00 in relation to any breach of the Minimum Conditions of Employment Act 1993 and there was an error in law in that the compensation paid to the Appellant, as a result of the Commissioner's decision, exceeded the maximum compensation allowed.

None of these are made out. The Commissioner, having found that there was unfairness was not prohibited from considering relief by way of compensation as an alternative in that reinstatement, had been reasonably concluded was not appropriate in all the circumstances.

The amount awarded was specific to the finding of unfairness and fell within the statutory ambit for relief by way of compensation for unfair dismissal. That the Respondent had paid a significant sum of money in recognition of the Appellant's loss of employment resulting out of a redundancy situation was properly considered by the Commissioner and the fact of that payment could not of itself bar the award of compensation for the unfairness.

The other ground is to the effect that the Commission misapplied tests set down by the Industrial Appeal Court in *Shire of Esperance v Mouritz* (1991) 71 Western Australian Industrial Gazette 891 in that it presumed that the facts on which that appeal was determined and the facts of this case were sufficiently at one when they are actually at odds.

But leaving aside the *Mouritz* case, it is established that the process adopted for termination of a contract of employment

may be a factor giving rise to unfairness in a particular case. In the case at first instance, the evidence is that the termination involved a quite senior position, service of some years and a contract in which there was a reasonably held expectation by the employee of security of employment by the Respondent. In this context and with the evidence of a peremptory dismissal, it was open to the Commission to conclude that the procedure adopted for dismissal was a factor giving rise to the unfairness.

None of the grounds of the cross appeal are made out.

I would dismiss the appeal and the cross appeal.

COMMISSIONER GIFFORD: I have read the Reasons for Decision of His Honour the President and agree with him in all respects. I accordingly agree that the appeals ought to be dismissed.

THE PRESIDENT: For those reasons, the appeals are dismissed.

Order accordingly

Appearances: (In Appeal No. 496 of 1996)

Ms V L Proud (of Counsel), by leave, and later Mrs R Gilmore, as agent, on behalf of the appellant.

Mr P M Nisbet QC, by leave, and with him Mr D H Solomon (of Counsel), by leave, on behalf of the respondent.

(In Appeal No. 706 of 1996)

Mr P M Nisbet QC, by leave, and with him Mr D H Solomon (of Counsel), by leave, on behalf of the appellant.

Ms V L Proud (of Counsel), by leave, and later Mrs R Gilmore, as agent, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jacob Gilmore
(Appellant)

and

Cecil Bros, FDR Pty Ltd and Cecil Bros Pty Ltd
(Respondents).

No 496 of 1996.

and

FDR Pty Ltd
(Appellant)

and

Jacob Gilmore
(Respondent).

No. 706 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P.J. SHARKEY.

COMMISSIONER S.A. CAWLEY.

COMMISSIONER R.H. GIFFORD.

8 November 1996.

Order:

THESE matters having come on for hearing before the Full Bench on the 17th, 18th and 19th days of September 1996 and on the 7th and 8th days of October 1996, and having heard Ms V L Proud (of Counsel), by leave, and later Mrs R Gilmore, as agent, on behalf of the appellant in appeal No 496 of 1996 and the respondent in appeal No 706 of 1996, and Mr P M Nisbet QC, by leave, and with him Mr D H Solomon (of Counsel), by leave, on behalf of the respondent in appeal No 496 of 1996 and the appellant in appeal No 706 of 1996, and the Full Bench having reserved its decision and reasons for decision being delivered on the 8th day of November 1996 wherein it was found that the appeals herein be dismissed, it is this day, the 8th day of November 1996, ordered that appeal Nos. 496 of 1996 and 706 of 1996 be and are hereby dismissed.

By the Full Bench

(Sgd.) P.J. SHARKEY,

President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jacob Gilmore
(Appellant)

and

Cecil Bros, FDR Pty Ltd and Cecil Bros Pty Ltd
(Respondents).

No. 496 of 1996.

and

FDR Pty Ltd
(Appellant)

and

Jacob Gilmore
(Respondent).

No. 706 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P.J. SHARKEY.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER R.H. GIFFORD.

8 November 1996.

Order.

THESE matters having come on for hearing before the Full Bench on the 17th, 18th and 19th days of September 1996 and on the 7th and 8th days of October 1996, and having heard Ms V L Proud (of Counsel), by leave, and later Mrs R Gilmore, as agent, on behalf of the appellant in appeal No 496 of 1996 and the respondent in appeal No 706 of 1996, and Mr P M Nisbet QC, by leave, and with him Mr D H Solomon (of Counsel), by leave, on behalf of the respondent in appeal No 496 of 1996 and the appellant in appeal No 706 of 1996, and the Full Bench having reserved its decision and reasons for decision being delivered on the 8th day of November 1996, it is this day the 8th day of November 1996, ordered and directed as follows that the application herein to extend time to file and serve Notice of Appeal No. 706 of 1996, be and is hereby extended to and including the 10th day of May 1996.

By the Full Bench

(Sgd.) P.J. SHARKEY,

[L.S]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
(Appellant)

and

Cerebral Palsy Association of WA Ltd and The Board of
Management, Quadriplegic Centre
(Respondents).

Nos. 145 and 146 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P.J. SHARKEY.
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER P.E. SCOTT.

17 October 1996.

Reasons for Decision.

THE PRESIDENT: These are appeals against the decisions of the Commission, constituted by a single Commissioner, in applications Nos 1161 and 1147 of 1994.

The Commission by its decisions varied the Quadriplegic Centre Award and the Training Assistants' and Community Support Staff (Spastic Welfare) Award 1987 to have effect as and from the beginning of the first pay period commencing on or after 1 January 1996.

Secondly, the appellant appeals against the decisions of the Commission to include an enterprise flexibility provision in terms to which it was opposed at first instance.

The enterprise flexibility provision inserted by the Commission by its orders is in the following terms—

- “(1) Subject to the provisions contained elsewhere in this clause an employer, and an employee or group of employees, covered by this Award may reach agreement upon terms and conditions of employment to meet the requirements of the employers enterprise and the aspirations of the employee or employees.
- (2) Where a matter arises for consideration between an employer, and an employee or group of employees which—
- (a) were it to be settled between them as a term of an enterprise flexibility agreement such a term would be inconsistent with a provision of this Award, and
 - (b) were an inconsistent term of any such agreement to be given legal force and effect it would apply to a current employee who is known to the employer to be a member of the Union, and
 - (c) if it be intended that the Western Australian Industrial Relations Commission be requested to exercise its powers to give legal force and effect to such an inconsistent term of any agreement, the employer shall notify the Union of the matter raised for consideration as soon as reasonably practicable after it arises and before the matter is settled as a term of any agreement.
- (3) Nothing in this clause shall prevent an employee seeking advice from, or being represented by, the Union during negotiations with the employer.
- (4) No employee shall lose any existing entitlement to earnings for working ordinary hours of work as a result of the implementation of an enterprise flexibility agreement, provided that an employer and an employee or groups of employees may agree on terms and conditions in the aggregate no less favourable to the employees than those prescribed by this Award for working ordinary hours of work.
- (5) Where an enterprise flexibility agreement is made with the genuine consent of the employer and the majority of the employees covered by the scope of that agreement, the Union shall not unreasonably oppose the terms of the agreement.
- (6) Any enterprise flexibility agreement made between the employer, and an employee or group of employees, shall be committed to writing and, if the Union participated in the related negotiations or it is intended that the agreement be given legal force and effect by the Western Australian Industrial Relations Commission pursuant to the Industrial Relations Act, 1979, the employer shall forward a copy of the agreement to the Secretary of the Union.
- (7) An enterprise flexibility agreement made pursuant to this clause is entered into on the condition that, if an application be made to the Western Australian Industrial Relations Commission to give it legal force and effect by means of a variation to this Award, such variation is subject to the approval of the Western Australian Industrial Relations Commission and will, if approved, be made in the form of a schedule to this Award.
- (8) Nothing in this clause shall be taken as limiting a right to apply the Western Australian Industrial Relations Commission to have the Commission exercise any one of its several powers that enable the Commission to give legal force and effect to an enterprise flexibility agreement.”

The grounds of the appeals herein are as follows—

- “1) In determining an operative date of 1 January 1996 for the Second Arbitrated Safety Net Adjustment the Commissioner erred:
- 1) by failing to give any reasons whatsoever for determining that date.
 - 2) by failing to properly consider the low paid nature of the employee cover by the award.
 - 3) by failing to properly consider the community expectation that National Wage Decision will be accessed without undue delay.
 - 4) in that the date is inconsistent with the intention of the State Wage Decision (No.985 of 1994) that all workers under state awards should receive a \$24 increase between 1 November 1991 and 11 July 1996.
- 2) In varying the award to insert the Clause—Enterprise Flexibility Provisions the Commissioner erred:
- 1) in that the clause as inserted is contrary to the intent of the State Wage Decision (No.985 of 1994) in that it
 - (a) encourages individual contracts rather than enterprise based bargaining.
 - (b) is complex and difficult to understand.
 - 2) failing to properly consider the nature of the workforce by the award.
 - 3) failed to properly consider the low paid nature of the workforce covered by the award.
- 3) The appellant seeks an order that the decision of the Commissioner is varied to include an operative date of first pay period on or after 8 June 1995 and a new Enterprise Flexibility Provision as follows—

ENTERPRISE FLEXIBILITY PROVISION

- (1) At each enterprise or workplace, a consultative mechanism and procedures shall be established, comprising representatives of the employer, employees and the Union.
- (2) The purpose of such consultative mechanisms and procedures is to facilitate the efficient operation of the enterprise and/or workplace according to its particular needs
- (3) The particular mechanism and procedure established shall be appropriate to the site (sic), structure and needs of the enterprise and/or workplace
- (4) Where agreement is reached at an enterprise and/or workplace through such mechanism and procedure, and where giving effect to such agreement required this award, as it applies at the enterprise and/or workplace, to be varied, an application to vary shall be made to the Commission.
- (5) The agreement shall be made available in writing, and be filed with the Commission.
- (6) Where an agreement made pursuant to this clause varying this award is approved it shall become a Schedule to this award, and the agreement shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.
- (7) The agreement must meet the following requirements.
 - (a) The purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its (sic) particular needs;
 - (b) The majority of employees must genuinely agree to the change;
 - (c) No employee shall lose income as a result of the change;
 - (d) The Union must have been involved in the consultative mechanism or process;

- (e) No employee is disadvantaged as a result of the agreement through reduction of any award or other legal requirements or protections, in the context of their terms and conditions of employment considered as a whole.
 - (f) The Commission safety net standards are not diminished.
- 8) Any dispute arising in relation to these matters will be dealt with in accordance with the award disputes procedure.”

The latter clause is that proposed by the appellant and rejected by the Commission at first instance.

BACKGROUND

The parties were in agreement before the Commission at first instance that, subject to the determination of appropriate enterprise flexibility provisions, all other conditions precedent to the varying of the awards to prescribe for payment of the second \$8.00 arbitrated safety net adjustment made available by the State Wage Decision of December 1994 had been met.

The respondent employer had proposed an enterprise flexibility related clause which is reproduced at page 15 of the appeal book (hereinafter referred to as “AB”).

At pages 16-17 (AB) the Commission at first instance identified the fundamental differences between the parties.

The Commission had decided the question of the form of enterprise flexibility clause to be included in an award such as this in relation to other applications, and relied upon reasons given by the Commission in deciding those other applications reported in ALHMWU v Powerclean and Others 75 WAIG 2815 at 2819. As a result, the Commission included the clause which it did.

No reasons were given by the Commission for the operative date fixed for the variation to provide for payment of the second safety net adjustment.

CONCLUSIONS

The decisions appealed against are discretionary decisions as identified in Norbis v Norbis 65 ALR 12 (HC).

The Principles which are set out in House v The King [1936] 55 CLR 499 at 504-505 (HC) apply.

It is for the appellant to establish that the Commission at first instance erred in the exercise of its discretion. Only if that is established can the Full Bench substitute its decision for that of the Commission at first instance. A similar matter to this was dealt with by the Full Bench in ALHMWU v Ngala Family Resource Centre and Others 76 WAIG 1658 (FB).

In ALHMWU v Ngala Family Resource Centre and Others (op cit) (FB) the Full Bench heard an appeal from the decisions of the Commission, constituted by a single Commissioner, in a number of matters. The enterprise flexibility provision which was appealed against, having been inserted, was in almost identical terms to that inserted by the Commission at first instance in this matter.

As in this case, too, the question of the operative date of the variation and thus of the payment of the second safety net adjustment was in issue.

Also, as in this case, there were no reasons given for the Commission fixing the date of operation of the variation of the award which it fixed.

The Full Bench observed in ALHMWU v Ngala Family Resource Centre and Others (op cit) (FB) that the reasons for decision of the Commission must be sufficient to comply with the prescription which appears in Ruane v Woodside Offshore Petroleum Pty Ltd 71 WAIG 913 at 914-915 (FB). Those reasons for decision are those required by virtue of s.35 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as “the Act”) to be published by the Commission when it hands down minutes of proposed orders.

Assistance can also be derived from the dictum in Dornan and Others v Riordan and Others 95 ALR 451 at 458 (FC FC) which is as follows—

“The statement of bare conclusions without the statement of reasons will always expose the tribunal to the suggestion that it has not given the matter close enough attention or that it has allowed extraneous matters to cloud its consideration.”

A substantial failure to state reasons for a decision in the circumstances, when a statement of reasons is a requirement of the exercise of the decision-making power, is an error of law rendering the decision void ab initio (see *Ruane v Woodside Offshore Petroleum Pty Ltd* (op cit) (FB) and *Dornan and Others v Riordan and Others* (op cit) (FC FC)).

In my opinion, for the same reasons as were set out in *ALHMWU v Ngala Family Resource Centre and Others* (op cit) (FB), it can be said that there were adequate reasons for the decision as a whole, even though they contain no reason for the decision to make the variations to the award. The decision was to make the operation of the variation retrospective and to fix the date from which the decision was to operate as at the first pay period commencing on or after 1 January 1996.

The fact that no reasons were given carries with it the risk that the Commission might be held not to have given the matter close enough attention, or that it had allowed extraneous matters to cloud its consideration, as I have observed above. I am not, however, satisfied that the Commission at first instance did not give sufficient reasons to enable it to comply with its statutory duty to give reasons. I say that because only one segment of the decision was not the subject of reasons. That segment was a determination of the date of operation of the orders. In my opinion, there was therefore no error of law so as to void the decision ab initio (see also *ALHMWU v Ngala Family Resource Centre and Others* (op cit) (FB) at pages 1660-1661).

There is, however, the matter of whether it might be said that the Commission could be held not to have given the matter close enough attention or it allowed extraneous matters to cloud its consideration because the lack of reasons for reaching the decision which it did in relation to the operative date might lead to that conclusion that the Commission erred in that respect. I will refer to that question later.

RETROACTIVITY OF OPERATION

The Commission at first instance did make the variation of the awards to enable payment of the Second Safety Net Adjustment retrospective. It gave no sufficient reason and thus left itself open to the Full Bench saying that it had not properly exercised its discretion. It was not submitted that the decision lacked statutory validity under s.35 of the Act for failure to provide sufficient reasons for decision, nor could this be said so for reasons which were set out in *ALHMWU v Ngala Family Resource Centre and Others* (op cit) (FB).

In the absence of sufficient reasons, the Commission at first instance is exposed to the suggestion that it did not give the matter of retroactivity close enough attention or that it had allowed extraneous matters to cloud its consideration (see *Dornan and Others v Riordan and Others* (op cit) at page 458 (FC FC)).

The Commission did, however, recognise the need for ordering some retroactivity.

S.39 of the Act applies to applications such as this under s.40 of the Act. Under s.39(3) of the Act the Commission may by its award give retrospective effect to the whole or any part of the award if and to the extent that the parties to the award so agree, or if in the opinion of the Commission there are special circumstances which make it fair and right to do so.

There was no agreement between the parties concerning retrospectivity. The applications were lodged in the Commission on 9 November 1994. There were answers and counter proposals lodged on 12 December 1994. The matters were heard by the Commission on 29 June 1995. Orders issued on 31 January 1996 and were deposited in the office of the Registrar on 31 January 1996 becoming perfected only then (ie over a year after the applications were made).

It was necessary, in my opinion, for the Commission to consider the clear prescription of the Wage Fixing Principles that all employees under State awards should receive a \$24.00 increase between 1 November 1991 and 1 July 1996 (see the State Wage Decision 75 WAIG 23 at 31-33 (CICS)). There the Commission said at page 33—

“It is emphasised that negotiations involving offsetting should be conducted within the context that it is the object of the wage fixing system under which a programme for wage adjustments has been provided that all employees will receive a minimum wage increase of \$24.00 per

week over a period of more than four and a half years from 1 November, 1991 to 1 July, 1996.

Mr O'Connor, on behalf of the respondents, submitted that the provision in the Principles was not mandatory. However, that seems to be the clear intention of the Commission in Court Session and the reason why the Safety Net Adjustments exist. Certainly, there are conditions precedent to be complied with, but subject to that those time limits apply.

It was open, too, to the Commission to find that there were special circumstances within the meaning of s.39(3) of the Act to enable the operation of the variation to the award to effect payment of the Second Safety Net Adjustment to be made retrospective. That is acknowledged by the Commission in making the order varying retrospective operation.

In my opinion, the equity, good conscience and substantial merits of the case required the delay of over 12 months from application to order to not be permitted to disadvantage the employees covered by the awards. The view that such a course is correct is fortified by the fact that the Third Safety Net Adjustment was required to be made prior to 1 July 1996 (see the State Wage Decision 75 WAIG 23 at 31-33 and 38 (CICS)).

Further, the Second and Third Arbitrated Safety Net Adjustments were to be made available at award level operating from the first pay periods commencing on or after 22 March 1995 and 22 March 1996 respectively (see the State Wage Decision 75 WAIG 23 at 38 (CICS) and the Supplementary State Wage Decision 75 WAIG 40 at 41 (CICS)).

The date fixed for the operation of the variation took no proper account of these requirements. Further, it was not to the point that other safety net adjustment variations may not have been sought or made. What caused that to be the case is quite unknown to this Full Bench.

Further, although it was not essential to a proper consideration of this matter, the fact that these were lowly paid employees comparatively on the unchallenged statistical evidence at first instance (see page 39 (AB)) was another reason why retrospectivity for a significant period should have been ordered.

That there was 12 months delay in the payment being made was in all of the circumstances inequitable.

In order to comply with the Principles and so that the employees would not be disadvantaged, having regard also to the fact that these were lowly paid employees, and also having regard to the delay between the date of hearing, 29 June 1995, and the issue of the orders eight months later, all of which were relevant factors, the Commission was entitled to take into account, the exercise of discretion miscarried. Further, the Commission should have found that those factors existed and taken them into account. Having taken them into account, a proper exercise of the discretion of the Commission required that the variation of the awards to provide for the \$8.00 per week payment be made operational at least as and from 29 June 1995, the date of the hearing. These were all therefore special circumstances within the meaning of s.39 of the Act which would enable the Commission to rightly fix the operation of the orders as commencing at 29 June 1995. In any event, it is fair to add that it did not appear how the Commission at first instance reached the result embodied in its orders, and because the decision as to retroactivity was plainly unreasonable, I would hold that the Full Bench should infer that, in some way, there had been a failure properly to exercise the discretion which the law reposed in the Commission at first instance (see *House v The King* (op cit) (HC) at page 505 per Dixon J). The Commission erred in failing so to do. The Commission's discretion miscarried for the above reasons, in terms of the test set out in *House v The King* (op cit) (HC). I am satisfied that all of those factors which I have mentioned above should be taken into account and that it was open to the Commission to find that they should be. I would now find in terms of what I have outlined above in the exercise of the Full Bench's discretion and substitute an operative date of 29 June 1995.

I refer to the reasons in detail given in *ALHMWU v Ngala Family Resource Centre and Others* (op cit) (FB) at page 1661.

I turn now to the question of the enterprise flexibility provisions. The Commission is bound to apply the Wage Fixing Principles (see *RRIA v AMWSU and Others* 73 WAIG 1993 (IAC)).

Since part of the submission was that the provision by way of variation was inserted contrary to the intent of the State Wage Decision (75 WAIG 23 (CICS)), it is necessary to consider the relevant provisions of the Wage Fixing Principles. The Commission in Court Session in that decision, which gave effect to the Statement of Principles formulated in the Australian Commission in August 1994 (the 1994 State Wage Decision 75 WAIG 23 at 24 (CICS)), observed that the decision to provide for three \$8.00 per week Arbitrated Safety Net Adjustments represented—

“an appropriate balance between three objectives:

- maintaining an award system that provides for relevant wages and conditions of employment;
- promoting enterprise bargaining by maintaining an incentive to bargain; and
- facilitating the review of awards under Section 150A.”

At 75 WAIG 23 at 26 (CICS) the Commission in Court Session observed—

“The objectives of the wage fixing system in this State which give effect to the National Wage Decision should identify that priority is given to enterprise bargaining, that parties at an enterprise take responsibility for their own industrial relations affairs and that Structural Efficiency continues to have relevance to the award system which underpins enterprise bargaining.”

The Commission in Court Session said, too, quite categorically, that the wage fixing system (see 75 WAIG 23 at 26 (CICS))—

“... must provide an orderly approach to wage determination in the award system which remains available to parties unable to reach agreement at the enterprise level while still maintaining an incentive for them to continue to bargain for an agreement.”

The Commission in Court Session had explained that one of the objectives was to (see 75 WAIG 23 at 26 (CICS))—

- ensure that priority in the system is on the parties at an enterprise—employers, employees and registered organisations—to take responsibility for their own industrial relations affairs and reach agreements appropriate to the enterprise.”

The Commission in Court Session there specifically recognised in its decision the part to be played by registered organisations in this process. One Principle, in fact, refers to the role of arbitration and the award system (see also 75 WAIG 40 (CICS)). The Commission also observed (75 WAIG 40 (CICS)) that—

“The term “enterprise flexibility agreement” does not have any statutory basis under the Industrial Relations Act, 1979 (‘the Act’) and as we have said in our Reasons for Decision dated 30 December 1994, we do not seek to import any such legislative provision from the federal act.”

The Commission there specifically declined to import a provision which recognises enterprise flexibility clauses. The Commission nonetheless said (see 75 WAIG 40 at 41 (CICS))—

“The Commission shall promote and facilitate enterprise bargaining by the inclusion of enterprise flexibility clauses in awards which are consistent with the objectives that parties take responsibility for their own industrial relations affairs and reach agreement appropriate to the enterprise.”

In Section 2, Part 2, “Consent Award or Award Variations to Give Effect to an Enterprise Agreement”, the Commission in Court Session made this observation (see 75 WAIG 40 at 41 (CICS))—

“If the Commission considers that the onus has been satisfied a consent award or consent variation to an award may be made to give effect to an enterprise agreement between parties bound by an award ...”

What is made quite clear in all of the Statements of the Principles by the Commission in Court Session is that an integral part of enterprise bargaining comprises of registered organisations who are parties to the award. Further, the award which underpins enterprise bargaining is inextricably linked to the

process. In other words, enterprise bargaining does not occur and is not separate from the existence of an award. Indeed, awards may (as is recognised) be varied to reflect an enterprise bargaining agreement. That is in the case where an enterprise bargaining agreement registrable under s.41 of the Act is not achieved. The place of registered organisations of both employers and employees in enterprise bargaining is recognised by the Wage Fixing Principles, as we have said, and the extracts to which we have referred bear that out quite unequivocally. That place is also recognised by the fact that the Principles acknowledge and support an award based concept involving registered organisations which are, as the appellant is, a party to the awards sought to be varied and which are parties to such awards by right of constitutional coverage of employees subject to the awards. An award cannot be sought to be varied except by an organisation or association named as a party to it (or an employer who is bound by the award) (see s.40 of the Act). No-one else can apply for a variation. A s.41 agreement cannot be registered unless it is made between an organisation or association of employees and any employer or organisation of employers.

The Act encourages the formation of representative organisations of employers and employees and their registration under the Act (see s.6(e) of the Act). That is what, of course, underpins the Principles. The Principles relate to an award based system of industrial regulation. In this State, there is another distinct and separate system contained in the Workplace Agreements Act 1993 which is entirely different. The Commission in Court Session observed, as we have said above, that the Federal concept of enterprise flexibility is not imported into the State system by the Principles (the Federal provisions are set out in s.113A and s.113B of the Industrial Relations Act 1988 (Cth) (as amended)). Quite clearly that concept is not. The true nature of the system created by the State Wage Fixing Principles is based on the cornerstone Structural Efficiency Principle. The Enterprise Bargaining Flexibility provisions came into the Wage Fixing System under the Structural Efficiency Principle as long ago as April 1991 (National Wage Decision 1991 (Print J7400)). The Wage Fixing System in this State has continued to be based on the Structural Efficiency Principle and does not import the statutory enterprise flexibility requirements of s.113A and s.113B of the Industrial Relations Act 1988 (Cth) (as amended). These sections came into operation in 1994 (Act No 98 of 1993). The Structural Efficiency Principle and the place of organisations in the system are also unequivocally recognised by the dicta of the Commission in Court Session in the 1994 State Wage Case Decision (75 WAIG 23 at 29) as follows—

- establishing a consultative mechanism and procedures appropriate to their size, structure and needs for consultation and negotiation on matters affecting their efficiency and productivity;
- providing in awards, in order to ensure increased efficiency and productivity at the enterprise level, while not limiting the rights of either an employer or union to arbitration, a process whereby consideration can be given to changes in award provisions; any agreement reached under this process would have to be formally ratified by the Commission and any disputed areas should be subject to conciliation and/or arbitration; and”

The consultative process envisages that organisations will be involved and not be excluded.

There is no provision equivalent of or similar to either s.113A or s.113B of the Industrial Relations Act 1988 (Cth) (as amended), so the Federal authorities cited to us are of little assistance.

The Commission inserted a clause in this case which purports to exclude the applicant being engaged in negotiations with employers to achieve enterprise agreements. To do so is to provide a mechanism which might exclude an organisation which is a party to the award and represents employees covered by the award doing what it is entitled to do. The clause ordered to be inserted risks the provision of a mechanism to create workplace agreements outside the framework of that Act, when, in this State, there are two separate systems, one the workplace agreement system created by the Workplace Agreements Act 1993, and the other, the award based system to which the Wage Fixing Principles apply. Further, the provision in the variation

ordered by the Commission at first instance, which enables agreements to be made to which the appellant is not a party or not engaged in the negotiations, is contrary to the Principles, as we have illustrated above. The only way in which a variation to the award can be made on behalf of employees is by the applicant. The only way in which a s.41 agreement, which reflects an enterprise bargaining agreement, can be registered on behalf of employees is by the applicant. The clause inserted purported to provide a mechanism for employees to enter into agreements themselves with an employer to the exclusion of the appellant. There is no provision in the Act to enable this to occur. There is no provision within the Principles to enable this to occur. The Principles, as we have said, enable only s.41 agreements or award variations to reflect an enterprise bargaining agreement. Both mechanisms are only valid and enforceable because the Act provides for them. The clause is therefore contrary to the Principles.

It is also alleged in this ground that the Commission at first instance erred in failing to consider the nature of the workforce covered by the awards and to properly consider the low paid nature of the workforce covered by the awards. I am not certain that the Commission did so err, and we are not persuaded that, in any event, those matters were necessarily relevant.

However, the enterprise flexibility provision proposed by the appellant, at first instance, properly reflects a process which involves the organisation which has the only power to deal with these matters under the Act and in accordance with the Principles right through to variation of the awards or to the registering of an agreement.

There were a number of submissions made to us which were not made to the Full Bench in ALHMWU v Ngala Family Resource Centre and Others (op cit) (FB).

Firstly, it was submitted that if the clause favoured by the appellant were inserted in the awards then breaches of s.96B of the Act might occur. By that section, there is a prohibition upon an award, an industrial agreement or an order under this Act or any arrangement between persons relating to employment requiring a person to become or remain a member of an organisation, requiring a person to cease to be a member of an organisation, requiring a person not to become a member of an organisation, or requiring a person to treat another person less favourably or more favourably according to whether or not that other person is or will become or cease to be a member of an organisation. Further, there is a prohibition upon an award, etc, conferring on any person by reason of that person's membership or non-membership of an organisation, any right to preferential employment or to be given preference in any aspect of employment. The section goes on to provide that a requirement contrary to the section is of no effect.

The provision sought to be inserted in the award by the appellant is and does not contravene s.96B of the Act in any respect on any fair reading. The provision is directed to ensuring that the appellant organisation plays a part in any enterprise bargaining process and in the consultative process from which the same springs. The enterprise bargaining process does not take account of or inhibit the ability of agreements being made with employees granting greater than award prescribed benefits, as Mr O'Connor submitted. That is because the form of clause inserted is one inserted, as envisaged, by the Principles and which can give both to a s.41 agreement or an application to vary the award.

The requirement that the organisation is a party when it is a party to the award which regulates the enterprise because the enterprise is part of an industry for the purposes of s.37 of the Act cannot, in any way, offend s.96B of the Act and does not. It contains no requirement of the type which s.96B prohibits. I see no difficulty at all in the appellant being involved in consultation processes at a workplace, even if no members are employed there. The Principles make no exception and awards under s.37 of the Act are common rule awards which bind employees employed in any calling mentioned in the award in the industry or industries to which the award applies, etc. Since the appellant is a party to these awards, any process which results or might result in a s.41 agreement or a variation to the award whether involving members or not should include the appellant. Further, I am not persuaded that the appellant's proposed clause prevents agreements being struck by individuals at the workplace.

For the reasons which I have set out above, the Commission at first instance erred in the exercise of its discretion in that it failed to apply the Principles, as it was bound to do (see RRIA v AMWSU and Others (op cit) (IAC)). The Commission's discretion therefore miscarried and I would substitute, in the exercise of the discretion of the Full Bench as properly reflecting the Principles and complying with them, the clauses proposed by the appellant. That conclusion we reached applying the reasons set out above as to the merits of the appellant's applications at first instance, and making all necessary findings based on those reasons. I have considered carefully all of the submissions made to the Full Bench and all of the evidence and other material before the Full Bench. Nothing has been put to me which would persuade me that the decision of the Full Bench in ALHMWU v Ngala Family Resource Centre and Others (op cit) (FB) was wrong or that that case was distinguishable in any material particular from this. I would uphold the appeals for those reasons. I would vary the decisions at first instance accordingly and issue a minute to reflect these reasons.

CHIEF COMMISSIONER W S COLEMAN: I have had the benefit of reading the draft of The Hon President's reasons for decision. I agree with those reasons and with the orders proposed.

COMMISSIONER P E SCOTT: I have had the benefit of reading in draft form, the reasons for decision of His Honour, The President, and agree with his conclusions and the variation to the decisions at first instance in the manner set out in those reasons, and having nothing to add.

THE PRESIDENT: For those reasons, the appeals are upheld and the decisions at first instance varied.

Order accordingly

Appearances: Ms S Ellery on behalf of the appellant.

Mr M O'Connor on behalf of the respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
(Appellant)

and

Cerebral Palsy Association of WA Ltd and The Board of
Management, Quadriplegic Centre
(Respondents).

Nos. 145 and 146 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
CHIEF COMMISSIONER W S COLEMAN.
COMMISSIONER P E SCOTT.

17 October 1996.

Order:

THESE matters having come on for hearing before the Full Bench on the 1st day of August 1996, and having heard Ms S Ellery on behalf of the appellant and Mr M O'Connor on behalf of the respondents, and the appellant having sought leave of the Full Bench to amend the grounds of appeal, and there being no objection to such amendments by the respondents, and whereas the Full Bench found it necessary to make such an order as was necessary or expedient for the expeditious and just hearing and determination of these matters, it is this day, the 17th day of October 1996, ordered and directed that leave be and is hereby granted to the appellant herein to amend the grounds of appeal as follows—

- (1) THAT ground (1) of the grounds of appeal in appeals Nos 145 and 146 of 1996 be and are hereby amended by substituting for the date "1 September 1995" the date "1 January 1996".

- (2) THAT ground (3) of the grounds of appeal in appeals Nos 145 and 146 of 1996 be and are hereby amended by substituting for the date "1 July 1995" the date "8 June 1995".

By the Full Bench

(Sgd.) P. J. SHARKEY,

[L.S]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
Appellant

and

Cerebral Palsy Association of WA Ltd and The Board of
Management, Quadriplegic Centre
Respondents.

Nos 145 and 146 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY
CHIEF COMMISSIONER W.S. COLEMAN
COMMISSIONER P.E. SCOTT.

17 October 1996.

Order.

These matters having come on for hearing before the Full Bench on the 1st day of August 1996, and having heard Ms S Ellery on behalf of the appellant and Mr M O'Connor on behalf of the respondents, and the Full Bench having reserved its decision on these matters, and reasons for decision being delivered on the 17th day of October 1996 wherein it was found that the appeals should be upheld, it is this day, the 17th day of October 1996, ordered and directed as follows—

- (1) THAT appeals Nos 145 and 146 of 1996 be and are hereby upheld.
- (2) THAT the decisions of the Commission in applications Nos 1161 and 1147 of 1994 made on the 31st day of January 1996 be and are hereby varied as follows—
 - (a) THAT the operative date of "1 January 1996" wherever the same appears in the said decisions of the Commission in applications Nos 1161 and 1147 of 1994 be deleted and a new operative date to read "29 June 1995" be substituted therefor.
 - (b) THAT the new clauses "Enterprise Flexibility Provisions" referred to in paragraph 4 of the Schedule to the decision of the Commission in application No 1161 of 1994 and paragraph 3 of the Schedule to the decision of the Commission in application No 1147 of 1994 be and are hereby varied by deleting such clauses in the said Schedules to the applications as follows—
 - (i) in application No 1161 of 1994 clause 28.—Enterprise Flexibility Provisions
 - (ii) in application No 1147 of 1994 clause 35.—Enterprise Flexibility Provisions,
 and substituting for the same in paragraphs 4 and 3 respectively of the said Schedules in the said decisions, as numbered hereunder—
 - (i) No 1161 of 1994—clause 28
 - (ii) No 1147 of 1994—clause 35

the following clause "Enterprise Flexibility Provision"—

ENTERPRISE FLEXIBILITY
PROVISION

- (1) At each enterprise or workplace, a consultative mechanism and procedures shall be established, comprising representatives of the employer, employees and the Union.
- (2) The purpose of such consultative mechanisms and procedures is to facilitate the efficient operation of the enterprise and/or workplace according to its particular needs.
- (3) The particular mechanism and procedure established shall be appropriate to the site (sic), structure and needs of the enterprise and/or workplace.
- (4) Where agreement is reached at an enterprise and/or workplace through such mechanism and procedure, and where giving effect to such agreement requires this award, as it applies at the enterprise and/or workplace, to be varied, an application to vary shall be made to the Commission.
- (5) The agreement shall be made available in writing, and be filed with the Commission.
- (6) Where an agreement made pursuant to this clause varying this award is approved it shall become a Schedule to this award, and the agreement shall take precedence over any provision of this award to the extent of any expressly identified inconsistency.
- (7) The agreement must meet the following requirements.
 - (a) The purpose of the agreement is to make the enterprise or workplace operate more efficiently according to its particular needs;
 - (b) The majority of employees must genuinely agree to the change;
 - (c) No employee shall lose income as a result of the change;
 - (d) The Union must have been involved in the consultative mechanism or process;
 - (e) No employee is disadvantaged as a result of the agreement through reduction of any award or other legal requirements or protections, in the context of their terms and conditions of employment considered as a whole.
 - (f) The Commission safety net standards are not diminished.
- (8) Any dispute arising in relation to these matters will be dealt with in accordance with the award disputes procedure."

By the Full Bench

(Sgd.) P. J. SHARKEY,

[L.S]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
Appellant

and

Cerebral Palsy Association of WA Ltd and The Board of
Management, Quadriplegic Centre
Respondents.

Nos 145 and 146 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
CHIEF COMMISSIONER W S COLEMAN
COMMISSIONER P E SCOTT.

4 July 1996.

Order.

These matters having come on to hear any further application for adjournment before the Full Bench on the 3rd day of July 1996, and having heard Ms S Ellery on behalf of the appellant and Mr M O'Connor on behalf of the respondents, and the Full Bench having given its reasons for decision, it is this day, the 4th day of July 1996, ordered that the hearing and determination of appeals No 145 and 146 of 1996 be and are hereby adjourned to 10.30 am on Thursday, the 1st day of August 1996.

By the Full Bench

(Sgd.) P. J. SHARKEY,

[L.S]

President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
Appellant

and

Cerebral Palsy Association of WA Ltd and The Board of
Management, Quadriplegic Centre
Respondents.

Nos 145 and 146 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY
CHIEF COMMISSIONER W S COLEMAN
COMMISSIONER P E SCOTT.

12 June 1996.

Order.

These matters having come on for hearing before the Full Bench on the 7th day of June 1996, and having heard Ms S Ellery on behalf of the appellant and Mr M O'Connor on behalf of the respondents, and the respondents herein having applied to the Full Bench to adjourn the appeals herein, and the appellant herein having opposed such adjournment, and whereas the Full Bench found it necessary to make such orders as were necessary for the expeditious and just hearing and determination of these matters, it is this day, the 12th day of June 1996, ordered and directed that appeals No 145 of 1996 and No 146 of 1996 be and are hereby adjourned to 9.30 am on Wednesday, the 3rd day of July 1996 to hear any further application for adjournment.

By the Full Bench

(Sgd.) P. J. SHARKEY,

[L.S]

President.

**FULL BENCH—
Appeals against decision of
Industrial Magistrate—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Builders' Labourers', Painters and
Plasterers Union of Workers

(Appellant)

and

Anglican Homes Inc.

(Respondent).

No. 843 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P.J. SHARKEY.

COMMISSIONER A.R. BEECH.

COMMISSIONER R.H. GIFFORD.

17 September 1996.

Reasons for Decision.

THE PRESIDENT: This is an appeal against the decision of the Industrial Magistrate's Court at Perth made on 28 May 1996 upon complaint No. 44 of 1996.

By that complaint, the appellant organisation of employees alleged that between 10 July 1994 and 11 September 1994 at Perth, the respondent, Anglican Homes Inc, being a party bound by Award No. 14 of 1978, committed a breach thereof in that it failed to pay correct wages to "their" employee, Peter Reekie, contrary to clauses 8(1), (2)(a), (3), (4), (5), (6) and (10) of Award No. R 14 of 1978.

In fact, Mr Reekie in evidence gave his name as Peter Parker Reekie.

Award No. R 14 of 1978 is the Building Trades (Construction) Award 1987 (hereinafter referred to as "the award"). By its complaint, the appellant claims that the correct wage had not been paid to Mr Reekie on 10 July 1994 and weekly thereafter, up to and including 11 September 1994. The total amount claimed as unpaid was \$479.00. The complaint was heard on 28 May 1996 and at the end of the applicant's case, the advocate for the respondent submitted that there was no case to answer. His Worship, having heard submissions, dismissed the complaint. It is against that decision that the appellant now appeals.

The appellant does so on the following grounds (as amended)—

1. The learned Magistrate erred in law and in fact in his reasons for decision, in finding that Mr. Reekie was not able to be covered under the classification of "on site" Painter as outlined in the Building Trades (Construction) Award, No. 14 of 1978 ("the Award") in that:
 - (a) The learned Magistrate erroneously found that Mr. Reekie did not undertake "on site" painting duties as defined in the Award.
 - (b) The learned Magistrate failed to have sufficient regard to the evidence of Mr. Reekie which demonstrated the nature of the painting duties which he undertook whilst employed by Anglican Homes.
 - (c) The learned Magistrate failed to apply the correct principles in determining whether Mr. Reekie was an "on site" painter as defined under the Award.
2. The learned Magistrate erred in law in denying the Appellant natural justice in that:
 - (a) The Appellant was not afforded the opportunity of completing submissions regarding the issue of whether or not Mr. Reekie was an "on site" painter as defined in the Award.

Accordingly, the Appellant seeks an Order that Mr. Reekie was an "on site" painter as defined in the Award and that the complaint be remitted back to the learned Magistrate for further hearing and determination."

Counsel for the appellant abandoned ground 2 upon the hearing of this appeal and so advised the Full Bench.

ISSUES AND CONCLUSIONS

The learned Industrial Magistrate gave *ex tempore* reasons which appear at pages 40-42 of the appeal book (hereinafter referred to as "AB").

He made a number of findings and reached a number of conclusions—

- (1) His Worship observed correctly that the matter turned on the question of whether Mr Reekie employed by the respondent was covered by the subject award.
- (2) His Worship found that the work which Mr Reekie did was maintenance painting, and that the respondent, which had a number of nursing homes and homes of that type around Perth, employed the defendant (sic) as painter to maintain them.
- (3) His Worship found that there was no evidence that Mr Reekie was directly employed for the purposes of completing buildings, but that he attended on "sites" owned by the defendant and maintained them as a painter. The bulk of the work was merely repainting, preparing the surface and some insignificant refurbishment work also.
- (4) His Worship found—
 - (a) Mr Reekie's work did not come within the scope clause, clause 3, of the subject award read with the definition of "construction work" in clause 7 of the award.
 - (b) That because Mr Reekie was doing maintenance work on buildings owned by the respondent, he was not therefore doing them "on site".
 - (c) His Worship observed "I think the term "on site" refers to "on building sites" and the award has the genera of "construction". These, His Worship held, were existing, well-established buildings and the work was not "in concern" with construction work.

The principles applying to the interpretation of awards are well established (see *Norwest Beef Industries Ltd and Another v AMIEU* (1984) 64 WAIG 2124 at 2133 (IAC) and see also *AEFEU v Minister for Health* 71 WAIG 2253 (IAC)).

It was submitted to us that clause 7(3)(a) of the award was clear and unambiguous and it is not necessary to resort to extrinsic aids to interpret the clause. I agree. However, one has to read clause 3, particularly clause 3(1), with clause 7(3)(a) in the context of the whole of the award.

Clause 3(1) of the award reads as follows—

"This award shall apply:

- (1) to all employees usually employed on or employed as casual employees on construction work as defined in Clause 7.—Definitions of this award in any of the callings set out in Clause 8.—Rates of Pay of this award and who are employed in the building construction industry; and"

Clause 7(3) of the award reads as follows—

"(3) "Construction Work" means—

- (a) all work "on-site" in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or other structures of any kind whatsoever; or
- (b) all work which the union and the employer concerned agree is construction work but only if the agreement is approved by the Board of Reference; or
- (c) all work which, in default of an agreement as aforesaid, is declared by the Board of Reference to be construction work."

Mr Reekie's evidence, read with the evidence of an organiser for the appellant, Mr Anthony Joseph Remedio, was, clearly, that none of the work done by Mr Reekie was done by Mr Reekie as part of a building contract, and that on one occasion he had to complete painting of units not completed by a bankrupt building contractor (and was paid at construction rates for these). His evidence was, however, that what he really did was maintenance work with two other painters on buildings owned by the respondent as instructed by the respondent's property manager (see pages 13-15 and 24-25 (AB)). The respondent employed painters, etc, to make sure that the properties "are kept up to scratch and in good repair as with a hotel or your own house" (see page 23 (AB)).

Mr Reekie's evidence was further that the business of his respondent employer was to look after the elderly.

Mr Remedio described construction sites as some type of building site which he attended in the course of his duties (see page 26 (AB)). However, he did refer to two "off site areas".

To establish that the award bound the respondent to pay in accordance with its provisions, the applicant had to establish that Mr Reekie was usually employed on, or as a casual employee "on construction work" as defined in clause 7. There was no suggestion that Mr Reekie was a casual worker. Indeed, it was quite clear that he was not.

Within the definition of "construction work", Mr Reekie did do work in connection with the maintenance of buildings.

I am of opinion that the scope clause could not apply to the respondent and to Mr Reekie without it being established that Mr Reekie was an employee usually employed on construction industry work and who was, at the material time, employed in the building construction industry as well. His Worship made no finding as to the latter. However, it is difficult to see how the word "on site" can mean anything other than work done on a building site as distinct from work done in a factory or workshop or at one's home or one's own business premises by oneself or one's employees.

The whole context of the award, including the occupations referred to and defined the safety procedures (as well as its history as outlined by Ms Laferla), makes it certain that the award relates to building construction on building construction sites, not to the proprietor of a business or institution or a home owner having his/her/its employees maintain buildings which the former own and use. Even if I am wrong in that, it was not on the evidence or on the submissions established otherwise before His Worship.

In any event, although it was not necessary to finally determine the issue, it was not established what the "building construction industry" is for the purposes of clause 3. There was no evidence that the work being done was work being done in the building construction industry. The terms of clause 3 of the award require that to be proven also.

The learned Industrial Magistrate therefor did not err in finding as he did. I agreed to dismiss the appeal for those reasons, no ground of appeal having been made out.

COMMISSIONER A.R. BEECH: The union relied on subclause (1) of Clause 3.—Scope of the *Building Trades (Construction) Award* to argue that Anglican Homes was bound by the award. In doing so the union needed to show:

1. that Mr Reekie was an employee usually employed on, or a casual employee on, construction work as defined;
2. that he was employed in one of the callings set out in clause 8; and
3. that he was employed in the building construction industry.

It was conceded that Mr Reekie was an employee. The union sought to show that Mr Reekie was employed in the construction industry as defined in the award. Construction work means all work "on site" in connection with the erection, repair, renovation, maintenance, ornamentation or demolition of buildings or other structures of any kind whatsoever. Construction work may also mean all work which the union and the employer agree is construction work if that agreement is approved by the Board of Reference, but in default of an agreement the Board of Reference is to declare whether or not the work is to be construction work. It is arguable that the mean-

ing of what is construction work and what is not construction work ought to have been taken before a Board of Reference. However, the point was not taken either before the learned Industrial Magistrate or on appeal and I take the issue no further.

On appeal the point that was argued related to the definition of construction work within the award. As I read the argument presented the union did not seek to argue that Mr Reekie performed his work on a building construction site. Rather, the union argued the words "on site" are to be read as "on a site" meaning any location where work is performed. The difficulty which I have with that interpretation is that it embraces anywhere work is performed without restriction. If that was indeed the case then there would be little point in referring to "work "on site" ". The award would need only to refer to "work". The preferable interpretation in my view is that construction work is work that is performed "on site" rather than work that is performed "on a site" and in the context of the award it is work performed on a building construction site. The appellant argues that "maintenance" where it appears in that definition can apply to maintenance work as such. However it is difficult to divorce the use of word from the context in which it is presented. That context is, by the title of the award, a building construction award. The distinguishing feature of this award is that it applies to the building construction industry (and see *ABLF v. Heyring Pty Ltd* (1988) 68 WAIG 683 at 684). The indications are that the draftsman of the award intended that there should be an award applying solely to the building construction industry. The words "on site" must therefore be more than merely any place where work is performed. The evidence is that Mr Reekie worked in offices, property owned by Anglican Homes Inc, rented flats and other property. Sometimes the work would be the outside buildings, sometimes inside buildings and some were small jobs and some of them were big jobs. I agree with the conclusion of the learned Industrial Magistrate that there is nothing in the evidence to show that Mr Reekie's work was "on site" as that is to be read in the award.

In any event there was certainly no evidence before the learned Industrial Magistrate that Mr Reekie was employed in the building construction industry. Following the amendment to the award in 1990 (70 WAIG 2661) the application of the award no longer depends upon determining the building construction industry as carried on by the respondents to the award. Now, there merely needs to be evidence which describes the building construction industry as such. In the absence of any evidence on that point, even if it could be said that Mr Reekie worked "on site", which I do not say, there was no evidence about the building construction industry from which it could be concluded that he was employed in it. The learned Industrial Magistrate was quite correct in the decision he reached and indeed no other decision was reasonably open to him. I would therefore dismiss the appeal.

COMMISSIONER R H GIFFORD I have read the Reasons for Decision of His Honour the President, and agree with them. I have nothing further to add.

THE PRESIDENT: For those reasons, the appeal is dismissed.

Appearances: Ms H Prince (of Counsel), by leave, on behalf of the appellant.

Ms S Laferla, as agent, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Builders' Labourers', Painters and
Plasterers Union of Workers

(Appellant)

and

Anglican Homes Inc.

(Respondent).

No. 843 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
COMMISSIONER A.R. BEECH.
COMMISSIONER R.H. GIFFORD.

29 August 1996.

Order.

This matter having come on for hearing before the Full Bench on the 29th day of August 1996, and having heard Ms H Prince (of Counsel), by leave, on behalf of the appellant and Ms S Laferla, as agent, on behalf of the respondent, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 29th day of August 1996, ordered that appeal No. 843 of 1996 be and is hereby dismissed.

By the Full Bench,

[L.S]

(Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Cain
(Appellant)

and

Allan Graham Shuttleton
(Respondent).

Nos. 1246-1250 of 1995.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

4 November 1996.

Reasons for Decision.

THE PRESIDENT: These were a number of appeals brought under s.84 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act") against the decisions of two Industrial Magistrates sitting in the Industrial Magistrate's Court at Perth on different dates.

By complaint No 80 of 1995, Allan Graham Shuttleton, an Industrial Inspector, alleged that on 13 September 1994 at Morley, John Cain threatened that the free and lawful exercise of the occupation of Jason Richard Brown would be interfered with by reason of the circumstance that Jason Richard Brown was not a member of an organisation of employees; contrary to s.96E(1)(b) of the Act.

By complaint No 81 of 1995, Mr Shuttleton alleged that the same offence had been committed on 16 September 1994.

By complaint No 82 of 1995, Mr Shuttleton alleged that on 13 September 1994, Mr Cain threatened that the free and lawful exercise of the trade of John Cinquina would be interfered with by reason of the circumstance that Jason Richard Brown was not a member of an organisation of employees; contrary to s.96E(1)(b) of the Act.

Mr Shuttleton brought complaint No 84 of 1995 alleging that on 13 September 1994, at Morley in the State of Western Australia the appellant, John Cain, had threatened that the free and lawful exercise of the occupation of Ken Sclater would be interfered with by reason of the circumstance that Ken Sclater was not a member of an organisation of employees; contrary to s.96E(1)(b) of the Act.

By complaint No 85 of 1995, Mr Shuttleton alleged that on 13 September 1994, Mr Cain had threatened that the free and lawful exercise of the trade of Kim Suckling would be interfered with by reason of the circumstance that Ken Sclater was not a member of an organisation of employees; contrary to s.96E(1)(b) of the Act.

The latter two complaints were heard by an Industrial Magistrate on 18 October 1995. The first three mentioned complaints were heard by a different Industrial Magistrate on 19 October 1995.

A conviction was recorded and penalties of \$400.00 imposed in respect of each of complaints Nos 84 and 85 of 1995. A total sum of \$2500.00 was ordered to be paid by the appellant for costs.

In relation to complaints Nos 80, 81 and 82 of 1995, the defendant was convicted and fined \$400.00 upon each complaint and ordered to pay costs in the sum of \$1000.00 on each complaint, being a total of \$3000.00. One other complaint was dismissed on that day.

By appeals Nos 1249-1250 of 1995 the appellant appeals against the decisions made in complaints Nos 84 and 85 of 1995 respectively. By appeals Nos 1246, 1247 and 1248 of 1995 the appellant appeals against the decisions in complaints Nos 80, 81 and 82 of 1995 respectively.

GROUND OFS OF APPEAL

The grounds of appeal are, with the exception of some particulars peculiar to each appeal, identical. I reproduce hereunder the grounds of appeal in appeal No 1246 of 1995 as an example of the grounds of appeal—

- “1. The learned magistrate erred in law in convicting the appellant (defendant) of the charge herein when there was no or no sufficient evidence that the appellant (defendant) made a threat as alleged or at all in that:
 - (a) the words said by the appellant (defendant) according to Mr Jason Brown (“Brown”) did not constitute a threat; and
 - (b) there is no evidence that the appellant (defendant) made any threatening gestures or the like.
2. Alternatively, if there was sufficient evidence for the learned magistrate to find that the appellant (defendant) made a threat at all, then the learned magistrate erred in law and in fact in finding that any threat made by the appellant (defendant) was of an unlawful character pursuant to section 96E of the Industrial Relations Act 1979 (“the Act”) in that there was no or no sufficient evidence that the threat related to membership of an “organisation of employees” within the meaning of section 96E and s.96A of the Industrial Relations Act 1979 (“the Act”), as:
 - (a) there is no or no sufficient evidence that the entities stated in evidence by all witnesses as “union”, “TWU” and “Transport Workers Union” were “organisations of employees” pursuant to the act; and
(sic)induction rather by reason of Brown not being a member of an “organisation of employees”.
3. Alternatively, if there was sufficient evidence that the appellant (defendant) made a threat that related to membership of an organisation of employees, then the learned magistrate erred in law and in fact in not holding:
 - (a) that any threat made by the appellant (defendant) related to membership of the Transport Workers Union of Australia (“the federal union”), an organisation registered pursuant to the Industrial Relations Act 1988, an act of the federal parliament (“the federal Act”); and

- (b) that insofar as the state Act sought to regulate the recruitment of membership to the federal union then the state act is invalid to that extent as it is inconsistent with the federal act which covers the field of the regulation of recruitment of members of unions registered under the federal Act.

4. The learned magistrate erred in law in applying the civil standard of proof in deciding the facts necessary to convict the appellant rather than the criminal standard.
5. The learned magistrate erred in law in awarding the complainant costs in the amount of \$1000 as the amount is unreasonable and therefore beyond the power granted the learned magistrate in section 151 of the Justices Act 1902.

And the appellant (defendant) seeks an order that the conviction be quashed.”

All of these appeals were heard together by direction. Upon the hearing of these appeals, Counsel for the appellant informed us that grounds 1 and 2 of the grounds of the appeals were abandoned.

S.96E(1) AND S.96A(1) OF THE ACT

The pertinent section, s.96E(1) of the Act, reads as follows—

- “(1) A person, including an organization of employees, must not threaten that—
- (a) discriminatory action will or may be taken against a second person; or
 - (b) the free and lawful exercise of a second person’s trade, profession or occupation will or may be interfered with,
- by reason of the circumstance that the second person or a third person is not a member of an organization of employees.”

It will be seen that a person is prohibited by the section from, inter alia, threatening the free and lawful exercise of a second person’s trade, profession or occupation. By reason of the circumstance, the second person or a third person is not a member of an organisation of employees.

“Organization” and “organization of employees” are both defined in s.96A(1) of the Act, and I will deal with those definitions later in these reasons.

BACKGROUND TO APPEALS NOS 1246-1248 OF 1995

At the material time, Mr Jason Richard Brown, who gave evidence before the Industrial Magistrate, was an apprentice cabinetmaker employed by Histonium Furniture of which entity Mr John Cinquina was the “principal”. On 13 September 1994, Mr Brown was instructed by Mr Cinquina to take a truckload of metal from the factory on a four and a half tonne Mazda truck to the shop of Betts and Betts at the Morley Galleria, Morley. There, other employees of Mr Cinquina were fitting the shop out. Mr Brown arrived at the shop at the Morley Galleria at about 9.00 or 9.30 am and went to the back door. Two of his co-employees who were tradesmen, Mr Paul Jones and Mr John Stenbridge Fowler, were fitting the shop out. They were coming out of the shop and he was standing on the back of the truck as they came out. Mr Brown then said in evidence “I was stopped by the union from unloading the truck ... Mr Cain came up and asked me if I was a member of the union”. Mr Brown said that it was pretty obvious that Mr Cain was referring to the “TWU union”. On his shirt were the letters “TWU”. Mr Brown’s evidence was that he replied “No, I’m an apprentice, I don’t have to be”. His evidence was that Mr Cain said “If you unload the truck I’ll close it down”. Mr Brown said in evidence that he was not sure whether this meant closing the job down or the site down. He waited for Mr Cain to leave. He said that he did unload the truck.

On 16 September 1994, Mr Brown went back to the site to deliver another truckload of metal which would also involve unloading the truck. Mr Cain was there on that day and walked across the carpark and asked if he had joined the union yet. Mr Brown replied that he was still an apprentice. Mr Brown said that he was told by Mr Cain that he was not allowed to unload the truck. He said to Mr Cain that he was going to deliver the load and not unload it. The two tradesmen, Mr

Jones and Mr Fowler, then unloaded the truck. Had Mr Cain not been there, Mr Brown said that he would have unloaded the truck. He said that Mr Cain did not introduce himself. He denied that Mr Cain said to him that he did not have appropriate safety checks or that he, Mr Brown, required a safety induction. Indeed, he denied that he required the latter. Mr Brown said that he was offended by what occurred because Mr Cain stopped him from doing his job.

There was evidence from Mr Paul Jones, a shopfitter employed by Histonium Furniture, who was working at Betts and Betts with a fellow employee, Mr John Fowler. He gave evidence that Mr Brown told them that there was some trouble about unloading the truck. Mr Cain then came into the shop and introduced himself to them as "John Cain". He told them that he was from the Transport Workers' Union. He showed them a business card which had on it "Transport Workers' Union" and the name "John Cain". He asked Mr Brown if he was in the union. They said that they did not think that he was because he was an apprentice. He corroborated that Mr Cain said that Mr Brown should be in the union otherwise he could not drive the truck and they, Mr Jones and Mr Fowler, could not unload it. Mr Jones and Mr Fowler told Mr Cain to contact their boss, Mr Cinquina. They proceeded to unload the truck. They did unload the truck on that day.

Mr John Stembridge Fowler was employed at the material time as a shopfitting carpenter by Histonium Furniture. He gave evidence corroborating Mr Jones' evidence and described Mr Cain as a large chap from "the Trades and Labor Council and from the TWU". Mr Cain said that it was necessary to have a safety induction onto the site. Mr Fowler said that Mr Cain said on 13 September 1994 that Mr Brown could not unload the truck if he was not a member of the TWU.

Mr John Cinquina gave evidence that, at the material time, he was the proprietor of Histonium Furniture. On 13 September 1994, he received a telephone call from one of his employees, Mr John Fowler, who was fitting out the Betts and Betts shop at Morley Galleria. Mr Cinquina came to the shop as a result and spoke to Mr Cain who gave him a TWU card with the latter's name on it. He said "I am John Cain from TWU. You've got a truck down here which one of your drivers is not a member of the TWU union. If he's not a member of the union he's not allowed on the site". He meant Mr Jason Richard Brown. Mr Cinquina asked the cost of joining the union and Mr Cain told him \$203.00. Mr Cain gave him a membership card and an enrolment card. Mr Cinquina paid no money to Mr Cain. He arranged to have a meeting with Mr Cain the next day, but did not do so because he had to give him a cheque for \$203.00 and decided against it.

Mr Cinquina had a meeting with Mr Cain on Friday, 16 September 1994. Mr Allan Shuttleton, the complainant, was there. Mr Cain, Mr Cinquina said, rang him and threatened to close his site down.

Mr John Cain, a Special Projects Officer with the Transport Workers' Union, gave evidence. He said that on 13 September 1994 he spoke to Mr Brown and asked him if he were a member of the Transport Workers' Union. Mr Brown told him that because he was an apprentice he did not have to join the union, but had no problems about joining it. Mr Brown said that he would have to speak to his boss about it. Mr Cain said "Fine". Mr Cain said that he also asked Mr Brown if he had had a site induction, that is a safety induction in relation to the site. Mr Brown told him that he did not know what an induction was. He denied stopping the truck being unloaded and gave evidence of what he did say. Mr Cain said that he was wearing a TWU shirt. Mr Cain also gave evidence of discussions with Mr Cinquina. He referred throughout his evidence to the "Transport Workers' Union". He admitted in cross-examination that he said that if Mr Brown unloaded the truck he, Mr Cain, would close "it" down because Mr Brown had not had the site safety induction. "It" meant the truck.

There was evidence about the necessity of safety induction onto a site from Mr Kenneth John Bethune of Multiplex Constructions.

There was documentary evidence also. These documents included a copy of the rules of the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch.

By rule 6 of those rules it is provided as follows—

"6. ADMISSION

Subject to Rule 39, every candidate for admission to membership of the branch shall sign the application form as set out in Rule 5, which shall be forwarded to the Secretary of the Branch.

Such applicant for admission shall become a member of the Branch immediately upon signing the said application form whether an entrance fee has been paid or not, unless at the next general meeting of the Branch, to which the application is submitted, objection is taken of his admission; in the event of objection being taken to his admission, the applicant shall only be admitted upon a majority of the members assembled at such meeting voting in favour of the admission of the application.

Any person who shall sign an application form in the form set out in Rule 5 save that the said application form shall refer to the "Transport Workers' Union of Australia" instead of "Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch" shall be deemed to comply with the provisions of this rule insofar as such rule, required the signing by a candidate of the form set in Rule 5.

Any person who has signed an application form in the form set out in Rule 5, save that the said application form shall have referred to the "Transport Workers' Union of Australia" instead of "Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch" shall be deemed to have complied with the provisions of this rule, insofar as such rule required the signing by a candidate of the form set out in Rule 5."

What that rule provides is that an application form signed by a person which refers to the "Transport Workers' Union of Australia" (the Federal union) instead of the "Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch" (the State union) shall be deemed to comply with the rule requiring an application form as prescribed by rule 5 to be signed. That effectively means that the same form can be used to join both unions.

By rules 48 and 49, the State organisation is incorporated with and is a Branch of the Federal union, namely the "Transport Workers' Union of Australia", which is registered pursuant to the Commonwealth Act. Membership in the former is prescribed to be synonymous with membership of the State union. The rules of the Federal organisation are incorporated in the State rules, provided that they are not inconsistent with the rules of the State organisation (see rule 49).

By a letter dated 2 December 1993, the Secretary of the Federal Branch wrote on letterhead, which does not bear the name of the State organisation, to the Registrar of this Commission advising that Mr Cain had the authority "to appear on behalf of the TWU". By "appear" I assume that he meant "appear" in this Commission.

A copy of the rules of the Federal body appear in the appeal book, together with the application form given to Mr Cinquina, and referred to in evidence, which is headed "Transport Workers' Union of Australia".

Her Worship found that the "Transport Workers' Union" is an organisation of employees within the definition of s.96A of the Act. She found that Mr Cain spoke with Mr Cinquina in terms of joining up Mr Brown, one of his staff, "as a union member" on paying the sum of \$203.00. She found, further, that his evidence was factual. She also accepted the evidence of Mr Brown, Mr Jones and Mr Fowler and was satisfied that a threat was made and that it interfered with the free and lawful exercise of Mr Brown's occupation and Mr Cinquina's trade.

BACKGROUND TO APPEALS NOS 1249-1250 OF 1995

Mr Kenneth John Sclater was a shopfitter employed by "Kim Suckling Design and Shopfitting", at the material time. He was by trade a carpenter and joiner.

On 13 September 1994, Mr Sclater had work which was being done at the Morley site. They were installing fixtures inside six shops. He went and got a hire truck and picked up a load of steel shop fittings which he took to the Morley site in a two and a half tonne truck. He was planning to unload the truck so that they could fit one of the shops out. There was a

labourer with him, Mr John Alabaq. Part of the site was fenced off and he drove his truck towards the gate in the fence. There was a person at the gate with "TWU" written on his t-shirt. He introduced himself as John Cain from the Transport Workers' Union. Mr Cain, according to Mr Sclater, said "Did you have a Transport Workers' Union ticket?" Mr Sclater said that he had a ticket, but it was not a Transport Workers' Union ticket. In fact, Mr Sclater gave evidence that he is a member of the CFMEU. His evidence was that Mr Cain said that he, Mr Sclater, needed a Transport Workers' Union ticket to drive a truck onto the site at Morley. Mr Cain asked where Mr Sclater worked and Mr Sclater told him. Mr Cain asked him to contact Mr Suckling because Mr Sclater did not have a union ticket. Mr Cain said that, therefore, Mr Sclater was not allowed to drive the truck onto the site, according to Mr Sclater. Mr Sclater then rang Mr Suckling on a mobile telephone. Mr Cain was standing near. Mr Sclater told Mr Suckling what had occurred and asked him to come down and speak to Mr Cain. Mr Sclater drove his truck to the other side of the site and waited. When Mr Suckling arrived, Mr Cain gave him a business card. Mr Sclater had arrived at the site at about 9.35 am and Mr Suckling arrived at about 11.00 am. Mr Sclater said that Mr Suckling told him "You are not allowed to drive the truck on site or unload the truck". Mr Sclater did not pay any money to join the union but signed a card on 13 September 1994. After he signed the card he returned it to his employer, Mr Suckling, who witnessed the application form to join the union in front of him. Mr Suckling handed to him the receipt. He said that when Mr Cain indicated that he was from the Transport Workers' Union he said "TWU", but Mr Sclater then added in evidence "It might have been the Transport Workers' Union. I do not recall".

Mr Kim Allen Suckling also gave evidence that he was the proprietor of Kim Suckling Design and Shopfittings. On 13 September 1994 he had three employees on site at Morley Galleria and two working in his factory. They were fitting out six shops at the Morley Galleria Shopping Centre. Mr Sclater was working for him as at 13 September 1994. Mr Sclater telephoned him. As a result, Mr Suckling came down to the site. When he got there he met a person who introduced himself as John Cain. Mr Cain introduced himself as "John Cain from the Transport Workers' Union". He had a membership card of his own which he handed to him. Then he handed Mr Suckling a business card also. The business card was a Transport Workers' Union card with "John Cain, Special Projects Officer" on it. Mr Sclater wrote on the back of it. Mr Cain told Mr Suckling that the truck was not to be unloaded because "we weren't in the relevant union to unload it". Mr Suckling asked for an application form and asked Mr Cain how much the fee was and gave him a cheque for \$203.00. He nominated Mr Sclater as the member.

Mr John Cain gave evidence that he was an organiser for the Transport Workers' Union, and, in fact, a Special Projects Officer. On 13 September 1994 he saw the truck. He spoke to Mr Sclater and asked him if he was a member of the union. Mr Sclater told him that he was a member of the CFMEU. He asked Mr Sclater if he knew that that union had no coverage for driving trucks. Mr Sclater replied "I don't know about that. You will have to speak to my boss". Mr Cain then said "Fine. Give your boss a call". Later Mr Suckling came down and they introduced themselves to each other. There was a discussion about the CFMEU not covering truck drivers. Mr Cain said that Mr Suckling asked "What do we have to do to resolve the problem?" Mr Cain then said that the matter could be resolved by the bloke joining the correct union or by using a transport company paid "by the correct award". Mr Cain said that he gave Mr Suckling a joining card. They parted. Then a few minutes later Mr Suckling gave Mr Cain a joining card which had been filled out and a cheque for \$203.00. They then shook hands and left. Mr Cain denied that he threatened industrial action if they did not join the union. Mr Cain denied threatening to stop them working. After Mr Cain spoke to Mr Sclater, he said that the latter drove his truck to another position on site. He said that he asked Mr Sclater if he had a union ticket. He said that it was quite possible that he introduced himself to Mr Sclater as John Cain from the Transport Workers' Union.

There was evidence from Mr Andrew John Waddell, industrial officer and tutor-trainer with the Transport Workers' Union

of Australia. He gave evidence that Mr Cain did not contact him on 13 September 1994 in relation to any incidents.

There were similar documentary exhibits to those tendered upon the other complaints referred to above. There was amongst the exhibits here an application form signed by Mr Sclater headed "Transport Workers' Union of Australia Application Form" and a business card bearing on it the words "Transport Workers' Union of Australia, Western Australia" and "John Cain, Special Projects Officer".

Her Worship found both charges proven to the required standard of proof. By virtue of the abandonment of grounds 2 and 3, there is no appeal against the findings of Their Worships in either matter that there was a threat to the occupation of Mr Brown and Mr Sclater and the trades of Mr Cinquina and Mr Suckling by virtue of the circumstances that Mr Brown and Mr Sclater respectively were not members of an organisation of employees.

SUBMISSIONS AND CONCLUSIONS

Mr Cuomo (of Counsel) submitted that all references to organisations to which the threat the subject of the charge related referred to the Transport Workers' Union of Australia, an organisation registered pursuant to the Industrial Relations Act 1988 (Cth) (as amended) (hereinafter referred to as "the Commonwealth Act") and not to the Transport Workers' Union of Australia, Industrial Union of Workers, Western Australian Branch, an organisation of employees registered under the Act.

An "organization" is defined in s.4(1) of the Commonwealth Act to mean "an organization registered under this Act".

There is a great similarity between the objects of both Acts. S.3(e) and (f) of the Commonwealth Act and s.6(e) and (f) of the Act encourage the organisation of representative bodies.

The intention of the legislature in relation to the State Act, too, is plain in another respect. That is, that it is its intention to create offences in relation to threat to trades, occupations, etc, because a person is not a member of an organisation of employees constituted, incorporated or registered under the Act or under any Commonwealth or other Act.

An "organization" is defined in s.96A of the Act to mean "an organization of employers or an organization of employees".

An "organization of employees" is defined in s.96A of the Act to mean—

- "(a) an organization of employees, whether constituted, incorporated or registered under this Act or any other Act or under any Commonwealth Act and by whatever name called;
- (b) an industrial association of employees registered under section 67; or
- (c) an association, society or other body that has applied to be constituted, incorporated or registered as an organization of employees referred to in paragraph (a)."

A law of the Commonwealth prevails over the law of the State where there is an inconsistency between them (see s.5 and s.109 of the Constitution of the Commonwealth of Australia).

S.5 of the Constitution of the Commonwealth of Australia reads as follows—

"Operation of the constitution and laws.—This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth."

S.109 of the Constitution of the Commonwealth of Australia reads as follows—

"Inconsistency of laws.—When a law of a State is inconsistent with a law of the Commonwealth, the latter shall prevail, and the former shall, to the extent of the inconsistency, be invalid."

It was submitted that there is an inconsistency between the Commonwealth Act and the State Act insofar as s.96E(1) of

the Act is concerned, because the latter Act provides for the creation of unions registered pursuant to it and the recruitment of members of those organisations.

It was submitted that s.192, 195(viii) and s.320 of the Commonwealth Act were relevant.

S.192 of the Commonwealth Act reads as follows—

“An organisation:

- (a) is a body corporate;
- (b) has perpetual succession;
- (c) has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with any real or personal property;
- (d) shall have a common seal; and
- (e) may sue or be sued in its registered name.”

S.195(1)(b)(viii) of the Commonwealth Act reads as follows—

“(1) [Content of rules] The rules of an organisation:

...

(b) shall provide for:

...

(viii) the resignation of members under section 264;”

S.320 of the Commonwealth Act provides as follows—

“(2) [Threats] An organisation shall not:

- (a) advise, encourage or incite an employer to take action in relation to a person that would, if taken, contravene subsection (1);
- (b) take, or threaten to take, industrial action against an employer with intent to coerce the employer to take action in relation to a person that would, if taken, contravene subsection (1); or
- (c) take, or threaten to take, action having the effect, directly or indirectly, of prejudicing a person who is a conscientious objector in his or her employment, with intent to coerce the person to join an organisation.

(3) [Organisations] An organisation shall not:

- (a) injure:
 - (i) an employer who is a conscientious objector; or
 - (ii) a person who is a conscientious objector and, although not an employer, is otherwise eligible to join an organisation of employers;
 in his or her business with intent to coerce the employer or person to join an organisation or;
- (b) advise, encourage or incite an organisation of employees to take industrial action against:
 - (i) an employer who is a conscientious objector; or
 - (ii) a person who is a conscientious objector and, although not an employer, is otherwise eligible to join an organisation of employers;

with intent to coerce the employer or person to join an organisation.”

It was submitted that the test of inconsistency was whether the Commonwealth Act creates an offence akin to s.96E(1) of the Act, or there is a textual inconsistency.

The Full Bench was referred to Miller v Miller [1978] 141 CLR 269 (HC) per Barwick CJ at pages 271 and 275.

It was submitted, too, that the extent of the regulation of the organisations and their membership by the Commonwealth Act is wide and evinces an intention to cover the field (see Lovell and Others v FLAIEU (1978) 22 ALR 704 (FC) per Northrop J at page 724 and Jumbunna Coal Mine N/L and Another v Victorian Coal Miners' Association [1908] 6 CLR 309 (HC) per Isaacs J at pages 377-378 and O'Connor at page 360).

An inconsistency exists even where there is no direct inconsistency between a Commonwealth law and a State law. Inconsistency may arise because a State law destroys or modifies a right, power or privilege conferred by the Commonwealth, or conversely, because a State law confers a right, power or privilege which a Commonwealth law destroys or modifies. In such a case, the inconsistency does not arise out of the impossibility of obeying both laws—both laws may be obeyed simply by refraining from exercising the right, power or privilege created by one of the laws. But clearly there is an inconsistency to the extent that the State law seeks to restrain some activity which is authorised by the Commonwealth law, or to authorise some activity which is forbidden by the Commonwealth law (see Lumb and Ryan “The Constitution of the Commonwealth of Australia—Annotated (2nd Edition) at page 355 and Colvin v Bradley Bros Pty Ltd [1943] 68 CLR 151 (HC)).

The covering the field test also deals with the question of conflict between Commonwealth and State legislation (see Clyde Engineering Co Ltd and Others v Cowburn and Others [1926] 37 CLR 466 at 489 (HC) per Isaacs J and Ex parte McLean [1930] 43 CLR 472 at 483 (HC)).

To determine whether the Commonwealth law covers the field, one must ascertain whether the Commonwealth in legislating on a particular topic has intended to provide an exclusive code to the exclusion of State legislation. The difficulty in this case is to determine whether the intention of the Commonwealth is to cover the whole field regulated by a State enactment or only portion of it. In some cases, the Commonwealth makes clear its intention to cover the whole field. In many cases, there is no such clear statement of intention in the Act or law. Then it is necessary to examine the Commonwealth Act as a whole in order to ascertain its true intent. If upon that being done, the court concludes that the Commonwealth Act is an exhaustive code allowing no room for the operation of State legislation in relation to matters not covered by the Commonwealth Act, then the law of the State is, to the extent of the inconsistency, invalid (see Wenn v Attorney General (Victoria) [1948] 77 CLR 84 (HC)).

The Act purports to make it an offence for any person to threaten to take discriminatory action against a second person or threaten the interference with the free and lawful exercise of the second person's occupation or trade because the second or third person is not a member of an organisation of employees. There are other prohibitions upon other acts (see s.96E(2) and (3) of the Act).

The fact of the matter is that an offence is created by the section if the person making the threat is an organisation registered or incorporated under the Commonwealth Act. An offence is also committed if the threat to do any of the acts forbidden by s.96E(1)(a) and (b) of the Act is made because a person is not a member of an organisation of employees registered under the Commonwealth Act (or the State Act or another Act).

The appellant's case is that that provision is inconsistent with the provisions of the Commonwealth Act. Therefore, to that extent, it is invalid. As I understand the submission, the provision is inconsistent because it purports to regulate or prescribe what can be done by a Federal organisation and what penalties may be applied to a Federal organisation or a person who makes threats or takes discriminating action as defined because a person is not a member of that Federal organisation.

It is necessary to consider the whole of the Commonwealth Act to see whether it is silent in relation to these matters, and, even if it is, whether it still constitutes an exhaustive code so as to cover the field. As I have already observed, the Commonwealth Act is one which prescribes for the registration of certain organisations and has, as an object, the formation of organisations of employers and employees and their development. The Commonwealth Act prescribes the registration of organisations, s.191, and the incorporation of organisations, s.192. Part IX deals with registered organisations, their rules and other matters. S.295 of the Commonwealth Act provides for cancellation of registration of organisations. Part XI creates a number of offences, some of which might relate to acts which could be committed by an organisation or its officers or members. S.308, s.309, s.310, s.313, s.314, s.315 and other

sections of the Commonwealth Act are examples. S.320 of the Commonwealth Act prohibits action being taken or threats being made, *inter alia*, by an organisation against a conscientious objector, or to coerce an employer who is a conscientious objector or any person who is a conscientious objector. S.334(3) of the Commonwealth Act prohibits dismissal from employment or threats of certain types because an employee is a member of an organisation, or in a number of other prescribed cases. There are prescribed penalties for certain types of industrial action (see s.335(1) of the Commonwealth Act).

The Commonwealth Act prescribes, too, for termination of employment, amalgamation of organisations, the constitution of the Australian Commission and the Industrial Relations Court of Australia and the exercise of arbitration and conciliation powers. It is a wide ranging Act which regulates organisations, arbitration, conciliation and other matters in a manner similar to the Act.

On a reading of the whole of the Commonwealth Act, even though it does not contain a provision similar to s.96E(1)(b) of the Act, it is clear that the Commonwealth legislature intended that the Act be an exhaustive code for the Federal conciliation and arbitration system, the registration and de-registration of organisations and their rules, and the regulation and conduct of their offices, including what acts constitute offences for the purposes of the Commonwealth Act. It is clear that it is an exhaustive code which covers the field in relation to acts by or involving Federally registered organisations, and that s.96E(1)(b) of the Act trespasses upon that field.

It follows, it is quite plain, that the legislature intended to cover the field where s.96A and s.96E(1)(b) of the Act trespassed. In other words, the Commonwealth Act discloses a clear intention that so far as the matter of regulation of organisations registered under the Act, and, *inter alia*, the matter of acts done by persons which may put pressure on other persons to join such organisations are concerned, a Commonwealth law only should apply (see as an example of this sort of legislation *Wenn v Attorney General (Victoria) (HC)* (op cit) per Latham CJ, Rich, Dickson and McTiernan JJ).

Accordingly, s.96E(1)(b) of the Act, insofar as it purports to make unlawful the acts of an organisation registered under the Commonwealth Act, and, insofar as it legislates in relation to acts directed to a person who is not a member of an organisation registered under the Commonwealth Act and alleged threats or discrimination, is invalid. That invalidity occurs by virtue of s.109 of the Constitution of the Commonwealth of Australia. Accordingly, insofar as the convictions appealed against result from findings in relation to threats alleged to have been made against the free and unlawful exercise of a person's trade or occupation by reason of the circumstance that a person was not a member of an organisation of employees registered under the Commonwealth Act, then such convictions were recorded as a result of an error of law and should be quashed.

The Industrial Magistrates seemed not to have made any finding as to whether the organisation referred to in the proceedings was proven or not proven to have been a State or Federally registered organisation.

It is fair to say that the question of the operation of s.109 of the Constitution of the Commonwealth of Australia was not raised at first instance. However, it was squarely argued by both sides upon these appeals, and no objection was taken to it being included as a ground of appeal.

There was no conflict in the evidence, as I have summarised it above, which revealed that Mr Cain was acting on behalf of the TWU, as his shirt bore the initials "TWU", and that the application forms for membership bore the name "Transport Workers' Union of Australia".

Indeed, Mr Cain was identified to the Registrar of this Commission as having a right to appear for the Federal organisation in a letter written on Federal organisation letterhead. Mr Cain's business card, tendered in evidence, bore the name of the Federal organisation "The Transport Workers' Union of Australia Western Australia" (see page 218 of appeal book No 1249-1250 of 1995). However, even that title is consistent with that being the name of the State Branch of the Federal organisation and not the State organisation.

Mr Suckling's company cheque was made out to the Transport Workers' Union of Australia (the Federal organisation) (see page 219 of appeal book No 1249-1250 of 1995).

The letter to the Registrar, to which I have referred, bears the name of the Transport Workers' Union of Australia, which is the name of the Federal organisation. There is no evidence that the TWU is the name or abbreviation by which the State organisation is known. Indeed, that letter also does not bear the name of the State organisation.

Further, there is no evidence that suggests that Mr Cain was a member of the State organisation. Certainly, an application for membership, even if on a form bearing the Federal organisation's name, may confer membership of the State organisation on the applicant by rule 6.

There is nothing further to indicate that any of the persons referred to in the complaints became members of the State organisation. (I have considered *Ducasse v TWU and Others 76 WAIG 330 at 337 (IAC)* per Franklyn J which contains findings of fact peculiar to the matter before Their Honours).

There is no suggestion in the evidence that the State organisation was mentioned expressly or impliedly by anyone.

It matters not that an application to join the State or registered organisation can be accounted an application to join the Federal organisation, or vice versa. The two organisations are separate entities (see *Moore v Doyle (1969) 15 FLR 59* and *Re McJannet; ex parte Minister for Employment, Training and Industrial Relations for Queensland and Others 132 ALR 198 (HC)*). It matters not that, by its rules, the State organisation is incorporated as a Branch of the Federal organisation. Indeed, that highlights the necessity for the evidence to have been unequivocal as to which organisation Mr Cain was acting on behalf of when he made the threats found to have been made.

What had to be established beyond reasonable doubt by the complainant at first instance was that the threats were made because Mr Brown, Mr Sclater, Mr Cinquina and Mr Suckling were not members of the State organisation. If that was not established beyond reasonable doubt then, as a matter of law, the complaints could not succeed. That is because threats made to these gentlemen by reason of the circumstance that they were not members of the Federal organisation could not constitute an offence.

Because there was no denial in the evidence that the name "TWU" or "Transport Workers' Union of Australia" was used by Mr Cain, and there was no suggestion in the evidence that the State organisation was referred to, I would not remit the matter to the Industrial Magistrate to make a finding that the threats were made because the persons concerned were not members of the Federal organisation. I would make that finding myself on all of the evidence which was not in dispute; that is a finding that Mr Cain's threats were made because the persons concerned were not members of the Federal organisation. Alternatively, I would say that it was not established beyond reasonable doubt that such threats were made by reason of the circumstance that the persons mentioned in the complaints were not members of the State organisation.

The need for such evidence to be unequivocal is borne out by the fact that there was no evidence as to whether the employees on the site, insofar as "Transport Workers' Union" covered employees were concerned, was a State or Federal award covered site. The Industrial Magistrates therefore erred in convicting the defendant under an invalid State law. Alternatively, Their Worships failed to find that there was a reasonable doubt that Mr Cain had committed breaches of s.96E(1) of the Act, by virtue of the fact that it was not proven beyond reasonable doubt that threats were made by reason of the circumstance that the four gentlemen concerned were not members of the State organisation.

For that reason, all of the appeals will be upheld.

GROUND 4—STANDARD OF PROOF

The standard of proof in the matter was beyond reasonable doubt. The Industrial Magistrate, in complaints Nos 80,81 and 82 of 1995, applied it after Mr Robbins reminded her of it. She specifically applied it. That ground is not made out.

In the other complaints, the other Industrial Magistrate said that she was satisfied according to the required standard of proof, and there is nothing to indicate that she did not apply the correct standard of proof.

My observations under this heading apply to all appeals.

COSTS

It is, because of my earlier findings, not necessary to decide this point since if the convictions have been quashed orders imposing penalty and requiring the payment of costs fall.

DECISION.

I have considered carefully all of the submissions and all of the authorities. I would uphold the appeals and quash all of the decisions appealed against, since, on the evidence, it was not open to the Industrial Magistrates to convict.

COMMISSIONER A R BEECH: I agree with the orders proposed by His Honour the President. Once it is established that the activities of an organisation registered under the *Industrial Relations Act, 1988* (Cwth) are not caught by the provisions of s.96E(1) of the Act then the need to show that the activity complained of was made by an organisation registered pursuant to this Act becomes clear. I am unaware of this particular issue having been previously taken and it has not needed to be considered in the matters which have gone before. The learned Industrial Magistrates at first instance made no finding whether the activities complained of were being undertaken by Mr Cain on behalf of either the Transport Workers Union, Western Australian Branch, Industrial Union of Workers (the State union) or by the Transport Workers Union of Australia (the Federal union). The two bodies are separate legal identities notwithstanding the provisions in their respective rules which confer rights on the members of the one due to membership of the other (*Re McJannet; Ex parte Minister for Employment, Training and Industrial Relations for Queensland and others* (1995) 132 ALR 198). To put it another way, if an official of the Federal union performs an act in the name of that organisation and for the purposes of that organisation then the State union is not merely for that reason implicated in the official's action. If, however, the official's action is in the name of, and for the purposes of, the State union then that is sufficient for the purposes of s.96E(1). There would need therefore to be material before their Worships which established beyond reasonable doubt that the activities being complained of were undertaken by Mr Cain on behalf of the State union. There was no finding to that effect and little positive material from which that conclusion could be drawn.

The words "Transport Workers Union" as used in evidence by Mr Cain are, at best, ambiguous. They could be taken to be words which describe either the Federal or the State union. It may be that other, unrelated, evidence allows a conclusion to be drawn that Mr Cain is authorised to appear for the State union, or that the State union may refer to itself as the "TWU". The letter (exhibit P3) on letterhead of the Transport Workers Union of Australia, Western Australian Branch, to the Registrar of the Commission may, on a proper construction, be held to be a letter from the State union indicating that Mr Cain is authorised to appear on behalf of that union in matters to do with that union in this Commission. That conclusion is open, given the decision of the Industrial Appeal Court in *Ducasse and TWU* ((1995) 76 WAIG 330 at 333,334) as is the conclusion from it that the State union refers to itself as the TWU. However if Mr Cain was acting at the time in relation to the federal union only then the fact that he is authorised to appear in this Commission on behalf of the State union, or that the State union refers to itself as the TWU, does not show that he was acting at the time in the name of the State union. Unlike the matter decided by the Industrial Appeal Court, there is no evidence of a search of the State union's membership register to establish that any of the employees were subsequently enrolled in the State union allowing the conclusion to be reached beyond reasonable doubt that Mr Cain was therefore acting on behalf of the State union. There was no evidence produced before their Worships to allow the conclusion beyond reasonable doubt that the State organisation was concerned in the activities at the building sites in question. Such evidence would be crucial in this matter and not just for its ability to resolve the ambiguity involved in the use of the title "Transport Workers Union" in the evidence of Mr Cain. In my view the existence of the ambiguity precludes the necessary finding by the Industrial Magistrate's Court under s.96E(1) and accordingly the decisions cannot stand.

COMMISSIONER R H GIFFORD: I have read the Reasons for Decision of His Honour the President, and agree with them. Accordingly, I agree that the appeals be upheld and that the decisions of the Industrial Magistrates be quashed. I have nothing further to add.

THE PRESIDENT: For those reasons, the appeals are upheld and the decisions of the Industrial Magistrates quashed.

Order accordingly

Appearances: Mr M Cuomo (of Counsel), by leave, on behalf of the appellant.

Mr L B Robbins (of Counsel), by leave, and with him Ms M Newton (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Cain
(Appellant)

and

Allan Graham Shuttleton
(Respondent).

Nos. 1246-1250 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

4 November 1996.

Order.

THESE matters having come on for hearing before the Full Bench on the 11th day of October 1996, and having heard Mr M Cuomo (of Counsel), by leave, on behalf of the appellant, and Mr L Robbins (of Counsel), by leave, and with him Ms M Newton (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on these matters, and reasons for decision being delivered on the 4th day of November 1996 wherein it was found that the appeals herein be upheld, it is this day, the 4th day of November 1996, ordered as follows—

- (1) THAT appeals Nos 1246 of 1995, 1247 of 1995, 1248 of 1995, 1249 of 1995 and 1250 of 1995 be and are hereby upheld.
- (2) THAT the decisions of the Industrial Magistrate in complaints Nos 80 of 1995, 81 of 1995 and 82 of 1995 made on the 19th day of October 1995 be and are hereby quashed.
- (3) THAT the decisions of the Industrial Magistrate in complaints Nos 84 of 1995 and 85 of 1995 made on the 18th day of October 1995 be and are hereby quashed.

By the Full Bench

(Sgd.) P.J. SHARKEY,

President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

John Cain
(Appellant)

and

Allan Graham Shuttleworth
(Respondent).

Nos. 1246-1250 of 1995.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P J SHARKEY.
COMMISSIONER A R BEECH.
COMMISSIONER R H GIFFORD.

26 July 1996.

Order.

THESE matters having come on for hearing of interlocutory applications by the Full Bench on the 23rd day of July 1996, and there being no appearance by or on behalf of the appellant and having heard Mr M G Lundberg (of Counsel), by leave, on behalf of the respondent, and the respondent herein having consented to the draft orders filed herein by the appellant, and the Full Bench having determined that a Minutes of Proposed Order would issue to reflect the draft orders if the Full Bench had not heard from the appellant or his agent or solicitors within three days of the 23rd day of July 1996 that the appellant wishes to be heard, and the appellant's solicitor having informed the Associate to the President on the 25th day of July 1996 that the appellant did not wish to be so heard, it is this day, the 26th day of July 1996, ordered and directed, by consent, as follows—

- (1) THAT the respondent to appeals Nos 1246-1250 of 1995 inclusive be renamed "Shuttleton".
- (2) THAT appeal No 1246 of 1995 between John Cain as appellant and Allan Graham Shuttleton as respondent be consolidated with appeals Nos 1247 and 1248 of 1995 and shall be carried as one appeal.
- (3) THAT appeal No 1249 of 1995 between John Cain as appellant and Allan Graham Shuttleton as respondent be consolidated with appeal No 1250 of 1995 and shall be carried as one appeal.
- (4) THAT the time for compliance with regulation 29(10) of the Industrial Relations Commission Regulations 1985 ("the Regulations") be extended to 14 days of the 26th day of July 1996.
- (5) THAT compliance otherwise with regulation 29(10) of the Regulations with respect to appeal No 1246 of 1995 shall constitute compliance in regard to appeals Nos 1247 and 1248 of 1995.
- (6) THAT compliance otherwise with regulation 29(10) of the Regulations with respect to appeal No 1249 of 1995 shall constitute compliance in regard to appeal No 1250 of 1995.

By the Full Bench
(Sgd.) P.J. SHARKEY,
President.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arthur Alfred Dixon
(Appellant)

and

Ministry of Justice.

(Respondent).

No 630 of 1996.

BEFORE THE FULL BENCH

HIS HONOUR THE PRESIDENT P.J. SHARKEY.
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER R.N. GEORGE.

5 September 1996.

Reasons for Decision.

THE PRESIDENT: These are the unanimous reasons for decision of the Full Bench.

This is an appeal against the decision of the Industrial Magistrate's Court at Perth made on 28 February 1996 in complaint No 167 of 1995.

The appeal is brought under s.84 of the Industrial Relations Act 1979 (as amended) (hereinafter referred to as "the Act"), of which s.84(1) reads as follows—

- "(1) In this section "decision" includes a penalty, order, order of dismissal, and any other determination of an industrial magistrate's court, but does not include a decision made by such a court in the exercise of the jurisdiction conferred on it by—
- (a) section 96J;
 - (b) Division 1 of Part 5 of the *Workplace Agreements Act 1993*; or
 - (c) section 100 of that Act."

By the complaint, the complainant employee, a Community Corrections Officer employed in the Ministry of Justice, alleged that, on various fortnightly pay periods, between 24 November 1991 and continuing, the "Ministry of Justice", being a party bound by the Public Service Award 1992, Award No A 4 of 1989 (as amended) (hereinafter referred to as "the award")—

"failed to pay overtime allowance for work performed in excess of the normal hours for days on which the complainant was rostered and worked as required by Clause 19 & 21 of the said award.

The complainant claims penalties, costs and interest and an Order for payment of the amount underpaid as may be determined with liberty to apply as to that amount."

BACKGROUND

The background to the matter was this. The appellant had for some time been employed by the respondent. In 1991, the respondent set up the Intensive Surveillance Unit (hereinafter referred to as "the ISU") where officers monitored the movement of persons subject to home detention orders.

The appellant was apparently, at all material times, one of three officers who staffed the ISU on any given day, working one of three eight hour shifts per day every day of the week.

By complaints Nos 1093, 1094, 1095 of 1994, and brought in the Industrial Magistrate's Court, the appellant claimed that the respondent had failed to pay him overtime payments due and payable to him under the Public Service Award 1992 from 4 October 1991 to 28 November 1991.

The appellant also wished to claim overtime payments which he said were due and payable under the award in respect of his employment after 28 November 1991.

However, the appellant and the respondent came to an agreement that the decision(s) in complaints Nos 1093, 1094 and 1095 of 1994 would be used by them as a "test case" to resolve the claims for the other periods after 28 November 1991, in respect of which the appellant claimed overtime.

On 22 December 1994 His Worship, Mr G Calder IM, found complaints Nos 1093, 1094 and 1095 of 1994 (the test case) proven and made an order that the respondent pay to the

appellant the amounts of overtime to which His Worship found that he was entitled from 4 October 1991 to 28 November 1991. The amount to be paid was to be agreed between the parties and no penalty was sought. The order was complied with.

The respondent appealed against His Worship's decision to the Full Bench but that appeal was dismissed (see *Public Service Commissioner v Dixon* 75 WAIG 1822 (FB) delivered 17 May 1995).

Pursuant to the agreement with the appellant, and as a result of the decision of His Worship, the respondent paid to the appellant overtime payments for the period ending 5 January 1995, in December 1995. The respondent refused to pay the appellant overtime for the period after 5 January 1995 despite the appellant's claim that he was entitled to such payment.

By complaint No 198 of 1995 the appellant's claim for overtime for the period from 1 December 1992 to 13 July 1995 came on for hearing before His Worship, Mr R J Gething IM, in the Industrial Magistrate's Court at Perth on 28 February 1996. That complaint was dismissed on 11 April 1996 according to the notation on the complaint.

Complaint No 167 of 1995, the decision upon which is the subject of this appeal, was brought on 30 August 1995. By that complaint, as it was amended, overtime was claimed from 29 November 1991, together with penalties, costs and interest in the words which we have quoted above. That complaint was heard by His Worship on 28 February 1996 also.

The agent appearing for the complainant (now the appellant) made it clear that complaint No 167 of 1995 related only to the period up until 5 January 1995.

By the time the complaint came on for hearing on 28 February 1996 the respondent had paid to the appellant all of his overtime payments for the period 29 November 1991 to 5 January 1995.

Mr Clohessy, the agent for the appellant, said that the amounts claimed for overtime payments to 5 January 1995, being an amount which it would seem was in excess of \$10,000.00, had been paid to the complainant so that only the remaining claims, and these were for interest, penalties and costs, would be pursued. Indeed, Mr Clohessy observed that had agreement been reached in respect of interest, penalties and costs up to 5 January 1995, his principal would have sought to withdraw.

At the hearing, Mr Clohessy claimed an order that interest be awarded pursuant to s.32 of the Supreme Court Act 1935 (as amended) (hereinafter referred to as "the Supreme Court Act").

Mr Clohessy submitted that proceedings here were civil upon the authority of *Re Packington; Ex parte Executive Director, Building Management Authority and Another* (1996) 64 IR 270 (Supreme Court of WA) (Full Court). Mr Clohessy also referred to *Hocking v Port Hedland Regional Hospital* 76 WAIG 1168 per Mr A R Robins IM and *FPF&AIU v Jason Industries Ltd t/a Jason Furniture* 75 WAIG 1947.

The respondent, through Counsel, opposed any order for interest (see page 25 of the appeal book (hereinafter referred to as "AB")).

His Worship observed at page 27 (AB)—

"You might find yourself stuck with an argument: There has been no actual claim for those amounts to be granted so therefore you can't ask for interest because there is no claim."

At page 31 (AB) His Worship indicated that he would want evidence of what the payments were, observing that he was given a piece of paper in the form of a submission which was not produced formally, nor was it subject to cross-examination.

Ms Sheridan, on behalf of the defendant, submitted that no costs should be awarded on the complaint because, on the first complaint in 1994, the test case, the costs to be awarded were left up to the parties. His Worship then suggested that she leave costs and deal with the substantial question of overtime.

His Worship observed that Mr Clohessy had submitted that by paying these amounts voluntarily the respondent had admitted that it was at fault in not paying the amounts claimed,

and therefore the Ministry by making these payments admitted liability for the amount and should pay a penalty "for the failure to pay from 1991 until the date these were paid in".

Ms Sheridan relied on the agreement which was made to treat some cases as the test case, and also submitted that there should be no order for interest because the initial complaint in 1994 which was going to be used as a test case should apply. Therefore, it would be unfair to now claim interest on what was already agreed beforehand to be paid. Further, the interest in the initial complaint was not pleaded.

It was said that it is discretionary whether or not to order interest to be paid (see *FPF&AIU v Jason Industries Ltd t/a Jason Furniture* (op cit) per Mr I G Brown IM, and see also s.32 of the Supreme Court Act).

His Worship also observed that he could not award interest for the amount because there was no claim for that amount.

In his reasons for decision His Worship in dismissing the claim and making no orders as to costs made the following observations and findings—

- (1) He had heard no evidence of the facts which the complainant alleged against the defendant as far as penalty was concerned.
- (2) Since there was no evidence to support the claim he was unable to decide whether the defendant's conduct warranted a penalty.
- (3) Interest may not be awarded in a matter if it is not expressly claimed in the complaint. The complaint did not seek the payment of interest.
- (4) The defendant had made payments for the additional overtime work performed as agreed and this part of the present complaint he had not pursued.
- (5) (a) Because the defendant was very slow in making payments the complainant was justified in making his complaint in August 1995, but that would not justify application for new claims not contained in the previous complaint, that is for penalties or interest.
(b) The defendant agreed to be bound by the orders made on the first complaint and they did not include orders for penalties or interest.
- (6) Since interest was not claimed in the original complaint, it could not be cured on this complaint.

His Worship therefore dismissed the complaint and made no order as to costs.

GROUND'S OF APPEAL

The appellant's grounds of appeal were as follows—

- "(1) That the Learned Magistrate failed to find the Complaint proved noting the admission that an amount of \$10902.40 had been underpaid to the Complainant, which amount by admission was paid to the Complainant on 20/12/1995 without qualification.
- (2) That the Learned Magistrate erred in finding that the claim for interest had not been made on complaint.
- (3) That the Learned Magistrate erred in finding that the Complainant was bound by decisions in the earlier complaints, particularly when in those matters including an appeal and in his decision in Complaint 198/1995, he found he was not so bound.
- (4) That the Learned Magistrate erred in not hearing submissions as to the Complainant's costs and penalties.
- (5) Such other grounds that may be adduced."

CONCLUSIONS

The Industrial Magistrate dismissed the application. Ground (1) of the grounds of appeal raises squarely the question whether the Industrial Magistrate erred in dismissing the application noting when there was an admission that an amount acknowledged to be owing to the appellant for overtime was paid to him in December 1995.

It was part of the submissions of the advocate for the respondent at first instance that because the amount was paid (as part of an undertaking that any amounts not paid would be paid following the "test case" referred to above), then no

penalty should be imposed. There was, without doubt, an admission on behalf of the respondent that an amount due to the appellant for overtime not paid to him was paid and it is clear that the failure to pay was a breach of the award.

The test case was to determine whether the failure to pay overtime was a breach of the award. That case meant that other and subsequent failures to pay overtime were contraventions of the award and admitted to be such. That is why the payments to the appellant were made in December 1995.

The complaint was brought because these payments had not been made soon after the Full Bench had heard and determined the appeal in the test case, but were delayed.

The question is whether, within the meaning of s.83(2) of the Act, the contravention of or failure to comply with the award was proved. If it were proved then the Commission was bound to so find. If or until it did so, matters of penalty, interest or costs were not matters which the Industrial Magistrate could at all consider.

By s.81CA of the Act the "general jurisdiction" of the Industrial Magistrate's Court is defined to mean, inter alia, the jurisdiction of an Industrial Magistrate's Court under s.83 of the Act. That is the jurisdiction which was here being exercised. S.81CA(2) of the Act provides as follows—

"(2) Except as otherwise prescribed by or under this Act or another law—

- (a) the powers of an industrial magistrate's court; and
- (b) the practice and procedure to be observed by an industrial magistrate's court,

when exercising general jurisdiction are those provided for by the *Local Courts Act 1904* as if the proceedings were an action within the meaning of that Act."

That provision was introduced by s.21 of the Act, No 79 of 1995, which came into operation on 16 January 1996, before these proceedings were heard on 28 February 1996.

The proceedings are, of course, civil (see *Re Packington; Ex parte Executive Director, Building Management Authority and Another* (op cit) (Supreme Court of WA) (Full Court)).

Regulation 3(1) of the Industrial Relations (Industrial Magistrates' Courts) Regulations 1980 prescribes as follows—

"(1) Subject to the Act and to these regulations, proceedings before an industrial magistrate's court and in particular the making of a complaint, the issue of a summons, the summoning of witnesses, the fees to be paid relating to any matter, the taking of evidence, the hearing and determination of a complaint and the costs and allowances to parties and witnesses shall be, with such modifications as circumstances require, those prescribed by the Justices Act, 1902-1979, in respect of proceedings before justices for a simple offence."

It is expressed to be "Subject to the Act and to these regulations". The regulations are another law for the purposes of the section (see the definition of "written law" in s.5 of the Interpretation Act 1984), and they prescribe otherwise the practice and procedure of the Industrial Magistrate's Court in s.83 matters. They therefore apply to s.83 proceedings.

Admissions made by agreement between the parties or made by Counsel to the court are binding in civil proceedings. They may be retracted if the court gives leave to do so (see "Cross on Evidence", Australian Edition, paragraph 3160).

In criminal proceedings an accused person either personally or by his Counsel or Solicitor may admit on his trial any fact alleged or sought to be proved against him, and such admission shall be proof of that fact without other evidence (see "Cross on Evidence" (op cit), paragraph 3170, and s.34 of the Evidence Act 1929).

Accordingly, whether these proceedings were civil or criminal, the Industrial Magistrate could have found that any alleged contravention or failure to comply proven on the admission of Counsel or an advocate. Notwithstanding the somewhat tortuous route which these proceedings took before the Industrial Magistrate, it is quite clear, given the submissions which were made in the first place as to questions of interest, cost and penalty, and by the advocate for the respondent, that it was accepted that the breach as alleged was

admitted by the respondent through its advocate to have occurred (see pages 32-34 and 36-37 (AB)). In particular, at page 37 (AB) Ms Sheridan, who appeared for the respondent at first instance, said—

"As a result of that and as you are aware, the ministry was found to have breached the award, and as a consequence of that the ministry has complied in paying it. The ministry has in no way at any time tried to avert its obligations in paying what people are entitled to. That is also on the transcript in those earlier complaints."

(See also page 38 (AB)).

At page 48 (AB) Ms Sheridan said—

"Well he was paid from that particular decision. With respect to the rest of the payments, yes, he wasn't paid until December 1995."

His Worship put the case properly at page 36 (AB) when he said—

"1994— determined that the payments should have been made from 1991 through to 1994. Right? And because the ministry did not make those payments, then the ministry should suffer a penalty for its failure to pay that overtime for that period."

Ms Sheridan said at page 36 (AB)—

"The ministry has at no time sought to frustrate the proceedings in any way."

(See also Ms Sheridan's admission at page 29 (AB)).

His Worship, notwithstanding remarks he made at page 31 (AB), seems to have accepted at page 36 (AB) that an admission of contravention or non-compliance had been made.

By reference to the whole of the transcript, but particularly those excerpts to which we have referred, there was a formal admission of the failure to pay overtime as alleged in the complaint, contrary to the provisions of the award, and an admission of contravention or failure to comply as alleged. That admission was sufficient to constitute proof for the purposes of s.83(4) of the Act of the contravention of the award alleged. The Industrial Magistrate erred in failing to so find.

The Industrial Magistrate erred in dismissing the complaint which he should have found proven. He should have then gone on to deal with questions of penalty, interest and costs, but had no power to do so until he found the complaint proven, which he did not.

Ground (1) is made out. Grounds (2), (3) and (4) are, for those reasons, not made out.

INTEREST

We do not have to decide this point. However, we make a number of observations which, we hope, might be helpful, as to the question of interest. The appellant claimed interest relying on s.32 of the Supreme Court Act. S.32 reads as follows—

- "(1) In any proceedings for the recovery of any money (including any debt or damages or the value of any goods), the Court may order that there shall be included, in the sum for which judgment is given, interest at such rate as it thinks fit on the whole or any part of the money for the whole or any part of the period between the date when the cause of action arose and the date when the judgment takes effect.
- (2) This section does not—
 - (a) authorize the giving of interest upon interest;
 - (aa) apply in relation to any general damages in respect of pain and suffering or the loss of the enjoyment of or the amenities of life awarded in relation to personal injury or the death of a person;
 - (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
 - (c) affect the damages recoverable for the dishonour of a bill of exchange.
- (2a) In subsection (2)(aa) "**personal injury**" includes any disease and any impairment of a person's physical or mental condition.

- (3) This section applies to proceedings in a Local Court; except where the sum for which judgment is given does not exceed \$750."

We interpret the meaning of s.32 in the context of the whole of the Act, giving the words their ordinary and natural meaning. By doing so, no ambiguity or absurdity is created. Firstly, the section prescribes that in any proceedings for the recovery of money the court (which in s.4 of the Supreme Court Act is defined as the Supreme Court of Western Australia) may order that there shall be included in the sum for which interest is given, interest at such rate as it thinks fit. S.32(1) otherwise prescribes.

S.34 of the Supreme Court Act contains a rule of law because it is part of Division 3 of Part III "Miscellaneous Rules of Law".

S.32(2) of the Supreme Court Act does not preclude the order being made. S.32(3) provides that the section applies to proceedings in a Local Court where the sum for which judgment is given does not exceed \$750.00.

S.34 of the Supreme Court Act prescribes that the several rules of law enacted and declared by this Act shall be in force and take effect in all courts whatsoever in Western Australia so far as the matters to which such rules relate shall be respectively cognisable by such courts.

The Industrial Magistrate's Court is a court and s.32 of the Supreme Court Act applies to proceedings in it, provided that s.83 proceedings can be said to be proceedings for the recovery of money.

S.83(1) of the Act enables certain prescribed persons to apply in the prescribed manner to an Industrial Magistrate's Court for the enforcement of an award, industrial agreement or order "where a person contravenes or fails to comply with any provision of an award, industrial agreement or order" (with some exceptions). On the hearing of such an application, the Industrial Magistrate's Court is empowered to issue a caution or impose a penalty "if the contravention or failure to comply is proved". Otherwise the court dismisses the application. The Industrial Magistrate's Court is empowered to do those things with or without costs (see s.83(2) of the Act).

S.83(4) of the Act provides—

- "(4) Where in any proceedings brought under subsection (1) against an employer it appears to the industrial magistrate's court that an employee of that employer has not been paid by that employer the amount which he was entitled to be paid under an award or order the industrial magistrate's court shall, subject to subsection (5), order that employer to pay to that employee the amount by which he has been underpaid."

Since the proceedings are enforcement proceedings directed to proving a contravention of or failure to comply with any provision of an award, and an order to pay an amount which an employee was not paid, when he was entitled to be paid such amount, can only be made if it appears to the court that the employee has not been paid the amount. In any proceedings brought under s.83(1) of the Act to enforce the award, it might be said that these were not proceedings for the recovery of money. We obviously do not decide that.

However, if this is an action for the recovery of money, which is doubtful because the agent for the applicant before the Industrial Magistrate acknowledged that the amount of overtime alleged not to have been paid was paid before the application came on for hearing, no order which might be said to be a judgment for the recovery of money was sought.

Interest may only be ordered to be paid as part of any judgment. If an order under s.83(4) of the Act can be said to be a judgment then none was sought and there was no "judgment" in which an order for interest might be included. Interest cannot, under s.32 of the Supreme Court Act, be ordered to be paid in isolation. We would have difficulty, on the arguments before us upon this appeal, seeing how an order could be made for the payment of interest.

We make these observations in the hope that they may be of some assistance.

FINALLY

We would vary the decision of the Industrial Magistrate's Court by substituting a finding of proven for the dismissal of

the complaint. We would remit the questions of interest, costs and penalty to the Industrial Magistrate to be dealt with according to law and these reasons.

Order accordingly,

Appearances: Mr R Clohessy, as agent, for the appellant.

Mr D Matthews (of Counsel), by leave, on behalf of the respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Arthur Alfred Dixon

(Appellant)

and

Ministry of Justice.

(Respondent).

No. 630 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER R.N. GEORGE.

5 September 1996.

Order.

This matter having come on for hearing before the Full Bench on the 25th day of July 1996, and having heard Mr R Clohessy, as agent, for the appellant and Mr D Matthews (of Counsel), by leave, on behalf of the respondent, and the Full Bench having reserved its decision on the matter, and reasons for decision being delivered on the 5th day of September 1996 wherein it was found that the appeal should be upheld, it is this day, the 5th day of September 1996, ordered and directed as follows—

- (1) THAT appeal No 630 of 1996 be and is hereby upheld.
- (2) THAT the decision of the Industrial Magistrate to dismiss complaint No 167 of 1995 be and is hereby varied by substituting for the word "dismissed" the word "proven".
- (3) THAT complaint No 167 of 1995 be and is hereby remitted to the Industrial Magistrate's Court to determine the questions of interest, costs and penalty according to law and the reasons of the Full Bench herein.

By the Full Bench,

(Sgd.) P.J. SHARKEY,

[L.S]

President.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony Neil Ross

(Appellant)

and

Irene Egerton t/a Burravilla Contractors.

(Respondent).

No. 883 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

4 September 1996.

Reasons for Decision.

THE PRESIDENT: These are the joint reasons for decision of Commissioner Beech and myself.

This is an appeal against the decision of the Industrial Magistrate sitting at Perth made on 30 May 1996 upon complaint No 57 of 1996.

The appellant had sought to enforce an order of the Commission made in application No 1197 of 1995 and dated 26 February 1996 wherein the Commission had ordered that the respondent, Irene Egerton, pay to the appellant "outstanding contractual entitlements" totalling \$2772.00.

On 29 May 1996, having heard the parties, the Industrial Magistrate—

- (1) Refused to make an order that interest be paid because it was not "claimed on the summons".
- (2) Imposed a penalty for contravention of the order in the sum of \$200.00 to be paid to the complainant.
- (3) Ordered \$100.00 travelling expenses to be paid to the appellant.
- (4) Apparently ordered payment of the fees on the complaint and summons and service thereof.
- (5) Ordered a total amount of \$465.30 to be paid to the appellant.

The appellant had claimed the following—

"Phone Calls	\$37.65
Postage	\$10.00
Court Fees	\$34.30
Application Fees	\$ 5.00
Summons—Service Fee	\$31.30
Loss of income 9 days \$229 per day	\$2061.00
Average as per docket whilst working for Burravilla	
Travelling to Perth 471 kms at 70c kms	\$989.10
" " Albany 209 " " " "	\$438.90
Interest at 16.5% on (\$2772 from 27-9-95 to 24-4-96 210 days	\$263.15
Accommodation (sic)	\$455.00
Meals at \$16 a day 9 days	\$144.00
Total of the above	\$4,471.40
Outstanding money	\$2,772.00"

The appellant now appeals against that decision on the grounds that the Industrial Magistrate erred in fact and in law in finding that the appellant was able to travel to court and home in one day and thereby disallowed the amount of travelling expenses, accommodation expenses and loss of wages claimed by the appellant. The appellant seeks an order that the decision of the Industrial Court at Perth be set aside and that "all costs previously claimed" be ordered to be paid.

On the hearing of this appeal, there was no appearance by the respondent. The appellant appeared in person.

The question of the quantum of lost income which was ordered to be paid was in issue between the parties, as was the quantum of travelling expenses, accommodation, meals, etc.

Plainly, in accordance with s.32 of the Supreme Court Act 1935 (as amended) interest was neither claimable nor payable. That is because, under s.32(1), an order for interest can only be made as part of a judgment. Thus, even if this were a claim for the recovery of money within the meaning of s.32(1), and we are not persuaded that it is, there could be no order for interest since the interest sought to be claimed was not sought as part of any "judgment".

We are not persuaded that any witness expenses relating to travel to Albany and back for advice could at all be included in the costs payable. Interest could not be included in any costs ordered to be paid.

There were two hearings in Perth it would seem and claims for loss of income, accommodation, meals, etc relate to it.

It was for the appellant to establish these claims, supported, if required, by oral evidence and by vouchers. If there was a dispute, as there was, as to costs, then the Industrial Magistrate should have heard evidence from the parties. This he did not do. In fact, he refused to order the payment of some items of costs claimed without hearing evidence. The learned Industrial Magistrate fixed costs which were in dispute without, in some necessary cases, inviting the parties to adduce evidence for or against the appellant's claims. In our opinion, there was an error in the exercise of the Industrial Magistrate's discretion because he purported to exercise that discretion

without any or any sufficient evidence. As a result, the exercise of the discretion miscarried (see *House v The King* [1936] 55 CLR 499 (HC)).

We would add that the jurisdiction to order costs to be paid is given in general terms so that the Industrial Magistrate's Court may make whatever order as to costs that is justified in the circumstances. We say that because regulation 3(1) of the Industrial Relations (Industrial Magistrates' Courts) Regulations 1980 (as amended) provides as follows—

- "(1) Subject to the Act and to these regulations, proceedings before an industrial magistrate's court and in particular the making of a complaint, the issue of a summons, the summoning of witnesses, the fees to be paid relating to any matter, the taking of evidence, the hearing and determination of a complaint and the costs and allowances to parties and witnesses shall be, with such modifications as circumstances require, those prescribed by the Justices Act, 1902-1979, in respect of proceedings before justices for a simple offence."

Therefore, s.151 of the Justices Act 1902 (as amended) operates and prescribes what costs may be ordered. That section reads as follows—

"In all cases of summary convictions and orders, the justices making the same may, in their discretion, order by the conviction or order that the defendant shall pay to the complainant such costs as to them seem just and reasonable."

There seems to be no prescription for costs other than the general prescription contained in s.151.

On the hearing of this appeal, after hearing and considering evidence, the Full Bench ordered, in what we considered a fair and proper exercise of our discretion, that the respondent pay to the appellant the sum \$602.00 for costs and expenses in relation to the appeal only. That amount was made up as follows—

Filing and service	\$14.00
Two days loss of income and travel	\$568.00
Meals	\$20.00

The amount there ordered and the reasons therefore, of course, can have no influence on the exercise of the discretion of the Industrial Magistrate at first instance in this matter.

For those reasons, we upheld the appeal. The decision appealed against was set aside and remitted back to the Industrial Magistrate for hearing and determination.

COMMISSIONER CAWLEY: I have read the reasons of the President in draft form and agree that the appeal should succeed. The learned Industrial Magistrate erred in the hearing of the appellant's complaint (No. 57 of 1996) against the respondent in that he apparently cut off opportunity for the issue of costs to be canvassed fully and evidence to be brought with respect to those components of claimed costs claimed which were open for his consideration. I also concur with the course of setting aside the decision appealed against and remitting the matter back to the Industrial Magistrate.

THE PRESIDENT: For those reasons, the appeal is upheld and the decision appealed against set aside and remitted back to the Industrial Magistrate for hearing and determination.

Appearances: Mr A N Ross on his own behalf as appellant.
No appearance by or on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Anthony Neil Ross

(Appellant)

and

Irene Egerton T/A Burravilla Contractors.

(Respondent).

No. 883 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
COMMISSIONER S.A. CAWLEY.
COMMISSIONER A.R. BEECH.

13 August 1996.

Order.

This matter having come on for hearing before the Full Bench on the 12th day of August 1996, and having heard Mr A N Ross on his own behalf as appellant, and there being no appearance by or on behalf of the respondent, and the Full Bench having determined that its reasons for decision will issue at a future date, it is this day, the 13th day of August 1996, ordered and directed as follows—

- (1) THAT appeal No. 883 of 1996 be and is hereby upheld.
- (2) THAT the decision of the Industrial Magistrate in matter No C 57 of 1996 made on the 29th day of May 1996 be set aside and remitted back to the Industrial Magistrate's Court to hear and determine according to law and the reasons of the Full Bench.
- (3) THAT the respondent herein pay to the appellant herein within 21 days of the 12th day of August 1996 costs and expenses of \$602.00.

By the Full Bench,

(Sgd.) P.J. SHARKEY,

President.

[L.S]

**FULL BENCH—
Coal Industry Tribunal
Reviews—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Coal Miners Industrial Union of Workers of Western
Australia

(Applicant)

and

Griffin Coal Mining Co Ltd

(Respondent)

No. 1017 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.

29 October 1996.

Reasons for Decision.

THE PRESIDENT: (Given extemporaneously at the hearing and determination of this matter on 14 October 1996 and edited by the Full Bench).

These are the unanimous reasons for decision of the Full Bench.

By this application to review, the applicant seeks the excision of the following part of a decision made by the Coal Industry Tribunal of Western Australia given on 11 July 1996, namely—

“Further, when making redundancy payments, the employer shall not differ in the amounts of those payments between employees taking voluntary redundancy in accordance with clause 7.1 of those employees being made redundant in accordance with clause 7.3.”

We are satisfied that there are special circumstances which warrant our reviewing the decision of the Coal Industry Tribunal.

We are also satisfied on the submissions put to us that there was no reasonable opportunity afforded to the parties to be heard in relation to what we are told is a material matter. In addition to that, it would seem to us that there was more than the possibility that the decision made would not have been made had the parties been afforded that opportunity (see Stead v SGIC [1986] 161 CLR 141 (HC)).

Further, we note that whilst s.26(3) of the Industrial Relations Act 1979 (as amended) does not apply, that it adequately states a principle which is probably applicable as a matter of common law.

Finally, having regard to that, we will make an order which voids that part of that order complained about at first instance. That therefore will result in the deletion by consent of the clause referred to in the grounds of review. That clause is in fact the final paragraph of clause 7 of the decision made by the Coal Industry Tribunal on 11 July 1996 and now the subject of this review.

Appearances: Ms C Crawford (of Counsel), by leave, on behalf of the applicant.

Mr G E Bull, as agent, on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Coal Miners Industrial Union of Workers of Western
Australia

(Applicant)

and

Griffin Coal Mining Co Ltd

(Respondent)

No. 1017 of 1996.

BEFORE THE FULL BENCH
HIS HONOUR THE PRESIDENT P.J. SHARKEY.
CHIEF COMMISSIONER W.S. COLEMAN.
COMMISSIONER S.A. CAWLEY.

14 October 1996.

Order.

This matter having come on for hearing before the Full Bench on the 14th day of October 1996, and having heard Ms C Crawford (of Counsel), by leave, on behalf of the applicant and Mr G E Bull, as agent, on behalf of the respondent, and the Full Bench having given reasons, it is this day, the 14th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT the application for review be and is hereby granted.
- (2) THAT the last paragraph of order No 2 of the decision of the Coal Industry Tribunal of Western Australia in application No 22 of 1995 made on the 11th day of July 1996 under review be and is hereby declared null and void.
- (3) THAT order No 2 of the decision of the Coal Industry Tribunal of Western Australia in application No

22 of 1995 made on the 11th day of July 1996 be and is hereby varied by deleting the following words contained in the last paragraph of order No 2—

“Further, when making redundancy payments, the employer shall not differ in the amounts of those payments between employees taking voluntary redundancy in accordance with clause 7.1 of those employees being made redundant in accordance with clause 7.3.”

By the Full Bench
(Sgd.) P.J. SHARKEY,
President.

[L.S]

COMMISSION IN COURT SESSION— Matters dealt with—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sales Representatives and Commercial Travellers' Guild of
WA, Industrial Union of Workers

and

Leonard Industries Pty Ltd and Others.

No. 592 of 1996.

Commercial Travellers and Sales Representatives'
Award 1978.

COMMISSION IN COURT SESSION

SENIOR COMMISSIONER G.L. FIELDING.
COMMISSIONER A.R. BEECH.
COMMISSIONER R.H. GIFFORD.

25 October 1996.

Reasons for Decision (extempore)

SENIOR COMMISSIONER: This is an application to amend the Commercial Travellers and Sales Representatives' Award 1978. More particularly, the application seeks to amend Clause 13 which deals with the contract of employment, including the termination of employment provisions. Also the application seeks to add two new clauses, one dealing with the introduction of change and the other with redundancy.

As Mr Johnston, for the Applicant, has said, in the main the application seeks to insert into the Award, with some modifications, the provisions which were first prescribed in or about 1984 by the Federal Commission in what is known as the Termination, Change and Redundancy Case. He argues that the matter can be dealt with under the State Wage Fixing Principles since, in effect, the application seeks to insert into the Award what amounts to a safety net to regulate termination, change and redundancy in this industry, for which he says there is a need. The Respondent consents to the application in its amended form. We do not consider that anything further need be said, other than that we are prepared to make the amendments in the terms as now sought and that we do so on the same basis of the matters which were raised and discussed in Application 512B of 1996. In the circumstances there will be an Order in the terms of the amended schedule. By consent this order will be operative from the first pay period commencing on or after today's date.

Appearances: Mr W.J. Johnston on behalf of the Applicant
Ms C. Brown on behalf of the Respondents

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sales Representatives and Commercial Travellers' Guild of
WA, Industrial Union of Workers

and

Leonard Industries Pty Ltd and Others.

No. 592 of 1996.

Commercial Travellers and Sales Representatives'
Award 1978.

COMMISSION IN COURT SESSION

SENIOR COMMISSIONER G.L. FIELDING.
COMMISSIONER A.R. BEECH.
COMMISSIONER R.H. GIFFORD.

25 October 1996.

Order:

HAVING heard Mr W.J. Johnston on behalf of the Applicant and Ms C. Brown on behalf of the Respondents, and by consent, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Commercial Travellers and Sales Representatives' Award 1978 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date hereof.

BY THE COMMISSION IN COURT SESSION

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S]

Schedule.

1. Clause 2.—Arrangement:
 - A. Delete “13. Contract of Service” and insert in lieu thereof the following—
 13. Contract of Employment and Termination
 24. Enterprise Agreements insert the following new clause titles—
 25. Introduction of Change
 26. Redundancy
 - B. After 24. Enterprise Agreements insert the following new clause titles—
 25. Introduction of Change
 26. Redundancy
2. Clause 13.—Contract of Service: Delete this clause and insert the following in lieu thereof—
 - 13.—CONTRACT OF EMPLOYMENT AND TERMINATION
 - (1) An employee will be engaged as a full-time or part-time employee.
 - (2) Termination of Employment
 - (a) Should an employer wish to terminate an employee, the following period of notice shall be provided—

Period of Continuous Service	Period of Notice
Not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks
 - (b) Employees over 45 years of age with two or more years' continuous service at the time of termination, shall receive an additional week's notice.
 - (c) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu. Provided that employment may be terminated by part of the period of notice and part payment in lieu.
 - (d) Payment in lieu of notice shall be calculated using the employee's weekly ordinary time earnings.
 - (e) The period of notice in this clause shall not apply in the case of dismissal for serious mis-

conduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.

(f) Notice of termination by employee

Two weeks' notice shall be necessary for an employee to terminate his or her engagement or the forfeiture or payment of two weeks' pay by the employee to the employer in lieu of notice.

3. Clause 24.—Enterprise Agreements: Following this clause, insert the following new clauses—

25.—INTRODUCTION OF CHANGE

Employer's Duty to Notify

- (1) (a) Where an employer has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the union.
- (b) "Significant effects" include termination of employment, major changes in the composition; operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities; promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

Employer's Duty to Discuss Change

- (2) (a) The employer shall discuss with the employees affected and the union inter alia, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.
- (b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1)(a) hereof.
- (c) For the purpose of such discussion, the employer shall provide to the employees concerned and their union, all relevant information about the changes, including the nature of the changes proposed, the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

26.—REDUNDANCY

- (1) This clause applies to employers who engage 15 or more employees at the time of any redundancies.
- (2) Discussions Before Terminations
- (a) Where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with the Union.
- (b) The discussions shall take place as soon as is practicable and shall cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise

the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

- (c) For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the Union, all relevant information about the proposed terminations including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

Provided that the employer shall not be required to disclose confidential information the disclosure of which would be detrimental to the employer's interests.

(3) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (2) above, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if they had been terminated, and the employer may make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rate for the number of weeks of notice still owing.

(4) Severance Pay

In addition to the period of notice provided in Clause 13.—Contract of Employment and Termination, a permanent employee whose employment is terminated for reasons set out above shall be entitled to the following amount of severance pay in respect of a continuous period of service—

Period of continuous service Severance Pay

less than 1 year	nil
1 year but less than 2 years	2 weeks' pay
2 years but less than 3 years	4 weeks' pay
3 years but less than 4 years	6 weeks' pay
4 years but less than 5 years	8 weeks' pay
5 years and over	10 weeks' pay

"Weeks pay" means the ordinary time rate of pay for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(5) Superannuation Benefits

- (a) Subject to further order of the Commission, where an employee, who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (4) of this clause the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.
- (b) If the superannuation benefit is greater than the amount due under subclause (4) of this clause then the employee shall receive no payment under that subclause.
- (c) Provided that benefits arising directly or indirectly from contributions made by an employer in accordance with an award, agreement or order made or registered under the Industrial Relations Act 1979 or the Industrial Relations Act 1988, or in accordance with the Superannuation Guarantee (Administration) Act 1992, shall not be taken into account unless the Commission so orders in a particular case.

(6) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (2) above may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she re-

mained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice in accordance with Clause 13.—Contract of Employment and Termination.

(7) Alternative Employment

- (a) The employer in a particular redundancy case, may make application to the Commission to have the general severance pay prescription varied if the employer obtains acceptable alternative employment for an employee.
- (b) Where the employer in a particular redundancy case obtains employment for an employee which is—
 - (i) equivalent in status and salary or wages to the former position; and
 - (ii) within a reasonable distance of the former employment.

the employer is not required to make payments in accordance with subclause (4) above. Provided that the union may refer such matter to the Commission for determination.

(8) Time Off During Notice Period

- (a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.
- (b) If the employee has been allowed paid leave for more than one day during the notice period for the purpose of seeking other employment, the employee shall, at the request of the employer, be required to produce proof of attendance at an interview or they shall not receive payment for the time absent.

For the purpose a statutory declaration will be sufficient.

(9) Notice to Commonwealth Employment Service

Where a decision has been made to terminate the services of 15 or more employees in the circumstances outlined in subclause (2) above, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information, including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(10) Transmission of Business

- (a) Where a business is before or after the date of this award, transmitted from one employer (in this subclause called "the transmitter") to another employer (in this subclause called "the transmittee") and an employee who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transmittee:
 - (i) The continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission, and
 - (ii) The period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In this subclause "business" and "transmission" has the same meaning and effect as in the Long Service Leave General Order at Volume 59 of the Western Australian Industrial Gazette, at pages 1 to 6.

(11) Employees with Less Than One Year's Service

This clause shall not apply to employees with less than one year's continuous service and the general obligation on the employer should be no more than to give relevant employees an indication of the

impending redundancy at the first reasonable opportunity, and to take such steps as may be reasonable to facilitate the obtaining by the employees of suitable alternative employment.

(12) Employees Exempted

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

(13) Incapacity to Pay

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
SECTION 14 OF THE MINIMUM CONDITIONS
OF EMPLOYMENT ACT 1993
RECOMMENDATION
COMMISSION IN COURT SESSION
CHIEF COMMISSIONER W.S. COLEMAN.
SENIOR COMMISSIONER G.G. HALLIWELL.
COMMISSIONER A.R. BEECH.

30 May 1996.

COMMISSION IN COURT SESSION: Before conducting a public hearing on 2 May 1996, the Commission invited submissions from persons and organisations with an interest in expressing a view on an appropriate rate and factors to be taken into account in formulating the recommendation for the minimum weekly wage rate. Notices were published in newspapers throughout the State. The invitation elicited 10 responses from members of the public with comments and proposals ranging from the relevance of a minimum wage to "mature age" trainees to the form of an adjustment which should have general application to all wage earners on less than \$450.00 per week.

The Commission was pleased to receive information from Professor D.H. Plowman, Director, The Graduate School of Management, University of Western Australia on work being done to establish a regime of household expenditures and an analysis of the latest Household Expenditure Survey (1993-94) to determine the needs for reasonable living for a single employee in Western Australia. We appreciate the opportunity to have discussed with Professor Plowman the issues involved in determining a minimum wage from the survey and review he is undertaking.

The Commission has also been assisted in formulating the recommendation for the minimum wage by the following papers and publications forwarded to us.

- From the Treasury—
"The Likely Impact of an Increase in the Adult Minimum Wage"
"The Western Australian Economy".
- From the Department of Training—
"The Effect of Minimum Wage Arrangements on Traineeship Commencements".
- From the Chamber of Mines and Energy—
"Economic Conditions Within the Western Australian Minerals and Energy Industry"
"Bedrock of Economy 1996".

From information supplied by the Treasury, in 1995-96 the Western Australian economy grew by 4.75 per cent in real terms. An easing in the rate of growth from the previous year

“reflects the decline in State final demand and dwelling investment (in particular expenditure on housing)”. Treasury notes that the recent consolidation in Western Australia’s economic activity is reflected in the performance of major economic indicators.

Private consumption increased by an estimated 3.75 per cent in 1995-96. Although the rate of growth has moderated, it is still in line with that being experienced at a national level. Dwelling investment in Western Australia declined by 22.25 per cent in 1995-96. Forward indicators for new housing activity predict a return to growth in the latter half of 1995-96.

Business investment in Western Australia has grown at a strong pace for four consecutive years. A growth of 12.5 per cent in business investment is forecast for 1996-97. Treasury notes that the position on investment growth reflects the strength of company profits.

There has been a rapid improvement in Western Australia’s labour market with annual employment growth averaging 3.2 per cent over the past three years. The growth in employment has seen a steady fall in the rate of unemployment in recent years. Western Australia’s unemployment rate at March 1996 was 7.7 per cent, the lowest of all States and well below the national rate of around 8.5 per cent.

Headline inflation in Western Australia is 4.7 per cent in the year to March 1996 with the Treasury’s budget estimate being 3.75 per cent for 1995-96.

In summary, the Treasury considers that—

“Economic growth has been easing since the end of 1994-95. This reflects a moderation in State Final demand and a decline in dwelling investment. A combination of lower economic growth and accelerated wages growth have been associated with an easing in employment growth in 1995-96.

Strong business investment and export growth are expected to underpin growth over the medium term. A major risk to this outlook is the possibility of a slowing in business profitability and inflation. In the context of the present moderation in economic activity and employment growth, it is desirable that increases in wages be linked to improvements in productivity.

However, if an increase in the average minimum wage is made available to those otherwise unable to secure a wage rise through an industrial agreement, then the impact upon wage growth would be minimised. Indeed, the likely effect of an increase in average minimum wages on inflation and economic growth would be minimal.”

With respect to the likely impact of an increase in the adult minimum wage, Treasury maintains the view that, in principle, increases in wages should be linked to productivity improvements to minimise the negative impact upon growth in employment and prices. Delayed or phased increases are favoured in order to spread the impact on the economy over time. The Treasury estimates that 19,000 employees are likely to be affected by an increase in the adult minimum wage.

The Trades and Labor Council, the Chamber of Commerce and Industry of Western Australia and the Australian Mines and Metals Association (Inc.) all advocate that on this occasion the recommendation should be formulated within the industrial relations framework previously followed by the Commission.

On this basis, the Council sees the rate established by reference to the 78 per cent of the tradesperson’s rate, together with the \$24.00 per week safety net adjustments applying to employees covered by awards as being equitable. The recommended amount should be \$349.40 per week. The rate determined within the context of the wage fixing system, as it applies to awards, links the weekly rate with the concept of a “social wage” established under the Accord process.

For the Chamber of Commerce and Industry of Western Australia and the Australian Mines and Metals Association (Inc.), wage movements over the past 12 months determined by reference to the industrial framework establishes the basis upon which the minimum wage should be adjusted. In the Chamber’s view, the \$8.00 per week increase available through the safety net adjustment process and determined by arbitration, substantially reflects a market outcome. Wage rates for non-award employees should not, in the Association’s opinion,

move any faster than those available to employees covered by awards. On the basis of applying a wage movement determined in an industrial framework to the existing adult minimum wage, the new rate would be \$325.10 per week.

To a significant extent, the Council’s position was conditioned by the trade union movement’s initiative to establish a “living wage” with the termination of the ACTU/Labor Government Accord. The submission for the Commission to recommend \$349.40 was made “without prejudice” to the position which would be taken in support of an amount of the “living wage”.

The Council, the Chamber and the Association each noted the Minister’s commitment to the process of establishing the adult minimum wage through the survey being undertaken by Professor Plowman. However, before abandoning the industrial relations framework, each of the parties would review their respective positions when the model has been developed. To this end, it was suggested by the parties that the Commission should embark on its enquiry for 1997 well ahead of the date by which the recommendation is to be forwarded to the Minister. This would afford the opportunity for comment on the appropriateness of the model as a basis of the Commission’s recommendation in future and the method by which the adult minimum wage should be adjusted.

In addition to the prospect of the ACTU’s claim for a “living wage”, the expiry of the wage fixing system underpinned by the Accord and the outcome of Professor Plowman’s survey, the Council noted proposals under amendments to Federal industrial relations legislation and the possibility of ramifications for minimum wage rates determined under State legislation.

As interesting as these developments might be, they cannot at this time affect the discharge of our statutory obligation pursuant to section 14 of the Minimum Conditions of Employment Act.

Put simply, the issue now before the Commission to recommend a minimum wage. In doing so, the Commission should consider whether it is appropriate to develop a model to ascertain the adult minimum wage, or to maintain the relevance of the industrial relations framework (either to effect the basis of the adjustment to the existing rate, or to re-establish the target rate recommended previously). At the end of the day, what is important is that the rate determined is equitable, that it does not prejudice the opportunities of those in employment and those seeking work, and does not have a deleterious impact on the State’s economy.

We consider that, without further investigation by the Commission at this time, it is not feasible for us to promote a model for the determination of the adult minimum wage, particularly as that work is already being done by Professor Plowman. The result of that survey and review will provide the basis upon which persons and organisations with an interest in the determination of the adult minimum wage can assess its relevance in establishing a “needs based” outcome which also satisfies the “most fundamental equity considerations”, including “protection of the weak against the strong” and “fair treatment of employees and employers” (*Western Australian Parliamentary Debates (Hansard) Thursday, 8 July 1993 at p 1456*).

It is likely that when the survey and review is available, the general environment with respect to wage fixing, consideration of a living wage, workplace legislation and transfers under the social security system will have been clarified. On this basis, the Commission intends to commence its review for the recommendation in 1997 before the end of 1996.

At present there is nothing to suggest that the State’s economy could not sustain an adjustment to the adult minimum wage. Indeed, strong economic growth, underpinned as it is in Western Australia by investment, points to a favourable outlook in the short and medium term.

At this time, we consider that the existing rate of \$317.10 should be adjusted to reflect movements in the Consumer Price Index (for Perth) for the year to March 1996. In addition to maintaining the real value of adult minimum wage, a further adjustment of \$8.00 per week is warranted. This accords with the level of adjustment of lower paid employees, whose wage rates have been regulated by movements in award rates, albeit that those employees have moved from a higher base. The

outcome of these adjustments to the minimum wage results in a recommended rate of \$336.50 per week. It would effectively mean a 6.1 per cent increase in the adult minimum wage as determined for a 21 year old employee. We consider this to be equitable, given wage movements within the community generally, and particularly with respect to a sector of the workforce whose ability to negotiate a productivity increase is limited.

It is noted that while the Minister is not to publish orders less than 12 months apart under subsection (2) of section 15 of the Minimum Conditions of Employment Act 1993, the rate determined may be implemented in two phases under the one Gazette notice.

The Council and the Chamber consider that the position of adult trainees needs to be addressed. By the exclusion that applies to apprentices and trainees under paragraph 5 of the Minimum Weekly Rates of Pay Order 1995 (*Western Australian Government Gazette No. 134*) the 21 year old trainee whose wage rate is provided for in an award may be paid a wage rate significantly less than the statutory adult minimum wage.

The Chamber's position is unequivocal. There should be one minimum wage payable in all the circumstances of adult employment. To do otherwise leads to "unintended consequences which discriminate against an adult apprentice".

The Council sees the issue being resolved by rates for this group of employees being the adult minimum wage ordered under the Minimum Conditions of Employment Act 1993 or that determined by the Commission "whichever is the greater".

Without specific reference to the circumstances of the 21 year old trainee, the Department of Training considers that "the exemption is important for traineeship take-up and therefore employment generally in Western Australia". The Department supports the continuation of the current exemption for trainees and apprentices.

Having regard to the principles upon which the adult minimum wage is based and accepting that it must address the needs of those who are 21 years and older, no matter what the circumstances of their employment, we consider that the exclusion that presently operates with respect to these employees, should be lifted. The exclusion should continue to apply to apprentices and trainees below 21 years of age.

It is our intention to follow the normal course and publish this Recommendation after gazettal of the Minister's prescription under section 15 of the Minimum Conditions of Employment Act 1993.

(Sgd.)
[L.S.]

W.S. COLEMAN,
Chief Commissioner,
on behalf of the
Commission in Court Session.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia

and

Myer Stores Limited and Others.

No. 512B of 1996.

Shop and Warehouse (Wholesale and Retail Establishments)
State Award 1977.

COMMISSION IN COURT SESSION
SENIOR COMMISSIONER G.L. FIELDING
COMMISSIONER A.R. BEECH
COMMISSIONER R.H. GIFFORD.

15 October 1996.

Reasons for Decision (extempore)

SENIOR COMMISSIONER: This is an application to amend the Shop and Warehouse (Wholesale and Retail

Establishments) State Award 1977, No. R 32 of 1976. The application before the Commission, as presently constituted, is to amend the Award by inserting into it a new Clause 51 dealing with redundancy.

The matter has been referred to the Commission in Court Session as a Special Case and now comes before the Commission by way of consent, although in an amended form. In essence, the application seeks to give effect to the decision in the 1984 Federal Termination Change and Redundancy Case, but with some amendments to suit local needs, the two most important being that there is to be, under the proposed amendments, an entitlement to severance pay based on a formula of two years' pay for each year of completed service, but capped, as we understand it, at 10 weeks' pay.

Furthermore, where the Termination, Change and Redundancy Case provided for employers to be relieved from the severance pay obligation where "acceptable employment" had been found, subject to the approval of the Commission, there is now also to be an entitlement of relief from the severance entitlement, without application to the Commission, where "equivalent employment" has been found, although, of course, there is always a right to the Union to come to the Commission where there is a dispute about that issue.

It is necessary that the Commission in Court Session be satisfied that the matter does indeed constitute a special case. It is not enough that the parties should consent to the changes, but we think, taken overall, it can be said that there are special features about this matter which would enable it to be processed without undermining the integrity of the State Wage Fixing Principles.

The Award currently provides, as the agents for the respective parties have said on a number of occasions, an obligation to consult where there has been a significant change and that would include pending redundancies. Quite apart from that obligation, there is, of course, a similar statutory obligation under the Minimum Conditions of Employment Act 1993. In the circumstances, it is perhaps not unreasonable that the Award should provide some safety net regulating the process for dealing with redundancies. Furthermore, we think it is fair to say, as the parties have said, that there is now a community expectation that where there is redundancy there will not only be consultation, but some form of financial recompense or compensation. In those circumstances, to establish a formula for severance pay and one which is based on State or local standards rather than Federal standards, which many employers in the industry and the Union representing many of the employees in the industry regard as fair and reasonable, seems sensible, if only because it saves costs, reduces the potential for conflict and ought to provide a basis for orderly management of redundancies in the future.

Thus, we think it can be said that the case is a special one and in those circumstances we indicate that we will make an order amending the Award in the terms now sought by the parties.

Appearances: Mr W.J. Johnston on behalf of the Applicant

Ms C. Brown on behalf of the Respondents and the Intervenor.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
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COMMISSION IN COURT SESSION

SENIOR COMMISSIONER G.L. FIELDING

COMMISSIONER A.R. BEECH

COMMISSIONER R.H. GIFFORD.

18 October 1996.

Order.

HAVING heard Mr W.J. Johnston on behalf of the Applicant and Ms C. Brown on behalf of the Respondents and the Intervenors, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

- (1) THAT the persons mentioned in Schedule A be given leave to intervene in these proceedings;
- (2) THAT The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 be varied in accordance with Schedule B and that such variation shall have effect from the beginning of the first pay period commencing on or after the 25th day of October, 1996.

BY THE COMMISSION IN COURT SESSION

(Sgd.) G.L. FIELDING,

[L.S]

Senior Commissioner.

SCHEDULE A

Able Cooke Div of Ajax Cooke Pty Ltd

141 Nicholson Street

EAST BRUNSWICK VIC 3057

Abrasiflex Products (WA) Pty Ltd

232 Collicr Road

BAYSWATER WA 6153

Action Food Barns (WA) Pty Ltd

18 Miles Road

KEWDALE WA 6105

Advantage Supermarkets Pty Ltd trading as Advantage
Supermarkets

Shop 79

Council Avenue

ROCKINGHAM WA 6168

Allders International (Oceania) Pty Ltd trading as Allders Duty
Free

17 O'Riordan Street

ALEXANDRIA NSW 2015

All Round Holdings Pty Ltd trading as Goldfields Pastries

13 Burt Street

BOULDER WA 6432

Alroh Turf Machinery Services Pty Ltd

576 Hay Street

SUBIACO WA 6008

Angus & Robertson Bookworld Pty Ltd

107 Elizabeth Street

MELBOURNE VIC 3000

Armadale Hardware & Building Supplies

26 Commerce Avenue

ARMADALE WA 6112

Ashdown Enterprises (Wholesale) Pty Ltd

172 Crockford Street

NORTHGATE QLD 4013

Atlas Group Pty Ltd

Alexander Drive

NORANDA WA 6062

Australian Red Cross

110 Goderich Street

EAST PERTH WA 6004

Balshaw's Florist

630 Beaufort Street

MT LAWLEY WA 6050

Bant Pty Ltd as Trustee for The TOP Trust trading as Thomsons

Office Products

283 Hannan Street

KALGOORLIE WA 6430

Barry David Nominees Pty Ltd trading as Barry Silbert

Marketing

26 Queen Street

PERTH WA 6000

Bassendean Square Pharmacy

8/6 West Road

BASSENDEAN WA 6054

Bates Saddlery Australia

430 Newcastle Street

PERTH WA 6000

BDL Cable & Electrical Co (WA) Pty Ltd

1-125 Barrington Street

SPEARWOOD WA 6163

Bhutan Nominees Pty Ltd trading as Vogue Distributors

4 Collingwood Street

OSBORNE PARK WA 6017

Bed Bath 'n Table Pty Ltd trading as Bed Bath 'n Table

95 Albert Street

BRUNSWICK VIC 3056

Bedor Pty Ltd trading as Textile Traders

34 Sundercombe Street

OSBORNE PARK WA 6017

BKW Co-operative Ltd

72-78 Austral Terrace

KATANNING WA 6317

BOC Gases Australia Limited

590 Hay Street West

SUBIACO WA 6008

Bon Marche (Bunbury) Pty Ltd

122 Victoria Street

BUNBURY WA 6230

Bondcrete Australia Pty Ltd

59-61 Robinson Avenue

BELMONT WA 6106

Botica Fisheries Pty Ltd trading as Variety Seafoods

U15/18 Milford Street

EAST VICTORIA PARK WA 6101

Bristile Ltd trading as Australian Fine China

576 Hay Street

SUBIACO WA 6008

Burnells Pty Ltd trading as Kennedys Sewing Centre

13 Queen Street

PERTH WA 6000

Cadbury Schweppes Pty Ltd

PO Box 6134

MELBOURNE VIC 3004

Charles Parsons (WA) Pty Ltd

14 Ledger Road

BALCATTWA WA 6021

Chrisella Holdings Pty Ltd trading as Grannys Pies & Cakes

PO Box 14

OSBORNE PARK WA 6017

CL & D Smith Agencies Pty Ltd

PO Box 3

MAYLANDS WA 6051

Clelands Cold Stores (Aust.) Pty Ltd

2 Absolom Street

PALMYRA WA 6157

- Co-operative Purchasing Services
87 President Street
WELSHPOOL WA 6106
- Copperart Pty Ltd
PO Box 449
MT DRUITT NSW 2761
- Country Road Clothing Australia Pty Ltd
78 Trenerry Crescent
COLLINGWOOD VIC 3066
- CSI Control Systems Pty Ltd (EMS)
36 Hasler Road
OSBORNE PARK WA 6017
- Cummins Engine Co Pty Ltd trading as Cummins
50 Kewdale Road
WELSHPOOL WA 6106
- Cut It Out
870 Hay Street
PERTH WA 6000
- Dakmusk Pty Ltd trading as Cycle Gallery
8 Kershaw Gardens
LEEMING WA 6149
- Daneechi Activewear Pty Ltd trading as Daneechi
30 Rokeby Road
SUBIACO WA 6008
- Detco (A division of Tutt Bryant Industries Pty Ltd)
174 Railway Parade
BASSENDEAN WA 6054
- Edenbury Pty Ltd trading as Phil Volich Agencies
1st Floor, 97 William Street
PERTH WA 6000
- Effxseven Pty Ltd trading as Alltype Engineering Services
62 Burlington Street
NAVAL BASE WA 6165
- EM Darvell trading as Competitive Curtain Manufacturers
Shop 25/26 Belmont District Shopping Centre
Belmont Avenue
BELMONT WA 6106
- Email Furniture Ltd trading as Brownbuilt Metalux Industries
25 Guthrie Street
OSBORNE PARK WA 6017
- Email Ltd Mag Service
62 Guthrie Street
OSBORNE PARK WA 6017
- European Foods Wholesalers Pty Ltd trading as European Foods Wholesalers
95-101 Aberdeen Street
NORTHBRIDGE WA 6003
- Excel Trophies
146 Railway Parade
LEEDERVILLE WA 6007
- Farinosi & Sons (Service) Co Pty Ltd
274 James Street
NORTHBRIDGE WA 6003
- Farrandale Pty Ltd (Coastal Ceilings) trading as Rockingham/Mandurah Gyprock Supplies
101 Dixon Road
ROCKINGHAM WA 6168
- Fernihough's Hardware Pty Ltd
34 William Street
BECKENHAM WA 6107
- Frederick Duffield Pty Ltd
12 Carson Court
OSBORNE PARK WA 6017
- Furniture Hardware Supplies WA Pty Ltd
23 Denninup Way
MALAGA WA 6062
- Gerrard Strapping Systems
53 Banksia Road
WELSHPOOL WA 6106
- Good Samaritan Industries
47 Magnet Road
CANNING VALE WA 6155
- Great Bake Hot Bread Shop
4 Foster Road
COLLIE WA 6225
- Guiseppe Corica Pastries
106 Aberdeen Street
NORTHBRIDGE WA 6002
- Handyman Pak Industries Pty Ltd
90 Pomeroy Road
WALLISTON WA 6076
- Hanford Pty Ltd trading as Procom Car Audio
1 Shields Crescent
BOORAGOON WA 6154
- Hardi Spraying Equipment (WA)
PO Box 1262
VICTORIA PARK EAST WA 6101
- Hymat Holdings Pty Ltd trading as Hymat
46 Miguel Road
BIBRA LAKE WA 6163
- Inghams Enterprises Pty Ltd
Baden Street
OSBORNE PARK WA 6017
- Intertan Aust Ltd trading as Tandy Electronics
91 Kurrajong Avenue
MOUNT DRUITT NSW 2770
- Jocelyn Pty Ltd trading as Cheap Foods Belmont
PO Box 130
CLOVERDALE WA 6105
- John Venables Pty Ltd
42 Ledger Road
BALCATTWA WA 6021
- Johns Building Supplies
220 Star Street
WELSHPOOL WA 6106
- Junabar Nominees Pty Ltd trading as BG Young & Co
1st Floor, 372 Murray Street
PERTH WA 6000
- Kingear Holdings Pty Ltd trading as Movieland Esperance
PO Box 1219
ESPERANCE WA 6450
- Kinnon Shoes (Australia) Ltd trading as Williams The Shoemen, Mathors, Jowsons, Footlocker
C/- 140 Melbourne Street
BRISBANE QLD 7000
- Kleenmaid Pty Ltd
Post Office Square, Dwyer Road
MAROOCHYDORE QLD 4558
- Lamin Pty Ltd as Trustee for The Padmar Import Trust trading as Padmar Australia
PO Box 1352
Osborne Park Business Centre
OSBORNE PARK WA 6916
- Lilley Rendell Pty Ltd trading as Carnarvon Bakery
PO Box 390
CARNARVON WA 6709
- Link Distributors Pty Ltd
24-26 Drynan Street
BAYSWATER WA 6053
- Malcolm Thompson Pumps Pty Ltd
17 John Street
BENTLEY WA 6102
- Malthouse Homebrew Supplies
Unit 1, 45 Welshpool Road
WELSHPOOL WA 6106
- Manassen Foods Australia Pty Ltd
PO Box 6444
SILVERWATER NSW 2128
- Mauri Integrated Ingredients trading as Lindgren Australia
14-16 Wittenberg Drive
CANNING VALE WA 6155
- Mazzucchellis Jewellers Pty Ltd
639 Murray Street
WEST PERTH WA 6005

- MBL Food Services Co-op Ltd trading as MBL Food Services
10-12 Asquith Street
VICTORIA PARK WA 6100
- McCays Holdings Pty Ltd trading as McCays South West Stores, Universal Office Supplies, Busselton Energy & Appliance Centre
PO Box 296
MANJIMUP WA 6258
- Micron Nominees Pty Ltd trading as Ron Mack Machinery Sales WA
8 Hector Street
OSBORNE PARK WA 6017
- Mitre 10 (WA) Ltd trading as Mitre 10
PO Box Locked Bag 16
CLOVERALE WA 6105
- Monterrey Pty Ltd trading as International Homebrew Supplies
5/85 Beechboro Road
BAYSWATER WA 6053
- Nello Martino Atelier and Club Industria
PO Box 408
INGLEWOOD WA 6052
- Norm Mackay Agencies Pty Ltd
433 Scarborough Beach Road
OSBORNE PARK WA 6017
- Nurserymen's Supplies (WA) Pty Ltd
20 Hodgson Way
KEWDALE WA 6105
- Oasis Nominees Pty Ltd trading as Cheap Foods Inglewood
96 Tenth Avenue
INGLEWOOD WA 6052
- Pacific BBA Ltd trading as Nally (WA) Pty Ltd
PO Box 1481
CANNING VALE WA 6155
- Pacific World Packaging (Australia) Pty Ltd
PO Box 36
BAYSWATER WA 6053
- Parrys Pty Ltd
50 Federal Street
NARROGIN WA 6312
- Pedera Pty Ltd as Trustee for the Thompsons Frock Shop Unit Trust trading as Thompsons Frock Shop
1267 Hay Street
WEST PERTH WA 6005
- PG Enterprises (WA) Pty Ltd
7 Marmalade Way
MADDINGTON WA 6109
- Prestige Motors Pty Ltd trading as Toyota WA Distributor
63 Adelaide Terrace
EAST PERTH WA 6004
- Pursuant Pty Ltd trading as The Athlete's Foot
Shop 2 Forrest Chase
Murray Street
PERTH WA 6000
- Quality Bakers Australia Ltd trading as Buttercup Bakeries
38 Crocker Drive
MALAGA WA 6062
- Redlum Investments Pty Ltd trading as Ceramicraft
33 Denninup Way
MALAGA WA 6062
- Rosendorf Diamond Jewellers
673 Hay Street Mall
PERTH WA 6000
- Salako Pty Ltd trading as Studio Scene
3/9 Shields Crescent
BOORAGOON WA 6154
- Seekers Australia Pty Ltd
375 Hay Street
EAST PERTH WA 6004
- Semana Nominees Pty Ltd trading as Farm Fresh Wholesalers
422 Albany Highway
ALBANY WA 6330
- Shahin Enterprises Pty Ltd trading as Smokemart
PO Box 512
WOODVILLE SA 5011
- Shortline Pty Ltd as Trustee for Hubbard Northlands Trust trading as Cash Converters Northlands
2/7 Augusta Street
WILLETTON WA 6155
- Slater Gartrell Sports
66 Helena Street
MIDLAND WA 6056
- Stamco Pty Ltd trading as Stammers Supermarkets
265 Canning Highway
PALMYRA WA 6157
- Supa Fresh Hot Bread Shop
PO Box 257
WYNDHAM WA 6740
- Sutcliffe Pty Ltd trading as Bullsbrook Produce Co
Box 230
BULLSBROOK WA 6084
- Table Eight Pty Ltd trading as Table Eight
35 Balfour Street
CHIPPENDALE NSW 2008
- Tallion Holdings Pty Ltd as Trustee for the P & R Kidd Family Trust trading as Katsui Studio
343 Stirling Highway
CLAREMONT WA 6010
- Telis Pty Ltd as Trustee for The Crosby Tiles Unit Trust trading as Crosby Tiles
46 Hector Street
OSBORNE PARK WA 6017
- The Book Centre Group Pty Ltd trading as Dymocks Booksellers
705 Hay Street Mall
PERTH WA 6000
- The Furniture Spot WA Pty Ltd
1472 Albany Highway
CANNINGTON WA 6107
- The Curtain Lady
10 Broadway
NEDLANDS WA 6009
- The Ink Group Pty Ltd
111 Burrows Road
ALEXANDRA NSW 2015
- Theo's Musical Instruments Pty Ltd
55 Stirling Street
PERTH WA 6000
- Toton Pty Ltd as Trustee for Robinson Family Trust trading as Rex Spares
3/21 Guthrie Street
OSBORNE PARK WA 6017
- Tudorgold Nominees Pty Ltd trading as Bluewater Tackle-Surf-Dive Marine
PO Box 92
SCARBOROUGH WA 6019
- Vetters Business Services Pty Ltd trading as Vetter Writing Boards
200 Collier Road
BAYSWATER WA 6053
- Wattlevale Holdings Pty Ltd trading as Bi-Lo Nollamara
63-67 Nollamara Avenue
NOLLAMARA WA 6061
- Welding Industries Limited trading as Welding Industries of Australia
5 Allan Street
MELROSE PARK SA 5039
- Wesdarlida Pty Ltd trading as Edwards Book Agencies
70 Jersey Street
JOLIMONT WA 6014
- Westrac Equipment Pty Ltd
128-134 Great Eastern Highway
GUILDFORD WA 6055
- Whittakers Limited
Grimwade Road
GREENBUSHES WA 6254

Witchery Fashions
111 Cambridge Street
COLLINGWOOD VIC 3011

SCHEDULE B

1. Clause 2.—Arrangement: After the number and title “50. Enterprise Level Award Change Procedure” insert the following new number and title—

51. Redundancy

2. Clause 50.—Enterprise Level Award Change Procedure: Following this clause insert the following new clause—

51.—REDUNDANCY

(1) This clause applies to employers who engage 15 or more employees at the time of any redundancies.

(2) Discussions Before Terminations

(a) Where the employer has made a definite decision that the employer no longer wishes the job the employee has been doing to be done by anyone and this is not due to the ordinary and customary turnover of labour and that decision may lead to termination of employment, the employer shall hold discussions with the employees directly affected and with the union.

(b) The discussions shall take place as soon as is practicable and shall cover, amongst other matters, the reasons the proposed terminations are required, measures to avoid or minimise the terminations and measures to mitigate any adverse effects of any terminations on the employees concerned.

(c) For the purposes of the discussion the employer shall, as soon as practicable, provide in writing to the employees concerned and the Union all relevant information about the proposed terminations, including the reasons for the proposed terminations, the number and categories of employees likely to be affected, and the number of employees normally employed and the period over which the terminations are likely to be carried out.

Provided that the employer shall not be required to disclose confidential information the disclosure of which would be detrimental to the employer's interests.

(3) Transfer to Lower Paid Duties

Where an employee is transferred to lower paid duties for reasons set out in subclause (2) above, the employee shall be entitled to the same period of notice of transfer as they would have been entitled to if they had been terminated, and the employer may make payment in lieu thereof of an amount equal to the difference between the former ordinary time rate of pay and the new lower ordinary time rates for the number of weeks of notice still owing.

(4) Severance Pay

In addition to the period of notice provided in Clause 20.—Contract of Employment and Termination, a permanent employee whose employment is terminated for reasons set out above shall be entitled to the following amount of severance pay in respect of a continuous period of service.

Period of continuous service severance pay

Less than 1 year	nil
1 year but less than 2 years	2 weeks' pay
2 years but less than 3 years	4 weeks' pay
3 years but less than 4 years	6 weeks' pay
4 years but less than 5 years	8 weeks' pay
5 years and over	10 weeks' pay

“Weeks' pay” means the ordinary time rate of pay for the employee concerned.

Provided that the severance payments shall not exceed the amount which the employee would have earned if employment with the employer had proceeded to the employee's normal retirement date.

(5) Superannuation Benefits

(a) Subject to further order of the Commission, where an employee, who is terminated receives a benefit from a superannuation scheme, the employee shall only receive under subclause (4) of this clause the difference between the severance pay specified in that subclause and the amount of the superannuation benefit the employee receives which is attributable to employer contributions only.

(b) If the superannuation benefit is greater than the amount due under subclause (4) of this clause then the employee shall receive no payment under that paragraph.

(c) Provided that benefits arising directly or indirectly from contributions made by an employer in accordance with an award, agreement or order made or registered under the Industrial Relations Act 1979 or the Industrial Relations Act 1988, or in accordance with the Superannuation Guarantee (Administration) Act 1992, shall not be taken into account unless the Commission so orders in a particular case.

(6) Employee Leaving During Notice

An employee whose employment is terminated for reasons set out in subclause (2) above may terminate his or her employment during the period of notice and, if so, shall be entitled to the same benefits and payments under this clause had he or she remained with the employer until the expiry of such notice. Provided that in such circumstances the employee shall not be entitled to payment in lieu of notice in accordance with Clause 20.—Contract of Employment and Termination.

(7) Alternative Employment

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

(b) Where the employer in a particular redundancy case obtains employment for an employee, which is:

(i) equivalent in status and salary or wages to the former position; and

(ii) does not require the employee to travel any further to his or her new employment than the employee was travelling to his or her former employment,

the employer is not required to make payments in accordance with subclause (4) above. Provided that the union may refer such matter to the Commission for determination.

(8) Time Off During Notice Period

(a) During the period of notice of termination given by the employer an employee shall be allowed up to one day's time off without loss of pay during each week of notice for the purpose of seeking other employment.

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

For the purpose a statutory declaration will be sufficient.

(9) Notice to Commonwealth Employment Service

Where a decision has been made to terminate the services of 15 or more employees in the circumstances outlined in subclause (2) above, the employer shall notify the Commonwealth Employment Service thereof as soon as possible giving relevant information including the number and categories of the employees likely to be affected and the period over which the terminations are intended to be carried out.

(10) Transmission of Business

- (a) Where a business is before or after the date of this award, transmitted from one employer (in this subclause called "the transmitter") to another employer (in this subclause called "the transmittee") and an employee who at the time of such transmission was an employee of the transmitter in that business becomes an employee of the transmittee:
- (i) The continuity of the employment of the employee shall be deemed not to have been broken by reason of such transmission; and
 - (ii) The period of employment which the employee has had with the transmitter or any prior transmitter shall be deemed to be service of the employee with the transmittee.
- (b) In this subclause "business" and "transmission" has the same meaning and effect as in the Long Service Leave General Order at Volume 59 of the Western Australian Industrial Gazette, at pages 1 to 6.

(11) Employees With Less Than One Year's Service

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

(12) Employees Exempted

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

(13) Incapacity to Pay

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

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distribution and Allied Employees' Association
of Western Australia

and

Myer Stores Limited and Others.

No. 606 of 1996.

The Shop and Warehouse (Wholesale and Retail
Establishments) State Award 1977.

COMMISSION IN COURT SESSION

SENIOR COMMISSIONER G.L. FIELDING,

COMMISSIONER A.R. BEECH

COMMISSIONER R.H. GIFFORD.

25 October 1996.

Reasons for Decision (extempore)

SENIOR COMMISSIONER: This is an application to amend The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977. The application seeks to amend Clause 45 of the Award which deals with superannuation.

In short, as the agents for the respective parties have said, the application does no more than at this time embody or reflect the conditions which are imposed upon employers and others by the Superannuation Guarantee (Administration) Act 1992. There is some difference of opinion between the parties as to what should happen in the future should that Act be amended, but that is not a matter for us on this occasion.

We are satisfied that the case is a special one because, as I have said, the change does not give rise to any new entitlements and does not impose any additional financial burden upon employers, apart from those which are already imposed by other statutory instruments. In addition, the change has the benefit of removing anomalies which now exist in the Award by reason of the provisions of the Act. In those circumstances I am authorised to say by my colleagues that we will make the amendment in terms of the amended schedule and with effect from the first pay period commencing on or after today's date.

Appearances: Mr W.J. Johnston on behalf of the Applicant
Ms C. Brown on behalf of the Respondents.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distribution and Allied Employees' Association
of Western Australia

and

Myer Stores Limited and Others.

No. 606 of 1996.

The Shop and Warehouse (Wholesale and Retail
Establishments) State Award 1977.

COMMISSION IN COURT SESSION

SENIOR COMMISSIONER G.L. FIELDING

COMMISSIONER A.R. BEECH

COMMISSIONER R.H. GIFFORD.

25 October 1996.

Order:

HAVING heard Mr W.J. Johnston on behalf of the Applicant and Ms C. Brown on behalf of the Respondents, and by consent, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date hereof.

BY THE COMMISSION IN COURT SESSION

(Sgd.) G.L. FIELDING,

[L.S]

Senior Commissioner.

Schedule.

1. Clause 45.—Superannuation:

A. Insert a new preamble to this clause as follows—

The provisions of this clause shall be read in conjunction with and shall complement the provisions of the Superannuation Guarantee (Administration) Act 1992.

B. Delete subclause (2) of this clause and insert in lieu thereof the following—

(2) Quantum

(a) Employers bound by this Award shall make application to participate in the Fund either

formally or informally and shall contribute to the Fund in respect of all eligible employees an amount equal to the percentage as set out in paragraph (b) of this subclause of each employee's weekly ordinary time earnings.

- (b) The percentage applicable to an employer for the purposes of paragraph (a) of this subclause shall be—

Year	Percentage Amount
1996-1997	6%
1997-1998	6%
1998-1999	7%
1999-2000	7%
2000-2001	8%
2001-2002	8%
2002-2003	9%
Subsequent Years	9%

- (C) Delete subclauses (4), (5), (6) and (7) of this clause and insert in lieu thereof the following—

(4) Eligibility

- (a) The employer shall be required to make contributions in accordance with this clause in respect of each employee except where—

- (i) an employee earns less than \$450.00 in any calendar month; or
- (ii) an employee who is aged under 18 years of age and works 30 hours or less per week.

- (b) Employees with existing superannuation entitlements.

Notwithstanding paragraph (a) above, the employer shall be required to make contributions in accordance with this clause in respect of each part-time or casual employee who had an entitlement to receive superannuation payments on 24 October 1996.

(5) Employee contributions

Employees who may wish to make contributions to the Fund additional to those being made by the employer pursuant to subclause (2) shall be entitled to authorise the employer to pay into the Fund from the employee's wages amounts specified by the employee.

Employee contributions to the Fund requested under this subclause shall be made in accordance with the rules of the Fund.

- (D) Renumber existing subclauses (8) and (9) of this clause as subclauses (6) and (7).

- (E) Delete subclauses (10) and (11) of this clause.

PRESIDENT— Unions—Matters dealt with under Section 66—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Australian Nursing Federation, Industrial Union of
Workers Perth.

(Respondent).

No. 1189 of 1996.

BEFORE HIS HONOUR THE PRESIDENT

P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr A Dzieciol on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and there being no objection by the respondent to the orders herein, it is this day, the 9th day of October 1996, ordered and declared as follows—

- (1) THAT I declare that rule 9(2) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 7(3) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 7(3) and 9(2) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

(Sgd.) P.J. SHARKEY,

President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Civil Service Association of Western Australia
Incorporated.

(Respondent).

No. 1188 of 1996.

BEFORE HIS HONOUR THE PRESIDENT

P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr F Furey on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious

and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 7(d) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 7(f) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 7(d) and 7(f) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Registrar
(Applicant)
and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch
(Respondent).

No. 862 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

5 November 1996.

Order.

THIS matter having come on for a hearing before me on the 4th day of November 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 5th day of November 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 4.7 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 4.5.7 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 4.7 and 4.5.7 of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 4th day of November 1996.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch
(Respondent).

No. 862 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 August 1996.

Order.

THIS matter having come on for a further directions hearing before me on the 5th day of August 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, and the parties herein having consented to waive their rights to speak to the minutes of proposed order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended), it is this day, the 9th day of August 1996, ordered, by consent, as follows—

- (1) THAT application No 862 of 1996 be and is hereby adjourned to 9.30 am on Tuesday, the 8th day of October 1996 for a further directions hearing.
- (2) THAT the applicant herein do file and serve written submissions within 21 days of the 5th day of August 1996.
- (3) THAT the respondent herein do file and serve written submissions within 21 days thereafter.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch
(Respondent).

No. 862 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a further directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, it is this day, the 9th day of October 1996, ordered and directed as follows—

- (1) THAT application No 862 of 1996 be and is hereby adjourned to 10.00 am on Monday, the 4th day of November 1996 for hearing and determination.
- (2) THAT application No 862 of 1996 be heard with application No 870 of 1996.
- (3) THAT the respondent herein do file and serve within seven days of the 8th day of October 1996 written submissions.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch
(Respondent).

No. 862 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

5 July 1996.

Order.

THIS matter having come on for a directions hearing before me on the 4th day of July 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, it is this day, the 5th day of July 1996, ordered, by consent, that application No 862 of 1996 be and is hereby adjourned to 9.00 am on Monday, the 5th day of August 1996 for a further directions hearing.

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Federated Millers and Mill Employees' Union of
Workers of Western Australia.

(Respondent).

No. 1193 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr W Johnston, as agent, on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 24(a) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 23 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 23 and 24(a) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Food Preservers' Union of Western Australia Union of
Workers.

(Respondent).

No. 1196 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr W Johnston on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 38 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 35 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 35 and 38 of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Footwear Repairers' Association of WA (Union of
Employers).

(Respondent).

No. 1191 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr R Cann on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this

day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 5(a) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 27 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 5(a) and 27 of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)
and

The Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers.

(Respondent).

No. 1186 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr I Sands on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 9(c) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 9(b) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 9(b) and 9(c) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)
and

Master Plasterers' Association of Western Australia Union
of Employers.

(Respondent).

No. 1187 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr K Spalding on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 8 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 30 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 8 and 30 of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)
and

The Metropolitan (Perth) Passenger Transport Trust
Officers' Union of Workers, Perth.

(Respondent).

No. 1197 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr D Rodgers on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this

day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 22 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 21(a) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 21(a) and 22 of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Plumbers and Gasfitters Employees' Union of
Australia, West Australian Branch, Industrial Union of
Workers
(Respondent).

No. 870 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

5 November 1996.

Order.

THIS matter having come on for a hearing before me on the 4th day of November 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 5th day of November 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rules 42(1) and 42(2)(b) of the rules of the abovenamed respondent organisation are contrary to or inconsistent with s.64A of the Act.
- (2) THAT rules 42(1) and 42(2)(b) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 4th day of November 1996.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Plumbers and Gasfitters Employees' Union of
Australia, West Australian Branch, Industrial Union of
Workers
(Respondent).

No. 870 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a further directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, it is this day, the 9th day of October 1996, ordered and directed as follows—

- (1) THAT application No 870 of 1996 be and is hereby adjourned to 10.00 am on Monday, the 4th day of November 1996 for hearing and determination.
- (2) THAT application No 870 of 1996 be heard with application No 862 of 1996.
- (3) THAT the respondent herein do file and serve within seven days of the 8th day of October 1996 written submissions.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Plumbers and Gasfitters Employees' Union of
Australia, West Australian Branch, Industrial Union of
Workers
(Respondent).

No. 870 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 August 1996.

Order.

THIS matter having come on for a further directions hearing before me on the 9th day of August 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, and the parties herein having consented to waive their rights to speak to the minutes of proposed order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended), it is this day, the 9th day of August 1996, ordered, by consent, as follows—

- (1) THAT application No 870 of 1996 be and is hereby adjourned to 9.30 am on Tuesday, the 8th day of October 1996 for a further directions hearing.
- (2) THAT the applicant herein do file and serve written submissions within 21 days of the 5th day of August 1996.
- (3) THAT the respondent herein do file and serve written submissions within 21 days thereafter.

[L.S] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The Plumbers and Gasfitters Employees' Union of
Australia, West Australian Branch, Industrial Union of
Workers
(Respondent).

No. 870 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

5 July 1996

Order.

THIS matter having come on for a directions hearing before me on the 4th day of July 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr C Young on behalf of the respondent, subject to and conditional upon the filing of a warrant within 48 hours of the 4th day of July 1996, it is this day, the 5th day of July 1996, ordered, by consent, that application No 870 of 1996 be and is hereby adjourned to 9.00 am on Monday, the 5th day of August 1996 for a further directions hearing.

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

Salaried Pharmacists' Association Western Australian
Union of Workers.
(Respondent).

No. 1190 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr A Dzieciol on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 8(b) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 9(c) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 8(b) and 9(c) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

Sales Representatives' and Commercial Travellers' Guild of
WA Industrial Union of Workers.

(Respondent).

No. 1194 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr W Johnston on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 11 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 13 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 11 and 13 of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

State School Teachers' Union of WA (Incorporated)
(Respondent).

No. 1192 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

7 November 1996.

Order.

THIS matter having come on for a directions hearing before me on the 6th day of November 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr A Drake-Brockman (of Counsel), by leave, on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act") and the parties herein having consented to the orders herein, it is this day, the 7th day of November 1996, ordered and directed by consent as follows—

- (1) THAT I declare that rule 11 of the abovenamed Respondent organisation is contrary to or inconsistent with s.64A of the Act.

- (2) THAT I declare that rule 9 of the abovenamed Respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT the Respondent organisation is directed to make application to the Registrar of the Commission, by 3 February 1997, to alter rules 9 and 11 so that those rules are not contrary to or inconsistent with s.64A, s.64B, and s.64D of the Act.

[L.S.] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

State School Teachers' Union of WA (Incorporated)
(Respondent).

No. 1192 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P J SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr A Drake-Brockman (of Counsel), by leave, on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, it is this day, the 9th day of October 1996, ordered and directed that application No 1192 of 1996 be and is hereby adjourned to 9.45 am on Wednesday, the 6th day of November 1996, for a further directions hearing.

[L.S.] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

Transport Workers' Union of Australia, Industrial Union of
Workers, Western Australian Branch
(Respondent).

No. 1185 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr M D Cuomo (of Counsel), by leave, on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented

to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 40 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 12 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT the respondent organisation is directed to make application to the Registrar of the Commission, by the 1st day of February 1997, to alter rules 12 and 40 so that those rules are not contrary to or inconsistent with s.64A, s.64B and s.64D of the Act.

[L.S.] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar
(Applicant)

and

The West Australian Hairdressers' and Wigmakers'
Employees' Union of Workers.

(Respondent).

No. 1195 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr W Johnston on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 10(1) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 10(2) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 10(1) and 10(2) of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

[L.S.] (Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Union of Australian College Academics, Western
Australian Branch, Industrial Union of Workers.

(Respondent).

No. 1198 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

THIS matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr N Hodgson on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, and the parties herein having consented to waive their rights to speak to the Minutes of Proposed Order pursuant to s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act"), and the parties herein having consented to the orders herein, it is this day, the 9th day of October 1996, ordered and declared, by consent, as follows—

- (1) THAT I declare that rule 11(b) of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64A of the Act.
- (2) THAT I declare that rule 12 of the rules of the abovenamed respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.
- (3) THAT rules 11(b) and 12 of the rules of the abovenamed respondent organisation be and are hereby disallowed as and from the 8th day of October 1996.

(Sgd.) P.J. SHARKEY,
President.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

(Respondent)

No. 1184 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

7 November 1996.

Order.

This matter having come on for a directions hearing before me on the 6th day of November 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr A DrakeBrockman (of Counsel) by leave on behalf of the respondent, and the parties herein having consented to waive the requirements of s.35(4) of the Industrial Relations Act 1979 (as amended) ("the Act") and the parties herein having consented to the orders herein, it is this day, the 7th day of November 1996, ordered and directed as follows—

- (1) THAT I declare that rule 8(1) and 8(2) of the rules of the abovenamed Respondent organisation are contrary to or inconsistent with s.64A of the Act.

(2) THAT I declare that rule 6 of the rules of the abovenamed Respondent organisation is contrary to or inconsistent with s.64B and s.64D of the Act.

(3) THAT the Respondent organisation is directed to make application to the Registrar of the Commission, by 3 February 1997, to alter rules 8(1), 8(2) and 6 so that those rules are not contrary to or inconsistent with s.64A, s.64B and s.64D of the Act.

[L.S]

(Sgd.) P.J. SHARKEY,
President.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Registrar

(Applicant)

and

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

(Respondent)

No. 1184 of 1996.

BEFORE HIS HONOUR THE PRESIDENT
P.J. SHARKEY.

9 October 1996.

Order.

This matter having come on for a directions hearing before me on the 8th day of October 1996, and having heard Ms J H Smith (of Counsel), by leave, on behalf of the applicant and Mr G Giffard on behalf of the respondent, and having made such orders as are necessary or expedient for the expeditious and just hearing and determination of the matter, it is this day, the 9th day of October 1996, ordered and directed as follows—

- (1) THAT application No. 1184 of 1996 be and is hereby adjourned to 10.00 am on Wednesday, the 6th day of November 1996 for hearing and determination.
- (2) THAT the parties herein file and serve written submissions 48 hours before the time and date of the hearing and determination of application No 1184 of 1996.

[L.S]

(Sgd.) P.J. SHARKEY,
President.

AWARDS/AGREEMENTS— Application for—

AMATEK LTD ENTERPRISE AGREEMENT 1996.

No. AG 277 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch

and

Rocla Pipeline Products.

No. AG 277 of 1996.

Amatek Ltd Enterprise Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

4 November 1996.

Order.

HAVING heard Mr J.D. Fiala on behalf of the Applicant and Mr W.P. Hepburn on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 10th day of October, 1996 entitled Amatek Ltd Enterprise Agreement 1996 be registered as an industrial agreement and replaces the Amatek Ltd Kewdale (Enterprise Bargaining) Agreement 1994 (No. AG 101 of 1994).

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

AMETEK ENTERPRISE AGREEMENT 1996-1998

(Trading as Rocla)

Schedule.

1.—TITLE

This Agreement shall be known as the Amatek Ltd Enterprise Agreement 1996.

2.—ARRANGEMENT

This Agreement is arranged as follows:

Clause

- | No. | Subject |
|------|---|
| 1. | Title |
| 2. | Arrangement |
| 3. | Application |
| 4. | Parties Bound |
| 5. | Single Bargaining Unit |
| 6. | Date & Period Of Operation |
| 7. | Relationship to Parent Award |
| 8. | National Standards |
| 9. | Commitment and Vision |
| 10. | Objectives |
| 11. | Continuous Improvement and Innovation Process |
| 11a. | Consultation and Participation |
| 11b. | Quality and Customer Satisfaction |
| 11c. | Flexible Work Organisation |
| 11d. | Skills Development and Training |
| 11e. | Performance Measures |
| 12. | Classification Structure |
| 13. | Wage Rates |
| 14. | Allowances |
| 15. | Redundancy |
| 16. | Avoidance of Industrial Disputes |

17. Use of a Precedent Prohibited

18. Renewal of Agreement

3.—APPLICATION

This Agreement shall apply to all employees (numbering four) of Amatek Ltd who are bound by the terms of Metal Trades (General) Award No. 13 of 1965 and employed in the following business units of the Pipe and Concrete Division:

* Rocla Pipeline Products, Kewdale

4.—PARTIES BOUND

Parties to this Agreement are:

- i) The Communications Electrical Electronic Energy Information Postal Plumbing and Allied Workers Union of Australia Engineering and Electrical Division WA Branch.
- ii) Amatek Ltd
- iii) All employees of Amatek Ltd engaged in any of the occupations, callings specified in the Metal Trades (General) Award, whether members of the organisation of employees listed in sub-clauses (i) hereof or not, employed in the Pipe and Concrete Division

5.—SINGLE BARGAINING UNIT

Each relevant Bargaining Unit has operated a consultative committee since at least 1989. These committees were re-structured for the purpose of developing agreement on Enterprise Bargaining issues consistent with the terms of the decision in the January 1992 State Wage Case. The committee is composed of employee and management representatives, and includes a representative of the union at the Kewdale site.

6.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the beginning of the first pay period to commence on or after 24th April, 1996 and shall remain in force until 21st May, 1998.

No Extra Claims

This Agreement shall not be varied and the Union undertakes not to pursue any extra claims, award or overaward, during the period of operation of this Agreement except where consistent with principles determined by the Western Australian Industrial Relations Commission.

7.—RELATIONSHIP TO PARENT AWARD

- This Agreement shall be read and interpreted wholly in conjunction with the relevant award listed in Clause 3, provided that where there is any inconsistency, this Agreement shall prevail to the extent of the inconsistency.

8.—STATE STANDARDS

This Agreement shall not operate so as to cause a departure from WA Industrial Relations Commission standards.

9.—COMMITMENT AND VISION

The parties to this Agreement are committed to making the Company more productive, effective and efficient, both operationally and financially within a satisfying and stable work environment. This Agreement builds on the Amatek Ltd Kewdale (Enterprise Bargaining) Agreement 1994 and enhances the commitment of the parties to build an organisation which attains international best practice in all areas. The Company is committed to the marketing of products derived from its shared core competencies being primarily concrete material and process technologies.

The parties are also committed to developing a shared vision through involvement and teamwork.

The parties are committed to improvement through the productivity improvement programmes at all sites which are not limited in their agendas and incorporate the Company's short and long term objectives.

The parties are also committed to nil disruption and maximum productivity improvements and high levels of customer service.

10.—OBJECTIVES

Consistent with the terms of the Amatek Ltd Kewdale (Enterprise Bargaining) Agreement 1994, the parties to this

Agreement are committed to the following objectives all of which are vital to the Company's business strategies and ongoing success:

- The development of a common culture and shared vision of a customer focused organisation with leading competence in concrete technologies and products.
- The introduction of modern and flexible forms of work organisation, technology and work patterns which optimise the benefit to the Company's shareholders, employees and customers.
- The establishment of work arrangements which ensure the involvement of all employees in continuous improvement.
- The elimination of existing work practices which inhibit flexibility and improved efficiency.
- The supply of products and services on a timely and cost effective basis.
- The establishment of career paths within the Company which provide for ascending levels of skill and responsibilities which will result in increased job satisfaction, greater career opportunities and opportunities for self management.
- The continued development of productivity performance measures including benchmarks internally and externally.
- Commitment to the appropriate level of quality in all processes and procedures.
- Commitment to high standards of occupational health and safety.

11.—CONTINUOUS IMPROVEMENT & INNOVATION

The parties agree that continuous improvement and innovation is a cornerstone of this Agreement and the Amatek Ltd Kewdale (Enterprise Bargaining) Agreement, 1994. Only through commitment to continuous improvement and innovation will the objectives be achieved.

The elements critical to the achievement of continuous improvement and innovation are:

- (a) Involvement and Teamwork
- (b) Quality and Customer satisfaction
- (c) Flexible Work Organisation
- (d) Skills Development & Training
- (e) Performance Management and Measures

Each of these elements which are explained in detail below will be focused on over the life of the Agreement. Specific actions have been identified as necessary for the continuous improvement process to deliver the objectives of this Agreement.

11a. Involvement and Teamwork

An important part of the consultative process has been, and will continue to be, the development of a workplace culture focusing on international competitive standards.

The parties recognise the importance of the workplace change process, and the need to develop productive working relationships and to achieve a workplace mindset of commitment and co-operation as a foundation for ongoing change.

Factory Improvement Groups (F.I.G.S.) have been established to provide the mechanism for involvement in workplace improvement. The F.I.G.S. are comprised of appropriate management and employee representatives, who will also be used to communicate information on key directions of the Company. Their objectives include:

- Examine and recommend means to improve the efficiency and productivity of the workplace making the most effective use of its total resources.
- Assist the implementation of workplace improvement through involvement and teamwork.
- Act as a forum for the communication of employee ideas to improve productivity.

The parties recognise the need to maintain the momentum established under the 1994 Agreement and to ensure that

the F.I.G.S. meet their objectives over the life of this Agreement.

Actions:

1. It is the aim of the parties to have in place early in the life of this Agreement properly operating F.I.G.S.
2. Each F.I.G. will be involved in the development of an Operational Plan which will be used as a guide over the next 12—24 months. The existing terms of reference shall continue to apply and Operational Plans will detail actions in the following areas:
 - * training and development
 - * teams/work organisation
 - * communication
 - * customer relations
 - * key performance measures and achievements
 - * OH&S
3. Training will continue to be provided to F.I.G.S. to ensure members are confident and capable of achieving their objectives.

11b. Quality and Customer Satisfaction

The parties are committed to the implementation and maintenance of the Company's Quality Assurance System. F.I.G.S. will assist in implementation and adherence. To ensure quality improvements occur the following actions will be necessary:

Actions:

1. The Company's policy on quality is clearly communicated to employees in terms that are easily understood. This will include linking it to the requirements of the various internal and external customers of the Company.
2. Recognition by all parties that satisfying the customer is the single most important factor in achieving quality and that in work there are a range of customers including work teams and their members.
3. All employees take responsibility for the quality of the work they carry out.
4. Employees will be involved in the development and adherence of procedures/instructions and training necessary for the achievement of the quality requirements

11c. Flexible Work Organisation

Building on the Amatek Ltd Kewdale (Enterprise Bargaining) 1994 Agreement the Company has commenced a process of multi-skilling employees to extend flexibility's. This process will result in no demarcations that would otherwise inhibit the full interchangeability of tasks. The following key elements are identified as necessary:

I. Multi-Skilled Teams

Work teams based around production centres will be established and introduced at all sites as soon as practicable. The range of the team member's skills will provide adequate overlap to allow interchangeability of individuals to stagger meal breaks and to cover any absence.

Functions which are currently considered as both direct and indirect work functions will be shared by team members.

Skill flexibility will extend to co-ordinators and maintenance trades people performing production tasks when necessary, and to promote the broadening of skills. It will not lead to the downgrading of employee skills.

II. Self Directed Teams

Multi-skilled teams will be encouraged and assisted, through training and consultation, to accept higher levels of responsibility and decision making in the operation of the production centre, and the achievement of quality standards.

III. Single Meal Break

Where staggered meal breaks cannot be operated, a single meal break will apply by combining the paid rest period of 15 minutes with the normal meal break, provided that other provisions of Clause 13 'Hours' of the parent award shall apply, except that the parent award provision of two rest periods of 7.5 minutes shall not apply. The duration of the single meal break and the method by which the paid 15 minutes is treated, may be determined by mutual agreement between the Company and the majority of employees concerned.

IV. Flexible Working Hours

The methods of implementing the 38 hour week provided in the Award shall continue to apply, except that in circumstances where the present hours arrangements are limiting or constraining operational efficiency or effectiveness they may be replaced by some other method of working the 38 hour week, provided that the majority of employees concerned agree. Agreement to work the proposed shift/hours will not be unreasonably withheld.

Where the majority of employees concerned do not agree the Company shall refer the matter to the union at the State level, and the union shall not withhold agreement unreasonably. Should agreement fail to be reached, the matter shall be referred to the Western Australian Industrial Relations Commission for resolution.

Starting and finishing times, may vary for individuals and or sections in line with operational requirements. Additionally different shift patterns may apply to sections or individuals within the site.

Where agreed shift/hours patterns impact on award conditions of employment (e.g. overtime, sick leave, public holidays, annual leave and long service leave) agreement following the above procedures, will be reached as to the treatment of such conditions ensuring no extra cost to the Company and no disadvantage to the individual or sections concerned.

V. Flexibility with Truck Drivers

Provided licence, safety and competence requirements are satisfied, truck drivers, if requested by management may load trucks. Such operations are not intended, and will not be used as a general replacement of existing forklift personnel but as an assistance to operations. Site specific arrangements in the Amatek Ltd Kewdale (Enterprise Bargaining) Agreement, 1994 shall continue to apply.

11d. Skills Development and Training

It is an objective of the Company that employee skills will be developed across all levels to increase the flexibility's and efficiency for the Company and opportunities for employees.

Employees may require competency development in one or all of four main areas: Operational Skills, Technical Skills, Administrative Skills and Interpersonal Skills.

Employee development will align with the competency-based standards for jobs where such standards are already in place. Employees will be assessed for skills and knowledge acquisition (competence) by accredited assessors, and any structured development activities will be competency based. The upskilling and multi-skilling of employees will provide career paths within the Company, and where competency standards are registered, employee competencies will be recognised across the industry.

It is intended that flexible forms of training and development will be introduced. The Company will encourage the use of different forms of learning including computer based training, and will continue to provide a range of learning resources.

Job specific training will normally be undertaken during working hours. It is envisaged that some job specific training activities may occur outside of normal hours.

Workplace trainers will be developed for the purposes of training other employees, and for developing the skills of more junior employees.

Specific actions to be undertaken include;

Actions

1. Subject experts will be developed and accredited as Workplace Trainers Level 1 and Workplace Assessors.
2. A skills audit will be conducted for all employees using the established competency standards.
3. A skills gap analysis for each employee will be prepared using the data collected in the skills audit.
4. The F.I.G.S. will be involved in:
 - (a) development of training plans generated by Training Co-ordinators
 - (b) encouraging employees to participate in training activities
 - (c) providing feedback to the Training Co-ordinators regarding the success or otherwise of training initiatives
5. Employees will assist with the training of other employees who are developing their skills.

11e. Performance Management and Measures

The parties agree that operational performance will be monitored and problems identified and corrective action taken where necessary to ensure the objectives of this agreement will be obtained.

Appendix I sets out measures, targets and wage increases attributable to 6 key performance measures. In determining the extent of improvement it will be taken from a year to date figure ending December, 1995. The amount of the second and third wage increase under this Agreement shall be dependent on the achievement of the measures.

Information on the progress of achievement of performance will be made available via the F.I.G. so as to ensure all employees understand the site/divisional performance. F.I.G.S. are encouraged to measure other factors that can be used to assess and improve performance.

F.I.G.S. may be required to develop action plans to correct any performance deficiency to assist in the achievement of the targets.

Each of the following business groups will be treated as separate entities in assessing the value of the productivity gains achieved:

- Rocla Pipeline Products
- Rocla Concrete Poles
- Rocla Concrete Sleepers

12.—CLASSIFICATION STRUCTURE

Employees shall be classified in accordance with the Metal Trades (General) Award.

13.—WAGES

- (i) Wage rates for all classifications in the AWU-Amatek Ltd Award (Federal) are increased as follows:

- First Increase

All existing award rates will be increased by \$8.00 per week (21 cents per hour) plus 4.5% effective from the first pay period on or after the 24 April, 1996.

Incentive Scheme rates will be reduced by 21 cents per hour effective from the first pay period on or after the 24 April, 1996.

- Second Increase

All wage rates will be increased by 2.5% effective from 24 January, 1997 and a further 1.5% on the achievement of agreed performance measures (see Appendix 1) also effective from 24 January, 1997

- Final Increase

All wage rates will be increased by 2% effective from 24 October, 1997 and a further 1.5% on the achievement of agreed performance measures (see Appendix 1) also effective from 24 October, 1997

(ii) Wage rates for all classifications under the Metal Trades (General) Award will be increased as follows:

- **First Increase**
All existing rates will be increased by 4.5% effective from the first pay period on or after the 24 April, 1996
- **Second Increase**
All wage rates will be increased by 2.5% effective from 24 January, 1997 and a further 1.5% on the achievement of agreed performance measures (see Appendix 1) also effective from 24 January, 1997
- **Final Increase**
All wage rates will be increased by 2% effective from 24 October, 1997 and a further 1.5% on the achievement of agreed performance measures (see Appendix 1) also effective from 24 October, 1997

Tradesmen who are eligible to receive incentive payments under the Company's Incentive Scheme the amount of \$8.00 per week referred to above shall be reduced in the same proportion to the percentage they receive under the Incentive Scheme.

14.—ALLOWANCES

Allowances under the Metal Trades (General) Award shall be adjusted in accordance with Appendix III.

15.—REDUNDANCY

The existing redundancy provisions under Clause 32(a) of the Metal Trades (General) Award shall apply except that:

- i) where an employee is made redundant in terms of the Award, the employee shall be entitled to two weeks pay for each completed year of service or the award whichever is the greater up to a maximum of 52 weeks.
Payment shall be calculated on the base weekly wage rate plus average weekly incentive earnings achieved during ordinary hours over the previous 13 weeks.
- ii) there shall be no offsetting of any redundancy benefits by superannuation benefits.

16.—AVOIDANCE OF INDUSTRIAL DISPUTES

Any difficulty, dispute, problem or question affecting one or more employees bound by this agreement, the parties to this Agreement undertake to observe the procedure for the avoidance of industrial disputes contained in the relevant parent awards, that is Clause 34 of the Metal Trades (General) Award.

In general the parties will attempt to resolve all disputes by internal negotiation, in keeping with the Commitment and Vision clause of this Enterprise Agreement.

17.—USE OF A PRECEDENT PROHIBITED

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

18.—RENEWAL OF AGREEMENT

The parties shall continuously monitor the application of this Agreement to ensure the effective implementation of structural efficiency and enterprise bargaining principles. The parties will commence discussion on the renewal or replacement of this Agreement no later than 21st February 1998.

SIGNATORY PAGE

LOCATION OF SITE KEWDALE W.A.
SIGNED BY:
CEPU REPRESENTATIVE J.D. Fiala (signed) (JOE DANIEL FIALA)
POSITION ORGANISER
DATE: 19-9-96
ROCLA REPRESENTATIVE W.P. Hepburn (signed)
POSITION AREA MANAGER
DATE: 19th SEPT 1996
W.P. HEPBURN

APPENDIX 1

		PERFORMANCE MEASURES		
Item	Indices	Improvement	Wages Incr. 24th Jan 1997	Wages In
1	Crew Utilisation	0.75% Improvement/yr	0.45%	0.45
2	Reduce Concrete Waste	7.5% Reduction/yr	0.30%	0.30%
3	Cement Usage	0.2%/yr	0.22%	0.22%
4	Absenteeism	Reduce by 0.75 day/employee/yr	0.23%	0.23%
5	Quality	Reduce Reject Rate by 11%	0.15%	0.15%
6	Safety	Reduce Injury Rate by 5.5%	0.15%	0.15%
		Total Increase	1.5%	1.50%

APPENDIX II

ALLOWANCES

Allowance	24 April 96	24 Jan 97	24 Oct 97
	4½%	4%	3½%
Leading Hand			
i/c 3 -10	17.35	18.04	18.67
i/c/ 10—20	26.54	27.60	28.57
u/c 20+	34.28	35.65	36.90
First Aid	6.64	6.91	7.15
Elec. Licence	13.79	14.34	14.84
Meals 1st	6.79	7.06	7.31
Meals 2nd	4.60	4.78	4.95
Tool	9.61	9.99	10.34

- Full payment will depend on achieving all performance measures. Non achievement will result in pro-rata payment.

CHRIST CHURCH GRAMMAR SCHOOL INC. (NON-TEACHING STAFF ENTERPRISE BARGAINING) AGREEMENT 1996 No. AG 223 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Christ Church Grammar School Inc; The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers; The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch; The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch; Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch; The Nursing Federation, Industrial Union of Workers Perth.

No. AG 223 of 1996.

Christ Church Grammar School Inc. (Non-teaching Staff Enterprise Bargaining) Agreement 1996.

COMMISSIONER A. R. BEECH.

11 October 1996.

Order.

HAVING heard Mr J. Madin, Ms T. Howe, Mr N. Whitehead, Ms D. MacTiernan, Mr J. Murie and Mr P. Reeves on behalf of the Applicants and by consent, the Commission, pursuant

to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Christ Church Grammar School Inc (Non-teaching Staff Enterprise Bargaining) Agreement 1996 be registered in accordance with the following Schedule on and from the 10th day of October 1996.

[L.S] (Sgd.) A. R. BEECH,
Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Christ Church Grammar School Inc (Non-teaching Staff Enterprise Bargaining) Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Relationship to Parent Awards
7. Single Bargaining Unit
8. Objectives
9. Salary Rates
10. Efficiency Improvements
11. Parental Leave
12. Dispute Resolution Procedure
13. Consultation
14. No Further Claims
15. No Precedent
16. Signatories

3.—PARTIES TO THE AGREEMENT

This Agreement is made between Christ Church Grammar School Inc (the School) and The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers; The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch; The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers' Union of Australia—Western Australian Branch; the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers' Union of Australia, Engineering and Electrical Division, WA Branch; the Australian Nursing Federation, Industrial Union of Workers Perth.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to staff members who are employed within the scope of the awards listed in Clause 6.

(2) The estimated number of staff employed within the scope of the awards is 71.

5.—DATE AND DURATION OF AGREEMENT

This Agreement shall come into effect on the 10th October 1996 and shall apply until 31 December 1998. The parties have agreed to meet no later than six months before the end of 1998 to review the Agreement.

6.—RELATIONSHIP TO PARENT AWARDS

This Agreement shall be read and interpreted in conjunction with the following awards:

- Building Trades Award 1968
- Independent Schools' Administrative and Technical Officers' Award 1993
- Independent Schools' (Boarding House) Supervisory Staff Award

Metal Trades (General) Award 1966

Nurses' (Independent Schools) Award

School Employees (Independent Day & Boarding Schools) Award, 1980

Teachers' Aides' (Independent Schools) Award 1988

Where there is any inconsistency between this Agreement and the relevant awards, this Agreement will prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

The parties to this Agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the School and reached full agreement with the School represented by this Agreement.

8.—OBJECTIVES

The purposes of this Agreement are to:

- (a) Consolidate and develop further, initiatives arising out of the award restructuring process.
- (b) Accept a mutual responsibility to maintain a working environment which will ensure that the School and its staff become genuine participants and contributors to the School's aims, objectives and philosophy.
- (c) Safeguard and improve the quality and productivity of services at the School by establishing a review procedure through which work practices are considered and by upgrading of professional skills and knowledge. The School and the staff acknowledge that this upgrading of skills and experience can best occur when both the School and staff share responsibility for professional development.

9.—SALARY RATES

(1) The minimum annual rate of salary payable to members of staff engaged in the classifications prescribed in subclause (1) Classifications of Clause 10.—Efficiency Improvements, shall be:

LEVEL	STEP	BASELINE
Level 1	1	\$22,140
	2	\$22,653
	3	\$23,166
	4	\$23,679
	5	\$24,192
	6	\$24,705
Level 2	1	\$25,218
	2	\$25,731
	3	\$26,244
	4	\$26,757
	5	\$27,270
	6	\$27,783
Level 3	1	\$28,296
	2	\$28,809
	3	\$29,322
	4	\$29,835
	5	\$30,348
	6	\$30,861
Level 4	1	\$31,374
	2	\$31,887
	3	\$32,400
	4	\$32,913
	5	\$33,426
	6	\$33,939
Level 5	1	\$34,452
	2	\$34,965
	3	\$35,478
	4	\$35,991
	5	\$36,504
	6	\$37,017

(2) In addition to the rates prescribed in subclause (1) of this clause the salary rates shall be increased by 12% payable in five increments from the first pay period commencing on or after the following dates:

- a) 1 July 1996—4%
- b) 1 January 1997—2%
- c) 1 July 1997—2%
- d) 1 January 1998—2%
- e) 1 July 1998—2%

(3) In the event of any safety net adjustment being applied in future to any or all of the relevant awards, such adjustment shall be absorbed into the salary rates prescribed by this Agreement.

(4) An employee appointed to a salary rate shall proceed by annual increments to the maximum of that classification level. Such annual increments shall be on the basis of full time employment.

(5) If during progression through the salary steps, and at least two months prior to the employee's next annual increment, the employer considers such increment to be inappropriate due to work performance and as such does not recommend or authorise further progression, then the employer shall state the reasons in writing to the employee concerned.

Such reasons should indicate the areas where the employer considers improvement is required.

If the improvement required is achieved, then the employee shall proceed to his/her appropriate salary level.

(6) An employee shall only progress from one level to another in accordance with the provisions prescribed in subclause (1) Classifications of Clause 10.—Efficiency Improvements.

The new structure further recognises that individual employees may be asked to assume greater responsibility and as such, their classification will be examined to determine the correct level. It is agreed that the acquisition of additional skills and/or recognised qualifications may lead to a review of an employee's classification. In such cases, a greater degree of responsibility for the job or for other employees will normally be expected.

(7) For the purpose of determining weekly or fortnightly salary, the annual salaries shall be divided by 52.16 or 26.08 respectively.

10.—EFFICIENCY IMPROVEMENTS

(1) Classifications

- (a) Each staff member shall be placed in one of the following levels dependent upon classification, qualification and experience.

Level 1

The employee at this level requires no prior experience or formal qualification in the performance of the job and works under direct or general supervision.

Level 2

The employee at this level performs duties under general supervision, is competent in the performance of tasks associated within Level 1 positions and, if the position requires, will have acquired some recognised trade or other relevant qualifications. Some employees at this level will supervise other staff under direction.

Level 3

The employee at this level is competent and skilled and performs duties under direction but with a significant degree of autonomy. The employee will have

acquired some recognised trade or other relevant qualifications. Some employees at this level will manage a team under direction.

Level 4

The employee at this level works as a competent skilled autonomous employee and has knowledge, skills and demonstrated capacity to undertake complex tasks. Employees at this level will manage a team under direction or have responsibilities of similar standing. The employee will have TAFE/Tertiary or equivalent qualifications.

Level 5

The employee at this level, through formal qualification or job responsibility, is not only fully competent in the performance of the position but also has a high degree of autonomy, initiative and discretion in the work programme and is responsible for the supervision of other employees.

- (b) No Reduction

Nothing herein contained shall entitle the School to reduce the salary of any staff member who at the date of this Agreement was being paid a higher rate than the minimum prescribed for the staff member's classification at that time.

(2) Long Service Leave

- (a) Notwithstanding the provisions of the Long Service Leave subclauses of the relevant awards from 1 January 1996, a staff member who has completed eight (8) years' continuous service with the School shall be entitled to take ten (10) weeks' Long Service Leave on full pay. Leave will accrue at the rate of 1.25 weeks for each year of service.
- (b) Where a staff member has become entitled to a period of Long Service Leave in accordance with this sub-clause, the staff member shall commence such leave as soon as possible after the accrual date in a manner mutually agreed between the employer and the staff member.

(3) Flexibility of Hours

- (a) The parties recognise that there is a wide range of duties and responsibilities included in the support of programmes in a Day and Boarding School. By necessity these duties and responsibilities are undertaken at a range of times during each 24-hour span.
- (b) The increases within this agreement are, in part, recognition of the requirement for employees to work overtime and as such ordinary rates will be paid until an employee works in excess of 90 hours per fortnight after which the relevant award penalty rates will apply.
- (c) The employee may choose to take the overtime as payment for hours worked or as time in lieu. The time in lieu taken in accordance with this sub-clause shall be at such time as agreed between the employer and employee.
- (d) The parties recognise that there is no intention on the part of the employer to seek to have employees work more than their prescribed normal hours on a regular basis.
- (e) The parties agree to discuss strategies providing for greater flexibility in working hours to meet the needs of the School programme.

(4) Review of Work Practices

The parties agree to work together to establish a procedure for the review of work practices.

(5) Appraisal

The parties agree to work together to develop an appraisal procedure for all non-teaching staff.

(6) Part-time Employees

- (a) Part time employees shall have the expectation of continuity of service.
- (b) The School may vary the hours of employment of part time employees on an annual basis.
- (c) The part time employee shall be given at least six weeks written notice of any variation, unless otherwise agreed by the School and the employee.
- (d) In determining the hours of a part time employee, the School acknowledges that such employees may wish to seek additional employment and agrees to negotiate hours of duty which, as far as practicable, suit the circumstances of the employee and the School.

(7) Professional Development

Professional development activities shall be undertaken partly in School time and partly in a staff member's own time; where feasible, in equal proportions.

There will continue to be consultation with staff members in the planning of professional development.

(8) Special Family Leave

The School agrees to the employee using three days of his or her sick leave entitlement each sick leave year without the production of a medical certificate to use in the event of the illness of a child, partner or other dependant. This leave will not accrue annually.

(9) Superannuation—Salary Sacrifice

Each employee is required to contribute 5% of his/her gross salary to the Christ Church Grammar School Superannuation Fund. Contributions are made by the School in accordance with the Christ Church Grammar Superannuation Fund Member Booklet.

Staff members are entitled to contribute more than the minimum amount. On application by the staff member and by agreement with the employer, salary may be deemed to include an amount which is paid on behalf of the staff member into an Approved Superannuation Fund, and not being an employer contribution to superannuation paid in accordance with either Federal legislation or an employer's contributory superannuation fund.

(10) Education of sons of members of staff

Until the Council decides otherwise, which it may do if it sees fit, a rebate for sons of Christ Church Grammar School staff equal to the fees concession offered to members of the teaching staff will be given, but it is a condition of this concession that members of staff apply for entry for their sons promptly after they are born, or promptly after the member of staff's appointment.

(11) Insurance Cover

- (a) For the period of this Agreement, the School will provide the following insurance cover for all employees covered by this Agreement:
 - (i) Journey Insurance—Loss of income as a result of accident whilst travelling to or from work, limited to payment of normal salary for a period up to two years.
 - (ii) Personal Accident Insurance—Similar to that covering all students at the School but limited in extent to \$150,000 for claims resulting in Paraplegia or Quadriplegia.
 - (iii) Salary Continuance Insurance—Providing a benefit of 75% of normal salary for a period of up to two years following a deferment period of 90 days.
- (b) The School acknowledges its intent to renew this insurance upon renewal of the Agreement subject to the cost being acceptable to the School.

(12) Redundancy conditions and payments

- (a) It is acknowledged that redundancy is a termination of services because the position the staff member occupied is no longer available.
- (b) In considering which employee is to be made redundant the school will:
 - assess its needs;
 - look at the job being performed and not the individual;
 - look at any flexibility offered by the employees being considered;
 - check with staff as to future plans (for example, long service leave, early retirement options or leave without pay) which may impact on the need for a redundancy;
 - give notice of not less than ten weeks to those employees affected;
 - terminate positions at the end of the school year whenever possible.

When there are a number of employees competing for a limited number of positions, decisions about which employees are to be retained will be made after a thorough review of the Schools' requirements in specific work areas and the qualifications of the employees.

- (c) The school will hold discussions with the employees and the employees' industrial union regarding the possible redundancies. The discussions will cover any reasons for the proposed redundancies, measures being implemented to avoid or minimise the redundancies, and measures to mitigate any adverse affects of the redundancies on the employees concerned.

All employees of the school will be informed of the procedures which will be undertaken in order to reach a fair and equitable outcome for all concerned.
- (d) To assist the redundant employee the School will:
 - offer part-time or relief employment if this is possible;
 - check with other schools to see whether there is a suitable vacancy;
 - provide secretarial assistance with job applications;
 - permit paid leave to attend job interviews;
 - provide the employee with a reference and a statement to the effect that he/she has been released owing to his/her job no longer existing;
 - give the employee all other entitlements;
 - permit the employee to leave immediately any time after being notified that he/she is redundant if alternate employment is found either for or by the employee;
 - provide the employee with a redundancy payment.
- (e) The following severance pay scale will apply:

Less than 1 year	4 weeks pay
After 1 year	6 weeks pay
After 2 years	8 weeks pay
After 3 years	10 weeks pay
After 4 years	an additional week for each year of service above 3 years up to a maximum of 20 years.

11.—PARENTAL LEAVE

The School will grant parental leave in accordance with current minimum provisions as contained in the Western Australian Minimum Conditions of Employment Act (1993).

12.—DISPUTE RESOLUTION PROCEDURE

A dispute is defined as any question, dispute or difficulty arising out of this Agreement:

The following procedure shall apply to the resolution of any dispute:

- (1) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.
- (2) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties to the Agreement together with any additional representative as may be agreed by the parties.
- (3) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

13.—CONSULTATION

(1) There shall be established a Consultative Committee with equitable representation of the School and employees covered by this Agreement. The Committee shall provide a forum in which to discuss matters that relate directly to the conditions of employment of non-teaching staff.

(2) The Committee shall meet at least once each School term.

14.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims, with respect to salaries or conditions, unless they are consistent with the State Wage Case Principles.

15.—NO PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the School or not.

16.—SIGNATORIES

Signed for and on behalf of:

J.W. Saleeba V. J. Evans

Christ Church Grammar School Inc

T.I. Howe

The Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers

Noel Whitehead

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

J. Gallagher

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch

J Murie

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

Marea Vidovich

The Australian Nursing Federation, Industrial Union of Workers Perth

**CLELANDS COLD STORES PTY LTD
ENTERPRISE AGREEMENT 1996
No. AG 216 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Clelands Cold Stores Pty Ltd

and

The Shop, Distributive and Allied Employees' Association
of Western Australia.

No. AG 216 of 1996.

Clelands Cold Stores Pty Ltd Enterprise Agreement 1996.

COMMISSIONER A.R. BEECH.

18 October 1996.

Order:

HAVING heard Mr M. Pritchard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders —

THAT the Clelands Cold Stores Pty Ltd Enterprise Agreement 1996 as detailed in the following schedule, be registered with effect on and from the 17th day of October 1996.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement shall be known as the Clelands Cold Stores Pty Ltd Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Relationship to Parent Award
6. Date and Period of Operation
7. Aims of Agreement
8. Commitments
9. Definitions
10. Casual Employees
11. Part Time Employees
12. Hours
13. Display of Rosters
14. Meal Breaks and Rest Pauses
15. Meal Money
16. Overtime
17. Holidays
18. Annual Leave
19. Employee Facilities
20. No Reduction
21. Higher Duties
22. Engagement
23. Time and Wages Record
24. Uniforms and Overalls
25. Country Work and Travelling Time
26. Junior Employee's Certificate
27. Sick Leave
28. Wages
29. Right of Entry
30. Motor Vehicle Allowance
31. Long Service Leave
32. Shift Work
33. Payment of Wages
34. Posting of Agreement
35. Stand Down
36. Compassionate Leave
37. Maternity Leave
38. Union Notice Board
39. Introduction of Change

40. Superannuation
41. First Aid Allowance
42. Trade Union Training Leave
43. Dispute Settlement Procedure
44. Signatories

3.—AREA AND SCOPE

This Agreement shall apply to Clelands Cold Stores Pty Ltd with respect to its Cold Stores operating within the State of Western Australia and employees in the callings listed herein.

4.—PARTIES BOUND

(1) This Agreement shall be binding on the following parties:

- (a) Clelands Cold Stores Pty Ltd (hereinafter, "the Company"), and
- (b) The Shop, Distributive and Allied Employees' Association of Western Australia (hereinafter, "the Union").

(2) The parties to this Agreement shall be bound jointly and separately to oppose any subsequent application by any other body or organisation to be joined to this Agreement.

(3) It is estimated that approximately 48 employees will be bound by this Agreement upon registration.

5.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 (No. R 32 of 1976) as varied from time to time (hereinafter, "the Award").

(2) Where there is any inconsistency between the terms of this Agreement and the Award, this Agreement shall prevail to the extent of the inconsistency.

6.—DATE AND PERIOD OF OPERATION

(1) This Agreement shall operate from the date of ratification and shall remain in force until 31st December 1997.

(2) This Agreement shall not continue to have effect beyond 31st December 1997 unless all parties to the Agreement agree to that course prior to 31st December 1997.

(3) The parties will commence discussions to review the terms and content of the Agreement at least three months prior to its expiry date with a view to reaching agreement on the terms of a replacement Agreement.

7.—AIMS OF AGREEMENT

To provide a framework on which the Company and its employees can build an ongoing relationship which:

- (1) Facilitates continuous improvements to its systems of work to the benefit of customers, employees and shareholders.
- (2) Allows employees to gain and utilise a broader range of skills and access to relevant and applicable training programs.
- (3) Achieves improved communication and genuine consultation in the workplace.

8.—COMMITMENTS

During the period of operation of the Agreement:

- (1) There will be no extra claims made by the Union on behalf of employees of the Company engaged at its Western Australian Cold Stores except in so far as they relate to negotiations for a replacement agreement as prescribed by subclause (3) of Clause 6.—Date and Period of Operation of this Agreement.
- (2) The terms and conditions of this Agreement will not be used to base or progress a claim or claims against any other organisation or employer.
- (3) The Agreement shall not operate to cause an employee to suffer a reduction in ordinary time earnings.

9.—DEFINITIONS

(1) "Storeperson" shall mean an employee performing one or more of the following duties: receiving, handling, storing, assembling, recording, preparing, packing, weighing and/or wrapping, branding, sorting, stacking or unpacking, checking, distributing or despatching or distributing goods in a store

or warehouse or delivering goods from a store or warehouse for transit; the ordering of goods; the receiving, arranging or making payment by any means; the recording by any means of a sale or sales. Such duties shall include the use of computerised equipment where necessary.

(2) "Storeperson Operator Grade I" means an employee employed as such carrying out the duties of a storeperson who is substantially required to operate the following mechanical equipment in the performance of his or her duties:

- (a) Ride-on power operated tow motor.
- (b) Ride-on power operated pallet truck.
- (c) Walk beside power operated high lift stacker.

(3) "Storeperson Operator Grade II" means an employee employed as such carrying out the duties of a storeperson who is substantially required to operate the following mechanical equipment in the performance of his/her duties:

- (a) Ride-on power operated fork-lift.
- (b) High lift stacker.
- (c) High lift stock picker.
- (d) Power operated overhead traversing hoist.

(4) "Storeperson Working Singly" shall mean a storeperson working where no other storeperson is employed in the establishment.

(5) "Despatch Hand" shall mean an employee who is substantially engaged in handling or receiving goods in or from departments for despatch or who passes them over to the packing room, or prepares and hands over packages to carters for delivery and who, if required, shall be responsible for the proper checking off of such packages and for the proper branding and marking thereof, and keeping necessary records, such as rail notes and cart notes.

(6) "Packer" shall mean an employee who packs goods for transport by air, post, rail or ship. Provided that an employee who packs goods for delivery by road transport where the destination of such goods is beyond a radius of 40 kilometres of the nearest post office to the employer's business, shall be classed as a packer.

(7) "Adult" for the purpose of this Award, the word "Adult" shall mean an employee twenty-one years of age and over or an employee who is in receipt of the prescribed adult rate of pay.

(8) "Weekly Hand" shall mean an employee engaged by the week and whose employment shall be terminable by not less than one week's notice on either side. Such week's notice cannot be continued from week to week.

Provided that a weekly hand employed for a period of four consecutive weeks or less shall be classed as a "casual employee" and be paid not less than the minimum rates of wages herein prescribed for a casual employee. This proviso shall not apply to an employee employed as a weekly hand and who is dismissed for incompetence or any other cause referred to in Clause 22.—Engagement of this Agreement or to an employee who severs his or her contract of service.

(9) "Wholesale Establishment" shall mean any warehouse or place where goods are exclusively or principally sold for re-sale and/or where goods are sold for consumption and/or use of another business.

(10) "Wholesale Salesperson" shall mean an employee performing one or more of the following duties in any establishment selling by wholesale, namely receiving, selling, assembling orders, distributing, handling goods or manufacture or sale by wholesale.

10.—CASUAL EMPLOYEES

(1) "Casual Employee" shall mean an employee engaged by the hour and who may be dismissed or leave the Company's service at any moment without notice and shall not be engaged for more than 38 hours per week in ordinary hours. Work in excess of 38 hours shall attract the appropriate overtime penalty applied to the casual rate of pay.

Any casual employee engaged and not permitted to commence work shall receive three hours pay at the rate of 20 per centum in addition to the appropriate rate of wages prescribed in this Agreement.

(2) The minimum period of engagement for casual employees shall be three consecutive hours on any day.

(3) The rate for casual employees within ordinary time shall unless otherwise stated, be determined by dividing the appropriate wage rate prescribed by Clause 28.—Wages of this Agreement by thirty eight (38) and adding the appropriate loading prescribed by this Agreement.

(4) A casual employee shall be paid an additional loading in accordance with the following scale:

- (a) where the casual engagement on any day is for a full day's work—a loading of twenty (20) per cent.
- (b) where the casual engagement on any day is for less than a full day's work—a loading of twenty five (25) per cent.

(5) Tea breaks and meal breaks shall be taken in accordance with Clause 14.—Meal Breaks and Rest Pauses of this Agreement.

11.—PART TIME EMPLOYEES

(1) Except as hereinafter provided, a part time employee shall mean an employee who may be engaged on any day Monday to Friday inclusive for a maximum of thirty hours per week with not more than ten daily work commencements in any fortnightly period. Provided that a part time employee shall not be rostered for less than three consecutive hours on any shift or for more than the maximum number of ordinary hours worked on any shift by the full time employees rostered to work on that shift. Where a part time employee works in excess of the maximum daily or weekly ordinary hours, such excess hours shall be paid at overtime rates.

(2) A part time employee shall receive payment for wages, annual leave, sick leave and long service leave on a pro rata basis in the same proportion as the number of hours regularly worked each week bears to 38 hours.

(3) When a day, being a day when an employee would have been rostered to work is a holiday under the provisions of Clause 17.—Holidays of this Agreement, then that day shall be a holiday without deduction of pay to such employee.

(4) Tea breaks shall be taken in accordance with Clause 14.—Meal Breaks and Rest Pauses of this Agreement.

(5) Meal breaks shall be taken in accordance with Clause 14.—Meal Breaks and Rest Pauses of this Agreement.

12.—HOURS

(1) (a) Subject to this clause and except as provided elsewhere in this Agreement, the ordinary hours of work shall be 38 per week.

(b) The ordinary hours of work shall be exclusive of meal breaks and be so rostered that an employee shall not be required to commence work on more than 5 days in each week.

(c) Full time employees shall be rostered to work ordinary hours each week in accordance with one of the following roster patterns—

- (i) Five days of not more than 7.6 ordinary hours each week Provided that in any week up to 9.5 ordinary hours may be rostered to be worked on not more than one day, or
- (ii) four days of 9.5 ordinary hours each week.

(d) Where pursuant to paragraph (c) of this subclause an employee is rostered to work a four day week, the following conditions apply:

- (i) The day of the week on which the employee is not rostered to work shall be deemed to be the employee's rostered day off and any work performed on such a day shall be overtime payable at the rate of double time with a minimum engagement of four hours at overtime rates.
- (ii) In any week in which a Public Holiday or substituted Public Holiday falls, the ordinary hours of work in such week will be reduced by 7.6 hours for each such Holiday without loss of pay and the employee will be rostered to work 7.6 ordinary hours on each of the remaining days of the week, Monday to Friday.

(2) Subject to subclause (1) of this clause, establishments shall arrange the ordinary hours of work each day according to the following provisions:

- (a) Ordinary hours of work may be worked on any or all of the days Monday to Friday inclusive.

(b) Ordinary hours shall be worked between 5.00 a.m. and 6.00 p.m.

(3) The maximum number of ordinary hours of part time and casual employees on any day or shift shall not exceed the maximum daily ordinary hours of full time employees engaged on that day or shift whether that be 7.6 or 9.5 hours. Work in excess of the maximum daily ordinary hours for part time or casual employees shall be overtime and paid at the appropriate overtime rate.

13.—DISPLAY OF ROSTERS

(1) The Company shall post, or cause to be posted and keep posted, in a conspicuous position in each establishment, so as to be easily accessible to, and easily read by, every employee employed therein, a roster written in the English language showing:

- (a) The name of each employee bound by the Agreement, and
- (b) The days, during each work cycle, upon which the employee is required to work his/her ordinary hours of work and the start and finish times of each work period.

(2) Notwithstanding the provisions of subclause (1) herein, the Company may provide each employee with an individual roster in writing containing the required information.

(3) The particulars contained in such roster shall be in respect of the full week Monday to Friday inclusive, during which it is posted up, and may be altered or varied only on account of the sickness or absence of an employee or by the inclusion of particulars in respect of casual employees.

(4) Rosters shall be published at least one week in advance.

(5) The ordinary hours of work and any meal interval prescribed by this Agreement shall be rostered as a continuous period on any day.

14.—MEAL BREAKS AND REST PAUSES

(1) An employee, during any work period exceeding five hours, in which his/her ordinary hours of work are rostered to be worked, shall be allowed a meal break of not less than thirty minutes nor more than one hour.

(2) Subject to subclause (3) a meal break shall be taken after not less than two and a half hours nor more than five hours work have been performed on any day.

(3) From Monday to Friday inclusive, the lunch period may be taken between the hours of 10.00 a.m. and 3.00 p.m.

(4) An employee shall be allowed a ten minute break each day. No employee shall be required to work more than four and one half hours without having had such a break. Such breaks shall not take place within one hour of the employee's commencing or ceasing time or within one hour of a meal break. An employee who works 7.6 hours or more on any day shall be entitled to two ten minute breaks.

(5) (a) Where an employee is required to continue working beyond his/her normal finishing time for more than two hours he/she shall be allowed a break for a meal of not less than thirty minutes. Such break shall be allowed to the employee before the expiration of the period of work.

(b) If the overtime to be worked continues beyond the meal break, an additional half hour meal break shall be allowed after each period of overtime not exceeding five hours.

(6) The breaks provided in this clause shall be granted and taken in one continuous period.

15.—MEAL MONEY

(1) When an employee is required to continue working after the usual finishing time for more than one hour or when an employee is required to work more than three hours overtime on any one day or shift, he/she shall be paid \$6.90 for purchase of any meal required. From the 1st November 1996 this allowance shall increase to \$7.05. From 1st July 1997 this allowance shall increase to \$7.40.

(2) Meal money shall be paid together with the ordinary time earnings of employees for the pay period in which it was incurred.

16.—OVERTIME

(1) (a) Subject to the provisions of Clause 12.—Hours of this Agreement, all time worked outside of ordinary hours shall

be deemed to be overtime, payable in accordance with this clause.

(b) All time worked in excess of 38 hours per week shall be paid at overtime rates in accordance with this clause.

(2) Any employee on duty when, in accordance with the Roster, such employee should be off duty (except as provided by subclause (3) of Clause 13.—Display of Rosters of this Agreement) shall be paid at overtime rates.

(3) All time worked before the usual starting time or after the usual finishing time shall be paid for at overtime rates.

(4) Excepting as provided hereunder, all overtime worked shall be paid for at the rate of time and a half for the first two hours and double time thereafter. In the calculation of overtime each day shall stand alone.

(5) (a) Work performed on a Sunday shall be paid for at the rate of double time.

(b) Work performed on Easter Saturday shall be paid for at the rate of double time.

(6) Work performed on a holiday prescribed in subclause (1) of Clause 17.—Holidays of this Agreement shall be paid for at the rate of double time and a half.

(7) When an employee is recalled to work after leaving the Company's work establishment he/she shall be paid for at least three hours at the appropriate rate, and time reasonably spent in getting to and from work shall be counted as time worked.

(8) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least eight consecutive hours off duty between the work on successive days. An employee (other than a casual employee) who works so much overtime between the termination of ordinary work on one day and the commencement of ordinary work on the next day that he or she has not had at least eight consecutive hours off duty between those times, shall, subject to this paragraph, be released after completion of such overtime until he or she has had eight consecutive hours off duty, without loss of pay for ordinary working time occurring during such absence. If, on the instructions of the Company, such an employee resumes or continues work without having had eight consecutive hours off duty, he or she shall be paid at double rates until released from duty for such period and shall then be entitled to be absent until he or she has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(9) Notwithstanding anything contained in this Agreement—

(a) The Company may require an employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(b) No organisation, party to this Agreement or employee or employees covered by this Agreement shall in any way whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

17.—HOLIDAYS

(1) (a) The following days or the days observed in lieu shall, subject to this subclause and to Clause 16.—Overtime of this Agreement be allowed as holidays without deduction of pay, namely, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day, and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) When any of the days mentioned in paragraph (a) of this subclause falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) Where—

(a) a day is proclaimed as a public holiday or public half-holiday under Section 7 of the Public and Bank Holidays Act 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State, that day shall be a whole holiday or, as the case may be, a half-holiday for the purposes of this Agreement within the district or locality specified in the proclamation.

(3) An employee absent without leave on the day before or the day after any of the holidays referred to in subclause (1) shall be liable to forfeit wages for the holiday as well as for the day of absence except where the Company is satisfied that the employee's absence was caused through illness in which case wages shall not be forfeited for the holiday. Provided that an employee absent on one day only, either before or after a group of holidays, shall forfeit wages only for one holiday as well as for the period of absence.

(4) Where the services of an employee are terminated by the employer on the day preceding a holiday or holidays, refer to subclause (3) of Clause 22.—Engagement of this Agreement.

(5) (a) When any of the holidays prescribed in subclause (1) of this clause falls on a day which for a full time or part time employee is a day of the week upon which he or she is usually required to work less than one fifth of his or her ordinary weekly hours of duty, such employee shall be allowed time off duty without deduction of pay equivalent to the difference between the time usually worked on that day and one fifth of the ordinary weekly hours of duty.

(b) Provided that an employee who works overtime on such a day shall receive time off equivalent to the difference between the time off calculated in accordance with paragraph (a) of this subclause and the hours for which he or she has been paid at overtime rates.

(c) The time off duty is to be allowed either:

(i) At a time mutually agreed to between the employee and the Company or

(ii) in addition to but not as part of the annual leave to which the employee is entitled pursuant to Clause 18.—Annual Leave of this Agreement.

(d) The provisions of this subclause shall not apply to casual employees.

(6) Where a holiday prescribed in this clause falls on any day upon which an employee is required to work ordinary hours, the ordinary hours in that week shall be reduced by the number of hours ordinarily worked by that employee on the day on which the holiday occurs.

18.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to an employee by the Company after a period of twelve months' continuous service with the Company.

(2) (a) During a period of annual leave an employee shall be paid a loading of 17 ½% calculated on his/her ordinary wage as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) If any prescribed holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day, there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(4) (a) If after one month's continuous service in any qualifying 12 monthly period an employee leaves his/her employment or his/her employment is terminated by the Company through no fault of the employee, the employee shall be paid 2.923 hours pay at his/her ordinary rate of pay in respect of each completed week of continuous service.

(b) In addition to any payment to which he/she may be entitled under paragraph (a) of this subclause, an employee whose employment terminates after the completion of a twelve monthly qualifying period and who has not been allowed the leave prescribed under this Agreement in respect of that qualifying period shall be given payment as prescribed in subclauses (1) and (2)(a) of this clause in lieu of that leave or, in a case to which subclause (7) of this clause applies, in lieu of so much of that leave as has not been allowed unless—

(i) He/she has been justifiably dismissed for misconduct; and

- (ii) the misconduct for which he/she has been dismissed occurred prior to the completion of that qualifying period.

(5) Any time in respect of which an employee is absent from work except time for which he/she is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this Agreement shall not count for the purpose of determining his/her right to annual leave.

(6) In the event of an employee being employed by the Company for a portion only of a year, he/she shall only be entitled, subject to subclause (4) of this clause to such leave on full pay as is proportionate to his/her length of service during that period with the Company, and if such leave is not equal to the leave given to the other employees he/she shall not be entitled to work or pay whilst the other employees of the Company are on leave on full pay.

(7) By mutual agreement between the Company and the employee concerned, annual leave may be taken in up to three periods, provided that each period of leave is not less than one week.

(8) When an employee is entitled to annual leave under this clause, he/she shall receive at least two weeks' notice from the Company of the date when it will be convenient to the Company that such employee shall take that leave.

(9) Every employee shall be given and shall take annual leave within six months after the date the leave falls due.

(10) The provisions of this clause shall not apply to casual employees.

19.—EMPLOYEE FACILITIES

(1) Employees shall be provided, at each workplace, with a suitable change room containing sufficient lockers for each employee to have access to one personal lockable locker. Such room shall be in reasonable proximity to the normal place of work and shall be kept in a proper state of cleanliness.

(2) Employees shall be provided at each workplace, with a room for use during meal breaks. Such room will be equipped with tables, chairs and such other necessary equipment as agreed between the parties and shall be maintained in a proper state of hygiene and cleanliness.

20.—NO REDUCTION

Nothing herein contained shall entitle the Company to reduce the wage of any employee who at the date of this Agreement was being paid a higher rate of wage than the minimum prescribed for his/her class of work.

21.—HIGHER DUTIES

(1) An employee who is required to do work, which is entitled to a higher rate under this Agreement, other than that which he or she usually performs shall be entitled to payment at the higher rate while so employed. Provided that where no record is kept in the time and wages record of the actual times upon which the employee is engaged on such higher grade work, the employee shall be paid for the whole day at the rate prescribed for the highest function performed.

(2) The Company may direct an employee to carry out such duties as are within the limits of the employee's skill, training and competence.

22.—ENGAGEMENT

(1) Except in the case of casual employees one week's notice on either side shall be necessary to terminate the engagement or in the event of such notice not being given by the payment of one week's pay by the Company to the employee or the forfeiture of one week's pay by the employee to the Company. Provided that the Company at any time may dismiss an employee for refusal or neglect to obey orders or for misconduct or if after receiving one week's notice such employee does not carry out his or her duties in the same manner as he or she did prior to such notice.

(2) Notwithstanding the provisions of subclause (1) of this clause an employee's engagement may be terminated by either party at any moment during the first two months of his/her employment:

Provided that an employee whose employment is terminated by the Company after one month but less than two months' employment for reasons other than

misconduct shall be paid up to his or her ordinary ceasing time on the day on which notice of termination is given.

(3) (a) An employee whose employment is terminated by the Company on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holiday or holidays.

(b) In the event of Christmas Eve falling on a Saturday or a Sunday any employee whose employment is terminated by the employer on the preceding Friday, otherwise than for misconduct, shall be paid for Christmas Day and Boxing Day.

(c) This subclause shall not apply to casual employees.

23.—TIME AND WAGES RECORD

(1) The Company shall maintain a record containing the following information relating to each employee—

- (a) the name and address given by the employee,
- (b) the age of the employee,
- (c) the classification of the employee and whether the employee is full time, part time, or casual,
- (d) the commencing and finishing times of each period of work each day,
- (e) the number of ordinary hours and the number of overtime hours worked each day and the totals for each pay period,
- (f) the wages and any allowances paid to the employee each pay period and any deductions made therefrom.

(2) At the time of payment of wages the employee shall be given a pay slip showing that part of the record specified in paragraphs (e) and (f) of subclause (1) of this clause with respect to the pay period for which payment is being made.

(3) (a) The record may be maintained in one or more parts depending on the system of recording used by the Company whether manual or mechanical provided that if the record is maintained in more than one part, those parts shall be kept in such a manner as will enable the inspection referred to in this clause to be conducted at the one establishment.

(b) The record shall be kept in date order so that the inspections referred to in this clause may be made with respect to any period in the six years preceding the date of inspection.

(c) The Company may, if it is part of normal business practice, periodically send the record or any part of the record to another person, provided that the provision of this paragraph shall not relieve the Company of the obligations with respect to provisions contained elsewhere in this clause with the exception of those contained in paragraph (b) of this subclause.

(d) Subject to this clause the record shall be available for inspection by a duly authorised official of the union during the normal hours of business of the Company, but excepting any time when the employees who are required to maintain the record may be absent.

(e) The union official shall be permitted reasonable time to inspect the record and, take an extract or copy of any of the information contained therein if required.

(4) (a) If, for any reason, the record is not available for inspection by the union official when the request is made, the union official and the Company or its agent may fix a mutually convenient time for the inspection to take place.

(b) If a mutually convenient time cannot be fixed, the union official may advise the Company in writing that he or she requires to inspect the record in accordance with the provisions of this Agreement and shall specify the period contained in the record which he or she requires to inspect. The Company must comply with such a written request.

(c) The roster referred to in Clause 13.—Display of Rosters of this Agreement shall be available for inspection by a duly authorised representative of the union during normal trading hours.

24.—UNIFORMS AND OVERALLS

(1) If the Company requires an employee to wear a uniform for the purpose of his or her employment then the Company shall supply such uniforms free of charge or pay for its purchase and such uniform shall remain the property of the Company.

For the purpose of this clause a "uniform" shall mean any outer wearing apparel or part thereof including jumpers which

is distinctive to the Company's business either by bearing an embroidered or other permanent form of logo or business name or being outer wearing apparel of identical style, cut or design, and colour for all of the employees required to wear such a uniform.

(2) Any employee required to work in cool rooms or freezer rooms shall be provided by the Company with quality protective clothing and footwear free of charge.

25.—COUNTRY WORK AND TRAVELLING TIME

(1) When an employee is engaged on outside work, the Company shall pay all fares and a proper allowance at current rates shall be paid for all necessary meals.

(2) When an employee is engaged at such a distance that he/she cannot return home at night, suitable board and lodging shall be found at the Company's expense.

(3) Travelling time outside ordinary working hours shall be paid for at ordinary rates up to a maximum of twelve hours in any twenty four hour period from the time of starting on the journey.

26.—JUNIOR EMPLOYEE'S CERTIFICATE

(1) Junior employees shall, if required, furnish the Company with a certificate showing the following particulars:

(a) Name in full

(b) Age and date of birth

(2) The certificate shall be signed by the employee.

(3) No employee shall have any claim upon the Company for additional wages in the event of his/her age being wrongly stated on the certificate. If any employee mis-states his or her age in the certificate he or she alone shall be deemed guilty of a breach of this Agreement, and in the event of an employee having received a higher rate than that to which he or she was entitled, he or she shall make restitution to the Company.

27.—SICK LEAVE

(1) (a) An employee who is unable to attend or remain at his or her place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

The method of calculation of payment for such sick leave shall be as follows:

duration of absence	X	ordinary weekly rate
ordinary hours normally worked that day		5

(b) Entitlement to payment shall accrue at the rate of one-sixth of a week for each completed month of service with the Company.

(c) If in the first or successive years of service with the Company an employee is absent on the ground of personal ill health or injury for a period longer than the entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the Company of his/her inability to attend for work, the nature of the illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the Company within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the Company may

reasonably require provided that the employee shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the Company requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he or she is absent on annual leave and an employee may apply for and the Company shall grant paid sick leave in place of annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his or her place of residence or a hospital as a result of the personal ill health or injury for a period of seven consecutive days or more and produces a certificate from a registered medical practitioner that he or she was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the Company in accordance with subclause (3) of this clause if he or she is unable to attend for work on the working day next following the annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he/she proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the Company in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the Company and the employee or, failing agreement, shall be added to the employee's next period of annual leave, or if termination occurs before then, be paid for in accordance with the provisions of Clause 18.—Annual Leave of this Agreement.

(e) Payment for replaced annual leave shall be at the rate of wage applicable to the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 18.—Annual Leave of this Agreement shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from another employer to the Company and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in Volume 59 of the Western Australian Industrial Gazette at pages 1-6, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) (a) A sick leave incentive scheme shall be introduced, commencing from 1st December 1996. Where an employee has used less than five days of his/her sick leave entitlement over the period of a year, the employee will be paid out, at the employee's ordinary time rate of pay, as follows:

0 sick days—five day's pay

1 sick day—four day's pay

2 sick days—three day's pay

3 sick days—two day's pay

4 sick days—one day's pay

(b) Payment shall be made in the week prior to Christmas each year.

(c) The number of days in respect of which sick leave has been paid out shall be deducted from the employee's outstanding sick leave entitlement. The remaining five day's entitlement shall continue to accrue from year to year.

(d) Payment for sick leave in accordance with this subclause is at the employee's discretion. An employee is entitled to choose to accrue his/her entire sick leave entitlement and receive no payment in lieu of unused sick leave.

(9) The provisions of this clause do not apply to casual employees.

28.—WAGES

The minimum rates payable to employees under this Agreement are as follows:

(1) (a) Adults

(Classification and wage per week)

	From first pay period on or after 1st July 1996	From first period on or after 1st November 1996	From first pay period on or after 1st July 1997
	\$	\$	\$
Storeperson, Packer, Despatch Hand, Reserve Stock Hand, Orderer, Wholesale Sales Person	466.24	475.57	499.34
Storeperson Operator Grade 1	481.14	490.77	515.31
Storeperson Operator Grade 2	487.19	496.93	521.78

(b) In addition to the rates prescribed in paragraph (a) of this subclause, employees will receive a service payment as follows:

	\$ per week
After 6 months' service	5.00
After 12 months' service	10.00
After 18 months' service	15.00
After 10 year's service	20.00

(2) An employee who is required by the Company to be in charge of a store or warehouse or other employees shall be paid an in charge allowance for all purposes of the Agreement calculated as follows:

- (a) If placed in charge of a store or warehouse with no other employees or if placed in charge of less than three other employees—
..... 3.4% of the rate specified in paragraph (a) of subclause (1) of this clause.
- (b) If placed in charge of three or more other employees but less than ten other employees—
..... 6.2% of the rate specified in paragraph (a) of subclause (1) of this clause.
- (c) If placed in charge of ten or more other employees—
..... 11.2% of the rate specified in paragraph (a) of subclause (1) of this clause.

(3) The minimum rates of wages payable to all junior employees covered by this Agreement shall be as follows—

(percent of the appropriate wage prescribed in subclause (1) of this clause)

	%
Under 18 years of age	70
18 years of age to 19 years of age	75
19 years of age to 20 years of age	85
20 years of age to 21 years of age	95

(4) From the 1st July 1996 and in addition to the rates prescribed elsewhere in this clause the following allowances and rates shall be paid to an employee where applicable:

- (a) An employee required to operate a ride-on power operated tow motor, a ride-on operated pallet truck or a walk beside power operated high lift stacker in the performance of his or her duties shall be paid an additional thirty nine cents per hour whilst so engaged.
- (b) An employee required to operate a ride-on power operated fork lift, high lift stacker or high lift stock picker or a power operated overhead traversing hoist in the performance of his or her duties shall be paid an additional fifty five cents per hour whilst so engaged.

(5) From the 1st November 1996 and in addition to the rates prescribed elsewhere in this clause the following

allowances and rates shall be paid to an employee where applicable:

- (a) An employee required to operate a ride-on power operated tow motor, a ride-on operated pallet truck or a walk beside power operated high lift stacker in the performance of his or her duties shall be paid an additional forty cents per hour whilst so engaged.
- (b) An employee required to operate a ride-on power operated fork lift, high lift stacker or high lift stock picker or a power operated overhead traversing hoist in the performance of his or her duties shall be paid an additional fifty six cents per hour whilst so engaged.

(6) From the 1st July 1997 and in addition to the rates prescribed elsewhere in this clause the following allowances and rates shall be paid to an employee where applicable:

- (a) An employee required to operate a ride-on power operated tow motor, a ride-on operated pallet truck or a walk beside power operated high lift stacker in the performance of his or her duties shall be paid an additional forty two cents per hour whilst so engaged.
- (b) An employee required to operate a ride-on power operated fork lift, high lift stacker or high lift stock picker or a power operated overhead traversing hoist in the performance of his or her duties shall be paid an additional fifty nine cents per hour whilst so engaged.

(7) The allowances prescribed by subclauses (4), (5) and (6) of this clause shall not be payable to an employee engaged, and paid, as a "Storeperson Operator Grade I" or a "Storeperson Operator Grade II."

(8) (a) From 1st July 1996, an employee shall receive an additional payment for every hour of which he or she spends 20 minutes or more in a cold chamber in accordance with the following—

In a cold chamber in which the temperature is—

- (i) Below 00 Celsius to -200 Celsius
—53 cents per hour
- (ii) Below—200 Celsius to—250 Celsius
—62 cents per hour
- (iii) Below -250 Celsius
—71 cents per hour.

(b) From 1st November 1996, an employee shall receive an additional payment for every hour of which he or she spends 20 minutes or more in a cold chamber in accordance with the following—

In a cold chamber in which the temperature is—

- (i) Below 00 Celsius to -200 Celsius
—54 cents per hour
- (ii) Below—200 Celsius to—250 Celsius
—63 cents per hour
- (iii) Below -250 Celsius
—72 cents per hour.

(c) From 1st July 1997, an employee shall receive an additional payment for every hour of which he or she spends 20 minutes or more in a cold chamber in accordance with the following—

In a cold chamber in which the temperature is—

- (i) Below 00 Celsius to -200 Celsius
—57 cents per hour
- (ii) Below—200 Celsius to—250 Celsius
—66 cents per hour
- (iii) Below -250 Celsius
—76 cents per hour.

(d) Employees required to work in temperatures less than 18.9 degrees Celsius shall be medically examined at the Company's expense.

29.—RIGHT OF ENTRY

(1) On notifying the Company or its representative, an accredited representative of the union shall be permitted to interview an employee during non-working times or the meal period on the business premises of the Company.

(2) In the event of a disagreement existing or anticipated concerning any of the provisions of this Agreement, an accredited representative of the Union, on notifying the Company or its representative, shall be permitted to enter the business premises of the Company to view the work the subject of any such disagreement, but shall not interfere in any way with the carrying out of such work.

30.—MOTOR VEHICLE ALLOWANCE

(1) From 1st July 1996, where an employee maintains a motor vehicle and is authorised by the Company to use the vehicle in the performance of his or her duties, that employee shall be paid in accordance with the following schedule:

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Metropolitan Area	50.0	44.7	38.9
South West Land Division	51.2	45.9	40.0
North of 23.5 degrees South Latitude	56.2	50.6	44.0
Rest of the State	52.9	47.4	41.1

(2) From 1st November 1996, where an employee maintains a motor vehicle and is authorised by the Company to use the vehicle in the performance of his or her duties, that employee shall be paid in accordance with the following schedule:

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Metropolitan Area	51.0	45.6	39.7
South West Land Division	52.2	46.8	40.8
North of 23.5 degrees South Latitude	57.3	51.6	44.9
Rest of the State	54.0	48.3	42.0

(3) From 1st July 1997, where an employee maintains a motor vehicle and is authorised by the Company to use the vehicle in the performance of his or her duties, that employee shall be paid in accordance with the following schedule:

Area and Details	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Metropolitan Area	53.6	47.9	41.7
South West Land Division	54.8	49.2	42.8
North of 23.5 degrees South Latitude	60.2	54.2	47.1
Rest of the State	57.2	50.7	44.0

31.—LONG SERVICE LEAVE

The long service provisions published in Volume 59 of the Western Australian Industrial Gazette at pages 1 to 6, both inclusive are hereby incorporated in and shall be deemed to be part of this Agreement.

32.—SHIFT WORK

(1) Hours of Shifts:

The ordinary hours of work for shift employees shall not exceed 38 in any week to be worked in shifts and, except as provided by this clause, shall be rostered consistent with the provisions of Clause 12.—Hours of this Agreement.

(2) Definitions:

- "Afternoon Shift" means any shift finishing after 6.00 p.m. and at or before 1.00 a.m.
- "Day Shift" means any shift commencing at or after 5.00 am and finishing after 2.00 p.m. and at or before 6.00 p.m.
- "Night Shift" means any shift finishing after 1.00 a.m. and at or before 11.00 a.m.

(3) Where any particular process is carried out on shifts other than day shift and less than five consecutive afternoon or night

shifts are worked on that process, the employees employed on such afternoon or night shifts shall be paid at overtime rates, provided that where a four day week is in operation, shift work may be carried out on the basis of four afternoon or night shifts per week.

(4) The consecutive sequence of shifts referred to in subclause (3) of this clause shall not be deemed to be broken by reason of the fact that work on the process is not carried out on a Saturday, Sunday or holiday.

(5) The loading on the ordinary rates of pay for shift work shall be 15% of the ordinary rate prescribed by this Agreement in the case of afternoon shift employees and 25% of the ordinary rate prescribed by this Agreement in the case of night shift employees.

(6) The employer shall post in a place readily accessible to the employees a roster showing the starting and finishing times of the shifts each week.

(7) Overtime on afternoon shift or night shift shall be calculated on the rate payable for shift work.

(8) A junior employee under the age of eighteen years shall not be required to work afternoon shift or night shift without his/her consent.

33.—PAYMENT OF WAGES

(1) The Company shall pay employees each week either by cheque or by credit transfer to a bank, building society or credit union account in the name of the employee. The day that the credit transfer is credited to the employee's account shall be deemed to be the date of payment.

(2) Payment shall be made within three trading days from the last day of the pay period and if in cash or by cheque shall be made during the employee's ordinary working hours.

(3) The Company shall not change its method of payment to employees without first giving them at least four weeks' notice of such change.

34.—POSTING OF AGREEMENT

The Company shall allow a copy of this Agreement, if supplied by the union to be posted in a place which is easily accessible to the employees.

35.—STAND DOWN

(1) Notwithstanding the provisions of Clause 22.—Engagement of this Agreement the Company may stand down without pay any employee who cannot be usefully employed because of any strike, ban, limitation or restriction on the performance of work by employees or any union, association or organisation or because of any break down or failure of the Company's machinery which the Company could not reasonably have prevented.

(2) The provisions of subclause (1) of this clause shall not be applied unless and until the ordinary hours in which the employee cannot be usefully employed because of a strike, ban, limitation or restriction on the performance of work or because of any break down or failure of the employer's machinery exceeds four.

36.—COMPASSIONATE LEAVE

(1) An employee shall, on the death within Australia of the wife, husband, father, mother, grandparent, child or stepchild of the employee, be entitled to leave up to and including the day of the funeral of such relation and such leave for the period not exceeding the number of hours worked by the employee in two ordinary working days shall be without deduction of pay.

(2) The right to such leave shall be dependent on compliance with the following conditions—

- The employee shall give the Company notice of his/her intention to take such leave as soon as reasonably practicable after the death of such relation.
- The employee shall furnish proof of such death to the satisfaction of the Company.
- The employee shall not be entitled to leave under this clause during any period in respect to which he or she has been granted any other leave.

(3) For the purpose of this clause the word "wife" and "husband" shall not include a wife or husband from whom the

employee is separated, but shall include a person who lives with the employee as a de-facto wife or husband.

37.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

An employee who becomes pregnant shall, upon production to the Company of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with the Company immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

- (a) An employee shall include a part time employee but shall not include an employee engaged upon casual or seasonal work.
- (b) Maternity leave shall mean unpaid maternity leave.
- (2) Period of Leave and Commencement of Leave
 - (a) Subject to subclauses (3) and (6) of this clause, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.
 - (b) An employee shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to the Company stating the presumed date of confinement.
 - (c) An employee shall give not less than four weeks' notice in writing to the Company of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
 - (d) An employee shall not be in breach of this clause as the consequence of failure to give the stipulated period of notice in accordance with paragraph (c) of this subclause if such failure is occasioned by the confinement occurring earlier than the presumed date.

(3) Transfer to Safe Job

Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the Company deems it practicable, be transferred to a safe job at the rate and on the conditions attached to that job until the commencement of maternity leave.

If the transfer to a safe job is not practicable, the employee may or the Company may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) of this clause.

(4) Variation of Period of Maternity Leave

- (a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the Company, by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
- (b) The period of leave may, with the consent of the Company, be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

- (a) Maternity leave applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Company which shall not exceed four weeks from the date of notice in writing by the employee to the Company that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

- (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
 - (i) She shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
 - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
- (b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid sick leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
- (c) For the purposes of subclauses (7), (8) and (9) of this clause, maternity leave shall include special maternity leave.
- (d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who has transferred to a safe job pursuant to subclause (3) of this clause, to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) of this clause does not exceed 52 weeks,

- (a) An employee may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.
- (b) Paid sick leave or other paid authorised Agreement absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any award, Agreement or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Agreement.

(9) Termination of Employment

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

(10) Return to Work After Maternity Leave

- (a) An employee shall confirm her intention of returning to her work by notice in writing to the Company given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) An employee, upon the expiration of the notice required by paragraph (a) of this subclause, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case

of an employee who was transferred to a safe job pursuant to subclause (3) of this clause, to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the employee is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) Before the Company engages a replacement employee under this subclause, the Company shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before the Company engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this clause, the Company shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring the Company to engage a replacement employee.
- (e) A replacement employee shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

38.—UNION NOTICE BOARD

The Company shall permit a shop steward or an official of the Union to post formal Union notices, authorised by the General Secretary of the union or his nominee upon an appropriate notice board.

Any notice posted on a notice board not so signed by the General Secretary of the Union or his nominee may be removed by the Company.

39.—INTRODUCTION OF CHANGE

(1) Employer's Duty to Notify

- (a) Where the Company has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the Company shall notify the employees who may be affected by the proposed changes and the union.
- (b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the Company's work force or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs. Provided that where the Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(2) Employer's Duty to Discuss Change

- (a) The Company shall discuss with the employees affected and the union inter alia, the introduction of the changes referred to in subclause (1) of this clause, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give prompt consideration to matters raised by the employees and/or their union in relation to the changes.
- (b) The discussion shall commence as early as practicable after a definite decision has been made by the Company to make the changes referred to in paragraph (a) of subclause (1) of this clause.
- (c) For the purpose of such discussion, the Company shall provide to the employees concerned and their union, all relevant information about the changes

including the nature of the changes on employees and any other matters likely to effect employees provided that the Company shall not be required to disclose confidential information, the disclosure of which would be inimical to its interests.

40.—SUPERANNUATION

(1) Definitions:

- (a) "Fund": In this clause all reference to "Fund" shall mean the Clerical Administrative and Related Employees Superannuation Plan.
- (b) "Ordinary Time Earnings": In this clause the term "Ordinary Time Earnings" shall mean the base classification rate, including supplementary payments where appropriate, in charge rates, shift penalties and (if any) overaward payments, together with any other all purpose allowance or penalty payment for work in ordinary time and shall include in respect to casual employees the appropriate casual loadings as prescribed by this Agreement, but shall exclude any payment for overtime worked.
- (c) "Employees": In this clause all reference to "Employees" shall mean employees of the Company whose employment is regulated by this Agreement.
- (d) "Trustee": In this clause all reference to "Trustee" shall mean the Trustee of the Clerical Administrative and Related Employees Superannuation Plan.
- (e) "Approved Superannuation Fund": In this clause "Approved Superannuation Fund" shall mean a superannuation fund which complies with the Occupational Superannuation Standards Act, 1987.

(2) Quantum:

The Company shall contribute to the Fund with respect to all eligible employees such an amount as is required by the Superannuation Guarantee Charge Act 1992 or 6% of ordinary time earnings, which ever is greater, from the 1st November 1994.

(3) Cessation of Contributions:

The obligation of the Company to contribute to the Fund in respect of an employee shall cease on the last day of such employee's employment with the Company.

(4) Part Time and Casual Employees:

Contributions to the Fund in respect of eligible part time and casual employees who are employed under the terms of the award listed in subclause (1) of this clause will be proportionate to the hours of work of such employee.

(5) Eligibility:

The Company shall be required to make contributions in accordance with this clause in respect of each employee who has been employed by the Company continuously for a period of thirteen weeks. Once the employee has completed the thirteen week qualifying period he/she shall be eligible to have contributions to the Fund paid on his/her behalf from the date of his/her engagement with the Company but no earlier than the date of operation of this clause in subclause (2) herein.

(6) Employee Contributions:

Employees who may wish to make contributions to the Fund additional to those being paid by the Company pursuant to subclauses (2) or (4) of this clause shall be entitled to authorise the Company to pay into the Fund from the employee's wages amounts specified by the employee.

Employees contributions to the Fund requested under this subclause shall be made in accordance with the rules of the Fund.

(7) Frequency of Payment:

The Company shall pay such contributions together with any employee's deductions to the Fund for pay periods completed in the month. Provided that payments may be made at such other times and in such other manner as may be agreed in writing between the parties from time to time.

(8) Existing Superannuation Arrangements:

The Company shall not be excluded from this clause on the basis of existing voluntary superannuation arrangements.

41.—FIRST AID ALLOWANCE

An employee holding either a Red Cross or St. John Senior First Aid Certificate of at least 'A' level who is appointed by the Company to perform first aid duties shall be paid \$7.00 per week in addition to the employee's ordinary rate. The first aid allowance shall increase to \$7.15 per week from 1st November 1996 and to \$7.50 per week from 1st July 1997.

42.—TRADE UNION TRAINING LEAVE

(1) Subject to this clause union delegates shall be allowed up to five days leave with pay annually, to attend trade union training courses authorised by the Shop, Distributive and Allied Employees' Association of Western Australia. The entitlement to Trade Union Training Leave will not accumulate from year to year.

(2) The union will provide the company with one month's notice (or such lesser time as may be agreed between the parties) of the dates on which such courses are to be held and leave will be granted to the union delegate or delegates to attend courses provided that, unless there is agreement between the parties to the contrary, no courses will be scheduled in the months of December or January, in the week before or the week after Easter; or the week preceding a half yearly stock take.

(3) Each employee on leave in accordance with this clause shall be paid all ordinary time earnings which normally become due and payable during the period of leave. Ordinary time earnings shall be as defined in paragraph (b) of subclause (1) of Clause 40.—Superannuation of this Agreement.

(4) Leave granted will not incur any additional payment to the extent that the course attended coincides with any other period of paid leave granted pursuant to this Agreement.

(5) Leave granted pursuant to this clause shall count as service for all purposes of the Agreement.

(6) On the completion of the course the employee shall, upon request, provide the Company proof satisfactory to the Company of his or her attendance at the course. The Company shall not be required to make payment for any period of leave granted that is not utilised in the attendance at a course unless the employee can substantiate that the failure to attend the course was due to the taking of paid leave otherwise authorised by this Agreement.

(7) Only employees who have completed twelve months' continuous service with the company shall be eligible for leave pursuant to this Clause.

43.—DISPUTE SETTLEMENT PROCEDURE

(1) Any questions, disputes or difficulties arising from this Agreement shall be dealt with in accordance with the following procedure:

- (a) The matter shall first be discussed between the employee affected and the appropriate supervisor.
- (b) If not settled the matter shall be discussed between the employee, an accredited representative of the union and the warehouse manager or other appropriate representative of the Company.
- (c) If not settled the matter shall be discussed between a senior official of the union and an appropriate representative of the Company.

(2) A time limit of two working days will apply to each step of the procedure set out in subclause (1) of this clause.

(3) While the matter in dispute is being discussed in accordance with the grievance procedure work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

(4) It will be open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute.

44.—SIGNATORIES

Representatives of the parties to this Agreement, Clelands Cold Stores Pty Ltd and the Shop, Distributive and Allied Employees' Association of Western Australia have signed this clause indicating their agreement.

(Richard Pattinson)

..... for and on behalf of Clelands Cold Stores Pty Ltd

(Joseph Bullock)

..... for and on behalf of the Shop, Distributive and Allied Employees' Association of Western Australia

**CLOVER MEATS AND CLOVER SMALLGOODS
ENTREPRISE AGREEMENT 1996
No. AG 257 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Meat and Allied Trades Federation of Australia (Western Division) Union of Employers

and

Australasian Meat Industry Employees' Union, Industrial Union of Workers, West Australian Branch.

No. AG 257 of 1996.

Clover Meats and Clover Smallgoods Enterprise Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

24 October 1996.

Order:

HAVING heard Mr R.A. Heaperman on behalf of the Applicant and Mr D.H. Hopperton on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

- 1. THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 25th day of September, 1996 entitled the Clover Meats and Clover Smallgoods Enterprise Agreement 1996 be registered as an industrial agreement.
- 2. THAT the Meat Industry Clover Meats North Perth (38-Hour Week) Order (No. C 143 of 1987) and the Wynne Exports Pty Ltd (Clovers North Perth) Four Per Cent Second Tier Order (No. C 717 of 1988) be and is hereby cancelled.

[L.S] (Sgd.) G.L. FIELDING,
Senior Commissioner.

Schedule.

1.—TITLE

This Enterprise Agreement shall be known as the Clover Meats and Clover Smallgoods Enterprise Agreement 1996 No. AG 257 of 1996.

2.—ARRANGEMENT

- 1. Title
- 2. Arrangement
- 3. Application of Agreement and Parties Board
- 4. Duration
- 5. Relationship to Awards
- 6. Payment of Wages
- 7. Agreement not be used as a Precedent
- 8. Dispute Procedure
- 9. Agreed Matters
- 10. Wage and Classification Structure

11. Hours of Work
12. Classification Structure & Career Progression
13. Progression/Career Development
14. Transitional Arrangements
15. Employment Trades person Butchers North Perth
16. Signatories to Agreement

3.—APPLICATION OF AGREEMENT & PARTIES BOUND

3.1 This Agreement shall bind all employees of Wynne's Pty Ltd T/as Clover Meats and Clover Smallgoods, Albert Street, North Perth and Howe Street, Osborne Park, who are bound by the terms of the Meat Industry (State) Award R9 of 1979.

3.2 The parties to the Agreement are Wynne's Pty Ltd and The Western Australian Branch of the Australasian Meat Industry Employees' Union, Industrial Union of Workers.

3.3 This Agreement covers approx 70 people.

4.—DURATION

This Agreement shall take effect from first pay period on or after the 5th July 1996 in regard to Clause 10 Wages and from the 12th August 1996 for all other conditions and shall remain in force for one year during which time this Agreement shall not be varied, including any variation from matters arising in any State or Federal Wage Cases.

The parties agree that it is intended that this Agreement be replaced or re-negotiated prior to its expiry.

These negotiations to commence on or about the 1st March 1997 for a future enterprise agreement.

5.—RELATIONSHIP TO AWARDS

The terms and conditions of this Agreement shall be read and interpreted in conjunction with the Meat Industry (State) Award R9 of 1979 as varied from time to time.

Where there is any inconsistency between this Agreement and the relevant Award this Agreement shall prevail to the extent of that inconsistency.

This Agreement also supersedes all previous orders.

6.—PAYMENT OF WAGES

Wages and allowances for all employees shall be paid by electronic fund transfer.

7.—AGREEMENT NOT TO BE USED AS A PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

8.—DISPUTE PROCEDURE

The disputes procedure as shown in appendix 1 will apply.

9.—AGREED MATTERS

It is a term of the Agreement that the Union undertakes that for the duration of this Agreement, it will not pursue any extra claims.

10.—WAGE AND CLASSIFICATION STRUCTURE

Grade Level	A	B	C
FPO Level 7	532.30	542.90	553.70
FPO Level 6	466.00	475.30	484.80
FPO Level 5	443.90	452.70	461.80
FPO Level 4	421.80	430.20	438.80
FPO Level 3	399.70	407.70	415.80
FPO Level 2	382.00	389.60	397.40
FPO Level 1	355.50	362.60	369.90

Column A to apply as from the 1st Pay Period on or after 5th July 1996.

Column B to apply as from the 1st Pay Period on or after 5th October 1996.

Column C to apply as from the 1st Pay Period on or after 5th January 1997.

11.—HOURS OF WORK

11.1. The ordinary hours of work in this Agreement for all employees, other than part-time and casual, will be thirty eight (38) hours per week.

The actual ordinary working hours will not exceed 8 hours on any day and forty (40) hours in any week to be worked in the case of employees other than Shift Workers on five (5) days Monday to Friday inclusive between the hours of 5.00am to 6.00pm.

However, any employee required to work their normal spread of hours commencing before 6.00am will be paid 30% loading on their hourly classification rate for time actually worked between 5.00am and 6.00am.

11.2. Notwithstanding the provisions of this clause at the time of making this agreement, the actual ordinary working hours Monday to Thursday will be 8 hours and fifteen minutes before overtime/penalty rates will apply. This will facilitate employees only working 7 hours on Friday.

11.3. The starting and finishing time may be altered by the Company giving Notice the previous day.

11.4. Entitlement:

- (a) The hours of work provided for in this Agreement will be worked over a twenty (20) day, four (4) week cycle in accordance with this clause.
- (b) Employees will be entitled to one day off in each twenty (20) days four (4) week cycle.

11.5. Payment

- (a) Payment for the day off will be calculated on the following basis:
 - (i) each employee will accrue a money credit based on one-nineteenth (1/19th) of actual ordinary earnings, paid each day (excluding rostered or deferred days off).
 - (ii) any paid absence from work will accrue a money credit based on one nineteenth (1/19th) of the actual amount paid for such absence, but excludes rostered or deferred days off, long service leave, unauthorised absences, annual leave, and workers compensation except as provided for in 11.6(b).

- (b) Each employee will accrue a time credit on the basis of one nineteenth (1/19th) of each calendar day, Monday to Friday (excluding rostered or deferred days off).

- (c) A day's pay for the purposes of a "day off" will be calculated at the ordinary times rate.

11.6. Pay Out of Entitlement

Payment will not be made by an employer to an employee in lieu of any accumulated "day off" to which the employee is entitled under this clause nor will any such payment be accepted by the employee, except under the following circumstances only:

- (a) Any entitlement accumulated in accordance with subclause 11.4 of this clause will be paid to the employee on termination of engagement.
- (b) When an employee is absent and receiving workers' compensation payments, entitlement accumulated in accordance with paragraph 11.5(a) of this clause during such period of absence will be paid to the employee, provided that the minimum payment made will be the equivalent of a "day's pay" calculated in accordance with paragraph 11.5(c) of this clause for the first month of such absence only. RDO's will then cease to accrue.
- (c) Where such payment is made to an employee, any entitlement accumulated in accordance with paragraph 11.5(b) of this clause, during such period of absence, will be deemed to have been taken by the employee.
- (d) Any entitlements accumulated in accordance with paragraphs 11.5(a) and (b) by the employee prior to such absence for which workers' compensation payments are made, will remain to the credit of the employee.

12.—CLASSIFICATION STRUCTURE AND CAREER PROGRESSION

1. The skills required in the workplace are broadly grouped in levels as detailed below. Employees working under these

classifications will work in any or all range of jobs within a level to the extent of their training, skills and qualifications. This may involve an employee working in a number of sections or departments depending upon work requirements including to meet short term operational requirements.

2. Utilisation of skills

Employees will be employed to carry out duties as may be directed by the employer from time to time subject to the limits of their skills, competence and training.

An employee may at the time carry out duties and use tools and equipment as may be directed by the employer provided that the employee has been properly trained in the use of the tools and equipment.

Any direction given by the employer in accordance with any of the above will be consistent with the employers obligations under the Western Australian "Occupational Health, Safety and Welfare Act 1984".

3. Classification Structure

(a) Food Preparation Operator Grade 1

New employees at this level are undertaking, on the job training during an initial period of employment of three (3) months. Training may include information on the company or enterprise, occupational health and safety requirements, plant layout, work and documentation procedures, training requirements and career path opportunities, basic knife skills etc. An employee would also be expected to demonstrate that he/she has the ability to work in a team environment.

An employee at this level performs routine labouring duties essentially of a manual nature, works under direct supervision, exercises minimal judgement, works to defined procedures, may perform general cleaning duties and is undertaking on the job training to enable him or her to work at Grade 2.

Indicative tasks which an employee at this level may perform include;

Labourer—less than 3 months service.

(b) Food Preparation Operator Grade 2

An employee at this level works above the skills of an employee at Grade 1 level and has received on the job training or has prior experience to allow the performance of work within the scope of this level.

An employee at this level:

- (i) Works under direct supervision but with responsibility for the quality of his or her work.
- (ii) Operates basic machinery and equipment.
- (iii) Exercises limited discretion.
- (iv) Operates from a basic set of procedures or instructions.
- (v) Has an understanding of and undertakes basic quality control/assurance procedures.
- (vi) Operates flexibly between packing stations.

Be able to measure accurately, and may:

- have basic understanding of quality control, meat handling and hygiene processes and techniques.
- have some (internal/external customer service skills).
- Use a range of basic hand tools.
- be responsible for quality of his or her work.
- operates hand trolleys, pallet trucks.
- works in a team environment
- exercise basic keyboard skills.

Indicative tasks which an employee at this level may perform include:

Stock Person
Chiller Room Hand
Carton Room Hand
Packer/spotter/trimmer (undergoing training)
Knife hand

Meat loading or lumping

Labourer—more than 3 months service

Strapping/gluing machine operator

Cleaner (undergoing training)

(c) Food Preparation Operator Grade 3

An employee at this level works above and beyond the skills of an employee at Grade 2 level and has received on and/or off the job training or has prior experience to allow the performance of work within the scope of this level of such training. An employee at this level must:

- (i) Exercise discretion within the scope of this level.
- (ii) Use all relevant tools and equipment.
- (iii) Possess and utilise numeracy and literacy skills.
- (iv) Responsibility for the quality of his/her work subject to routine supervision.
- (v) Be able to work in a team environment, and may:
 - Assist in the provision of on the job training to a limited degree.
 - Have a sound understanding of meat handling, processing and quality assurance requirements and procedures.
 - Have a knowledge of and perform to customer specification requirements.
 - Posses good knife skills and utilise them where applicable.
 - Perform routine maintenance upon equipment.
 - Receive on/off the job training.
 - Exercise intermediate keyboard skills.

Indicative tasks which an employee may perform at this level include:

Driver of Vehicle 1.25 to 4.5 tonne.
Fork Lift Driver up to and including 5 tonne lifting capacity.
Trimmer Whizzard knife operator
Packer/spotter (all tasks including operation of cyro-vac machinery).
Stock person/Receiver
Sastek operator—basic keyboard skills.
Team Leader or Leading Hand for level 1 & 2 Positions.
Trimmer (All tasks)
Rasher Operator
Linker

(d) Food Preparation Operator Grade 4

An employee at this level works above and beyond the skills of an employee at Grade 3 level and has received on and/or off the job training or has prior experience to allow the performance of work with the scope of this level to the level of such training.

An employee at this level must:

- (i) exercise discretion.
- (ii) have a sound working knowledge of quality assurance, customer specification and Aus Meat and AQIS requirements.
- (iii) work under little supervision either individually or in a team environment.

And may—

- Assist in the provision of on-the-job training to a limited degree.
- Perform basic maintenance and operate all relevant equipment.
- Have and utilise numeracy and literacy skills.
- Have First Aid training.
- Possess good knife skills and utilise them.
- Receive on/off the job training.

- Exercise advanced keyboard skills.

Indicative tasks which an employee may perform at this level include:

- Driver of vehicle 4.5 to 13.9 tonnes.
- Packer (knowledge of all packs, all species, able to rotate to every work station)
- Receival and filling of orders including Meat Grading
- Tally Clerk
- Sastek Operator—Grader
- Team Leader or Leading Hand of 2 & 3 positions.

(e) Food Preparation Operator Grade 5

An employee at this level works above and beyond the skills of an employee at level 4 and has received on and/or off the job training which may include the attainment of a relevant Trade qualification or has prior experience to allow the performance of work within the scope of this level.

An employee at this level must:

- be responsible for assessing the quality of their own and others work.
- work under little or no supervision.
- assist in the provision of on-the-job training to a limited degree.
- have a detailed knowledge of quality assurance, Aus Meat and AQIS and customer specifications.
- have and utilise numeracy and literacy skills.
- completion of Apprenticeship or Company equivalent.
- may possess superior knife skills and utilise them.
- co-ordinate work in a team environment.

And may:

- Be able to competently perform all tasks.

Indicative tasks which an employee at this level may perform include:

- Trades person Butcher or Smallgoods Maker
- Quality Assurance Officer
- Pickle Pumper
- Team Leader or Leading Hand of positions up to level 4.

(f) Food Preparation Operator Grade 6

An employee at this level has an appropriate trade qualification or company equivalent and has received on and off the job training so that he or she possesses skills beyond that required for a level 5.

An employee at this level must:

- be responsible for assessing the quality of their own and others work.
- work under little or no supervision.
- train other employees.
- have a detailed knowledge of quality assurance, AQIS, Ausmeat and customer specifications.
- have and utilise numeracy and literacy skills.
- completion of Apprenticeship or Company equivalent.
- shall possess superior knife skills and utilise them.
- co-ordinate work in a team environment.

And;

- be able to competently perform all tasks.

Indicative tasks which an employee at this level may perform include:

- Trades Person Butcher Special.

(g) Food Preparation Operator Grade 7

An employee at this level has an appropriate trade qualification or company equivalent and has received

on and off the job training so that he or she possesses skills beyond that required for level 6.

An employee at this level must:

- have had off the job training in terms of quality assurance, AQIS, OH & S, client specifications.
- Be able to competently perform all jobs on site.
- Perform routine maintenance.
- Be able to competently perform all tasks and train other employees in those.
- Satisfactory completion of prescribed training if required.
- Have and utilise numeracy and literacy skills.

Positions at this level will generally be allocated by management.

13.—PROGRESSION/CAREER DEVELOPMENT

All employees will be encouraged and assisted to progress to the highest level personally attainable consistent with the needs of the workforce and upon the availability of positions. When a new employee enters at a high level due to particular skill requirements he/she must familiarise him/herself with the skills required at a lower level within 12 months to ensure full flexibility.

14.—EMPLOYMENT OF TRADES PERSON BUTCHERS NORTH PERTH

New Employee Butchers will be classified at Grade 5 for a period of eight weeks to ensure that their skills are suitable to classification Grade 6.

The Assessment of their skills will be carried out by a Trades Person Butcher Special Grade 6 an Officer of the Union and a Company nominee.

The Employee will not be reclassified to Grade 6 until the assessment has been passed.

15.—TRANSITION ARRANGEMENTS

15.1 Classifications

- The Employer will within 2 weeks advise each existing employee of their new classification in accordance with the definitions in Clause 12.3 Classification Structure.
- Should any employee be dissatisfied with their allotted classification they shall notify the Company in writing of their dissatisfaction within 14 days of receipt of the Company's advice as in (a) above and the classification they seek and the reasons for seeking a new classification.
- The Employer and the Secretary of the AMIEU will consult on the claim and if agreement cannot be reached within 14 days of receipt of the employees request, the matter shall be referred to the Industrial Relations Commission for determination.

This Clause will cease to have effect when all claims have been finalised.

15.2 Special Classification Provision

It is agreed that Employees B. McGarry and E. James will be classified as Grade 5 with a Special Allowance paid to Grade 6.

Provided that such employees will undergo Company training over a period of six months to Grade 6 responsibility.

Should the training increase their skill level to Class 6 they shall be reclassified to Grade 6.

Should, however, the employees not increase their skill levels at the end of 6 months to Grade 6, the Special Allowance will cease and they will become a substantive Grade 5 and paid as such.

The Assessment will be carried out by a Trades Person Butcher Special Grade 6, an Officer of the Union and a Company nominee.

SIGNATORIES

My Company understands its rights and obligations under this Agreement and has freely entered into it and wishes to have this Agreement registered.

THE COMMON SEAL OF WYNNE'S PTY LTD ACN 008 681 221 WAS AFFIXED IN THE PRESENCE OF:

(indecipherable)

DIRECTOR

DATE... 14/8/96.....

(indecipherable)

SECRETARY

DATE... 14/8/96.....

The Common Seal of The Australasian Meat Industry Employees Union Industrial Union of Workers W.A. Branch was hereto affixed in the presence of;

E. Ferguson

Secretary 25/09/96

SIGNATURE TITLE DATE

82 Beaufort Street, PERTH WA 6000

Common Seal

Common Seal

APPENDIX 1

DISPUTE SETTLEMENT PROCEDURE

COMMITMENT OF WYNNE'S PTY LTD AND A.M.I.E.U.

The company commits itself to expeditiously deal with any difference that may arise between itself and the A.M.I.E.U. or its members employed by Wynne's PTY LTD.

The A.M.I.E.U. and its members commit themselves to seek to resolve the differences with Wynne's PTY LTD without resort to industrial action.

If a dispute occurs and unless a safety issue is involved, work will continue while these procedures are followed:

In the case of a dispute the worker or their representative will first approach the departmental supervisor and if a solution cannot be found then the following steps apply:

Step 1.

Brief Description of Dispute

The worker or their representative will approach the shed delegate with the problem. If the shed delegate and departmental supervisor cannot solve the problem then Step 2.

Shed Delegate

Step 2.

(Cross Out One) Shed Delegate

The shed delegate approaches the production manager with the problem. Dept. Supervisor

If no satisfactory solution then Step 3. Unresolved

Step 3.

The shed delegate and the production manager approach the works manager with the problem. If no satisfactory solution then Step 4. Resolved Unresolved Shed Delegate Works Manager

Step 4.

Problem is referred to Union Secretary and State Manager or his nominee. State Manager or his nominee will reply to the dispute as soon as practical after having it being referred.

State Manager or Nominee, A.M.I.E.U. Secretary or nominee were able/unable to resolve dispute.

Detail of resolution

Step 5.

If no resolution and either the employees or employer genuinely believe that the response of the other is unacceptable then each party reserves the right to take Industrial action.

Notes:

- 1. Adequate notice of any changes to custom, practice or procedures will be given to the other party.
2. Where the Union proposes the change, such notice will be directed to the Works Manager.
3. In the event of a dispute arising over proposed changes, no change shall occur until the matter has been resolved through the observance of the dispute settlement procedure.
4. Where agreement has been reached to resolve a dispute, the company and the union will ensure that any undertakings given have been fulfilled.
5. When safety or mechanical problems have been reported to the supervisor, the company will ensure that urgent attention is given to such matters. The company will report back to the delegate within 7 days of the action taken.

None of the foregoing shall affect the operation of the Occupational Health and Safety Act.

COM A1 WINDOWS PTY LTD AGREEMENT 1996
No. AG 261 of 1996.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
 Kindred Industries Union of Workers—Western Australian
 Branch

and

Com A1 Windows Pty Ltd.

No. AG 261 of 1996.

Com A1 Windows Pty Ltd Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

10 October 1996.

Order.

HAVING heard Mr G.C. Sturman on behalf of the Applicants
 and Mr J. Derwort on behalf of the Respondent, and by con-
 sent, the Commission, pursuant to the powers conferred on it
 under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the
 terms of the following schedule and lodged in the Com-
 mission on the 27th day of September, 1996 entitled the
 Com A1 Windows Pty Ltd Agreement 1996 be registered as
 an industrial agreement to replace the Lidco Aluminium
 Windows Pty Ltd Agreement 1995, No. AG 286 of 1995.

(Sgd.) G.L. FIELDING,

[L.S.] Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "Com A1 Windows
 Pty Ltd Agreement 1996

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Parties Bound
 4. Period of Operation
 5. Renewal of Agreement
 6. Relationship to Parent Awards
 7. Probationary Period
 8. Casual Employees
 9. Service Bonus
 10. Protective Clothing
 11. Hours of Work and Overtime
 12. Consultative Process
 13. Aims of Agreement
 14. Improvement Measures
 15. Resolution of Disputes
 16. Rates of Pay
 17. Multi-skilling
 18. Union Meetings on Local Issues
 19. No Extra Claims Commitment
 20. Journey Cover
- Signatories to Agreement

3.—PARTIES BOUND

The parties to this Agreement are—

Com A1 Windows Pty Ltd at its manufacturing opera-
 tions, 1B Gary Road Maddington, W.A. (the employer).

The Automotive, Food, Metals, Engineering, Print-
 ing, and Kindred Industries Union of Workers—West-
 ern Australian Branch (hereinafter referred to as
 (AFMEPKIU)

Transport Workers' Union of Australia, Western Austral-
 ian Branch (herein after referred to as TWU)

This Agreement shall be binding upon estimated 16 em-
 ployees of the Company employed in classifications covered
 by the AFMEPKIU and the TWU

4.—PERIOD OF OPERATION

This Agreement shall operate for a period of 12 months from
 1st September 1996

5.—RENEWAL OF AGREEMENT

The parties shall commence negotiations to renew this Agree-
 ment three months prior to its expiration.

6.—RELATIONSHIP TO PARENT AWARDS

(1) This Agreement shall be read and interpreted in con-
 junction with the Metal Trades (General) Award 1966 No. 13
 of 1965 and the Transport Workers' (General) Award.

(2) Where there is any inconsistency between the Agree-
 ment and the Awards specified in subclause (1) hereof, this
 Agreement shall prevail to the extent of such inconsistency.

7.—PROBATIONARY PERIOD

As part of the on-going selection process, all new employ-
 ees will be engaged for a one-month probationary period, dur-
 ing which time either the employer or the employee may
 terminate the contract of employment by giving one day's
 notice to the other party.

8.—CASUAL EMPLOYEES

(1) Due to seasonal demands of the industry, the Company
 will, from time to time, employ short term casuals.

(2) (a) The period of notice of termination by the employer
 shall be one working day.

(b) If the required notice of termination is not given, one
 day's pay shall be paid by the employer or forfeited by the
 employee as the case may be.

(3) On engagement, a casual employee shall be notified in
 accordance with subclause (6) in Clause 6. Contract of Ser-
 vice of the Metal trades (General) Award 1966 No. 13 of 1965.

(4) A loading of 20% shall apply to the hourly rate of a
 casual employee.

9.—SERVICE BONUS

In recognition of length of service, a 1% bonus shall be paid
 for each year of service, up to a maximum of 10 years based
 on the normal basic wage of the employee.

10.—PROTECTIVE CLOTHING

(1) Every two years the employer shall issue employees with
 a jumper or jacket which has the Company name printed
 thereon.

(2) Company tee-shirts shall be provided every six months,
 commencing on 1st October 1996

(3) Safety boots shall be provided as the need arises.

11.—HOURS OF WORK AND OVERTIME

(1) Ordinary hours of work shall be 38 per week, carried out
 between 6.00am and 6.00pm, Monday to Friday inclusive.

(2) (a) On specific occasions starting and finishing times
 may be varied each day to suit requirements of customers, by
 arrangement between the employer and employees.

(b) Such flexibility may be extended

(3) Time worked outside of ordinary hours shall be paid at
 penalty rates as prescribed by the relevant Award.

12.—CONSULTATIVE PROCESS

(1) A consultative Committee, comprising two representa-
 tives of management and two shop floor members, will be
 formed.

(2) Meetings shall be held on request, if there is consent by
 all representatives and will not be of more than one hour in
 duration

13.—AIMS OF THE AGREEMENT

(1) Through new methods and approaches to work and work
 organisation reduction in waste and improvement to quality,
 timeliness, customer service and satisfaction will continue to
 be developed

(2) Continual Improvement:

(a) Based on Total Quality Management and Time-based
 Management practices, all ComA1 ventures, with the
 objective of continued improvement, are to be
 achieved.

- (b) Employees shall advise the Consultative Committee of any improvements which, in their view, need to be made in production, distribution, or any other measures, to reach the desired aims.
- (c) The Consultative Committee shall be responsible for the collection, co-ordination and implementation of initiatives arising from this Agreement
- (d) Greater emphasis on Time and Quality Management will be placed, to achieve the required objectives.

14.—IMPROVEMENT MEASURES

In order to achieve the main aims of improved productivity, efficiency and flexibility, the following measures will be implemented.

- (1) Occupational Safety and Health:
Approved safety procedures, monitoring of methods and safety inspections at regular intervals will remain in force, which will result in a further reduction of time lost through injury. With the co-operation of all employees and a determined commitment from management, greater gains will be made in this area.
- (2) Sick Leave and Absenteeism:
 - (a) By monitoring absenteeism of employees, the employer and employees aim to reduce the number of absent and sick leave days taken.
 - (b) Management will make counselling available to all employees in an effort to improve performance in this area and employees will attend such counselling when so required.

15.—RESOLUTION OF DISPUTES

(1) Where a grievance arises, the employee concerned shall initially discuss the matter with his/her immediate supervisor and, if the employee so desires, his/her Union delegate.

(2) If the grievance is not resolved by discussion referred to in subclause (1) hereof, he/she or the Union delegate as the case may be, shall discuss and attempt to resolve the dispute with the Departmental Manager.

(3) Where the aforementioned discussions fail to resolve the matter, it shall be referred to Senior Management and the appropriate full-time Union official, at which stage the parties shall initiate steps to resolve the grievance as soon as possible.

(4) While steps in subclauses (1), (2) and (3) hereof are being followed, and to allow for the peaceful resolution of grievances, the parties shall be committed to avoiding stoppages of work, lock-outs or any other bans, as per subclause (2)(f) in Clause 34 of the Metal Trades(General)Award 1966 No. 13 of 1965

(5) If the grievance remains unresolved, either party may refer the matter to the Western Australian Industrial Relations Commission for settlement, provided that any party reserves the right to refer an issue to the Commission at any time.

(6) (a) The parties will give each other the earliest possible advice of any problem which may give rise to a grievance or dispute.

(b) All relevant facts shall be clearly identified and recorded throughout the procedures

16.—RATES OF PAY

(1) In accordance with the successful operation of this agreement and a continued commitment from all parties, a wage increase of 5% shall be payable on the rates existing at the commencement of this Agreement.

(2) (a) The rates shall not be less than those prescribed in Part 1 of the Metal Trades(General)Award 1966 No. 13 of 1965 or the Transport Workers'(General) Award- Part 1.

(b) Such increase will apply from the commencement of the first pay period beginning on or after 1st September 1966.

(c) New employees who become signatories to this Agreement during its period of operation as prescribed in Clause 4.Period of Operation, shall be paid the rates of pay as prescribed in subclause (2)(a) of Clause 16.-Rates of Pay plus the additional 5%.

17.—MULTI-SKILLING

(1) Subject to Clause 35.—Training in the relevant Awards, when so directed employees will carry out duties that are within the limits of their skill and competency.

(2) (a) Management will encourage the acquisition of new skills by way of on-the-job training as prescribed in the relevant Awards.

(b) Funding for such training, outside of working hours and the work environment, shall be made available.

18.—UNION MEETINGS ON LOCAL ISSUES

(1) Meetings to report on in-house matters may be held at times convenient to the Company and the employees, with the aim of maintaining a continuous non-disruptive work pattern.

(2) Discussions with Management will take place if either party wishes to change the time for a meeting.

19.—NO EXTRA CLAIMS COMMITMENT

(1) The parties agree there shall be no extra claims made during the life of this Agreement

(2) The parties shall be bound by the terms of the Agreement for its duration

(3) The parties shall oppose any application by others to be joined to this Agreement

20.—JOURNEY COVER

All employees shall be insured by the Company while travelling between their home and place of work

SIGNATORIES TO AGREEMENT

Signed for and on behalf of
ComAl Windows Pty Ltd. (indecipherable)

Signed for and on behalf of The
Automotive, Food, Metals, Engineering,
Printing, and Kindred Industries Union
of Workers—Western Australian Branch

J. Sharp-Collett (signed)
Common Seal

Signed for and on behalf of the Transport
Workers Union of Australia—Western
Australian Branch J. McGovern (signed)
Common Seal

COUNTRY HIGH SCHOOL HOSTELS AUTHORITY ENTERPRISE AGREEMENT 1996 No. PSAAG 155 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Inc
and

Country High School Hostels Authority.
No. PSAAG 155 of 1996.

Country High School Hostels Authority Enterprise
Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

17 October 1996.

Order:

HAVING heard Mr R. O'Byrne on behalf of the Applicant and Mr R. De Blank on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Country High School Hostels Authority Enterprise Agreement 1996 attached hereto be and is hereby registered as an industrial agreement and shall operate

from the beginning of the first pay period commencing on or after 23 August 1996.

[L.S] (Sgd.) R.N. GEORGE,
Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Country High School Hostels Authority Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties to the Agreement
5. Number of Employees Covered
6. Definitions
7. Date and Period of Operation of the Agreement
8. No Further Claims
9. Relationship to Awards and Agreements
10. Award Discussions
11. Single Bargaining Unit
12. Audit of 4% Second Tier and 1989 SEP
13. Objectives and Principles
14. Productivity Improvement
15. Productivity Measurement
16. Salary Increases
17. Dispute Settlement Procedure
18. Family Carers Leave
19. Union Facilities, Access
20. Supervisors, Senior Supervisors and College Managers
21. Clerical Officers
22. Signatures of Parties to the Agreement

Schedule A

Schedule B

Schedule C

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Authority employees working in Residential Colleges who are members of or eligible to be members of the Union party to this agreement.

4.—PARTIES TO THE AGREEMENT

4.1 Employer

Country High School Hostels Authority

4.2 Unions

Civil Service Association of Western Australia Incorporated

4.3 The parties bound by this agreement will oppose any subsequent application by any body or organisation to be joined to this agreement.

5.—NUMBER OF EMPLOYEES COVERED

It is estimated that 60 employees will be covered by this agreement.

6.—DEFINITIONS

“Agreement”: the Country High School Hostels Authority Enterprise Agreement 1996

“Authority”: the Country High School Hostels Authority as constituted by the Country High School Hostels Authority Act, 1960—1972.

“Employee”: for the purpose of this agreement, someone who is referred to at Clause 3—Scope.

“Employer”: the Country High School Hostels Authority.

“Government”: the State Government of Western Australia

“Minister”: the Minister for Education.

“Union”: the Civil Service Association of Western Australia Incorporated (CSA).

“WAIRC”: the Western Australian Industrial Relations Commission

“GOSAC”: the Government Officers Salaries, Allowances and Conditions Award 1989.

7.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

(1) This agreement shall operate from the beginning of the first pay period commencing on or after 23 August 1996 and shall remain in operation until 24 August 1997.

(2) The parties will review this agreement six months prior to the expiration of this agreement to commence negotiations for a new agreement.

(3) The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.

(4) The pay quantum achieved as a result of this agreement will remain and form the new base pay rates for future agreements provided the terms and conditions of this agreement continue to apply in the absence of a further agreement, except where the award rate is higher in which case the award shall apply.

(5) The agreement will continue in force after the expiry of its term until such time as any of the parties withdraws from the agreement by notification in writing to the other party and to the WAIRC.

8.—NO FURTHER CLAIMS

(1) The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except as provided for under this agreement.

(2) This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

9.—RELATIONSHIP TO AWARDS AND AGREEMENTS

This agreement shall be read in conjunction with the Government Officers Salaries Allowances and Conditions Award 1989 and the Country High School Hostel Authority Hostel Supervisory Staff Agreement 1980. In the case of any inconsistencies, this agreement shall have precedence to the extent of the inconsistencies.

10.—AWARD DISCUSSIONS

The parties agree to hold discussions during the life of this agreement on the issue of award coverage for all Country High School Hostels Authority employees.

11.—SINGLE BARGAINING UNIT

(1) This agreement has been negotiated through a Single Bargaining Unit (SBU).

(2) The SBU comprises representatives from the Authority and the Civil Service Association of Western Australia.

12.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the “Restructuring and Efficiency Principle” of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

13.—OBJECTIVES AND PRINCIPLES

The shared objectives of the parties are:

- (1) To satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.
- (2) To achieve the Authority’s mission and improve operational productivity and efficiency.
- (3) To continue to foster enhanced employee relations.
- (4) To have an efficient, effective, flexible workforce focussed on the achievement of the Authority’s goals.
- (5) To continue to promote job satisfaction and to operate with fairness and consideration in employment matters.
- (6) To work with staff in implementing and adapting to change in the workplace and to help staff deal with any personal impact and maintain their self-esteem.

- (7) To promote health, safety, welfare and equal opportunity for all employees and resident students.

14.—PRODUCTIVITY IMPROVEMENT

(1) Objectives of Performance Improvement

The Authority's mission is to provide an opportunity for students in remote areas to attend primary and secondary schools and TAFE colleges by providing affordable, good quality, supervised student accommodation in strategic country locations.

It is the Authority's responsibility to maintain, upgrade and be accountable for residential colleges which support students in their studies and actively promote students' physical well-being and social and personal development.

(2) Strategies and Initiatives Developed to Achieve Objectives

The Authority is committed to the ongoing improvement of its customer services, staff knowledge and skills, productivity and program management. It operates on the basis that there is always a better way and that all staff need to be involved in identifying and implementing improvements to the extent that this is possible. The advantages and disadvantages associated with each proposed improvement will be evaluated to ensure that the overall outcome is better than before.

The parties are committed to the development and implementation of the initiatives included in this agreement which are designed to enhance the quality of student care including improvements in customer service and customer information, employee relations, working arrangements, management systems, training and remuneration for services rendered.

The parties agree to develop and implement productivity improvements by way of:

2.1 Customer Service

On average students in CHSHA residential colleges spend 40 weeks a year for up to five years in a communal living environment, away from the stability and emotional support of their families during a key formative stage in their lives. Because college staff have an important part to play in the lives of students and have a duty of care towards them, their performance and the services and facilities provided in residential colleges, are important.

To enhance the performance of college staff the Authority is preparing, with staff assistance, a set of guidelines on the professional care of students (*Student Welfare Guidelines*). Supervisory and clerical staff will receive training during 1996 and early in 1997, based upon the student welfare guidelines, to ensure that they are better equipped to provide professional duty of care.

The Authority formally monitors parent satisfaction with the care, accommodation and services provided in residential colleges on a biennial basis. The feedback from parents on various aspects of college operations is utilised by the staff at each college to identify areas for improvement.

Targets/Milestones

- All supervisory and clerical staff will participate in professional development based upon the *Student Welfare Guidelines* during 1996 and in the week prior to the commencement of the 1997 school year.
- A parent satisfaction survey will be conducted during 1996 and it is the Authority's aim to at least maintain the current high parent approval rating (92% satisfaction rating).
- The feedback from the parent survey will be used to identify changes to work practices which will enhance customer service.
- Staff will be formally involved in the customer service enhancement process through staff meetings and training forums.
- Senior supervisory staff will have a key role in the development of college customer service enhancement plans during 1996/97.

2.2 Customer Information Strategy

Market research has indicated low awareness among isolated families of government boarding facilities and the curriculum available at adjacent senior high schools.

A three year marketing strategy (1995-1997) has been initiated to ensure that isolated families are well informed about the government's boarding facilities and schooling provisions. The strategy includes the delivery of an information booklet to all isolated families and follow-up support from residential college staff so that parents who make enquires receive all the information they need and fully appreciate the benefits available to students.

Targets/Milestones

- Maintain customer satisfaction at 92% or better.
- Provide a high quality information service to parents through:
 - use of an effective response format for telephone enquires;
 - planned school visit program, supported by senior high school staff;
 - attendance at Field Days, Open Days and community activity days;
- In a diminishing market, and in the context of greater competition, seek to increase market share and boost enrolments in 1997 by 1.5% over the 1996 enrolment.

2.3 Improved Management of the Residential College Program

The Authority's improvements will be achieved through an ongoing process of careful and thorough planning, policy and systems development including detailed documentation of quality management processes, training, implementation and review. Implementation and review includes performance management and the participation of staff in regular meetings.

Planning:

- During 1996/97 college management will benefit from training in the preparation and utilisation of a business/marketing plan.

Policy and Systems Development

- To enable colleges to maintain the capacity to manage those aspects of college operations for which they have responsibility, the Authority provides information and training for College Boards of Management, College Managers, Senior Supervisors, supervisors and Clerical Officers. During 1996/97 human resource and general administration manuals will be distributed and training undertaken to ensure that all college staff have the knowledge and skills to implement new government policy and contribute to the improved management of residential colleges.
- To enhance human resource management college managers and clerical staff will receive training in the utilisation of a computerised personnel and payroll system which will enhance each college's capacity to maintain employee information and facilitate improved human resource management and accountability.

Training:

- During 1996/97 a training plan will be devised which will identify and establish mechanisms for training for all college staff in keeping with the Authority's priorities and staff needs. Parent satisfaction with staff professionalism, and the success of staff who use the knowledge and skills they have developed with the Authority to further their careers, are both indicators of the benefits derived from training.

Performance Management:

- Formal performance management will be introduced for all supervisory and clerical staff during 1996/97. The process will help monitor the outcomes of the initiatives aimed at improving professionalism, customer service and information, knowledge of Government policies and provisions and personal training needs.

Participative Processes:

- College staff will be involved in the overall improvement process through their participation in regular staff meetings and their involvement at the personal level in the performance management process. College management value highly the contribution which staff can make and will actively involve staff in the identification of productivity initiatives and their implementation.
- Initiatives which involve significant change will not proceed prior to the involvement of staff.
- The Authority agrees to consult with the Union where changes involve any significant change to the employment of staff.

Targets/Milestones

- Business plans first draft by 30 October, 1996 and finalised by 31 December, 1996.
- Human Resource manual in colleges by 30 April, 1996; induction of college staff by 30 June 1996.
- General administration manual in colleges by 30 September, 1996; induction of college staff by 30 November 1996.
- Computerised *personnel* system training completed and system in use by 30 November 1996.
- Computerised *payroll* system training completed and system in place by 30 June, 1997.
- 2-3 day training camp for all supervisory staff in the week before the commencement of the 1997 school year.
- Minimum 6 days professional development for college managers during 1996 and again in 1997.
- College-based training based on student welfare guidelines during 1996.
- 2 day skill development program for clerical officers during 1996 and 1997.
- College-based training based upon the student welfare guidelines.
- Participation in regular staff meetings for the duration of this agreement.
- All staff to participate in formal performance management process during 1996 and again in 1997. Written performance feedback for all staff in each year.
- The Authority and the Union agree to consult on the development of further productivity initiatives and measures prior to the end of this Agreement for inclusion in a subsequent agreement.

15.—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of the Authority to management, employees and other relevant stakeholders.

(2) The parties agree to assess the extent to which the productivity improvement targets and milestones have been achieved as indicators of productivity improvements achieved via this agreement.

(3) The parties agree that the Authority's 1996/97 Annual Report will report on the extent to which these initiatives have been implemented and their impact on college operations.

(4) It is agreed that the employees' understanding of productivity measurement concepts is vital to performance monitoring arrangements to be successful on an ongoing basis.

16.—SALARY INCREASES

(1) The following salary increases are payable on the basis of implementation within the time frames established and continued co-operation in the application of those improvements in productivity and/or work practice changes outlined in Clause 14—Productivity Improvements.

(2) Subject to subclause (1), the following increases will be payable during the life of this Agreement:

- an increase of 4% from 23 August, 1996;
- a further increase of 2% from 1 October, 1996;
- a further increase of 1% from 1 April, 1997;

(3) For employees covered by GOSAC, salaries will be payable in accordance with Schedule C.

(4) Employees employed under Schedule A of this agreement will be paid in accordance with clause 19 of that schedule.

17.—DISPUTE SETTLEMENT PROCEDURE

Any dispute, question or difficulty requiring resolution shall be dealt with in the following manner:

- The CSA representative and/or the employee concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA Representative.
- If the matter is not resolved within 5 working days following the discussion in accordance with subclause (a) hereof the matter shall be referred by the CSA Representative and/or employee to the Authority's Chief Executive Officer or his/her nominee for resolution.
- If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the Authority it may be referred by either party to the Western Australian Industrial Relations Commission.

18.—FAMILY CARERS LEAVE

(1) Employees covered by this agreement may with the consent of the Department use 5 days of accrued sick leave in accordance with this clause to provide care for another person subject to:

- the employee being responsible for the care of the person concerned; and
- the person concerned being either:
 - a member of the employee's immediate family; or
 - a member of the employee's household.
- the term "*immediate family*" includes:
 - a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person; and
 - a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
- production of satisfactory evidence of illness of the other person.

(2) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.

(3) Leave taken under this provision is deemed to be Sick Leave.

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

19.—UNION FACILITIES, ACCESS

The Facilities Agreement 1992 No. PSA AG2 of 1992 shall continue to apply.

20.—SUPERVISORS, SENIOR SUPERVISORS AND COLLEGE MANAGERS

The conditions of service for Supervisors, Senior Supervisors and College Managers are contained within Schedule A of this agreement. Clauses 12,13,14 and 15 of schedule A are to be read in conjunction with GOSAC. With the exception of these provisions, no other condition or clause of GOSAC applies to Supervisors, Senior Supervisors or College Managers.

21.—CLERICAL OFFICERS

The provisions of Schedule B shall apply to Clerical Officers and shall be read in conjunction with GOSAC. Where any inconsistencies exist, the conditions of this Agreement shall apply.

22.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed for and on behalf of the

CIVIL SERVICE ASSOCIATION INCORPORATED by:

_____ in the presence of _____ Date / /

Signed for and on behalf of the

COUNTRY HIGH SCHOOL HOSTELS AUTHORITY by:

_____ in the presence of _____ Date / /

SCHEDULE A

CONDITIONS OF EMPLOYMENT SUPERVISORS, SENIOR SUPERVISORS AND COLLEGE MANAGERS

1.—ARRANGEMENT

1. Arrangement
2. Definitions
3. Annual Increments
4. Hours of Duty
5. Contract of Service
6. Work Flexibility
7. Annual Leave
8. Part-Time Employment
9. Casual Employment
10. Fixed-Term Employment
11. Sleepover
12. Long Service Leave
13. Other Leave Provisions
14. Camping Allowance
15. Other Allowances
16. Time and Salaries Record
17. Right of Entry
18. Copies of the Agreement
19. Salaries

2.—DEFINITIONS

For the purposes of this section, the following terms have the following meaning:

“Employee” means those persons employed by the Employer in the capacity of a Supervisor, Senior Supervisor or College Manager.

“Day” shall mean from midnight to midnight.

A “year” shall commence from one week prior to the commencement of the school year and continue to the day prior to one week before the commencement of the following school year.

“Employer” means the Country High School Hostels Authority as constituted under the provisions of the Country High School Hostels Authority Act 37 of 1960 as amended.

“Fixed term employee” means an employee who is employed on a full time or part-time basis on a contract of service for a specified duration.

“Term” refers to the period between commencement and finishing dates of the school term as gazetted.

“School year” shall mean the period gazetted as such by the Hon. Minister for Education.

3.—ANNUAL INCREMENTS

(1) Subject to good conduct, diligence and efficiency, an employee shall proceed to the maximum of their designated salary range by annual increments according to the increments of such salary range.

(2) Before any increase in salary is paid, the Employer must be satisfied in respect of the employee’s efficiency, diligence and conduct and where the employer is satisfied with the assessment, the salary increase shall be paid.

(3) Where an employee is the subject of an adverse assessment pursuant to subclause (2) of this clause, the following provisions shall apply—

- (a) the employee’s line manager shall meet with the employee to discuss their assessment when reasonably practicable, but no less than 1 week before their increment is due;
- (b) before the increment is due, the assessment shall then be put in writing and brought to the notice of the employee and shall be initialled as sighted and seen by the employee;
- (c) if the employer fails to bring the assessment to the attention of the employee before their increment is due, the employee’s increment shall be automatically awarded;
- (d) if the employee desires to give any explanation in respect of the assessment or give any reasons for disagreeing with the assessment, they shall put the explanation or reasons in writing;
- (e) the employer shall consider the assessment and the employee’s explanation or reasons before reaching a final decision on the employee’s assessment;
- (f) the employer shall notify the employee of their final decision within 14 clear days of receipt of the assessment.

(4) Where an increment is not paid for a specific period, the employer shall complete a further assessment before the expiry of the specific period and the provisions of subclauses (2) and (3) shall apply in respect of that assessment.

(5) The non-payment of an increase shall not change the normal anniversary date of any further increases due to the employee.

4.—HOURS OF DUTY

(1) The Board of Management in conjunction with the College Manager, shall determine the rostered hours of duty for employees so as to meet their individual college requirements. In doing so it shall be ensured that:

- (a) the total rostered hours of duty shall not exceed 2,200 per year;
- (b) the rostered weekly hours of duty shall not exceed 55 hours per week averaged over a term period. However where the situation arises where an employee is required to work in excess of these hours, time worked in excess of 55 hours per week averaged over a term period is to be paid at the normal rate or treated as time off in lieu of payment for actual time worked at the discretion of the employer. The time off in lieu of payment shall be taken at a time agreed upon between employer and employee.
- (c) All rostered work is to be shared as equitably as possible between all employees required to be part of the rostering system.

(2) As part of a normal roster, an employee shall not be rostered to work more than nine (9) hours a day without a one (1) hour break. Availability of this one (1) hour break for employees rostered on weekends will be subject to the requirement to provide duty of care in relation to weekend activities (eg. Sporting events, excursions and camps) and emergencies.

(3) Employees shall be entitled to two full consecutive days or 48 consecutive hours off duty per week.

5.—CONTRACT OF SERVICE

PROBATION

(1) (a) Every employee appointed to the employ of the employer shall be on probation for a period not exceeding six months.

(b) The employer shall convey to the employee the terms and conditions of their probationary employment specifically mentioning the period of the probation and the date on which the employees probationary appointment is to be reviewed.

(c) At any time during the period of probation the employer may annul the appointment and terminate the services of the employee by the giving of two weeks notice or payment in lieu thereof.

(d) Two weeks prior to the expiration of the period of probation the employer shall notify the employee in writing on whether they intend to:

- (i) confirm the appointment; or
- (ii) extend the period of probation for up to six months; or
- (iii) terminate the employment, termination effective at the end of the probationary period.

Failure to notify of termination within the required time and in the required manner shall result in the employment of the employee being deemed to be permanent.

(e) Extension of probation

Where it has been decided to extend the period of probation, the employer shall notify the employee in writing as to the reasons for extending the probationary period. Notwithstanding the above provision, the employer may still terminate the contract of employment as set out in paragraph (c) of this clause.

(2) NOTICE

- (a) No employee shall leave the employ of the employer until the expiration of one (1) months written notice of the employee's intention to do so, without the approval of the employer. An employee who fails to give the required notice shall forfeit a sum of \$500.00. Such monies may be withheld from monies due on termination.
- (b) One month's written notice shall be given by the employer to an employee whose services are no longer required. Provided that the employer may pay the employee one month's salary in lieu of the said notice.
- (c) Notwithstanding any of the other provisions contained in this clause, a lesser period of notice may be negotiated between the employer and the employee.
- (d) The employer may summarily dismiss an employee deemed guilty of gross misconduct or neglect of duty and the employee shall not be entitled to any notice or payment in lieu of notice.
- (e) An employee, having obtained the age of 55 years shall be entitled to retire from the employ of the employer.

6.—WORK FLEXIBILITY

(1) Each employee will be required to carry out such duties as are within the limits of the employee's skills, competencies and training. In particular, employees agree to assist in the redefinition of Job Description Forms to reflect the additional administrative responsibilities devolved to each position under this agreement.

(2) The employer will have the discretion to cease the arrangement at any time if it is not operating efficiently or effectively.

7.—ANNUAL LEAVE

(1) (a) Each officer is entitled to 4 weeks paid leave for each year of service. Annual leave accrues pro-rata on a weekly basis and shall be calculated on the basis of 2.88 hours leave for each completed week of service.

(b) An employee who is appointed after the commencement of the year is entitled to pro-rata annual leave for that year.

(c) The leave must be taken between the end of the school year and one week prior to the commencement of the following school year, unless otherwise agreed between the employer and the employee.

(d) The employer may grant to any employee or category of employees Annual Leave of absence for recreation in excess of four weeks in any one year on full pay, if it is of the opinion that special circumstances exist by reason of:

- (i) the nature of the duties performed by an employee or category of employees; and
- (ii) the employee or category of employees being regularly rostered to perform weekend duty and being available for out of hours work and emergency duty as required.

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

(3) Lump Sum Payment

On application to the employer, a lump sum payment for money equivalent of any accrued annual leave and/or pro rata annual leave shall be made to an employee who retires, resigns, is retired or in respect of an employee who dies. Accrued annual leave shall be paid to an employee who is dismissed, unless the misconduct for which the employee has been dismissed occurred prior to the completion of the qualifying period. Pro-rata annual leave shall not be paid to an employee who is dismissed.

(4) An employee who has been permitted to proceed on annual recreation leave and who ceases duty before completing the required continuous service to accrue the leave must refund the value of the unearned pro rata portion calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an employee.

(5) When computing the annual leave due under this clause, no deduction shall be made from such leave in respect of the period an employee is on annual leave, or absence through sickness with or without pay. This provision applies except for that portion of an absence that exceeds three months, absence on workers' compensation except for that portion of an absence that exceeds six months, or any period exceeding two weeks during which the employee is absent on leave without pay.

(6) (a) Subject to paragraph (b) of this subclause, a loading equivalent to 17.5% of normal salary is payable to employees proceeding on annual leave, including accumulated annual leave.

(b) The loading is paid on a period of four weeks per year. Payment of the loading is not made on additional leave granted to employees.

(c) Annual leave commencing in any year and extending without a break into the following year attracts the loading calculated on the salary applicable on the day the leave commenced. The maximum loading payable shall be that applicable on the day the leave is commenced.

(d) The loading payable on approved accumulated annual leave shall be at the rate applicable at the date the leave is commenced. Under these circumstances an employee can receive up to the maximum loading for the approved accumulated annual leave in addition to the loading for the current year's entitlement.

(e) A pro rata loading is payable on periods of approved annual leave less than four weeks.

(f) The loading is calculated in accordance with the formula contained in the GOSAC award based on the rate of salary the employee receives at the commencement of leave.

(g) Where payment in lieu of accrued or pro rata annual leave is made on the death, dismissal, resignation or retirement of an employee, a loading calculated in accordance with the terms of this clause is to be paid. Provided that no annual leave loading shall be payable in respect of pro rata annual leave paid on resignation or where an employee is dismissed for misconduct.

(h) Part time employees shall be paid a pro rata loading at the salary rate applicable.

8.—PART TIME EMPLOYMENT

A part-time employee shall be entitled to the same conditions of employment prescribed in this agreement for full-time employees on a pro-rata basis.

The provisions of subclause (2) of clause 5 of this schedule shall also apply in respect to part-time employees.

A part time employee shall be defined as an employee rostered to work regular and continuing employment up to a maximum of thirty hours per week.

Part-time employees are not required to perform weekend work, on-call work or sleeperover duties.

An employee who is employed on a part time basis shall be paid the appropriate hourly rate based on the actual number of rostered hours worked. These rates are contained within clause 19 of this schedule.

- (1) (a) Each permanent part time arrangement shall be confirmed in writing and shall include the agreed period of the arrangement and the agreed hours of duty in accordance with subclause (3) of this clause.
 - (b) The employer shall give an employee one (1) month's notice of any proposed variation to that officer's starting and finishing times and/or particular days worked, provided that the employer shall not vary the employees total weekly hours of duty without the employee's written consent, a copy of which shall be placed on record.
 - (c) There may be exceptional reasons for temporary variations to an employee's working hours. Since the usual reasons for seeking part time employment are because of other commitments, any variations must be agreed to in writing by the part time employee.
- If agreement is reached to vary an employee's working hours pursuant to this subclause:

- (i) The total time worked on any day will not exceed 9 hours unless otherwise agreed between employer and employee.
- (ii) Additional days worked, up to a total of five days per week, are regarded as an extension of the contract and should be paid at the normal rate.

(2) Annual Leave

Payment to a part time employee proceeding on annual leave shall be calculated having regard for any variations to the employee's ordinary rostered hours during the accrual period. Payment in such instances shall be calculated as follows:

- (a) Where accrued annual leave only is being taken, the ordinary hours worked by the employee over the accrual period shall be averaged to achieve the average hours worked per fortnight. This average is then applied to the following formula to achieve an average fortnightly rate of pay:

$$\frac{\text{average fortnightly hours worked} \times \text{appropriate fortnightly salary}}{75}$$

- (b) Annual leave taken entirely in advance shall be paid according to the salary the employee would have received had the employee not proceeded on leave.
- (3) Conversion from full time to part time employment
- (a) Where a full time employee is permitted at their initiative to work part time for a specified period no greater 12 months, that employee has a right, upon written application to revert to full time hours in that position, or a position of equal classification, as soon as is deemed practicable by the employer, but no later than the expiry of the agreed period.
 - (b) A full time employee who at their initiative works part time for an unspecified period may apply to revert to full time hours in that position but only as soon as deemed practicable by the employer. This should not prevent the transfer of the said employee to another full time position at a classification commensurable to that of their previous full time position.

- (c) An officer employed directly as part-time who wishes to become full-time is required to seek promotion or transfer to a full-time position by:

- (i) application for advertised vacancies; and/or
- (ii) by notification in writing to the employer of their desire to convert to full time employment.

9.—CASUAL EMPLOYMENT

(1) Casual employees are engaged by the hour. Casual employment may be terminated by either party at any time by the giving of one hour's notice, or payment in lieu thereof.

(2) A casual employee is an employee engaged for a period not exceeding one calendar month in any period of engagement, or on an hourly rate of pay by agreement between the Association and the employer.

(3) Employees who are engaged on a casual basis shall be paid a 20% loading in lieu of annual leave, sick leave, long service leave and payment for public holidays.

(4) The conditions of employment, leave and allowances provided under this agreement do not apply to a casual officer. The hours worked by a casual officer are paid at the ordinary hourly rate plus 20%. These rates are contained within clause 18 of this schedule.

10.—FIXED-TERM EMPLOYEES

(1) Notwithstanding the other provisions contained in this clause, the employer may employ officers for a fixed term.

(2) Employees employed for a fixed term shall be advised in writing of the terms and of the appointment and such advice shall specify the dates of commencement and termination of employment.

(3) The provisions of subclause (2) of clause 5 of this schedule shall also apply in respect of fixed term employees.

11.—SLEEPOVER

(1) For the purposes of this clause the following shall have this meaning:

"Sleepover" means a period of time overnight when an employee is required to reside in accommodation adjacent to or attached to student dormitories and is required to be immediately contactable (on call) to deal with situations of an essential nature.

"Essential Nature" means circumstances urgent in nature and may mean the attendance to ill residents.

(2) An employee may be required to perform sleepovers as a regular part of their duties. Sleepovers shall be shared equitably among all staff.

(3) Employees shall be provided with separate accommodation for sleepovers which should at least contain a bed, tea and coffee making facilities and private ablution facilities.

(4) An overnight sleepover allowance of \$28 will be paid to those employed on a casual or part-time basis to fulfil the duties of a sleepover. This allowance shall be paid on top of the hourly payment provided for work prior to and following the sleepover.

12.—LONG SERVICE LEAVE

Employees will be entitled to long service leave as prescribed by the GOSAC Award. However long service leave must be taken in a single block such that employees return to work at the commencement of a school term. Other arrangements may be made subject to agreement between the employer and employee.

13.—OTHER LEAVE PROVISIONS

Employees shall be entitled to the following as prescribed by the GOSAC Award.

- | | |
|-----------------------|--|
| 22. Sick Leave | 26. Short Leave |
| | 27. Leave to Attend Association Business |
| 23. Maternity Leave | 28. Trade Union Training Leave |
| 24. Leave Without Pay | 29. Leave for Training with Defence Force Reserves |
| 25. Study Leave | 30. Bereavement Leave |

14.—CAMPING ALLOWANCE

Employees covered by this Agreement shall not be entitled to the camping allowance as prescribed in the GOSAC Award.

15.—OTHER ALLOWANCES

Employees shall be entitled to the following allowances as prescribed by the GOSAC Award.

- (a) Removal Allowance
- (b) Travelling Allowance
- (c) District Allowance
- (d) Property Allowance
- (e) Disturbance Allowance
- (f) Transfer Allowance
- (g) Motor Vehicle Allowance

16.—TIME AND SALARIES RECORD

(1) The employer shall keep or cause to be kept a time and salaries record showing:

- (a) the name of each employee;
- (b) the nature of work performed;
- (c) the hours worked each day;
- (d) the salary and allowances paid to each employee.

Any system of automatic recording by means of machines shall be deemed to comply with the provision to the extent of the information recorded.

(2) (a) The time and salary record shall on request be produced for inspection by the General Secretary or duly accredited official of the Association during the employer's usual office hours and when necessary the duly accredited official of the Association may take a copy of the record.

(b) The Association shall:

- (i) give prior notification to the employer on when it proposes to inspect the record;
- (ii) not conduct interviews during normal working hours in circumstances which will result in the employer's business being unduly interrupted or otherwise hampered; and
- (iii) treat with confidentiality any information obtained from time and salary records.

(c) The employer's office shall be deemed to be a convenient place for the purposes of inspecting records and if, for any reason, the time and salary record is not available when the duly accredited official of the Association calls to inspect it, the record will be made available for inspection at a mutually convenient time at the employer's office.

(d) The Association is not permitted to have access to the records of employees who are not members of the Association, unless those employees give the Association consent to do so.

(e) If the employer maintains a personal or other file on an employee, subject to the employer's convenience, the employee shall be entitled to examine all material maintained on that file.

17.—RIGHT OF ENTRY

The General Secretary of the Association or a duly authorised representative shall on notification to the employer have the right to enter the employer's premises during working hours, including meal breaks, for the purposes of discussing with employees covered by this Agreement, the legitimate business of the Association or for the purpose of investigating complaints concerning the application of this Agreement, but shall in no way unduly interfere with the work of the employees.

18.—COPIES OF AGREEMENT

Every employee shall be entitled to have access to a copy of this Agreement. Sufficient copies shall be made available by the employer in each workplace for this purpose and shall be located in easily accessible areas for employees.

19.—SALARIES

(1) The salaries payable to Supervisory employees shall be as set out below.

(2) (a) The gradings of each Residential College shall be established on the last day in February each year and be based

upon a College's enrolment on that date applied to the following formula:

Gradings are derived from the grading total as follows:

Grading Total	Grading
0—50	A
51—100	B
100—150	C
151 +	D

The grading total is an addition of 3 factors:

1. A college's current enrolment.
2. If co-educational add a co-education factor of 20.
3. Add a size factor from the following table.

Boarding Capacity of College	Size Factor
0—50	10
51—100	20
101—150	30
151 +	40

(b) The salaries for employees employed at each Residential College shall be in accordance with the salaries outlined below and adjusted from the first day in March each year according to the College's grading, except that where a College is downgraded, an existing employee's salary will be maintained at its former level.

(3) The salaries included within this clause include compensation for regular weekend work, extended hours of duty and for being on call during the "lights out" period.

	Incorporating 25% Loading	23 August 1996 4% increase	1 October 1996 2% increase	1 April 1997 1% increase
College Managers				
Grade A:				
1st year of service	31,366	32,621	33,273	33,606
2nd year of service or thereafter	32,302	33,594	34,266	34,609
Grade B:				
1st year of service	33,422	34,759	35,454	35,809
2nd year of service or thereafter	34,280	35,651	36,364	36,728
Grade C:				
1st year of service	35,183	36,590	37,322	37,695
2nd year of service or thereafter	36,137	37,582	38,334	38,717
Grade D:				
1st year of service	37,134	38,619	39,392	39,786
2nd year of service or thereafter	38,506	40,046	40,847	41,256
Senior Supervisors				
Grade A				
1st year of service	25,848	26,882	27,420	27,694
2nd year of service or thereafter	26,644	27,710	28,264	28,547
Grade B				
1st year of service	27,439	28,537	29,107	29,398
2nd year of service or thereafter	28,229	29,358	29,945	30,245
Grade C				
1st year of service	29,024	30,185	30,789	31,097
2nd year of service or thereafter	29,024	30,185	30,789	31,097
1st year of service	29,819	31,012	31,632	31,948
2nd year of service or thereafter	29,819	31,012	31,632	31,948
Supervisors	25,848	26,882	27,420	27,694
Casual and Part-Time Supervisory Staff Hourly Rates of Pay (25% Loading Excluded)				
Part-time Supervisory Staff	10.82 per hour	11.25 per hour	11.48 per hour	11.59 per hour
Casual Supervisory Staff (Includes 20% Casual Loading)	12.98 per hour	13.50 per hour	13.78 per hour	13.91 per hour

SCHEDULE B

CONDITIONS OF EMPLOYMENT
CLERICAL OFFICERS

1.—DEFINITIONS

"Clerical Officer" means employees employed by the Country High School Hostels Authority in residential colleges in an administrative/clerical capacity.

2.—LEAVE OF ABSENCE

(1) (a) A clerical officer shall not be required to present themselves for duty on any day on which the residential college at which they are employed is not open.

(b) Clerical officers shall be entitled to this leave on a without pay basis, provided that if the college is closed due to a public holiday, as prescribed in clause 20—Public Holidays of the GOSAC Award, the officer shall be entitled to that day with pay.

(2) (a) Notwithstanding subclause (1), clerical officers may be recalled to work during any period of leave without pay to meet organisational workload. The employer shall give the officer at least 48 hours notice of their need to return to work. However employer and employee may agree to a shorter period of notice.

(b) Subject to paragraph (c) of the subclause, payment to clerical officers recalled to work in accordance with paragraph (a) of this subclause shall be at ordinary time rates.

(c) Where agreement has not been reached to alter the 48 hour notice period with the clerical officer concerned, that officer shall be paid overtime in accordance with clause 18—Overtime of the GOSAC Award for those hours worked during their leave of absence.

(3) Any period of leave of absence without pay that exceeds 21 days shall not, for any purpose, be regarded as part of the period of service of that officer.

(4) Clerical officers entitled to leave without pay as defined by this clause shall not be required to exhaust all other leave credits before proceeding on leave without pay.

3.—ANNUAL LEAVE

(1) Clerical officers shall be required to take accrued annual leave as well as a period of leave without pay during the Christmas break period.

(2) If a clerical officer has accrued less than 4 weeks annual leave, the remainder of the Christmas period shall be taken as leave without pay.

(3) In conjunction with subclauses (1) and (2) of this clause, all other annual leave provisions as prescribed by the GOSAC Award shall apply to clerical officers.

4.—LONG SERVICE LEAVE

Employees will be entitled to long service leave as prescribed by the GOSAC award. Long service leave must be taken as a single block such that employees return to work at the commencement of a school term. Other arrangements may be made subject to agreement between the employer and employee.

5.—PART-TIME EMPLOYMENT

A part-time employee shall be defined as an employee engaged in regular and continuing employment for a minimum of seven and a half hours per week and a maximum of 30 hours per week.

6.—PUBLIC HOLIDAYS

Officers shall be entitled to the following holidays without loss of pay:

New Year's Day, Australia Day, Labour Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

With the exception of Australia Day and Anzac Day, when any of the public holidays falls on a Saturday or on a Sunday, the holiday shall be observed on the next succeeding Monday. When Boxing Day falls on a Sunday or a Monday, the holiday shall be observed on the next succeeding Tuesday.

SCHEDULE C

SALARY SCHEDULE

Annual salaries applicable to Clerical Officers covered by the GOSAC award.

Level	Salary per Annum	23 August 1996 4% increase	1 October 1996 2% increase	1 April 1997 1% increase
Under 17 years	10,873	11,308	11,534	11,649
17 years	12,707	13,216	13,480	13,614
18 years	14,822	15,415	15,723	15,880
19 years	17,157	17,844	18,200	18,511
20 years	19,267	20,038	20,439	20,643
21 years or 1st year of adult service	21,165	22,012	22,452	22,676
22 years or 2nd year of adult service	21,817	22,690	23,143	23,375
23 years or 3rd year of adult service	22,468	23,367	23,834	24,072
24 years or 4th year of adult service	23,115	24,040	24,520	24,766
25 years or 5th year of adult service	23,766	24,717	25,211	25,463

Level	Salary per Annum	23 August 1996 4% increase	1 October 1996 2% increase	1 April 1997 1% increase
26 years or 6th year of adult service	24,417	25,394	25,902	26,160
27 years or 7th year of adult service	25,166	26,173	26,696	26,963
28 years or 8th year of adult service	25,684	26,711	27,246	27,518
29 years or 9th year of adult service	26,450	27,508	28,058	28,339

DAWSON AOC WATER SERVICES PTY LTD MECHANICAL AND ELECTRICAL MAINTENANCE ENTERPRISE BARGAINING AGREEMENT 1996

No. AG 115 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Dawson AOC Water Services Pty Ltd
and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australia
Branch and Others.

No. AG 115 of 1996.

Dawson AOC Water Services Pty Ltd Mechanical and
Electrical Maintenance Enterprise Bargaining Agreement
1996.

CHIEF COMMISSIONER W.S. COLEMAN.

9 October 1996.

Order:

HAVING heard Mr D. Sproule on behalf of the Applicant and Mrs S. Ellery on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers Union, The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the "Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement 1996" attached hereto be and is hereby registered as an industrial agreement and shall operate on and from the 19th day of September, 1996.

(Sgd.) W.S. COLEMAN,

[L.S]

Chief Commissioner.

1.—TITLE

This agreement shall be known as the Dawson AOC Water Services Pty Ltd Mechanical and Electrical Maintenance Enterprise Bargaining Agreement, 1996 and shall be referred to in this document as the "Agreement".

2.—ARRANGEMENT

1. TITLE
2. ARRANGEMENT
3. AREA AND SCOPE
4. PARTIES BOUND
5. TERM
6. APPLICATION OF AWARD
7. DEFINITIONS
8. CONTRACT OF SERVICE
9. APPRENTICES
10. PAYMENT OF WAGES
11. HIGHER DUTIES
12. DEDUCTION OF UNION SUBSCRIPTIONS

13. ORDINARY HOURS OF WORK
14. OVERTIME
15. WAGES
16. SPECIAL RATES AND PROVISIONS
17. TRAVELLING TIME AND TRAVEL ALLOWANCES
18. SUPERANNUATION
19. JOURNEY COVER
20. ANNUAL LEAVE
21. SICK LEAVE
22. LONG SERVICE LEAVE
23. PUBLIC HOLIDAYS
24. PARENTAL LEAVE
25. FAMILY LEAVE
26. BEREAVEMENT LEAVE
27. DEFENCE FORCE TRAINING LEAVE
28. JURY SERVICE
29. TRADE UNION TRAINING LEAVE
30. CLOTHING AND PROTECTIVE EQUIPMENT
31. FIRST AID FACILITIES AND SERVICES
32. AMENITIES
33. POSTING AND EXPLANATION OF AGREEMENT
34. POSTING OF NOTICES
35. RELATIONSHIP AND RIGHTS OF THE PARTIES
36. GRIEVANCE AND DISPUTE SETTLING PROCEDURE
37. INTRODUCTION OF CHANGE
38. CONSULTATION PROCESS
39. SIGNATORIES TO THE AGREEMENT
 - Appendix I—Classification Structure and Definitions
 - Appendix II—Historical Transitional Arrangement
 - Appendix III—Parental Leave

3.—AREA AND SCOPE

(1) This Agreement will apply throughout the State of Western Australia.

(2) Whilst this Agreement applies throughout the State, it is envisaged that the initial operations covered by the Agreement will be confined to the locations previously serviced by the Mechanical and Electrical Services Sections of the Bulk Water and Wastewater Division of the Water Corporation of Western Australia.

(3) This Agreement shall apply to employees of the Company engaged in classifications contained in this Agreement and who perform work previously undertaken by the Mechanical and Electrical Services Sections of the Bulk Water and Wastewater Division of the Water Corporation of Western Australia.

(4) The activities described in sub-clause (3) will usually be confined to the Perth North and Perth South Regions of the Bulk Water and Waste Water Division of the Water Corporation. However, should the opportunity arise to perform work outside of that region, negotiations will take place as to the terms and conditions that will apply.

(5) At the date of registration of this Agreement, its terms and conditions will apply to approximately 67 employees.

4.—PARTIES BOUND

The Parties bound by this agreement are:

- (1) Dawson AOC Water Services Pty Ltd;
- (2) the Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union, Western Australian Branch;
- (3) the Australian Liquor, Hospitality and Miscellaneous Workers Union Miscellaneous Division, Western Australian Branch; and
- (4) the Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Western Australian Branch.

5.—TERM

(1) Except as provided for by subclause (2), this Agreement shall apply for a period of 5 years from the date of registration, or the date of the commencement of work described in subclause (3) of Clause 3, whichever is the sooner.

(2) Provided that the wages and allowances contained in Clauses 15 and 16 shall be the subject of renegotiation com-

mencing from 1 April 1997. The resultant revised wages and allowances shall be applied from the beginning of the first pay period commencing on or after 1 July 1997.

6.—APPLICATION OF AWARD

(1) The Metal Trades (General) Award, 1966, as amended and consolidated, shall apply where this Agreement makes no provision.

(2) Where a provision of this Agreement conflicts with a provision of the Metal Trades (General) Award, the provision of this Agreement shall apply.

7.—DEFINITIONS

(1) A "casual employee" shall be an employee engaged for periods of four consecutive weeks or less.

(2) A "full time employee" shall be an employee other than a casual employee, engaged for 38 ordinary hours of work per week on a continuing basis, save for reasons of redundancy, performance or misconduct.

(3) "Approved leave" shall mean any paid or unpaid leave approved, before or after the period of that leave, by a responsible employee of the Company. Approved leave shall include all leave, holidays and Rostered Days Off allowed by the Company.

(4) "Ordinary wages" shall comprise of the wage rates and allowances described as all purpose allowances in Clause 16.

8.—CONTRACT OF SERVICE

(1) Employees may be engaged under this Agreement as full time or casual employees.

(2) Casual employees shall be engaged for unplanned peak work loads and not to the exclusion of full time employees.

(3) Employees engaged as casuals shall be advised accordingly at the time of their engagement.

(4) Employment, other than of casual employees, may be terminated by the Company or the employee by giving the other the following notice, or equivalent payment of ordinary wages in lieu.

Period of Continuous Service	Period of Notice
4 weeks or less	1 day
Over 4 weeks but less than 1 year	1 week
1 year but less than 3 years	2 weeks
3 years but less than 5 years	3 weeks
5 years and over	4 weeks

(5) The notice period required from the Company for employees, other than casual employees, who are over 45 years of age shall be increased by one week where the employee has 2 or more years of continuous service.

(6) The Company and the employee concerned may agree in writing to a shorter period of notice, and consequently an equivalent payment of ordinary wages in lieu.

(7) The period of notice for a casual employee shall be one day.

(8) The provisions of this Clause do not affect the rights of the Company to instantly dismiss an employee for serious misconduct.

(9) Notice given by the Company to other than casual employees shall be in writing.

(10) The Company is under no obligation to pay an employee for any time for which the employee was required to work but failed to do so, unless that failure was due to absence on approved leave.

(11) The Company may deduct payment of wages for any day on which an employee cannot be usefully employed for any reason beyond the control of the Company, except where an employee is allowed to commence work, in which case a minimum of 4 hours shall be paid.

(12) The Company shall allow an employee up to 8 hours Special leave without deduction of pay during the notice period for the purpose of securing alternate work.

(13) An employee may be required to work within the limits of his or her skill, competence, training and trade stream, subject to the Company's requirement to provide a safe and healthy working environment.

(14) Any change to the permanent work location shall be by agreement between the Company and the employee concerned.

9.—APPRENTICES

(1) Apprentices may be taken in the ratio of one apprentice for every two or fraction of two (the fraction being not less than one) journeymen and shall not be taken in excess of that ratio unless:

- (a) The Union or Unions concerned so agree; or
- (b) The Commission so determines.

(2) Where an apprentice's rostered day off as prescribed in Clause 13 Hours, of this Agreement falls within a period of block release, an alternative rostered day off will be arranged at a mutually convenient time to the employer and the apprentice.

(3) The Company will cover all costs related to course fees, materials and texts.

10.—PAYMENT OF WAGES

(1) Wages shall be paid fortnightly by electronic funds transfer into the bank account nominated by the employee. Regular deductions from wages into another nominated bank account and a hospital benefit fund may be available dependant upon the type of deduction, the type of account and administrative considerations.

(2) Employees proceeding on leave of 5 days or more may request that wages for the period of leave be made available on the last working day prior to proceeding on leave.

(3) The employer shall provide each employee, on the day of payment or transfer of monies, with a statement showing:

- (a) the employees ordinary rate of wage;
- (b) the number of ordinary hours worked;
- (c) the number of overtime hours worked;
- (d) the amount of allowances and special rates paid;
- (e) any paid leave payments made;
- (f) the gross amount of wages and allowances paid;
- (g) all deductions;
- (h) the net amount of wages and allowances;
- (i) accumulated sick leave entitlements remaining;
- (j) superannuation payments;
- (k) annual leave entitlements; and
- (l) accumulated days in lieu.

(4) Employees ceasing employment for reasons other than summary dismissal, will be paid their wages by cheque or electronic funds transfer at their option, and no later than the next working day after their last day of work.

11.—HIGHER DUTIES

(1) Employees required to perform work of a classification carrying higher ordinary wages than their usual classification shall be paid the higher rate for the time so engaged, but if they are so engaged for more than two (2) hours on any day or shift they shall be paid the higher rate for the whole day or shift.

(2) Employees required to perform work in a lower grade shall not have their ordinary wages reduced whilst employed in such capacity.

(3) Employees required to perform work described in subclause (1) for more than one week shall be advised of the expected duration of that work at the higher rate.

12.—DEDUCTION OF UNION SUBSCRIPTIONS

(1) The Company shall deduct union subscriptions from the wages of any employee who presents the Company with an authorisation to deduct in accordance with Company procedures.

(2) The continuation or cessation of deductions shall be in accordance with the authority of the employee.

13.—ORDINARY HOURS OF WORK

(1) The ordinary hours of work shall be an average of 38 hours per week. Except where provided elsewhere 76 hours, to be worked over 9 days per fortnight exclusive of Saturdays and Sundays, shall constitute a fortnight's work.

(2) Eight and a half (8½) hours shall constitute the ordinary hours of work on any day Monday to Thursday inclusive.

(3) Eight (8) hours shall constitute the ordinary hours of work on any Friday.

(4) The ordinary hours of work shall be consecutive except for an unpaid meal break of 30 minutes.

(5) The ordinary hours of work for employees engaged on day work shall be rostered between 6.00am and 6.00pm or be paid at overtime rates if outside of that spread.

(6) Provided that the provisions of subclauses (2), (3) and (5) may be varied by Agreement between the Company and the majority of employees in the work section or sections concerned.

(7) An employee shall not be required to work for more than five hours without a break for a meal, provided that by agreement between the Company and the majority of employees in the section concerned, employees may be required to work in excess of five hours, but not more than six hours, at ordinary rates of pay, without a meal break.

(8) The scheduling of meal breaks shall be determined by the provisions of this Clause and operational requirements.

(9) Where a meal break is delayed past the limits established in subclause (7), a double time penalty shall be applied to all ordinary time worked after the limit, until a meal break can be taken.

(10) The Company shall allow each employee a paid work break of 15 minutes each day at a time determined by operational requirements.

14.—OVERTIME

(1) All work performed outside of the ordinary hours of work shall be paid at the following penalty rates:

- (a) time and one half for the first two hours and double time thereafter, Monday to Friday and on Saturday prior to 12 noon;
- (b) double time after 12 noon on Saturday and all day Sunday;
- (c) double time and one half on Public Holidays other than Christmas Day and Labour Day; and
- (d) treble time on Christmas Day and Labour Day.

(2) Overtime worked after midnight but continuous with overtime on the previous day, shall be deemed to have been worked on the previous day.

(3) Subject to operational requirements, employees may be allowed a day off in lieu of payment of the first eight hours worked on a Public Holiday, and at a time agreed with the Company.

(4) Where an employee returns to work after having left work for the day, at or after the expiration of ordinary hours, he or she shall be paid a minimum of 4 hours at appropriate overtime rates on each occasion, but not more than once in respect of any period of time. An employee shall not be obliged to work longer than it takes to complete the work for which the employee was recalled.

(5) The provisions of subclause (4) do not apply to pre notified pre start overtime continuous with the commencement of ordinary hours of work.

(6) An employee required to hold himself or herself in readiness for a call to return to work shall be paid 3 hours at ordinary wages for each day so required Monday to Friday, and 4 hours on a Saturday or Sunday, in addition to any other payments due under this Agreement. An employee required to hold himself or herself in readiness on a Public Holiday shall also receive a day off without loss of pay for ordinary hours of work.

(7) Excepting time worked on a call out as described in subclause (4), but subject to subclause (8) of this Clause, a worker who does not have a break of 10 hours between work of successive days shall be allowed such a break without loss of pay for rostered ordinary hours or be paid at overtime rates until such a break is taken.

(8) Where time worked on a call out by an employee who is designated as being "on call" is performed after midnight, the employee may commence his or her ordinary hours of work later than the rostered commencing time without loss of pay for ordinary hours of work. The duration of the delayed start shall equal the hours worked after midnight on the subject call out, but in any event shall be a minimum of 2 hours.

(9) Time worked in excess of the ordinary hours shall be paid at ordinary time rates if it is due to private arrangements between the employees concerned.

(10) When working overtime, each employee shall have a 20 minute crib time after each 4 hours of overtime, if work is to continue beyond the 4 hours. When overtime of more than 1.5 hours commences at the end of an employee's ordinary hours of work, the employee shall have a 20 minute meal break at ordinary time.

(11) A meal allowance of \$7.00 shall be paid on each occasion an employee becomes entitled to crib time.

(12) Travel time shall be included as hours worked for the purpose of calculating the duration of a call out.

15.—WAGES

(1) (a) The weekly wage payable to employees, other than apprentices, shall be those specified for the appropriate classification, as detailed below.

CLASSIFICATION	WEEKLY WAGE
C6	645.77
C7	594.11
C8	568.28
C9	542.45
C10	516.62
C11A	511.45
C11	490.79
C12	464.96
DC6	697.43
DC7	671.60
DC8	645.77
DC9	619.94
DC10	594.11

(b) The classifications are defined in Appendix I.

(2) The weekly wage prescribed by subclause (1) shall be increased as follows:

- (a) by 4% from the beginning of the first pay period commencing on or after 1 July 1996;
- (b) by 4% from the beginning of the first pay period commencing on or after 1 January 1997; and
- (c) by 2% from the beginning of the first pay period commencing on or after 1 July 1997.

(3) The all purpose hourly rate shall be one thirty eighth of the all purpose weekly rate as defined by subclause (4).

(4) The all purpose weekly rate shall consist of the appropriate weekly rate as contained in subclause (1) together with those allowances designated as all purpose in this Clause.

(5) In addition to the rates contained in subclause (1), an employee shall receive an all purpose experience allowance of \$30.00 per week payable after one year of service in the Water Industry.

(6) Progression from one Water Industry Engineering Trades Employee level to the next shall be contingent upon such additional skills being required to be performed by the employee, the related level of technology being in operation, such a move promoting and maintaining the cost efficiency and effectiveness of the work area, and the individual having demonstrated capability and such pre-requisites and minimum training as prescribed in Appendix I—Classification Structure and Definitions.

(7) In addition to the rates prescribed in subclause (1), an employee on successful completion of the first half (Stage 2B) of the instrument/electrical cross trade TAFE training shall be paid an all purpose allowance of \$15.00 per week. Payment of this allowance is subject to satisfactory progression in instrument / electrical cross trade training and ceases upon appointment to the DC structure prescribed in Appendix I—Classification Structure and Definitions.

(8) Apprentices

The weekly wage rate shall be a percentage, as hereunder, of the Water Industry Tradesperson Level C10:

(a) Five year term	%
First year	40
Second year	48
Third year	55
Fourth year	75
Fifth year	88

(b) Four year term	%
First year	42
Second year	55
Third year	75
Fourth year	88
(c) Three and a half year term	
First six months	42
Next year	55
Next following year	75
Final year	88

(9) Tool Allowance

(a) Where the Company does not provide a tradesperson or an apprentice with the tools ordinarily required by that tradesperson or apprentice in the performance of work as a tradesperson or as an apprentice the employer shall pay a tool allowance of:

- (i) \$9.20 per week to such tradesperson; or
- (ii) in the case of an apprentice a percentage of \$9.20 being the percentage which appears against the year of apprenticeship in subclause (7) of this clause.

(b) The allowances prescribed by this subclause are all purpose.

(c) The Company shall provide for the use of tradespersons or apprentices all necessary power tools, special purpose tools and precision measuring instruments.

(d) A tradesperson or apprentice shall replace or pay for any tools supplied by the employer, if lost through negligence of the employee.

(10) Leading Hands

(a) An employee placed in charge of:

- (i) three and not more than ten other employees shall be paid \$16.60 per week extra;
- (ii) more than 10 and not more than 20 other employees shall be paid \$25.40 per week extra; and
- (iii) more than 20 other employees shall be paid \$32.80 per week extra.

(b) The allowances prescribed by this subclause are all purpose.

(11) No new classification shall be introduced into this Agreement during its currency unless the parties agree.

16.—SPECIAL RATES AND PROVISIONS

(1) Offensive Allowance

(a) An allowance of \$5.00 per day shall be paid to each employee who comes into contact with filth during the operation of cleaning out septic tanks, sand pits, ripple chambers, suction chambers of sewerage pumping stations or in deragging of sewerage pumps.

(b) An employee employed on offensive work in connection with working in or about old sewers or working in ground where fumes arise from decomposed material or from any other cause shall be paid an allowance of 25% of his / her ordinary time rate.

(2) Dirt Allowance

An amount of 33 cents per hour extra shall be paid to an employee when engaged on work which it is agreed is of an unusually dirty nature.

(3) Confined Space Allowance

An employee working in a compartment, space or place the dimensions of which necessitate working in an unusually stooped or otherwise cramped position or without proper ventilation shall be paid an allowance of 41 cents per hour whilst so engaged.

(4) Hotwork Allowance

An employee who works in a place where the temperature has been raised by artificial means to between 46°C and 54°C shall be paid 33 cents per hour or part thereof, and to more than 54°C—39 cents per hour or part thereof, in addition to any other amount prescribed for such employee elsewhere in

this Agreement. Where such work continues for more than 2 hours the employee shall be entitled to 20 minutes rest after every 2 hours work without loss of pay, not including the special rate provided by this subclause.

(5) Height Allowance

An employee shall be paid an allowance of 30 cents per hour in addition to his / her ordinary rate on which he / she works at a height of 9 metres or more above the nearest horizontal plane.

(6) Driver's Licenses

Initial issue or additional classifications of drivers licenses required by the Company shall be paid for by the employer. In addition the employer shall allow the employee sufficient time off with pay to take the requisite test.

(7) Fumes Allowance

An employee required to work in a place where fumes of sulphur or acids or other offensive fumes are present shall be paid an allowance of 30 cents for each hour worked.

(8) Steam or Water Cleaning Allowance

An employee using a steam or water cleaning unit shall be paid an allowance of 33 cents per hour whilst so engaged.

(9) Wet Places

- (a) An employee who is required to work in a wet place or during wet weather shall be provided with rubber boots and adequate waterproof clothing, including waterproof head covering so as to protect the employee from getting wet. Such waterproof clothing and rubber boots shall be replaced as required, subject to fair wear and tear in the service of the employer.
- (b) An employee working in a wet place shall be paid an allowance of \$1.54 per day in addition to his/her ordinary rate, irrespective of the time worked unless his/her classification expressly includes an allowance for wet pay.
- (c) A place shall be deemed to be wet when it is agreed that water (other than rain) is continually dropping from overhead to such an extent that it would saturate the clothing of an employee if he/she were not provided with waterproof clothing or when the water in the place where the employee is standing is over 2.5 cm deep.
- (d) Where the Company directs work to continue during rain, if the Company supplies adequate protective clothing to the employee, the Company may require him/her to continue working. For such work the employee shall be paid an allowance of 25% of his/her ordinary rate.

(10) Spray Application

An employee engaged on any spray applications carried out in other than a properly constructed booth approved by Worksafe shall be paid 33 cents per hour or part thereof in addition to the rates otherwise prescribed in this Agreement.

(11) Handling Lime Cement or Flyash

An employee involved in the handling of dry cement, lime or flyash shall be paid \$1.74 per day.

(12) Hot Bitumen

- (a) An employee handling hot bitumen or asphalt or dipping materials in creosote shall be paid 41 cents per hour extra.
- (b) An employee shall be provided with gloves and overalls and with oil or other solvents suitable for the removal of the above materials.

(13) Pesticides and Toxic Substances

- (a) An employee required to use pesticides or toxic substances shall be informed by the Company of any known health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.
- (b) An employee using such materials shall be provided with and shall use all safeguards, including clothing and equipment, as are required. The employee shall be instructed in the proper use of such safeguards.

- (c) An employee required to wear protective clothing or equipment for the purposes of this subclause shall be paid 41 cents per hour or part thereof if the employee suffers discomfort or inconvenience while wearing it. Any dispute as to the application of this paragraph shall be resolved using the provisions of Clause 37.

(14) Asbestos

- (a) An employee using materials containing asbestos or working in close proximity to any employee using such material shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority.
- (b) Where such safeguards include the mandatory wearing of protective equipment (ie combination overalls and breathing equipment of similar apparatus), any such employee shall be paid 42 cents per hour extra whilst so engaged.

(15) First Aid Allowance

An employee who is a qualified first aid attendant, and is appointed by the Company to carry out first aid duties in addition to normal duties shall be paid an additional rate of \$1.28 per day.

(16) Construction Work Allowance

Subject to the provisions of this clause, an employee specified in this clause shall be paid a flat allowance of \$3.47 per day to compensate for loss of amenities when actually engaged on work outside of the confines of the permanent work location or temporary work location.

(17) Closet Cleaning Allowance

- (a) All employees called upon to clean closets, connected with septic tanks or sewerage shall receive an allowance of 41 cents per closet per week.
- (b) For the purposes of this subclause, 1 metre of urinal shall count as one closet and three urinal stalls shall count as one closet.
- (c) All such employees shall be supplied with rubber gloves on request.

(18) The work of an electrical fitter shall not be tested by an employee of a lower grade.

(19) Electrical License Allowance

An Electronic Tradesperson, an Electrician—Special Class, an Electrical Fitter and/or an Armature Winder or an Electrical Installer who holds and in the course of employment may be required to use a current 'A' grade or 'B' grade licence issued pursuant to the relevant Regulation in force on the 28th day of February 1978 under the Electricity Act, 1948 shall be paid an allowance of \$13.20 per week. Provided that an employee appointed to the DC classification structure as contained in Clause 16—Wages of this Agreement shall not receive this allowance as the wage rate contained in the DC classification structure includes a component for this allowance.

(20) Special Rates not Cumulative

Where more than one of the disabilities entitling an employee to extra rates exists on the same job, the Company shall be bound to pay only one rate, namely the highest for the disabilities so prevailing. Provided further that this subclause shall not apply to confined space, dirt money, height money, hot work, wet work, first aid allowance or construction work allowance, the rates for which are cumulative.

(21) Special Disability not Otherwise Provided for in this Award

Where a Union claims the existence of a special disability not otherwise provided for in this Agreement, the Company and the Union shall confer with a view to agreeing upon an appropriate special rate. In the event of agreement not being reached the matter may be referred to the Western Australian Industrial Relations Commission.

17.—TRAVELLING TIME AND TRAVEL ALLOWANCES

(1) Except as provided by this Clause, employees shall start work at a depot, workshop or other location nominated by the Company at the time of engagement as the employee's permanent work location.

(2) An employee shall start and cease work at the permanent work location at the usual commencing and finishing times.

(3) The Company may require an employee to start and cease work at a temporary work location at the usual commencing and finishing times, provided any excess travelling time shall be paid at ordinary wages.

(4) Where an employee is required to start and cease work at a temporary work location, the employee shall be:

- (a) provided with a home garaged vehicle for the duration of the assignment to the temporary work location; or
- (b) paid the kilometre allowance contained in Sub Clause (6).

(5) Employees who are required to transport other employees and/or materials are performing work.

(6) Where an employee is required to use his or her own vehicle for business purposes he or she shall be paid an allowance as per the following table:

Area and Details Rates per kilometre (Cents)	Engine Displacement (in Cubic Centimetres)		
	Over 2600cc	Over 1600cc - 2600cc	1600cc & under
Metropolitan Area	51.6	46.2	40.2
South West Land Division North of 23.5° South Latitude	52.8	47.4	41.2
Rest of the State	58.0	52.2	45.4
Motor Cycle (in all areas)	54.6	48.9	42.5
	17.8 cents per kilometre		

18.—SUPERANNUATION

(1) The Company shall contribute, to the C+Bus Superannuation Fund on behalf of each employee, an amount equal to that demanded by the Superannuation Guarantee (Administration) Act.

(2) The Company shall pay to the C+Bus Superannuation Fund the cost of providing the following additional benefits to each employee:

- (a) \$250,000 death or permanent disability cover;
- (b) salary continuance of up to 75% of the weekly wage for up to 2 years; and
- (c) the ability for employees to make periodic and / or regular contributions.

(3) The additional benefits provided by the C+Bus Superannuation Fund detailed in subclause (2) above must be provided under one instrument at competitive cost.

19.—JOURNEY COVER

(1) The Company shall pay for the cost of the premium for each employee who takes out a Journey Cover Insurance Policy through Hammond Insurance Broking or another policy of like benefit and cost.

(2) The Company's involvement in the provision of Journey Cover shall be confined to the reimbursement of insurance policy premiums.

20.—ANNUAL LEAVE

(1) An employee shall be entitled to 152 hours Annual Leave without loss of wages for ordinary hours of work after 12 months continuous service.

(2) If any public holiday falls within an employee's period of Annual Leave and is observed on a day which for that employee would have been an ordinary working day, there shall be added to that period one day, being an ordinary working day, for each such holiday observed as aforesaid.

(3) Annual Leave shall accrue at the rate of 2.923 hours for each completed week of Service.

(4) Annual Leave may be taken at a time agreed between the employee and the Company, recognising operational requirements and the employee's personnel needs, but no later than twelve months from the date it falls due.

(5) Annual Leave may be taken in more than one period, but at least one period shall be two weeks.

(6) Annual Leave may be taken in advance but, should the employee leave prior to the accrual of the full period of leave so taken, the value of the unaccrued portion shall be refunded to the Company by the employee.

(7) Continuous service shall include any period of approved paid or unpaid leave, unless the company and the employee agree in writing to the contrary.

(8) An employee shall receive a loading of 17.5% on his ordinary time wages for any period of leave taken. The loading shall also be applied to any period of accrued leave paid out on termination, other than leave accrued from an incomplete 12 month period of service. Provided that employees who have applied for Annual Leave in accordance with the existing roster system, and have had such leave application refused, shall be entitled to the loading on the leave so refused on termination.

21.—SICK LEAVE

(1) An employee shall be entitled to payment for non-attendance during ordinary hours of work on the grounds of personal ill health or injury for up to 76 hours for each year of Service, accruable at the rate of 6.33 hours for each completed month of Service.

(2) Unused Sick Leave from any year of Service shall be available to the employee in the subsequent years of service.

(3) The employee shall be required to furnish proof satisfactory to the Company, but a medical certificate may not be demanded for absences of less than 3 consecutive days, unless the total of such absences exceeds 5 in any year of service.

(4) A worker falling sick during a period of Annual Leave may apply for Sick Leave to be paid in lieu and the substituted Annual Leave recredited to the employee's Annual Leave accrual.

22.—LONG SERVICE LEAVE

The provisions of the Long Service Leave Act 1958 and the Construction Industry Portable Paid Long Service Leave Act 1985 are hereby incorporated in and shall be deemed part of this Agreement.

23.—PUBLIC HOLIDAYS

The following days, or days observed in lieu, shall be observed as holidays without deduction of pay:

- (a) New Years Day;
- (b) Australia Day;
- (c) Labour Day;
- (d) Good Friday;
- (e) Easter Monday;
- (f) Anzac Day;
- (g) Foundation Day;
- (h) Queens Birthday;
- (i) Christmas Day; and
- (j) Boxing Day.

(2) The Parties may agree to substitute another day in lieu of any of those mentioned subclause (1).

(3) Where any of the days mentioned in subclause (1) falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday, or when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday.

(4) Where any of the days mentioned in subclause (1) falls on a Rostered Day Off, the Rostered Day Off shall be observed on the next ordinary working day.

(5) Where any of the days mentioned in subclause (1) falls during an employees Annual Leave, the employee shall, for each such day, be allowed a days leave with pay to be taken immediately after completion of that period of Annual Leave.

24.—PARENTAL LEAVE

Employees shall be entitled to Maternity, Parental and Adoption Leave as detailed in Appendix III.

25.—FAMILY LEAVE

(1) Use of Sick Leave

- (a) An employee with responsibilities in relation to either member of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any Sick Leave accrued under this Agreement for absences to provide care and support for such persons when they are ill.
- (b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.
- (c) The entitlement to use Sick Leave in accordance with this subclause is subject to:
 - (i) the employee being responsible for the care of the person concerned; and
 - (ii) the person concerned being either:
 - (aa) a member of the employee's immediate family; or
 - (bb) a member of the employee's household.
 - (iii) the term "immediate family" includes:
 - (aa) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee. A de facto spouse, in relation to a person, means a person of the opposite sex to the first mentioned person who lives with the first mentioned person as the husband or wife of that person on a bona fide domestic basis although not legally married to that person, and
 - (bb) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the employee or spouse of the employee.
- (b) The employee shall, wherever practicable, give the Company notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the Company by telephone of such absence at the first opportunity on the day of absence.

(2) Use of Unpaid Leave

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

(3) Use of Annual Leave

- (a) Notwithstanding the provision of this Clause, an employee may elect, with the consent of the Company, to take Annual Leave not exceeding five days in any calendar year at a time, or times, agreed between them.
- (b) Access to Annual Leave, as prescribed in paragraph (a) above, shall be exclusive of any shutdown period provided for elsewhere under this Agreement.

26.—BEREAVEMENT LEAVE

(1) An employee shall, on the death within Australia of a wife, husband, de facto wife or de facto husband, father, father-in-law, mother, mother-in-law, sister, brother, child or step-child, be entitled on notice, to leave up to and including the day of the funeral of such relation and such leave shall be without deduction of pay for a period not exceeding the number of hours worked by the employee in two ordinary working days.

(2) Proof of such death shall be furnished by the employee to the satisfaction of the Company.

(3) Provided that payment in respect of Bereavement Leave shall be made only where the employee otherwise would have been on duty.

27.—DEFENCE FORCE TRAINING LEAVE

(1) Leave of absence may be granted to an employee who is a member of the reserve defence forces or cadet force and who is required to attend a camp of continuous obligatory training or other obligatory training course.

(2) Obligatory training camps or course may include attendance to a maximum of 4 days on advance and rear parties where the Officer in Charge of the subject unit certifies in writing that the employee's presence is essential.

(3) Employees granted leave under subclause (1) and (2) shall be entitled to make up pay being the difference between the employee's ordinary wages and that received from the relevant defence force, where the defence force pay is less than the ordinary pay for the rostered ordinary hours of work.

(4) The employee shall claim the difference in writing, supporting the claim with a statement of earnings for the relevant period for the defence force unit.

(6) Applications for leave to attend other camps or courses shall be subject to operational requirements and be on a leave without pay basis.

28.—JURY SERVICE

(1) An employee required to attend for jury service during ordinary working hours shall be allowed to attend without deduction of ordinary wages.

(2) The employee shall make application for such leave with pay to the employer as soon as possible supported by the Summons to Serve.

(3) The application will be granted on the condition that the employee must return to duty as expeditiously as possible on discharge from jury service.

(4) The employee shall give the employer proof of attendance, and the duration of such attendance.

(5) The leave shall be paid leave provided the employee seeks to obtain reimbursement from the court and assigns any attendance fees received to the Company.

29.—TRADE UNION TRAINING LEAVE

(1) Employees shall be entitled to claim up to five days paid leave without deduction of ordinary wages for ordinary hours of work for employees to attend properly organised courses conducted by a union party to this Agreement or the Australian Trade Union Training Authority. Up to ten days may be granted in one calendar year provided the total leave for that and the subsequent year does not exceed ten days.

(2) The above entitlement shall also be granted to attend other seminars or courses supported by the Union and agreed with the Company.

(3) The granting of leave pursuant to this Clause shall be subject to the leave not unduly affecting the operations of the Company.

(4) Applications for such leave must be supported by the relevant details of the course or seminar.

30.—CLOTHING AND PROTECTIVE EQUIPMENT

(1) The entitlements and practices with respect to the supply of clothing that are currently in force in the Mechanical and Electrical Maintenance Department of the Waste Water and Groundwater Division, will continue for those employees transferring to the Company from the Water Corporation.

The provisions of subclauses (2), (3) and (4) shall apply to other employees.

(2) Clothing Issue

Employees shall be supplied with clothing appropriate to the work performed. All work clothing is to be maintained in neat and presentable condition. The following initial issue of clothing will be made to all full time employees:

- (a) 6 Shirts (long & short sleeve)
- (b) 6 Trousers / shorts
- (c) 2 Windcheaters
- (d) 1 Jacket
- (e) Overalls as required by operational requirements

Thereafter, clothing will be replaced when required through fair wear and tear attributable to ordinary use in the service of the Company.

Casual employees will be supplied with clothing appropriate to the duration and nature of their employment.

(3) Protective Footwear

Two (2) pairs of protective footwear shall be initially supplied to each full time employee and thereafter shall be replaced as and when required through fair wear and tear attributable to ordinary use in the service of the Company.

Casual employees shall be provided with one pair of protective footwear.

(4) Water Proof Clothing

Suitable water proof overcoat and water proof pants, together with a pair of rubber boots, will be supplied to each full time employee and replaced by the Company on the basis of fair wear and tear.

Casual employees will be provided with Company stock which must be returned to the Company upon termination.

(5) Personal Protective Equipment (PPE)

Employees will be provided with suitable clothing to perform their work. Such protective clothing may include gloves, overalls, safety helmets, respirators and clothing for protection from welding such as aprons, leggings, boots and goggles.

(6) Clothing and Footwear to be Worn

- (a) Employees shall maintain all clothing and PPE in a clean and serviceable condition, fair wear and tear excepted.
- (b) Employees agree to wear PPE as reasonably directed.
- (c) Employees not wearing clothing issued by the Company shall ensure that such other clothing meets Occupational Safety and Health requirements.

(7) Laundering of Contaminated Work Clothing

All work clothing used by employees, which has become contaminated with sewage, will be laundered by the Company.

(8) Shower, Change Room and Locker Facilities

The Company will provide showers, change room and locker facilities for use by employees. Employees who come in contact with sewage will be entitled to a 20 minute paid shower break in their ordinary time at the conclusion of their shift.

(9) Electric Torches

An electric torch shall be made available to all employees required to work at night or in dark places. The torches remain the property of the Company and shall be returned after each shift.

(10) Where electric arc operators are working, screens or such other equipment that is suitable and sufficient for the purpose, shall be provided by the employer for protection of employees from flash.

31.—FIRST AID FACILITIES AND SERVICES

(1) One employee at each work location shall be qualified in first aid.

(2) An adequate first aid kit shall be provided and maintained by the Company at each work location.

(3) The name and the base location of the appointed first aid attendance shall be made known to the employees concerned.

32.—AMENITIES

(1) The Company shall provide reasonable site accommodation of a standard that will enable the employees to enjoy a clean, insect free atmosphere including the provision of heating or air conditioning as is necessary, suitable food storage space, hot water and pie warmer, and covered garbage bins.

(2) Each employee shall be allowed at least one square metre of floor space, adequate bench space and facilities for hanging clothes and PPE in each crib area.

33.—POSTING AND EXPLANATION OF AGREEMENT

(1) An up to date copy of this Agreement shall be given to each employee on or before the first day of engagement.

(2) A introduction to the contents of this Agreement shall form part of the Company's induction program.

(3) An up to date copy of this Agreement shall be kept in a place accessible to all employees.

34.—POSTING OF NOTICES

(1) The Company shall allow Unions party to this Agreement to post Union notices at Company work locations.

(2) A suitable place for the posting of Union notices shall be maintained by the Company in reasonable condition at each work location.

35.—RELATIONSHIP AND RIGHTS OF THE PARTIES

(1) The Company shall confer with the Unions party to this Agreement on matters affecting their members and this Agreement.

(2) The Company shall recognise any duly accredited employee as a Union Representative on matters affecting the Company and its employees.

(3) On notifying the Company, an Officer of a Union party to this Agreement shall have the right to visit the job at any time when work is being carried out to interview employees covered by this Agreement, provided that it does not unduly interfere with the work in progress.

(4) The Company shall grant paid leave to an employee who is required by his or her Union to attend union business provided that:

- (a) the leave is granted on the basis of without loss of pay for ordinary hours of work;
- (b) the operation of the business is not unduly affected;
- (c) the union business is directly related to the operations of the Company; and
- (d) the application for leave is supported by the relevant Union.

36.—GRIEVANCE AND DISPUTE SETTLING PROCEDURE

(1) Where a question, dispute or difficulty arises, the matter shall initially be discussed between the employee concerned and, if that employee so desires, his/her union delegate and the employee's immediate Supervisor.

(2) If the issue is not resolved by those discussions, or any agreed subsequent activity, the issue shall be referred to the Maintenance Manager.

(3) If the issue is still not resolved after referral to the Maintenance Manager and completion of any agreed subsequent activity, then the issue shall be referred to the Company's General Manager.

(4) Referral to the General Manager shall be made no later than 7 days after the issue was raised unless the Company, Employee and/or the Union otherwise agree.

(5) Any party may refer any unresolved issue from this process to the Western Australian Industrial Relations Commission at any stage.

(6) The employee and / or shop steward who raised an issue and his or her immediate Supervisor shall be kept closely informed of the progress of that issue.

(7) The employee may require the presence of a Union or other representative at any stage of discussion of the issue.

(8) Safety issues shall be resolved by reference to a specific and separate Safety Issue Resolution Procedure.

(9) The provisions of this Clause shall apply equally to disputes of a collective nature.

37.—INTRODUCTION OF CHANGE

(1) Employer's Duty to Notify

(a) Where the Company has made a definite decision to introduce major changes in production, program, organisation, structure or technology that are likely to have significant effects on employees, the Company shall notify the employees in writing who may be affected by the proposed changes as well as their Union or Unions.

(b) "Significant effects" include termination of employment; major changes in the composition, operation or size of the company's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work or locations and restructuring of jobs.

- (c) Provided that where the Agreement makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

(2) Employer’s Duty to Discuss Change

- (a) The Company shall discuss with the employees affected and their Union or Unions, inter alia, the introduction of the changes referred to in subclause (1) hereof; the effects the changes are likely to have on employees; measures to avert or mitigate the adverse effects of such changes on employees; and shall give prompt consideration to matters raised by the employees and / or their unions in relation to the changes.
- (b) The discussions shall commence as early as practicable after a firm decision has been made by the Company to make the changes referred to in subclause (1) hereof.
- (c) For the purposes of such discussion, the Company shall provide to the employees concerned and their union or unions, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that the Company shall not be required to disclose confidential information the disclosure of which would be detrimental to its interests.

38.—CONSULTATION PROCESS

- (1) The primary vehicle for employee involvement in the operations of the Company shall be via the Continuous Improvement Process, and the structures and procedures established to support that Process.
- (2) The Safety Management Plan shall also provide structures for the involvement of employees and Safety representatives in the management of occupational safety and health.
- (3) In order to provide a structure for the review of Continuous Improvement, Safety Management Structures and other activities a Consultative Committee (the Committee) shall be established.
- (4) The Committee shall:
 - (a) monitor the implementation of this Agreement, the Continuous Improvement Plan and the Safety Management Plan;
 - (b) assist in the development of trust and teamwork within the Company;
 - (c) assist in the creation of a work environment that is conducive to continuous improvement, employee involvement and job satisfaction and is supportive of the aims of the Company;
 - (d) assist in the development and monitoring of Key Performance Indicators; and
 - (e) communicate its activities to the workforce.
- (5) The Committee shall consist of:
 - (a) an elected representative from each of the depots, being Beenyup, Subiaco, Bore Test, Kelmscott and Woodman Point;
 - (b) A supervisor from each of the depots; and
 - (c) the Maintenance Manager or his deputy.
- (6) Committee members may invite representatives of other Service Company management and unions party to this Agreement to attend meetings.
- (7) The Committee members shall agree amongst themselves as to the form and conduct of Committee meetings provided that the Service Company shall provide the necessary administrative support.
- (8) A chairperson shall be elected at the first meeting of the Committee, and thereafter in such manner as the Committee agrees.
- (9) The Committee shall meet quarterly, or at such other times as the Committee determines.

39.—SIGNATORIES TO THE AGREEMENT

Signed for and on behalf of Dawson-AOC Water Services Pty Ltd.

Signed Date: Signed
(M WARNER)

Signed for and on behalf of the Automotive, Foods, Metals, Engineering, Printing and Kindred Industries Union, Western Australian Branch.

Signed Date: Signed
()

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers Union, Western Australian Branch.

Signed Date: Signed
()

Signed for and on behalf of the Communications, Electrical, Electronics, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch

Signed Date: Signed
()

APPENDIX I—CLASSIFICATION STRUCTURE AND DEFINITIONS

(1) Classification Structure—

Level	Classification Title	Minimum Training Requirement
C5	Water Industry Engineering Tradesperson	Advanced Certificate or 15 appropriate accredited modules of an Associate Diploma, or formal equivalent.
C6	Water Industry Engineering Tradesperson	12 appropriate accredited modules of an Advanced Certificate or Associate Diploma, or formal equivalent
C7	Water Industry Engineering Tradesperson	9 appropriate training modules in addition to the training requirements for C10
C8	Water Industry Engineering Tradesperson	6 appropriate accredited technical modules in addition to the training requirements for C10
C9	Water Industry Engineering Tradesperson	Trades Certificate or Tradesperson’s Rights Certificate
C10	Water Industry Engineering tradesperson	Trades Certificate or Tradesperson’s Rights Certificate
C11A	Water Industry Engineering Employee	16 appropriate accredited modules and relevant on the job training.
C11	Water Industry Engineering Employee	16 appropriate accredited modules and relevant on the job training
C12	Water Industry Engineering Employee	8 appropriate accredited modules and relevant on the job training
C13	Water Industry Engineering Employee	Up to 38 hours induction training and up to 3 months structured training

The definitions for levels DC10-DC5 inclusive are as for the C structure as listed above except that, in addition,

employees appointed to the DC structure are required to hold the appropriate cross of dual trained instrument/electrical fitting trades certificate. Minimum training requirements for levels DC10-DC5 inclusive are described by the corresponding number of appropriate technical training modules in addition to the training requirements for DC10.

(2) **Definitions—**

Water Industry Engineering Employee

Level C13

(Relativity to C10—82%)

A Water Industry Engineering Employee who exercises skills relevant to the specific requirements of the enterprise, and who is—

- (a) Undertaking or has undertaken up to 38 hours training which may include information on the enterprise, conditions of employment, introduction to supervisors and fellow employees, training and career path opportunities, plant layout, work and documentation procedures, occupational health and safety, equal employment opportunity and quality control/assurance; and up to three months structured training so as to enable the employee to perform work within the scope of this level; and to the level of his/her training—
- (b) Works under direct supervision either individually or in a team environment;
- (c) Understands and undertakes basic quality control/assurance procedures including the ability to recognise basic deviations/faults;
- (d) Understands and utilises basic statistical process control procedures;

Indicative of the tasks which an employee at this level may perform are the following:

- Repetition work on automatic, semi-automatic or single purpose machines or equipment;
- Assembles components using basic written, spoken and/or diagrammatic instructions in an assembly environment;
- Basic soldering or butt and spot welding skills or cuts scrap with oxyacetylene blow pipe;
- Uses selected hand tools;
- Boiler cleaning;
- Maintains simple records;
- Uses hand trolleys and pallet trucks;
- Assists in the provision of on-the-job training in conjunction with tradespersons and supervisor/trainees.

Level C12

(Relativity to C10—90.0%)

A Water Industry Engineering Employee who exercises skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C13, and whose job description requires—

- (a) Satisfactory completion of a minimum of eight accredited training modules and complemented such training with relevant on-the-job skill application to the appropriate level of competence as defined in the training programme; and to the level of his/her training—
- (b) Is responsible for the quality of his/her own work subject to routine supervision;
- (c) Works under routine supervision either individually or in a team environment;
- (d) Exercises discretion within his/her level of skills and training.

Indicative of the tasks which an employee at this level may perform are the following:

Receiving, dispatching, sorting, checking, packing, documenting and recording of goods, materials and components;

- Basic inventory control in the context of a production process;
- Basic keyboard skills;

- Advanced soldering techniques;
- Operation of mobile equipment including forklifts, overhead cranes and winch operation;
- Ability to measure accurately;
- Assist one or more Tradesperson;

Level C11

(Relativity to C10—95.0%)

A Water Industry Engineering Employee who exercises skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C12, and whose job description requires—

- (a) Satisfactory completion of a minimum of 16 accredited training modules and complemented such training with relevant on-the-job skill application to the appropriate level of competence as defined in the training programme; and to the level of his/her training—
- (b) Works from complex instructions and procedures;
- (c) Assists in the provision of on-the-job training to a limited degree;
- (d) Co-ordinates work in a team environment or works individually under general supervision;
- (e) Is responsible for assuring the quality of his/her own work.

Indicative of the tasks which an employee at this level may perform are the following—

- Uses precision measuring instruments;
- Machine setting, loading, and operation;
- Rigging (certificated);
- Inventory and store control including—
Licensed operation of all appropriate materials handling equipment;
Use of tools and equipment within the scope (basic non-trades) maintenance;
Computer operation at a level higher than that of an employee at C12 level;
- Intermediate keyboard skills;
- Basic engineering and fault finding skills;
- Performs basic quality checks on the work of others;
- Licensed and certified for forklift, engine driving and crane driving operations to a level higher than C12;
- Has a knowledge of the employer's operation as it relates to production process;
- Lubrication of production machinery equipment;

Level C11A

(Relativity 99%)

An employee who is employed as a Water Industry Engineering Employee who exercises skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C11, and whose job description requires that employee to:

- (a) perform the duties of a crane driver allocated to the Bore Maintenance Crew; or
- (b) perform the duties of a storesperson operating a general, spare parts and tool store.

Level C10

(Relativity 100%)

An employee who is employed as a Water Industry Engineering Tradesperson and holds a Trade Certificate or Tradesperson's Rights Certificate in a relevant trade stream as a—

- (a) Water Industry Engineering Tradesperson (electrical/electronic); or
- (b) Water Industry Engineering Tradesperson (mechanical); or
- (c) Water Industry Engineering Tradesperson (fabrication);

and is able to exercise competently the skills and knowledge of that trade using any non-trade skills which facilitates the completion of the whole task whilst not promoting deskilling.

A Water Industry Engineering Tradesperson exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of an employee at C11, and to the level of his/her training—

- (a) Understands and applies quality control techniques;
- (b) Exercises good interpersonal and communications skills;
- (c) Exercises keyboard skills at a level higher than C11;
- (d) Exercises discretion within the scope of this grade;
- (e) Performs work under limited supervision either individually or in a team environment;
- (f) Operates all lifting equipment incidental to his/her work;
- (g) Performs non-trade tasks incidental to his/her work;
- (h) Able to inspect products and/or materials for conformity with established operational standards.

Level C9

(Relativity to C10—105%)

A Water Industry Engineering Tradesperson is a—

- (a) Water Industry Engineering Tradesperson (electrical/electronic); or
- (b) Water Industry Engineering Tradesperson (mechanical); or
- (c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C10 tradesperson, and whose job description requires—

- (a) Satisfactory completion of a minimum of three accredited technical training modules in addition to the training requirements of C10, and complemented such training with relevant on-the-job skill application to the appropriate level of competence as defined in the training programme; and to the level of his/her training
- (b) Exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards which will apply to this Enterprise Bargaining Agreement;
- (c) Exercises discretion within the scope of this grade;
- (d) Works under general supervision either individually or in a team environment;
- (e) Understands and implements quality control techniques;
- (f) Provide trade guidance and assistance as part of a work team;

Exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Water Industry Metal Tradesperson C10.

Tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular tasks.

Level C8

(Relativity to C10—110%)

A Water Industry Engineering Tradesperson is a—

- (a) Water Industry Engineering Tradesperson (electrical/electronic); or
- (b) Water Industry Engineering Tradesperson (mechanical); or
- (c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C9 tradesperson, and whose job description requires—

- (a) Satisfactory completion of a minimum of six accredited technical training modules in addition to the training requirements of C10, and complemented such training with relevant on-the-job skill application to the appropriate level of competence as

defined in the training programme; and to the level of his/her training—

- (b) Exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards which will apply to this Enterprise Bargaining Agreement;
- (c) Provides trade guidance and assistance as part of a work team;
- (d) Assists in the provision of training in conjunction with supervisors and trainers;
- (e) Understands and implements quality control techniques;
- (f) Works under limited supervision either individually or in a team environment;
- (g) Exercises trade skills relevant to the specific requirements of the enterprise at a level higher than Water Industry Metal Tradesperson C9.

The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular tasks.

- Exercises high precision trade skills using various materials and/or specialised techniques;
- Performs operations on a CAD/CAM terminal in the performance of routine modifications to NC/CNC programs;
- Installs, repairs and maintains, tests, modifies, commissions and/or fault finds on complex machinery and equipment which utilises hydraulic and/or pneumatic principles and in the course of such work, is required to read and understand hydraulic and pneumatic circuitry which controls fluid power systems;
- Works on complex or intricate circuitry which involves examining, diagnosing and modifying systems comprising inter-connected circuits.

Level C7

(Relativity to C10—115%)

- (a) Water Industry Engineering Tradesperson (electrical/electronic);
- (b) Water Industry Engineering Tradesperson (mechanical); or
- (c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C8 tradesperson, and whose job description requires—

- (a) Satisfactory completion of a minimum of three appropriate training modules in addition to the requirements of C8; or
- (b) Satisfactory completion of nine appropriate modules towards an Advanced Certificate; or
- (c) Satisfactory completion of nine appropriate modules towards an Associate Diploma; and to the level of his/her training -
- (d) Exercises the skills attained through satisfactory completion of the training prescribed for this classification subject to the standards which will apply to this Enterprise Bargaining Agreement;
- (e) provides trade guidance and assistance as part of a work team;
- (f) provides training in conjunction with supervisors and trainers;
- (g) Understands and implements quality control techniques;
- (h) Works under limited supervision either individually or in a team environment;

The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular tasks.

- Works on machines or equipment which utilise complex mechanical, hydraulic and/or pneumatic circuitry and controls or a combination of hereof;

- Works on machinery or equipment which utilises complex electrical/electronic circuitry and controls;
- Works on instruments which make up a complex system which utilises some combination of electrical/electronic, mechanical or fluid power principles;
- applies advanced computer numerical control techniques in machining or cutting or welding or fabrication;
- Exercises intermediate CAD/CAM skills in the performance of routine modifications programs;
- Works on complex or intricate interconnected electrical circuits at a level above C8;
- Works on complex radio/communication equipment.

Level C6

(Relativity to C10—125%)

A Water Industry Engineering Tradesperson is a—

- (a) Water Industry Engineering Tradesperson (electrical/electronic); or
- (b) Water Industry Engineering Tradesperson (mechanical); or
- (c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirement of the enterprise, as described in a job descriptions, at a level above and beyond that of a C7 tradesperson, and whose job description requires—

- (a) Satisfactory completion of a minimum of—
 - 12 appropriate modules of an Advanced Certificate (yet to be determined); or
 - 12 appropriate modules of an Associated Diploma (yet to be determined); or
 - Equivalent accredited training; and to the level of his/her training—
- (b) Undertakes quality control and work organisation at a level higher than for C7;
- (c) Provides trade guidance and assistance as part of a work team;
- (d) Provides training in conjunction with supervisors and trainers;
- (e) Performs maintenance planning and predictive maintenance work not in technical fields;
- (f) Works under limited supervision either individually or in a team environment;
- (g) prepares reports of a technical nature on specific tasks or assignments as directed;
- (h) Exercises broad discretion within the scope of this level.

The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular tasks.

- Works on combinations of machines or equipment which utilise complex electronic, mechanical and fluid power principles;
- Works on instruments which make up a complex system which utilises some combination of electrical, electronic, mechanical, fluid power principles and electronic circuitry containing complex analogue and/or digital control systems utilising integrated circuitry;
- Applies computer integrated manufacturing techniques involving a higher level of compute operating and programming skills than for C7;
- Works on various forms of machinery and equipment which are electronically controlled by complex digital and/or analogue control systems using integrated circuitry.

Level C5

(Relativity to C10—130%)

A Water Industry Engineering Tradesperson is a—

- (a) Water Industry Engineering Tradesperson (electrical/electronic); or

- (b) Water Industry Engineering Tradesperson (mechanical); or
- (c) Water Industry Engineering Tradesperson (fabrication);

who exercises trade skills relevant to the specific requirements of the enterprise, as described in a job description, at a level above and beyond that of a C6 tradesperson, and whose job description requires—

- (a) Satisfactory completion of a minimum of—
 - An Advanced Certificate; or
 - 15 appropriate modules of an Associate Diploma (yet to be determined); or
 - Equivalent accredited training; and to the level of his/her training—
- (b) Provides technical guidance or advice within the scope of discretion at this level;
- (c) Prepares reports of a technical nature on specific tasks or assignment as directed or within the scope of discretion at this level;
- (d) Has an overall knowledge and understanding of the operating principle or the systems and equipment on which the tradesperson is required to carry out his/her task;
- (e) Assists in the provision of on-the-job training in conjunction with supervisors and trainers.

The following indicative tasks which an employee at this level may perform are subject to the employee having the appropriate trade and post-trade training to enable them to perform particular tasks.

- Through a systems approach able to exercise high level diagnostic skills on complex forms of machinery, equipment and instruments which utilise some combination of electrical, electronic, mechanical or fluid power principles;
- Set up, commission, maintain and operate sophisticated maintenance, production and test equipment and/or systems involving the application of computer operating skills at a higher level than a C6;
- Work on various forms of machinery and equipment electronically controlled by complex digital and/or analogue control systems using integrated circuitry.

Working on complex electronics or instruments or communications equipment or control systems which utilise electronic principles and electronic circuitry containing complex analogue and/or digital control systems using integrated circuitry.

APPENDIX II—HISTORICAL TRANSITIONAL ARRANGEMENTS

The following is a historical document that indicates the post method used to reclassify Water Corporation employees from various government awards into the current Water Corporation award.

(1) WIT Level C12

Engineering Trades (Government) Award 1967

Engineering Employee Level 2

Engineering Employee Level 3

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Employee Level 3

Government Water Supply (Kalgoorlie Pipeline) Award 1981

Engineering Employee Level 3

(2) WIT Level C11

Engineering Trades (Government) Award 1967

Engineering Employee Level 4 Group B

Engineering Employee Level 4 Group C

Engineering Employee Level 4 Group D

Engineering Trades (Government) Award 1967

Engineering Employee Level 4 Group A

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Employee Level 4 Group A

Government Water Supply (Kalgoorlie Pipeline) Award 1981
Engineering Employee Level 4 Group A

(3) WIT Level C10

Engineering Trades (Government) Award 1967
Engineering Tradesperson Level 1

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 1

Government Water Supply (Kalgoorlie Pipeline) Award 1981
Engineering Tradesperson Level 1

(4) WIT Level C9

Engineering Trades (Government) Award 1967
Engineering Tradesperson Level 2

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 2

Government Water Supply (Kalgoorlie Pipeline) Award 1981
Engineering Tradesperson Level 2

(5) WIT Level C8

Engineering Trades (Government) Award 1967
Engineering Tradesperson Level 3 Group A
Engineering Tradesperson Level 3 Group B

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 3 Group B

Engineering Tradesperson Level 3 Group C

Government Water Supply (Kalgoorlie Pipeline) Award 1981
Engineering Tradesperson Level 3 Group B

Engineering Tradesperson Level 3 Group C

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 3 Group A

Government Water Supply (Kalgoorlie Pipeline) Award 1981
Engineering Tradesperson Level 3 Group A

(6) WIT Level C6

Government Water Supply Sewerage and Drainage Employees Award 1981

Engineering Tradesperson Level 4 Group A

Engineering Tradesperson Level 4—Group B

Engineering Tradesperson Level 4—Group C

(7) For the purpose of adoption of the new DC classification structure, instrument / electrical classifications shall be aligned into the new levels as follows:

- (a) An employee on completion of the instrument / electrical cross trade training shall be appointed to the DC structure on one of the following bases:
 - i. Existing employees classified at C10, C9 or C8 following the reclassification process outlined in paragraph (5)(b) of Clause 43—Structural Efficiency, of this EBA shall be appointed to level DC8; or
 - ii. Existing employees classified at C7, C6 or C5 following the reclassification process outlined in paragraph (5)(b) of Clause 43—Structural Efficiency, of this EBA shall be appointed to level DC7, DC6 or DC5 respectively.
 - iii. Existing employees in either of the cases described in placitum (i) or (ii) above shall not be able to pursue a claim for reclassification as described in paragraph (5)(b) of Clause 43—Structural Efficiency, of this EBA on the basis of studies undertaken and / or skills attained as art of the instrument or electrical cross training indentureship.
- (b) An instrument / electrical fitting apprentice (dual trained) shall, on completion of his / her indenture be appointed at level DC10 if offered continuing employment with the Dawson-AOC Water Services Pty Ltd.

- (c) A new employee shall be appointed to the DC classification structure at a level commensurate with his / her skills and qualifications. A new employee holding trade qualifications in both instrument and electrical fitting (cross trained) shall be appointed at a level no lower than DC8.

APPENDIX III—PARENTAL LEAVE

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

PART A—MATERNITY LEAVE

(1) Nature of Leave

Maternity leave is unpaid leave.

(2) Definitions

For the purposes of Part A—Maternity Leave—

- (a) “Employee” includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (b) “Paternity Leave” means leave of the type provided for in Part B—Paternity Leave of this Appendix.
- (c) “Child” means a child of the employee under the age of one year.
- (d) “Spouse” includes a *de facto* or a former spouse.
- (e) “Continuous service” means service under an unbroken contract of employment and includes:
 - (i) any period of leave taken in accordance with this Appendix.
 - (ii) any period of part-time employment worked in accordance with this Appendix; or
 - (iii) any period of leave or absence authorised by the Company or by this Agreement.

(3) Eligibility for Maternity Leave

- (a) An employee who becomes pregnant, upon production to the Company of the certificate required by subclause (4) hereof, shall be entitled to a period of up to 52 weeks’ maternity leave provided that such leave shall not extend beyond the child’s first birthday.
- (b) This entitlement shall be reduced by any period of paternity leave taken by the employee’s spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave.
- (c) Subject to subclauses (6) and (9) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement, include a period of six weeks’ compulsory leave.
- (d) The employee must have had at least 12 months’ continuous service with the Company immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) the employee must produce to her employer

- (a) a certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement: and
- (b) a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with the contract of employment.

(5) Notice Requirements

- (a) An employee shall, not less than 10 weeks prior to the presumed date of confinement, produce to the Company the certificate referred to in paragraph (4)(a) hereof.
- (b) An employee shall give not less than four weeks’ notice in writing to the Company the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to her employer statutory declaration referred in paragraph (4)(b) hereof.

- (c) The Company, by not less than 14 days' notice in writing to the employee, may require her to commence maternity leave at any time within the six weeks immediately prior to her presumed date of confinement.
- (d) An employee shall not be in breach of this clause as a consequence of failure to give the stipulated period of notice in accordance with paragraph (b) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (6) Transfer to a Safe Job
- (a) Where, in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the Company deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
- (b) If the transfer to a safe job is not practicable, the employee may, or the Company may require the employee to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (10), (11), (12) and (13) hereof.
- (7) Variation of Period of Maternity Leave
- (a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (3) hereof
- (i) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened;
- (ii) the period may be further lengthened by agreement between the Company and employee.
- (b) The period of maternity leave may, with the consent of the Company, be shortened by the employee given not less than 14 days' notice in writing stating the period by which the leave is to be shortened.
- (8) Cancellation of Maternity Leave
- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of an employee terminates other than by the birth of a living child.
- (b) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Company which shall not exceed four weeks from the date of notice in writing by the employee to the employer that she desires to resume work.
- (9) Special Maternity Leave and Sick Leave
- (a) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by birth of a living child then
- (i) She shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work; or
- (ii) For illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (b) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take any paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under subclause (3) hereof.
- (c) For the purposes of subclause (10), (11) and (12) hereof, maternity leave shall include special maternity leave.
- (d) An employee returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (6) hereof, to the position she held immediately before such transfer.
- Where such position no longer exists but there are other positions available which the employee is qualified and the duties of which she is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.
- (10) Maternity Leave and Other Leave Entitlements
- (a) Provided the aggregate of any leave, including leave taken under this Part A—Maternity Leave, of this clause, does not exceed the period to which the employee is entitled under subclause (3) hereof, an employee may, in lieu of or in conjunction with Maternity Leave, take any Annual Leave or Long Service Leave or any part thereof to which she is entitled.
- (b) Paid sick leave or other paid authorised absences (excluding Annual Leave or Long Service Leave) shall not be available to an employee during her absence on maternity leave.
- (11) Effect of Maternity Leave on Employment
- Subject to this Part A—Maternity Leave, of this clause, notwithstanding any other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Agreement.
- (12) Termination of Employment
- (a) An employee on maternity leave may terminate her employment at any time during the period leave by notice given in accordance with this Agreement.
- (b) The Company shall not terminate the employment of an employee on the grounds of her pregnancy or of her absence on maternity leave, but otherwise the rights of the Company in relation of termination of employment are not hereby affected.
- (13) Return to Work After Maternity Leave
- (a) An employee shall confirm her intention of returning to her work by notice in writing to the Company given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) An employee, upon returning to work after maternity leave, or the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to subclause (6), to the position which she held immediately before such transfer or in relation to an employee who has worked part-time during the pregnancy the position she held immediately before commencing such part-time work.
- (c) Where such position no longer exists but there are other positions available for which the employee is qualified and is capable of performing, she shall be entitled to the position as nearly comparable in status and pay to that of her position.
- (14) Replacement Workers
- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (b) Before an employer engages a replacement employee the Company shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

- (c) Before the Company engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under Part A—Maternity Leave of this clause, the Company shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Nothing in Part A—Maternity Leave, of this clause shall be construed as requiring the Company to engage a replacement employee.

PART B—PATERNITY LEAVE

(1) Nature of Leave

Paternity leave is unpaid leave.

(2) Definitions

For the purposes this subclause—

- (a) “Employee” includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (b) “Paternity Leave” means leave of the type provided for in Part B—Paternity Leave of this Appendix.
- (c) “Child” means a child of the employee or the employee’s spouse under the age of one year.
- (d) “Spouse” includes a *de facto* or a former spouse.
- (e) “Primary care-giver” means a person who assumes the principal role of providing care and attention to a child.
- (f) “Continuous service” means service under an unbroken contract of employment and includes:
 - (i) any period of leave taken in accordance with this Appendix.
 - (ii) any period of part-time employment worked in accordance with this Appendix; or
 - (iii) any period of leave or absence authorised by the Company or by this Agreement.

(3) Eligibility for Paternity Leave

A male employee, upon production to the Company of the certificate required by subclause (4) hereof, shall be entitled to one or two periods of paternity leave, the total of which shall not exceed 52 weeks, in the following circumstances

- (a) an unbroken period of up to one week at the time of confinement of this spouse;
- (b) a further unbroken period of up 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child’s first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee’s spouse in relation to the same child and shall not be taken concurrently with that maternity leave.
- (c) The employee must have had at least 12 months’ continuous service with the Company immediately preceding the date upon which she proceeds upon such leave.

(4) Certification

At the time specified in subclause (5) the employee must produce to the Company

- (a) a certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place.
- (b) in relation to any period to be taken under paragraph (3)(b) hereof, a statutory declaration stating
 - (i) he will take that period of paternity leave to become the primary care-giver of a child;
 - (ii) particulars of any period of maternity leave sought or taken by his spouse; and
 - (iii) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(5) Notice Requirements

- (a) The employee shall, not less than 10 weeks prior to each proposed period of leave, give the Company notice in writing stating the dates on which he

proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in subclause (4) hereof.

- (b) The employee shall not be in breach of this clause as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to
 - (i) the birth occurring earlier than the expected date; or
 - (ii) the death of the mother of the child; or
 - (iii) other compelling circumstances.
- (c) The employee shall immediately notify the Company of any change in the information provided pursuant to paragraph (4) hereof.

(6) Variation of Period of Maternity Leave

- (a) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under subclause (3) hereof
 - (i) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days’ notice in writing stating the period by which the leave is to be lengthened;
 - (ii) the period may be further lengthened by agreement between the Company and employee.
- (b) The period of maternity leave may, with the consent of the Company, be shortened by the employee given not less than 14 days’ notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of Paternity Leave

Paternity leave, applied for under paragraph (3)(b) hereof but not commenced, shall be cancelled when the pregnancy of an employee’s spouse terminates other than by the birth of a living child.

(8) Paternity Leave and Other Leave Entitlements

- (a) Provided the aggregate of any leave, including leave taken under Part B.—Paternity Leave, of this clause, does not exceed the period to which the employee is entitled under subclause (3) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any Annual Leave or Long Service Leave or any part thereof to which he is entitled.
- (b) Paid sick leave or other paid authorised absences (excluding Annual Leave or Long Service Leave) shall not be available to an employee during this absence on paternity leave.

(9) Effect of Paternity Leave on Employment

Subject to Part B—Paternity Leave, of this Appendix, notwithstanding any provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Agreement.

(10) Termination of Employment

- (a) An employee on paternity leave may terminate his employment at any time during the period leave by notice given in accordance with this Agreement.
- (b) The Company shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of the Company in relation to termination of employment are not hereby affected.

(11) Return to Work After Paternity Leave

- (a) An employee shall confirm his intention of returning to work by notice in writing to the Company given not less than four weeks prior to the expiration of the period of paternity leave provided by paragraph (3)(b).
- (b) An employee, upon returning to work after paternity leave, or the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an employee who has worked part-time under this clause to the position he held immediately before commencing such part-time work.

- (c) Where such position no longer exists but there are other positions available for which the employee is qualified and is capable of performing, he shall be entitled to the position as nearly comparable in status and pay to that of his former position.

(12) Replacement Employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (b) Before the Company engages a replacement employee the Company shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (c) Before the Company engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under Part B—Paternity Leave of this clause, the Company shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Nothing in Part B—Paternity Leave, of this clause shall be construed as requiring the Company to engage a replacement employee.

PART C ADOPTION LEAVE

(1) Nature of Leave

Adoption leave is unpaid leave.

(2) Definitions

For the purposes of Part C—Adoption Leave—

- (a) “Employee” includes a part-time employee but does not include an employee engaged upon casual or seasonal work.
- (b) “Child” means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (c) “Relative Adoption” occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of the whole blood or half blood or by marriage).
- (d) “Primary care-giver” means a person who assumes the principal role of providing care and attention to a child.
- (e) “Spouse” includes a *de facto* spouse.
- (f) “Continuous service” means service under an unbroken contract of employment and includes—
- (i) any period of leave taken in accordance with this Appendix;
 - (ii) any period of part-time employment worked in accordance with this Appendix; or
 - (iii) any period of leave or absence authorised by the employer or by the Agreement.

(3) Eligibility

An employee, upon production to the Company of the documentation required by subclause (4) hereof shall be entitled to one or two period of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances—

- (a) an unbroken period of up to three weeks at the time of the placement of the child;
- (b) an unbroken period of up to 52 weeks from the time of its placement in order to be the primary care-giver of the child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee’s spouse in relation to the same child. This entitlement of up to 52 weeks shall be reduced by—
 - (i) any period leave taken pursuant to paragraph (a) hereof; and
 - (ii) the aggregate of any periods of adoption leave taken or to be taken by the employee’s spouse;
- (c) the employee must have had at least 12 months’ continuous service with the Company immediately

preceding the date upon which he or she proceeds upon such leave in either case.

(4) Certification

Before taking adoption leave the employee must produce to the Company—

- (a)
 - (i) a statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (ii) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
- (b) In relation to any period to be taken under paragraph (3)(b) hereof, a statutory declaration stating—
 - (i) the employee is seeking adoption leave to become the primary care-giver of the child;
 - (ii) particulars of any period of adoption leave sought or taken by the employee’s spouse; and
 - (iii) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.

(5) Notice Requirements

- (a) Upon receiving notice of approval for adoption purposes, an employee shall notify the Company of such approval and within two months of such approval shall further notify the Company of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
- (b) An employee who commences employment with the Company after the date of approval for adoption purposes shall notify the Company thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months’ continuous service with the Company immediately preceding the date upon which he or she proceeds upon such leave.
- (c) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the Company of such date, and of the date of the commencement of any period of leave to be taken under paragraph (3)(a) hereof.
- (d) An employee shall, 10 weeks before the proposed date of commencing any leave to be taken under paragraph (3)(b) hereof give notice in writing to the Company of the date of commencing leave and the period of leave to be taken.
- (e) An employee shall not be in breach of this clause, as a consequence of failure to give the stipulated period of notice in accordance with paragraphs (c) and (d) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.

(6) Variation of Period of Adoption Leave

- (a) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under subclause 93) hereof—
 - (i) the period of leave taken under paragraph (3)(b) hereof may be lengthened once only by the employee giving not less than 14 days’ notice in writing stating the period by which the leave is to be lengthened;
 - (ii) the period may be further lengthened by agreement between the Company and employee.
- (b) The period of adoption leave taken under Paragraph (3)(b) hereof may, with the consent of the Company

be shortened by the employee giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(7) Cancellation of Adoption Leave

- (a) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
- (b) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the Company forthwith and the Company shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.

(8) Special Leave

The Company, shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the Company may require the employee to take such leave in lieu of special leave.

(9) Adoption Leave and Other Entitlements

- (a) Provided the aggregate of any leave, including leave taken under Part C.—Adoption Leave, of this clause, does not exceed the period to which the employee is entitled under subclause (3) hereof, an employee may, in lieu of or in conjunction with adoption leave, taken any accumulated Annual Leave or Long Service Leave or any part thereof to which he or she is entitled.
- (b) Paid sick leave or other paid authorised absences (excluding annual leave or long service leave), shall not be available to an employee during absence on adoption leave.

(10) Effect of Adoption Leave on Employment

Subject to Part C.—Adoption Leave, of this Agreement, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Agreement.

(11) Termination of Employment

- (a) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this Agreement.
- (b) The Company shall not terminate the employment of an employee on the grounds of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of the Company in relation to termination of employment are not hereby affected.

(12) Return to Work After Adoption Leave

- (a) An employee shall confirm the intention of returning to work by notice in writing to the employer given not less than four weeks prior to the expiration of the period of adoption leave provided by paragraph (3)(b) hereof.
- (b) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or in relation to an employee who has worked part-time under this clause the position held immediately before commencing such part-time work.
- (c) Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.

(13) Replacement Employees

- (a) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
- (b) Before the Company engages a replacement employee the Company shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.

- (c) Before the Company engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising rights under Part C.—Adoption Leave, of this clause, the Company shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (d) Nothing in Part C.—Adoption Leave, of this clause, shall be construed as requiring the Company to engage a replacement employee.

**EMAIL LIMITED (MAJOR APPLIANCE
CONSUMER SERVICE DIVISIONS—WA)
ENTERPRISE AGREEMENT 1996
No. AG 148 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Email Limited (Major Appliance Consumer Service
Division—WA)

and

Australian Municipal, Administrative, Clerical and Services
Union of Employees, WA Clerical and Administrative
Branch and Others.

No. AG 148 of 1996.

COMMISSIONER P E SCOTT.

15 October 1996.

Order:

HAVING heard Mr C Keys on behalf of the Applicant and Mr R Dhue on behalf of the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Email Limited (Major Appliance Consumer Service Division—WA) Enterprise Agreement 1996 be registered on the 3rd day of September 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

Industrial Relations Act 1979.

This agreement made in pursuance of the Industrial Relations Act 1979, this 30th April, 1996 between The Australian Municipal, Administrative, Clerical and Services Union and The Shop Distributive and Allied Employees' Association of Western Australia of the one part and Email Limited of the other part, witnesseth that for the consideration hereinafter appearing the parties hereto mutually covenant and agree the one with the other as follows:

1.—TITLE

This agreement shall be known as the Email Limited (Major Appliance Consumer Service Division—WA) Enterprise Agreement 1996 and shall replace Agreement No. AG9 of 1992.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Application of Award
 4. Date and Period of Operation
 5. Parties Bound
 6. No Extra Claims
 7. Wage Increases
 8. Other Provisions
- Appendix 1—Dispute Resolution Procedure

3.—APPLICATION OF AWARD

(1) This Enterprise Agreement shall apply to approximately 14 employees of Email Limited (Major Appliance Consumer Service Division WA) employed at 62 Guthrie Street, Osborne Park pursuant to the provisions of the following awards:

- (A) Clerks (Wholesale and Retail Establishments) Award, No. 38 of 1947; and
- (B) Shop and Warehouse (Wholesale and Retail Establishments) Award, No. 32 of 1976.

(2) It is the express intention of the parties that the terms of this Enterprise Agreement shall apply notwithstanding the provisions of the awards referred to in subclause (1) of this clause.

4.—DATE AND PERIOD OF OPERATION

This agreement shall operate from the first pay period to commence on or after 9.1.96 and shall continue in operation for a period of two years thereafter.

5.—PARTIES BOUND

(1) The parties bound by this Enterprise Agreement are:

- Email Limited
- Australian Municipal, Administrative, Clerical and Services Union
- Shop, Distributive and Allied Employees Association of Western Australia

(2) The parties are opposed to any application by any other party to be joined as a party to this agreement.

6.—NO EXTRA CLAIMS

For the period of this Enterprise Agreement, the parties agree that there shall be no further claims except as otherwise provided by, or consistent with, future State Wage Case decisions determined by the Western Australian Industrial Relations Commission.

7.—WAGE INCREASES

(1) From the beginning of the first pay period to commence on or after 9 January 1996, each employee bound by this agreement shall receive a wage increase equivalent to 5% of his/her current ordinary time weekly wage rate.

(2) From the beginning of the first pay period to commence on or after 9 January 1997 each employee bound by this agreement shall receive a wage increase equivalent to 5% of his/her then current ordinary time weekly wage rate.

8.—OTHER PROVISIONS

Employees Bound by Clerks (Wholesale and Retail Establishments) Award

(1) (A) Spare Parts Office and Store Office

To commit to added value service by providing all customers with service of a high quality.

To provide our services to all customers for counter or phone inquiries and sales.

To achieve this competency, we undertake to perform all duties that will ensure that the orders received from the counter or phone are delivered to meet our customers' expectations.

To make ourselves available for training as required by management.

The job functions require the person to be committed to:

1. Serving on the counter
2. Processing invoices on the computer
3. Be able to use the ELF system
4. To fully converse with back order system
5. To assist in stock management.

(B) Teamwork

To fully support the team work culture that the company is engendering and recognise that others in the company are affected by how well we do our own job, and we must satisfy our internal customers.

(2) (A) Service Office

To commit to added value service by providing all customers with service of a high quality.

To provide our services to all customers for phone inquiries.

To commit to perform all duties that will ensure that the customers request for assistance or service is delivered to meet our customers' expectations.

(B) Teamwork

To fully support the teamwork culture that the company is engendering and recognise that others in the company are affected by how well we do our own job, and we must satisfy our internal customers.

Employees Bound by Shop & Distributive (Wholesale and Retail Establishments) Award

To commit to added value service by providing all customers with service of a high quality.

(I) This will be achieved by all employees serving or attending the Trade counter.

To employees of the store all commit to perform all duties that will ensure that the orders received from the counter or phone are delivered to meet our customers' expectations.

(II) This will be achieved by all staff assisting in "packing", "unloading pallets", "picking parts and SSPOs".

(III) All employees will complete "con notes".

Maintain stock holding (all employees in store will agree to participate in cycle counting of stock each day).

Teamwork

To fully support the teamwork culture that the company is engendering and recognise that others in the company are affected by how well we do our own job, and we must satisfy our internal customers.

In witness whereof the above parties have executed these presents the day and year hereinbefore mentioned.

APPENDIX 1

DISPUTE RESOLUTION PROCEDURE

1. Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure:

- (a) The matter shall first be discussed between the employee affected and the appropriate supervisor. The employee may choose to be represented by the union delegate.
- (b) If not settled, the matter shall be discussed between the employee, union delegate and the appropriate representative of the Company.
- (c) If not settled, the matter shall be discussed between an official of the union and an appropriate representative of the Company.

2. While the matter in dispute is being discussed in accordance with the procedure, as proscribed in subclause (1) hereof, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

3. It will be open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute.

Signed for and on behalf of Australian, Municipal, Administrative, Clerical and Services Union	)	Seal of the Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch
_____ (signed) _____	)	_____ (signed) _____
Witness	)	(Affix Seal)

Signed for and on behalf of Shop, Distributive and Allied Employees Association of Western Australia	)	Seal of the Shop, Distributive and Allied Employees Association of Western Australia
_____ (signed) _____	)	_____ (signed) _____
Witness	)	(Affix Seal)

The Common Seal of Email Limited was hereunto affixed by authority of The Board of Directors and in accordance with its Articles of Association

(signed)

Director: John Maxwell Hanna

(signed)

Secretary: Duncan William Scott Glasgow

Common Seal

(hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately eight employees covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

The dispute settlement procedure that shall apply to this Agreement shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of \$11.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

FIVE STAR CERAMICS INDUSTRIAL AGREEMENT No. AG 238 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
and

Brightnight Pty Ltd trading as Five Star Ceramics.
No. AG 238 of 1996.

Five Star Ceramics Industrial Agreement.

COMMISSIONER P. E. SCOTT.

21 October 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Five Star Ceramics Industrial Agreement in the terms of the following schedule be registered on the 20th day of September 1996.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement will be known as the Five Star Ceramics Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Program

Appendix A—Wage Rates

Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Five Star Ceramics

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and material
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreed classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of signing this Agreement the following will apply:

- (a) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (b) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—ALL-IN PAYMENTS

1. All-In methods of payments shall be prohibited.

2. "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or Agreement.

3. If an employer has been paying an employee an all in-rate he/she shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his period of employment.

In addition to making the appropriated taxation deductions from the employee's wages, the employer shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

4. If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the

head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

5. Any industrial action that may arise, shall be confined to the employer in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

Common Seal

(signed)	(signed)	Mark Brown
ON BEHALF OF THE UNION	ON BEHALF OF THE COMPANY	(PRINT NAME)

Dated this 28 day of August 1996.

APPENDIX A—WAGE RATES

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	HOURLY RATE	HOURLY RATE	HOURLY RATE	HOURLY RATE
Labourer Group 1	13.75	14.21	14.66	15.11
Labourer Group 2	13.27	13.71	14.15	14.59
Labourer Group 3	12.92	13.35	13.77	14.20
Plasterer, Fixer	14.29	14.76	15.23	15.70
Painter, Glazier	13.97	14.43	14.89	15.35
Signwriter	14.26	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

- (a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- (b) The decision on a person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

- (c) There will be no payment of lost time to a person unable to work in a safe manner.
- (d) If this happens 3 times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.
- (e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- (f) An employee having problems with alcohol and/or other drugs:
- Will not be sacked if he/she is willing to get help.
 - Must undertake and continue with the recommended treatment to maintain the protection of this program.
 - Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

- (a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- (b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- (c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

GROUND AND FOUNDATION SUPPORTS INDUSTRIAL AGREEMENT.

No. AG 95 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Ground and Foundation Supports Pty Ltd.

No. AG 95 of 1996.

Ground and Foundation Supports Industrial Agreement.

COMMISSIONER A.R. BEECH.

1 November 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Ground and Foundation Supports Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 1st day of November 1996.

[L.S.] (Sgd.) A. R. BEECH,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Ground and Foundation Supports Industrial Agreement

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
 16. Pyramid Sub-Contracting
 17. All-In Payments
 18. Drug and Alcohol, Safety and Rehabilitation Programme
 19. Signatories
- Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Ground and Foundation Supports Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. R 14 of 1978 (the "Award").

(2) There are approximately 4 employees covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award, the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year.)

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per subclause (2) of this clause for such purposes including, but not limited to, securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed, subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the 2nd April 1996 the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

17.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Graham Menz

On behalf of Ground and Foundation Supports Pty Ltd

Dated this 2nd day of April 1996.

APPENDIX A—WAGE RATES

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	HOURLY RATE \$	HOURLY RATE \$	HOURLY RATE \$	HOURLY RATE \$
Labourer Group 1	13.75	14.21	14.66	15.11
Labourer Group 2	13.27	13.71	14.15	14.59
Labourer Group 3	12.92	13.35	13.77	14.20
Plasterer, Fixer	14.29	14.76	15.23	15.70
Painter, Glazier	13.97	14.43	14.89	15.35
Signwriter	14.26	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

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

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

- Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.
- Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.
- Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

HEDLAND COLLEGE ENTERPRISE AGREEMENT
No. PSGAG 16 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia
Incorporated

and

Hedland College and The Australian Liquor, Hospitality and
Miscellaneous Workers Union, Miscellaneous Workers
Division, Western Australian Branch.

No. PSGAG 16 of 1996.

Hedland College Enterprise Agreement
No. PSGAG 16 of 1996.

PUBLIC SERVICE ARBITRATOR A R BEECH.

25 October 1996.

Order:

HAVING heard Ms F. Bajrovic on behalf of The Civil Service Association of Western Australia Incorporated and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch and Ms A. Hall on behalf of the Hedland College, and by consent, the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders —

THAT the Hedland College Enterprise Agreement No. PSGAG 16 of 1996 be registered in accordance with the attached Schedule with effect on and from the 17th day of October 1996.

[L.S]

(Sgd.) A.R. BEECH,
Public Service Arbitrator.

Schedule.

1.—TITLE

This Agreement shall be known as the Hedland College Enterprise Agreement No. PSGAG 16 of 1996.

2.—ARRANGEMENT

- Title
- Arrangement
- Scope of the Agreement
- Parties to the Agreement
- Number of Employees Bound
- Definitions
- Term of Agreement
- No Further Claims
- Relationship to Parent Award
- Single Bargaining Unit
- Shared Mission and Objectives
- Continuous Improvement
- Enterprise Bargaining
- Productivity Measurement
- Joint Consultative Improvement Committee
- Dispute Resolution Procedure
- Training and Development
- Flexible Working Arrangements
- Higher Duties Allowance
- Accumulation of Annual Leave
- Annual Leave Loading
- Long Service Leave
- Short Leave
- Family Carers Leave
- Parental Leave
- Public Holidays
- Overtime and Time Off In Lieu Arrangements
- Signature of the Parties
- Schedule A

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all employees of Hedland College who are members of or are eligible to be members of The Civil Service Association of Western Australia Incorporated and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

4.—PARTIES TO THE AGREEMENT

This Agreement shall be binding upon Hedland College and The Civil Service Association of Western Australia Incorporated and The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

5.—NUMBER OF EMPLOYEES BOUND

This Agreement shall apply to all employees covered by the Scope of this Agreement. Upon registration, the number of employees covered by this Agreement is estimated to be 50.

6.—DEFINITIONS

(1) "Agreement" means the Hedland College Enterprise Agreement No. PSGAG 16 of 1996.

(2) "Association" means The Civil Service Association of Western Australia Incorporated.

(3) "College" means Hedland College.

(4) "Union" means The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch.

(5) "WAIRC" means the Western Australian Industrial Relations Commission.

7.—TERM OF AGREEMENT

(1) This Agreement shall operate from the date of operation of the first pay increase as contained in Clause 13.—Enterprise Bargaining of this Agreement and shall remain in operation until 30 June 1997.

(2) The parties agree to commence negotiations for a new Agreement three months prior to the expiration of this Agreement.

(3) (a) The parties will assess achievements in performance, productivity and efficiency against the milestones detailed at Clause 13.—Enterprise Bargaining during the term of this Agreement.

(b) Should the agreed milestones not be met, then payment of the second increase shall be deferred until all milestones have been successfully completed.

(4) The pay quantum achieved as a result of the Agreement will remain and form the new base pay rates for future Agreements or continue to apply in the absence of a further Agreement subject to the continuation of the conditions of this Agreement.

8.—NO FURTHER CLAIMS

(1) The parties to this Agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted.

(2) The parties recognise that it is important to encourage further productivity improvements beyond those currently identified in the Agreement and agree that where such improvements are identified and implemented they will be negotiated as part of the next Agreement.

(3) This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

9.—RELATIONSHIP TO PARENT AWARDS

Except as provided by the Agreement the conditions of employment and rates of salary payable to employees are those covered by the Government Officers Salaries, Allowances and Conditions Award 1989, the Children's Services (Government) Award 1989, Gardeners (Government) Award and the Cleaners and Caretakers (Government), Award 1975. In the case of any inconsistencies, the Agreement shall have precedence to the extent of the inconsistencies.

10.—SINGLE BARGAINING UNIT

This Agreement has been negotiated through a Single Bargaining Unit comprising management and employees of the College, Association and Union representatives.

11.—SHARED MISSION AND OBJECTIVES

(1) The parties to the Agreement are committed to achieving the mission of the College, which is:

To meet client needs with Quality services in education and training and contribute to the community and cultural development of the Eastern Pilbara.

(2) To achieve these objectives and provide a continuously improving quality of service to all stake holders, the parties are committed to the following:

(a) to provide on a full-time or part-time basis in such post-secondary education as it is authorised to provide.

(b) to aid the advancement, development and improvement of post-secondary education as it is authorised to provide.

(c) to encourage the development and improvement of post-secondary education.

(d) to contribute to the general cultural development of the community in the general region of the College.

(e) to foster the general welfare and development of all enrolled students.

(f) to promote and encourage collaboration and consultation between the College and other institutions and authorities to ensure the greatest effectiveness and economy in expenditure and the most beneficial relationship between the College and other educational institutions throughout the state.

(g) to provide such facilities relating to the functions of the College as the Council thinks necessary for or conducive to their environment.

(h) to encourage community use of College facilities.

(3) To achieve the mission and these objectives it is agreed that the parties will need to pursue the following supporting objectives within the College to:

(a) build on the clear commitment and talents of our employees by developing a work environment which values and rewards initiative, effort and excellence.

(b) develop and pursue changes on a cooperative and continuing basis through the implementation of a Continuous Improvement Program.

(c) pursue best management practice through the implementation of a corporate management structure.

(d) encourage greater flexibility in decision making and the allocation of human and other resources.

(e) improve organisation performance through the training and development of staff.

(4) The College is committed to providing services to its customers which are of a high level of quality, flexibility, responsiveness, care and understanding. The quality of service is guaranteed by the College and its employees. In order to improve delivery of the College's mission, the productivity initiatives contained in this Agreement have been established so as to focus on enhancing customer service.

12.—CONTINUOUS IMPROVEMENT

The College is committed to continually improving its productivity and overall performance. Enterprise bargaining and the implementation of a Continuous Improvement Programme will assist the College in achieving the following outcomes:

(1) to satisfy customer needs by delivery of quality services in the most effective way.

(2) through improved productivity, provide Government and employees a share in the consequent monetary gains.

(3) satisfy the requirements of clients and customers through the provision of reliable, efficient and competitive services.

(4) to promote the development of trust and motivation and to continue to foster enhanced employee relations.

(5) to facilitate greater flexibility in decision making and allocation of human resources.

(6) to promote increased satisfaction from jobs and employment opportunities.

- (7) to develop and pursue changes in a co-operative continuing basis by using participative practices.
- (8) to promote health, safety, welfare and equal opportunity to all employees.
- (9) facilitating an improvement programme which encourages all employees and management to identify and deal with real productivity barriers in a clear and participative manner.
- (10) achieving continuous improvement of all processes to achieve improved quality, work organisation, customer service, delivery, time lines, safety and training.
- (11) providing a forum and process in which staff are encouraged to contribute ideas and initiatives for productivity improvements and which will assist in their implementation.
- (12) make use of, and improving existing consultative processes.

13.—ENTERPRISE BARGAINING

(1) Two salary adjustments shall apply:

- (a) an increase of 4.45% payable from the first pay period commencing on or after the date of registration as detailed in Schedule A, Column A of this Agreement.
- (b) an increase of 2% payable on or after the 1st day of January, 1997 as detailed in Schedule A, Column B of this Agreement, subject to the achievement of identified milestones and Government approval.

(2) Employees will not be disadvantaged where milestones have not been met due to factors outside of the control of the employees covered by this agreement.

(3) A meeting of College employees has agreed that each employee will commit themselves to achieving the outcomes within the stipulated time frames. All employees agree that a genuine, individual commitment was essential to achieving the agreed outcomes and that in turn the achievement of those outcomes was essential to an improvement in productivity and quality of service within the College.

(4) The parties agree to develop and implement productivity improvements in accordance with the following milestones:

- (a) Introduction of a Quality Assurance Programme

Milestone

31 December 1996 documentation for accreditation and Quality Assurance Programme to have been completed for endorsement.

Benefits

- enhanced customer service
- Colleges courses to be of a recognised standard by the community and industry
- improved profile for the College
- accreditation of courses

- (b) Christmas/New Year Closedown of the College.

Milestones

30 November 1996. Staff to have applied for approved leave to cover the closedown period. Rosters, if necessary, prepared to ensure maximum staffing over the peak periods, are available.

Benefits

- Reduced expenditure on air conditioning and other associated costs.
- Improved customer service during the remaining part of the year, as staff will be accessing approved leave during a period of low demand for services and not during times of high demand.
- Savings associated with relief staff due to improved availability of staff during peak periods.

- (c) Skills Audit and training requirements to be undertaken.

Milestone

31 December 1996. Skills audit to have been completed and training requirements identified.

30 June 1997. 50% of staff with identified training needs to have completed appropriate courses.

Benefits

- Improved customer service.
- Greater flexibility for existing staff to undertake a wider range of duties within various departments of the College.
- Improved responsiveness and accountability.
- More cost effective use of the staff in carrying out duties.

- (d) Review of existing internal audit and monitoring systems and procedures

Milestones

31 December 1996 Review completed and recommendations delivered.

30 June 1997 Recommendations substantially implemented.

Benefits

- More effective internal auditing system.
- Improved human resources functions.
- Improved accountability.
- Ability to more accurately evaluate current practices and procedures and therefore implement productivity improvements.
- Improved methods of forward travel bookings thereby reducing costs.
- Reduction in the duplication and handling time for documents.

- (e) Review of existing technology, work practices and internal procedures to be undertaken.

Milestones

31 December 1996 Review to be completed and changes implemented.

30 June 1997 Minimum Savings of \$50,000 to have been achieved.

Benefits

- Identification of areas of duplication, double handling and other wastage.
- Savings in maintenance contracts through improved utilisation of staff.
- Commitment of staff to the introduction of new technology e.g. College wide E-Mail system.
- Savings from reduced running costs e.g. Air conditioning, photocopying.
- Reduction in overtime by more effective use of time of in lieu arrangements.
- Implementation of an Energy Savings Campaign.
- Reduction in cost of air travel.

- (f) Joint Consultative Committee to Monitor Productivity and Quality Improvement

Milestones

31 December 1996 Committee to have produced a report on the productivity achievement of the Enterprise Bargaining Agreement milestones.

Benefits

- improved employee relations
- enhanced commitment of the parties to the workplace reform process
- reduction in the time associated with the introduction of changed work practices and other productivity initiatives.

- ongoing monitoring of implementation of productivity improvement milestones.
 - (g) Supervision of Examinations To Be Conducted By College Staff
- Milestone
- 30 September 1996 Staff to have been trained in procedures for supervising November examinations.
 - 31 December 1996 Staff to have successfully supervised examinations.
 - 30 June 1997 Savings of \$8,000 to have been achieved.

Benefits

- improved utilisation of staff
 - reduction in costs in hiring external supervisors
 - time tabling examinations for common start time
- (h) Review of College Operations
- 31 December 1996 Review to have been completed.

Benefits

- services to reflect customer needs
- reduction in costs and/or increase in revenue through more efficient use of College resources.

14.—PRODUCTIVITY MEASUREMENT

(1) The parties agree that the assessment and monitoring of productivity improvements is important because it provides critical feedback on the performance of the organisation to management, employees and stakeholders.

(2) It is agreed that management and employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

(3) Consistent with the above it is agreed that a performance monitoring programme for the Enterprise Bargaining Agreement, be jointly developed between management, employees and the association/union.

15.—JOINT CONSULTATIVE IMPROVEMENT COMMITTEE

(1) The Committee will comprise two representatives elected from the employees with at least one (1) representative being a member of the association or the union. Management will be represented by either the Director or his nominee and one other person representing College management. A quorum will consist of two staff and one management representative.

(2) The committee will meet at least monthly. Its meetings shall be minuted and the minutes distributed to all employees. Meetings may be initiated by employee or management representatives.

(3) The role of the committee in relation to the monitoring of the Enterprise Bargaining Agreement shall be to:

- (a) Consider any disputed issues as specified in Clause 16.—Dispute Resolution Procedure of this Agreement and deal with issues that might normally be handled by a Joint Consultative Committee.
- (b) Monitor work practices in the organisation, recommending on any adjustments necessary to maintain the milestones and other initiatives in this Agreement or otherwise improve productivity and efficiency. Monitor productivity and workplace initiatives in the Agreement and report on the achievement of milestones.
- (c) Consider further changes to work practices that will enhance productivity/efficiency and the quality of client services with a view to trial the changes for incorporation in future Agreements.
- (d) Assess progress against the performance targets/milestones and the introduction of changes contained in this Agreement to permit the payment, subject to Council and Government, of the second salary increases proposed in the Agreement.
- (e) Discuss and recommend administrative measures that will improve the quality of the working life for employees without derogating performance targets/milestones.

- (f) Plan and overview and make recommendations on staff development activities.
- (g) Deal with issues that might normally be handled by a Workplace Consultative Committee.

16.—DISPUTE RESOLUTION PROCEDURE

(1) In the event of a disagreement, complaint, grievance or dispute arising between an employee, group of employees or the association/union and management concerning any implementation or the interpretation of this Agreement, the following procedure shall apply:

- (a) The association/union representative and/or the employees concerned shall discuss the matters with the immediate supervisor or employer's representative, as appropriate.
- (b) If the matter is not resolved within five working days following the discussions in accordance with paragraph (a) above the matter shall be referred by the association/union representative or the employee/s to the Associate Director. Failing resolution at this stage it should then be passed on to the Director, or his nominee, for resolution.
- (c) The parties to the dispute may individually or collectively seek advice and assistance from any appropriate organisation or person in an attempt to resolve the matter.
- (d) If the matter is not resolved within ten working days following notification in paragraph (c) above it may be referred by either party to the WAIRC for resolution.

(2) In implementing the above procedure the following principles shall be applied:

- (a) Decisions made are unbiased and are seen to be unbiased.
- (b) All parties to the dispute have the opportunity to put their cases fully.
- (c) Appropriate confidentiality is to be maintained.
- (d) Employees will not be subject to any discrimination as a result of using the dispute resolution procedure.

17.—TRAINING AND DEVELOPMENT

(1) The parties are committed to negotiate training and development of employees to achieve:

- (a) Skills relevant to the needs of the organisation.
- (b) Multiskilling of employees to the level required for operational efficiency and flexibility.
- (c) A career path within the organisation
- (d) Adjustment to technological change.
- (e) Greater efficiency and job satisfaction.

(2) A targeted training programme will be developed consistent with:

- (a) The likely future skill needs of the organisation.
- (b) The size, structure and nature of the operations of the organisation.
- (c) The need to provide efficient and effective administrative support services.

18.—FLEXIBLE WORKING ARRANGEMENTS

The parties recognise the need to provide an improved and efficient service to clients while at the same time providing a positive working environment and recognising the significant stresses placed on employees. Therefore the parties are committed to reviewing current working arrangements and investigating the provision of more flexible working arrangements, including such matters as:

- (1) Spread of hours.
- (2) Organisation of overtime.
- (3) Office opening times including weekend opening.
- (4) Shift provisions.
- (5) Flexitime and RDO arrangements.

19.—HIGHER DUTIES ALLOWANCE

(1) Notwithstanding the provisions of subclause (1) of Clause 14.—Higher Duties Allowance of the Government Officers

Salaries, Allowances and Conditions Award 1989, an employee who is directed by the College to act in an office which is classified higher than the employee's substantive office and who performs the full duties and accepts the full responsibility of the higher office for a continuous period of twenty working days or more shall, subject to the remaining provisions of Clause 14 of the Award, be paid an allowance calculated as being seventy five per cent of the difference between the employee's own salary and the salary the employee would receive if the employee was permanently appointed to the office in which the employee is so directed to act.

(2) Where the period of acting exceeds twenty days either in a continuous period or as an aggregate in a calendar year, then the allowance equal to the difference between the employee's own salary and the salary the employee would receive if he/she were appointed to the position in which he/she is to act, shall be paid for the period in excess of the initial twenty days.

20.—ACCUMULATION OF ANNUAL LEAVE

Employees shall, subject to the approval of the College, be entitled to accumulate a maximum of seven weeks annual leave. No employee shall be entitled to accumulate more than seven weeks annual leave other than by agreement with the Director, and such accumulated leave and the taking of such accumulated leave may be at the direction of the College. Employees should clear annual leave in the year it accrues.

21.—ANNUAL LEAVE LOADING

Employees covered by this Agreement will be paid the annual leave loading provided under the provisions of their Parent Award in the last pay prior to Christmas. Employees who have worked less than twelve months will receive a pro rata payment.

22.—LONG SERVICE LEAVE

An employee shall, subject to the approval of the College, be entitled to take any accrued long service leave in multiples of one week.

All other provisions relating to long service leave shall be in accordance with the parent Award, General Order or the Long Service Leave Act.

23.—SHORT LEAVE

The provisions of Clause 26.—Short Leave of the Government Officers Salaries, Allowances and Conditions Award, 1989 shall no longer apply provided that the provisions of Bereavement Leave as contained in the Minimum Conditions of Employment Act shall continue to apply.

Provided that in exceptional circumstances the Council may approve paid leave to deal with emergency situations.

24.—FAMILY CARERS LEAVE

Employees covered by this Agreement may use accrued sick leave up to a maximum of 37.5 hours per annum in accordance with this clause to provide care for another person subject to :

- (1) The employee being responsible for the care of the person concerned.
- (2) The person concerned being either a member of the employee's immediate family or a member of the employee's household.
- (3) The term "immediate family" includes a partner including a spouse or de facto spouse, child or adult child, including an adopted child, step child or ex nuptial child, parent, grandparent, grandchild or sibling of the employee or partner of the employee.
- (4) Where any application for leave pursuant to this clause exceeds two consecutive days the employee shall provide satisfactory evidence of the need for the care of the other person.
- (5) The employee shall, where practicable, give the employer prior notice of the intention to take leave, details of the relationship to the person requiring care, the reason for taking such leave and the estimated length of absence. In any event the particulars required by the prior notice must be provided to the employer as soon as practicable, in default of which there will be no entitlement to be paid leave under this clause.

25.—PARENTAL LEAVE

(1) Eligibility for Unpaid Parental Leave

- (a) An employee is entitled to a period of up to 52 weeks unpaid parental leave in respect to the birth of a child to the employee or the employee's spouse/partner.
- (b) Where the employee applying for the leave is the partner of a pregnant spouse one weeks leave may be taken at the birth of the child concurrently with unpaid parental leave taken by a pregnant employee.
- (c) An employee adopting a child under the age of five years shall be entitled to three weeks unpaid parental leave at the placement of the child and a further period of unpaid parental leave up to a maximum of 52 weeks.
- (d) An employee seeking to adopt a child shall be entitled to two days unpaid leave to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional unpaid day's leave. The employee may take any paid leave entitlement in lieu of this leave.
- (e) Subject to subclause (b) of this clause, where both partners are employed by the College the leave shall not be taken concurrently except under special circumstances and with the prior approval of the employer.

(2) Other Leave Entitlements

- (a) An employee proceeding on unpaid parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- (b) An employee may extend the maximum period of unpaid parental leave with a period of leave without pay subject to the employer's approval.
- (c) An employee on unpaid parental leave is not entitled to paid sick leave and other paid award absences.
- (d) Where the pregnancy of an employee terminates other than by the birth of the child then the employee shall be entitled to such period of sick leave or unpaid sick leave for a period certified as necessary by a registered medical practitioner.
- (e) Where a pregnant employee not on unpaid parental leave suffers illness related to the employee's pregnancy, or is required to undergo a pregnancy-related medical procedure, the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(3) Notice and Variation

- (a) The employee shall give not less than four weeks notice in writing to the employer of the date the employee proposes to commence maternity leave stating the period of leave to be taken.
- (b) An employee proceeding on unpaid parental leave may elect to take a shorter period of maternity leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

(4) Transfer to a Safe Job

- (a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of maternity leave.
- (b) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary by a registered medical practitioner. This leave shall be treated as parental leave for the purposes of this Agreement.

(5) Replacement Employee

- (a) Prior to engaging a replacement employee the employer shall inform the person of the temporary

nature of the employment and the entitlements relating to the return to work of the employee on parental leave.

- (6) Return to Work
 - (a) An employee shall confirm the intention to return to work by notice in writing to the employer not less than four weeks prior to the expiration of the period of the unpaid parental leave.
 - (b) An employee on return from unpaid parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on unpaid parental leave. Where an employee was transferred to a safe job pursuant to subclause (4) of this clause, the employee is entitled to return to the position occupied immediately prior to the transfer.
 - (c) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the part-time provisions of the relevant award.
 - (d) Where the position occupied by the employee no longer exists the employee shall be entitled to a position for which the employee is qualified and is capable of performing and most comparable in status and pay to that of their former position.
- (7) Effect of Leave on Employment Contract
 - (a) Fixed Term Contract

An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of the contract.
- (8) Continuous Service
 - (a) Absence on unpaid parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this Agreement.
- (9) Termination of Employment
 - (a) An employee on unpaid parental leave may terminate employment at anytime during the period of leave by written notice in accordance with the relevant award or Agreement.

26.—PUBLIC HOLIDAYS

(1) The following days shall be allowed as holidays with pay:

New Year's Day, Australia Day, Labor Day, Good Friday, Easter Monday, Anzac Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day.

(2) Where any of the days mentioned in subclause (1) of this clause falls on a Saturday or a Sunday, the holiday shall be observed on the next succeeding Monday. When Boxing Day falls on a Sunday or Monday, the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(3) The employer can agree to an alternative arrangement with the employee for the taking of public holidays. By agreement between the employer and the employee, the employee may substitute any of the days detailed in subclause (1) of this clause for an alternative day off in recognition of their cultural or religious requirements.

(4) Public Service Holidays shall no longer apply.

27.—OVERTIME AND TIME OFF IN LIEU ARRANGEMENTS

Notwithstanding the provisions of the parent award an employee who is called out on a weekend or public holiday shall not claim a call-out penalty payment, and an employee who is directed to work overtime by the College shall not receive penalty payments but shall be granted an equivalent time off in lieu for those hours worked in accordance with the Award.

Such time off in lieu shall be taken by the employee during term semester breaks or other periods as negotiated with the College.

28.—SIGNATURE OF THE PARTIES

Signed for and on behalf of
HEDLAND COLLEGE by:

(J. Thorpe)

Date 6/8/96

(J. Watson)

Date 6/8/96

WITNESS.....

Signed for and on behalf of
THE CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA INCORPORATED by:

(D. Robinson)

Date 9/8/96

(Ms J. Gaines)

Date 9/8/96

WITNESS.....

Signed for and on behalf of the
THE AUSTRALIAN LIQUOR, HOSPITALITY
AND MISCELLANEOUS WORKERS UNION,
MISCELLANEOUS WORKERS DIVISION,
WESTERN AUSTRALIAN BRANCH by:

(S. M. Jackson)

Date 18/7/96

(Noel Whitehead)

Date 18/7/96

WITNESS.....

SCHEDULE A

(1) Employees covered by the Government Officers Salaries, Allowances and Conditions Award.

	Current Annual \$	Column A \$	Column B \$
Level 1—			
U/17 Yrs	10,873	11,357	11,584
17 Yrs	12,707	13,272	13,538
18 Yrs	14,822	15,481	15,791
19 Yrs	17,157	17,920	18,279
20 Yrs	19,267	20,124	20,527
1st Yr of adult service	21,165	22,107	22,549
2nd Yr of adult service	21,817	22,788	23,244
3rd Yr of adult service	22,468	23,468	23,937
4th Yr of adult service	23,115	24,144	24,626
5th Yr of adult service	23,766	24,824	25,320
6th Yr of adult service	24,417	25,504	26,014
7th Yr of adult service	25,166	26,286	26,812
8th Yr of adult service	25,684	26,827	27,363
9th Yr of adult service	26,450	27,627	28,180
Level 2—			
1st Yr	27,367	28,585	29,157
2nd Yr	28,070	29,319	29,905
3rd Yr	28,809	30,091	30,693
4th Yr	29,590	30,907	31,525
5th Yr	30,407	31,760	32,395
Level 3—			
1st Yr	31,530	32,933	33,592
2nd Yr	32,405	33,847	34,524
3rd Yr	33,307	34,789	35,485
4th Yr	34,233	35,756	36,471
Level 4—			
1st Yr	35,503	37,083	37,825
2nd Yr	36,498	38,122	38,885
3rd Yr	37,522	39,192	39,976
Level 5—			
1st Yr	39,494	41,251	42,077
2nd Yr	40,827	42,644	43,497
3rd Yr	42,212	44,090	44,972
4th Yr	43,649	45,591	46,503

	Current Annual \$	Column A \$	Column B \$	Column A	Current Wage	Column A	Column B
Level 6—				Column A			
1st Yr	45,960	48,005	48,965	(d) Senior Qualified Child			
2nd Yr	47,531	49,646	50,639	Care Giver	534.50	558.29	569.45
3rd Yr	49,157	51,344	52,371	Column B			
4th Yr	50,893	53,158	54,221	(e) Child Care Giver			
Level 7—				Column A			
1st Yr	53,555	55,938	57,057	Step I	393.56	411.07	419.29
2nd Yr	55,397	57,862	59,019	Step II	400.54	418.36	426.73
3rd Yr	57,401	59,955	61,154	Step III	408.14	426.30	434.83
Level 8—				Step IV	418.78	437.41	446.16
1st Yr	60,658	63,357	64,624	Child Care Giver			
2nd Yr	62,991	65,794	67,110	Column B			
3rd Yr	65,884	68,816	70,192	Step I	373.95	390.59	398.40
Level 9—				Step II	381.90	398.89	406.87
1st Yr	69,497	72,590	74,041	Step III	389.50	406.83	414.97
2nd Yr	71,938	75,139	76,642	Step IV	399.00	416.75	425.09
3rd Yr	74,722	78,047	79,608	(h) Child Care Support			
Class 1	78,932	82,444	84,093	Employee			
Class 2	83,142	86,842	88,579	Column A	395.90	413.52	421.79
Class 3	87,350	91,237	93,062	1st year of experience	403.70	421.66	430.10
Class 4	91,560	95,634	97,547	2nd year of experience	411.40	429.71	438.30
				3rd year of experience	421.60	440.36	449.17
				4th year of experience			

(2) Classifications of the Government (Gardeners) Award and the Cleaners and Caretakers (Government) Award covered by this Agreement.

The minimum weekly rate of wage payable to employees employed in the following classifications covered by this Agreement, shall be:

Current Rate Column A Column B

Level Three			
Comprehends the following classes of work.			
Caretaker			
Estate Attendant (Homeswest) Grade 1			
1st year of employment	396.10	413.72	422.00
2nd year of employment	399.90	417.70	426.05
3rd year of employment and thereafter	403.80	421.77	430.20
Level Six			
Comprehends the following classes of work.			
Tradesperson Gardener			
1st year of employment	433.80	453.10	462.17
2nd year of employment	439.00	458.54	467.71
3rd year of employment and thereafter	443.20	462.92	472.18

(3) Classifications of the Children's Services (Government) Award covered by this Agreement

The minimum weekly wage payable to employees employed in the following classifications covered by this Agreement shall be:

Current Wage Column A Column B

Qualified Child Care Giver			
Column A	456.00	476.29	485.82
Step 1A	474.00	495.03	504.99
Step 1B	488.40	510.13	520.34
Step II	502.40	524.76	535.25
Step III	517.10	540.11	550.91
Step IV			
Qualified Child Care Giver			
Column B	434.80	454.15	463.23
Step 1A	452.00	472.11	481.56
Step 1B	465.70	486.42	496.15
Step II	479.20	500.52	510.53
Step III	493.00	514.94	525.24
Step IV			
Senior Qualified child Care Giver	561.50	586.49	598.22

**JAMES HARDIE BUILDING SERVICES LTD
TRADING AS QUELL FIRE & SAFETY PRODUCTS,
PERTH, PORTABLE SERVICE CERTIFIED
AGREEMENT 1996
No. AG 260 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch
and

James Hardie Building Services Ltd, t/a Quell Fire and Safety Products.

No. AG 260 of 1996.

James Hardie Building Services Ltd trading as Quell Fire & Safety Products, Perth, Portable Service Certified Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

10 October 1996.

Order.

HAVING heard Mr M. Anderton with Mr G.C. Sturman on behalf of the Applicants and Ms A. Chadwick on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 27th day of September, 1996 entitled the James Hardie Building Services Ltd trading as Quell Fire & Safety Products, Perth, Portable Service Certified Agreement 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

JAMES HARDIE BUILDING SERVICES LTD
TRADING AS
QUELL FIRE & SAFETY PRODUCTS
PERTH
PORTABLE SERVICE
CERTIFIED AGREEMENT
1996

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1.—TITLE

This Agreement should be known as the James Hardie Building Services Ltd. trading as Quell Fire & Safety Products, Perth, Portable Service Certified Agreement 1996.

2.—PARTIES AND PERSONS BOUND

The parties to this Agreement are:

- a) James Hardie Building Services Ltd trading as Quell Fire & Safety Products and its Perth Portable Service Division employees (approximately 10 employees) who are engaged in occupations covered by the Metal Trades (General) Award 1966,
Pt 1, who may or may not be members of the respondent union.
- b) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (AFMEPKIU).

3.—PURPOSE OF THIS AGREEMENT

The Management and employees will work to develop the Company's business of providing high quality products and services in the most effective manner, having regard to environmental and occupational health and safety considerations and the the achievement of the Structural Efficiency principles. This commitment will ensure the future growth of our Company and the job security of its employees.

This Agreement has been developed to:

- * Generate a culture that will ensure communication and consultation between employees and management to foster performance improvements.
- * Offer employees a share in these improvements and increased benefits.
- * Provide improved working conditions for all employees.
- * Support the introduction of new technology and associated changes to enhance the Company's competitive edge.
- * Encourage employees to continue to participate in appropriate training.
- * Widen the breadth of services and products promoted and supplied by employees.

4.—OPERATION AND DURATION OF AGREEMENT

a) This Agreement is made between James Hardie Building Service Ltd trading as Quell Fire & Safety Products and its Perth Portable Service employees

b) The provisions of this Agreement shall apply from the first pay period following signing of the agreement by all parties and certification by the Western Australian Industrial Relations Commission. The agreement shall continue in force for two years from the date of signing. After that time, conditions of the agreement will continue until a further enterprise agreement has been negotiated.

5.—CONSULTATIVE COMMITTEE

For the purpose of negotiating this and subsequent Agreements between Management and employees of the Company, a Consultative Committee will be established and maintained.

During the life of the agreement the Consultative Committee will become a continuous improvement team which will meet every three months and on an as required basis for the purpose of identifying further efficiencies to work practices.

The Consultative Committee will convene three months prior to the expiration of the agreement to commence negotiations for the next agreement.

6.—RELATIONSHIP TO PARENT AWARD

The provisions of the Metal Trades (General) Award 1966, Part 1, shall determine all conditions of employment not addressed by this Agreement. Provisions specifically addressed by this Agreement will apply in place of the Award.

7.—COMMITMENT TO QUALITY AND CONTINUOUS IMPROVEMENT

The commitment of management and employees to the philosophy of continuous improvement in the workplace is essential to ensure the continued profitable operation of the Company.

Through consultation, management and employees agree to co-operate in the suggestion and application of methods which:

- * Will add value to the business;
- * Promote the safety, health and welfare of employees;
- * Enhance efficient operations and improve productivity;
- * Improve cleanliness, presentation and housekeeping;
- * Further improve employee/employer relations;

- * Enhance and develop sound environmental practices;
- * Assist in supporting Company initiatives including total quality management and customer service philosophy;
- * Objectively measure performance, productivity and improvements;
- * Enhance the employee's ability to participate in new initiatives including products or services introduced by the Company and,
- * Enhance the Company's competitive position by establishing the Company as a leading provider of quality products and services.

8.—HOURS OF WORK

Hours of work will be as nominated in the Metal Trades (General) Award 1966, Pt 1. Changes in the way hours are typically worked will only occur through consultation and agreement between the employee(s) and the Company.

8.1 Spread of Hours

The employees working under this agreement recognise that in order to meet the demands of the business a flexible approach to hours of work must be adopted.

Ordinarily hours of work will be 8.00am to 4.30pm. With prior arrangement and agreement and in accordance with the needs of the business flexible hours may be worked between 6.00am and 6.00pm. Eight hours per day will normally be worked in order to accrue one rostered day off per four week period.

8.2 Rostered Days off

In order to ensure adequate coverage the following arrangements will apply.

- RDO's may be accrued to a total of three.
- Ordinarily one RDO shall be taken each month unless in an emergency where a maximum of three consecutive banked RDO's may be taken.
- Where possible one weeks notice must be provided prior to the taking of an RDO.
- No more than one field technician and one workshop technician may be on an RDO on any one day.

8.3 Overtime

Overtime will be worked following consultation and agreement between the technician and his/her supervisor.

9.—SICK LEAVE

Sick Leave entitlements will be in accordance with the parent award. In the event of an employee being unable to attend work due to illness he/she must contact his/her direct supervisor as soon as practicable, prior to the shift of the absence.

10.—USE OF COMPANY VEHICLES

Vehicles are to be used in accordance with the Company Work Vehicle User Policy (Appendix A).

The employee is responsible for ensuring the vehicle is serviced by the Company's service agent at the Company's expense and is kept safe, clean and tidy at all times. Employees who are permitted to drive a Company vehicle must at all times drive responsibly and in accordance with the Company Policy. The Company reserves the right to withdraw the use of any Company vehicle from any employee.

11.—TRAINING

During the life of the agreement the parties commit to undertake a training needs analysis in order to ascertain the key training requirements of the business. The Consultative Committee will meet on a regular basis to consult on and review the training requirements. Training will be undertaken on an as agreed and required basis.

12.—UNIFORMS

The standard issue of uniforms will be as follows:

- 5 shirts (long or short sleeve)
- 3 pairs of pants
- 1 jumper/jacket
- 1 safety boots
- 1 pair of overalls
- 1 sun hat
- 1 wet weather gear

Uniforms will ordinarily be issued within one month of commencement of employment with the Company and reissued on an annual or fair wear and tear basis.

All field and workshop technicians are to wear the Company supplied uniforms and present themselves in a neat and tidy manner.

Safety equipment will be issued upon request and must be worn as required.

13.—PERFORMANCE AND DEVELOPMENT REVIEW

The parties to this agreement recognise the importance of assessing employees performance and developing appropriate training programs.

All employees will be formally assessed annually, using the Company Performance and Development Review Procedure (Appendix B) in the following manner.

- Step 1. Immediate Supervisor appraises employee.
- Step 2. Immediate Supervisor and employee discuss and agree on a second appraisal form.
- Step 3. Employee receives a copy of both appraisals, as does the Manager.

Should the employee feel at any time during this appraisal process that the Supervisor is not being fair and objective, then the employee can bring this matter up with the Manager. Failure to reach agreement may result in the dispute resolution procedure being implemented.

14.—INCREASE TO WAGES

In full recognition of all productivity improvements made to date and the parties commitment to ongoing improvements and achievement of productivity initiatives the following increases in wages will be available:

- a) Upon all parties signing the agreement a change in the base rate of pay will apply as per Table 1.
- b) Effective the 1st April 1997 there will be an additional 5% increase to base rates of pay as per Table 1.
- c) Effective 1st April 1998 up to an additional 5% to the base rate of pay will be available based on the achievement of the 1997/98 yearly budget as per Table 2.

Table 1

Current base rate	5% on base on signing	5% on base 1/4/97	Upto 5% on base 1/4/98
\$446.00	\$468.30	\$491.70	upto \$516.30 available linked to achievement of budget (see Table 2)

Table 2

Achievement of 1997/98 Budget	Base rate of Pay as of 1/4/98
Less than 85% of budget = 0% increase to base	\$491.70
85-89% of budget = 2% increase to base	\$501.50
90-94% of budget = 3% increase to base	\$506.50
95-99% of budget = 4% increase to base	\$511.40
100%+ of budget = 5% increase to base	\$516.30

15.—ALLOWANCES

Where applicable allowances will be paid in accordance with the provisions of the parent award. Where a site agreement prescribes a site allowance and where contracted, that allowance shall be paid in addition to the rates of pay prescribed by this agreement and the terms of this agreement shall continue to apply.

16.—CLASSIFICATION STRUCTURE

The parties to this award agree that the recognition and development of appropriate work competencies is important to the future of our business and the well being of all. To this end the following classification structure has been developed specific to the needs of the business.

Level	Classification	Rate of pay upon signing	Rate of pay 1/4/97	Rate of pay 1/4/98
1	Entry Level	\$399.00	\$419.00	Upto \$440.00
2	Competent Technician	\$430.00	\$451.50	Upto \$474.00
3	Experienced Technician	\$468.30	\$491.70	Upto \$516.30
4	Senior Technician	\$492.00	\$516.60	Upto \$542.40

It is proposed that these classifications be supported by the following skill and competency requirements.

- Grade 1 Literacy, numeracy, basic EH&S, drivers licence, basic mechanical aptitude.
- Grade 2 Basic product knowledge, knowledge of Australian standards and servicing procedures for portable service equipment, all paperwork and invoicing procedures, basic computer skills, effective communication and liaison with customers.
- Grade 3 Grade 2 plus sound product knowledge and advanced fault finding techniques, ability to service and repair all portable equipment, apply testing procedures, effective installations, site surveys, hose reel maintenance, apply all relevant Australian standards, sales proficiency, ability to undertake product instructions.
- Grade 4 Grade 3 plus advanced product knowledge, perform training and product demonstrations and presentations, sound sales techniques, ability to perform quotations and complete tenders, supervision.

*All current employees will move into the Classification Structure at Level 3 Experienced Technician effective as of signing this agreement by all parties.

*New and existing employees will move through the structure based on skills acquired, accredited and utilised.

17.—AVOIDANCE AND SETTLEMENT OF INDUSTRIAL DISPUTES

17.1 It is the basic intention of the parties to eliminate, by direct negotiation and consultation between them, any dispute or grievance, including any which is liable to cause a stoppage or other form of ban or limitation upon performance of work. Throughout all stages of the following procedure all relevant facts shall be clearly identified and recorded.

17.2 As soon as possible after any concern or claim arises (within 24 hours), the employee concerned will raise the matter with his/her supervisor, using the Industrial Incident Report (Appendix D). The employee may elect to have a shop delegate or union representative present. The supervisor will attempt to resolve the matter.

17.3 If the matter is not resolved within three (3) working days it will be raised with the employee's manager who will attempt to resolve the matter as soon as possible.

17.4 Where such attempt to resolve the matter is unsuccessful, the matter may be raised with the Consultative Committee. The parties should work in consultation towards a suitable resolution.

17.5 If the matter is not resolved, the matter may be raised with the employee's union organiser. The parties should work in consultation towards a suitable resolution. Every endeavour will be made to resolve the dispute in accordance with the above procedure within 7 days of the matter being initially raised.

17.6 If the matter is not resolved it should be submitted to the Western Australian Industrial Relations Commission to resolve the matter by conciliation.

17.7 At all times work will continue without disruption whilst the issue(s) are being resolved in accordance with the above procedure.

18.—NO EXTRA CLAIMS

It is a term of this Agreement that the Unions and all employees bound by this Agreement will not pursue any extra claims, award or over award, for the life of this Agreement.

This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings or in national standards such as standard hours of work, annual leave or long service leave.

19.—RENEWAL OF AGREEMENT

At least three (3) months prior to the expiration of the agreement the parties will reconvene to discuss any changes required for a future agreement.

20.—NATIONAL COMPETENCY STANDARDS

The new rates included in this Agreement are inclusive of any anticipated increases that may result from the Award Restructuring Process.

The Consultative Committee shall be responsible for reviewing the competency standards at the enterprise level. It is acknowledged that the standards shall only be implemented on an agreed basis and that no employee shall be disadvantaged through their introduction.

21.—PERFORMANCE DISCIPLINE PROCEDURE

The parties to this agreement recognise the need for a clear and effective Performance Discipline Procedure. Performance discipline will be undertaken in accordance with the James Hardie Building Services Ltd Performance Discipline Procedure. (Appendix E)

22.—TOOLS

All employees will be provided with tools to perform their responsibilities as per the Schedule of Tools (Appendix F). The parties agree that it is the employees responsibility to ensure that all personal and Company supplied tools are regularly quality checked and maintained in an accurate and safe condition.

The employee shall be responsible for the replacement of tools which are lost or damaged as a direct result of his/her negligence.

23.—COMMITMENT TO EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Equal Employment Opportunity (EEO) is about removing discrimination at the workplace and ensuring that all people have the same opportunities to enter and progress in the workforce.

Affirmative Action (AA) is the planned process through which Equal Employment Opportunity is achieved.

In addition to abiding by the relevant legislation the parties to this agreement recognise the need to develop and implement an agreed policy to break down any existing barriers and ensure that all individuals have the same rights and opportunities to employment, training and advancement.

The parties undertake to:

- recognise the joint responsibility of management and employees to the development and implementation of an Affirmative Action Program: and
- undertake discussions at a local level with regard to AA:

24.—ENVIRONMENT, HEALTH AND SAFETY

The parties to this agreement are committed to providing a safe and healthy work environment. The parties will maintain a consultative and participate approach to the ongoing implementation of the James Hardie Industries Environment, Health and Safety Policies and Procedures.

25.—JOURNEY COVER

Upon certification of the agreement the Company shall effect Journey Cover insurance at the cost to the Company of \$20.00 per employee per annum during the life of the agreement. The choice of fund will be made in consultation, and agreement, with the parties to this agreement.

26.—ACCEPTANCE

The above agreement was accepted on behalf of all respondent employees by

(<u>indecipherable</u>)	on behalf of James Hardie Building Services
17/9/96	
<u>J. Sharp-Collett (signed)</u>	on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union.

Common Seal

Appendix A

JAMES HARDIE BUILDING SERVICES LTD.

WORK VEHICLE USER POLICY

(vans, utilities, and other commercial vehicles excluding passenger cars)

1. APPROVED DRIVERS

The driver of the Company vehicle must be an employee of the Company and the employee must be fully licensed to drive the vehicle. People who are not employees or employees who are unlicensed or who have provisional or learners licenses are not permitted to drive the Company vehicle.

A copy of each driver's current license is to be held by the Company and the driver is to advise the Company of any change to the status or validity of the license.

2. PRIVATE USE

Employees may use the Company vehicle that has been allocated to them to drive to and from work. The Company vehicle may also be used when the employee is rostered on call or when the employee may otherwise have good reason to believe that he or she may be called to work and on the proviso that he or she will be available if called to work.

3. RETURN OF COMPANY VEHICLE WHILE ON LEAVE

The Company vehicle must be returned to the Company prior to an employee commencing annual and long service leave. If an employee is on sick leave then the Company may arrange to retrieve the vehicle depending on how long the employee is expected to be on sick leave.

4. CARE OF COMPANY VEHICLE

At his or her own expense, the employee is expected to keep the inside and outside of the vehicle clean and presentable at all times. The employee is to pay for cleaning materials although the Divisional Manager may approve Company payment when the vehicle has become especially dirty through unusually harsh work use.

No alterations, additions or modifications are to be made to the vehicle without the approval of the Divisional Manager.

The employee is responsible for bringing to the Company's immediate attention any fault that could render the vehicle unsafe or not roadworthy. The approval of the Divisional Manager must be obtained before repairs and maintenance are carried out.

5. SHELL CARD

Shell Card is to be used for the purchase of petrol, oil, repairs and maintenance only. No miscellaneous purchases are permitted on Shell Card. Company approval must be obtained before Shell Card is used for repairs and maintenance.

6. INSURANCE

Company vehicles are insured for Third Party Property Damage only. Property carried in a Company vehicle, whether Company property or private property, is not insured by the Company. The employee should arrange through his or her own insurer for the insurance of private property which will be carried in the Company vehicle.

7. SAFE, COURTEOUS AND LEGAL USE

Company vehicles are to be used safely, courteously and legally at all times. All fines or other penalties are to be paid for or born by the employee.

An employee who loses his or her drivers license will be dismissed if the job requires the use of a vehicle and if no other arrangement is available.

8. ACCIDENTS

The driver of a Company vehicle must know what to do if he or she has an accident. Information on "What To Do If You Have An Accident" and "Details to Exchange" are available from the Company and should preferably be kept with each vehicle.

9. ALCOHOL OR DRUGS

A Company vehicle is not to be used by any driver who is affected by alcohol or drugs.

No support will be provided by the Company for any employee who suffers any consequences as a result of being in control of a Company vehicle while under the influence of alcohol or drugs.

The employee will pay for any damage to the Company vehicle, other vehicles, people or property as a result of an accident where the employee is the driver of the Company vehicle and the employee is found to be affected by alcohol or drugs.

10. MISDEMEANOUR

Any employee who does not abide by this policy will receive a written warning on the first occasion and could be dismissed if this happens on more than one occasion.

Immediate dismissal could result if an employee is found to be in control of a Company vehicle while under the influence of alcohol or drugs. Dismissal could also result if an employee steals from the Company by using Fleet Card for private purchases or if an employee alters or modifies a Company vehicle without the approval of the Divisional Manager.

If an employee causes damage to a vehicle through his or her own negligence then the employee may be required to pay for the repair of the damage.

PETER ROSS
HUMAN RESOURCES MANAGER

WHAT TO DO IF YOU HAVE AN ACCIDENT!

1. Assist any person hurt in the accident.

2. Do not discuss whose fault it was.

There is a time and place for this and it is not at the scene of the accident.

3. Only have the police attend if.....

- a person is injured or killed
- the other driver does not stop or give details
- one or more vehicles needs to be towed
- the other driver appears to be under the influence of alcohol or drugs
- damage to a vehicle or property appears to be over \$500.

4. If the police do not have to attend.....

- exchange details with the other driver (see attached)
- clear away any broken glass or other debris from the scene
- report the accident at a police station within 24 hours.

5. Report the accident to the Company.

Telephone your supervisor or manager as soon as possible.

ACCIDENT DETAILS TO RECORD

Other Vehicle's Driver
Full Name _____
Address _____
Phone Number (home) _____ (work) _____
Drivers License No. _____

Other Vehicle's Owner
Full Name _____
Address _____
Phone Number (home) _____ (work) _____

Other Vehicle's Insurance
Name of Company _____
Policy No _____ Policy Type _____

Other Vehicle
Registration Number _____
Make & Model _____
Year Made _____ Colour _____
Apparent Damage _____

Accident Scene
Street Names _____
Time _____
Briefly What Happened? _____

Independent Witness (if available)
Name _____
Address _____
Phone Number (home) _____ (work) _____

Police (if called)
Officer's Name _____
Police Station _____
Phone Number _____

<div style="display: flex; justify-content: space-between;"> <div style="text-align: center;"> <h2 style="margin: 0;">James Hardie Building Services</h2> <h3 style="margin: 0;">PERFORMANCE AND DEVELOPMENT REVIEW</h3> </div> <div style="text-align: right;"> <p>Appendix B</p> <p>CONFIDENTIAL</p> </div> </div>
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NAME _____	GIVEN NAMES _____	DIVISION/UNIT _____
CURRENT POSITION _____	LOCATION _____	
LENGTH OF TIME IN CURRENT POSITION _____	YRS _____	MTHS _____
DATE THIS REVIEW _____	DATE NEXT REVIEW _____	

1. KNOWLEDGE OF JOB: Consider the employee's knowledge of his/her immediately related duties, having regard to employee's relevant experience: Comments:	Exceptional Performance Exceeds Position Requirements Fully Meets Position Requirements Satisfactory, but Improvement Required Fails to Meet Position Requirements
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2. QUANTITY & QUALITY OF WORK: Consider the quantity and quality of end results produced by the employee in the light of the employees knowledge and experience: Comments:	Exceptional Performance Exceeds Position Requirements Fully Meets Position Requirements Satisfactory, but Improvement Required Fails to Meet Position Requirements
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3. INTERPERSONAL SKILL: Consider the conduct displayed by the employee in personal relationships with internal and external customers: Comments:	Exceptional Performance Exceeds Position Requirements Fully Meets Position Requirements Satisfactory, but Improvement Required Fails to Meet Position Requirements
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4. ORGANISING AND PLANNING: Consider the effectiveness displayed by the employee in carrying out his/her own work and where applicable, delegating and organising the work of others: Comments:	Exceptional Performance Exceeds Position Requirements Fully Meets Position Requirements Satisfactory, but Improvement Required Fails to Meet Position Requirements
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5. PROBLEM SOLVING: Consider the employee's ability to effectively solve problems using available resources: Comments:	Exceptional Performance Exceeds Position Requirements Fully Meets Position Requirements Satisfactory, but Improvement Required Fails to Meet Position Requirements
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6. COMMUNICATION: Consider the employee's effectiveness in keeping internal and external customers informed by way of both oral and written reporting: Comments:	Exceptional Performance Exceeds Position Requirements Fully Meets Position Requirements Satisfactory, but Improvement Required Fails to Meet Position Requirements
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7. APPEARANCE/PRESENTATION: Comment on the employee's personal presentation and appearance in addition to their care of company vehicle and property: Comments:	Exceptional Performance Exceeds Position Requirements Fully Meets Position Requirements Satisfactory, but Improvement Required Fails to Meet Position Requirements
--	--

8. ABSENTEEISM/TIMEKEEPING/RELIABILITY: Comment on the employee's consistency in arriving for work when required and on time as well as his/her attendance record: Comments:	Exceptional Performance	....
	Exceeds Position Requirements	....
	Fully Meets Position Requirements	....
	Satisfactory, but Improvement Required	....
	Fails to Meet Position Requirements	....

9. SAFETY: Comment on the employee's attitude to safety, adherence to safe working practices and breaches of safety regulations: Comments:	Exceptional Performance	....
	Exceeds Position Requirements	....
	Fully Meets Position Requirements	....
	Satisfactory, but Improvement Required
	Fails to Meet Position Requirements

COMMENT ON OVERALL PERFORMANCE:

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PERFORMANCE AND DEVELOPMENT AIMS FOR NEXT REVIEW PERIOD:

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EMPLOYEE'S COMMENTS:

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REVIEW CONDUCTED BY:

NAME POSITION.....

SIGNATURE DATE.....

NAME POSITION.....

SIGNATURE DATE.....

EMPLOYEE SIGNATURE DATE.....

INDUSTRIAL INCIDENT REPORT

1 Issue raised by: _____

Date: _____ **Time:** _____

2 Details of Grievance/Incident:

3 Supervisor's View:

4 Manager's View:

5 Consultative Committee's View:

6 Union Representative's View:

7 Follow Up Action Required:

Date: _____

8. Responsibilities:

Appendix D

PERFORMANCE DISCIPLINE PROCEDURE

Determining Disciplinary Action

The seriousness of any performance, conduct or behavioural issue together with associated circumstances, will determine the manner in which the employee needs to be disciplined.

Associated circumstances may include:

- prior poor conduct
- period of time since a prior related incident
- surrounding or mitigating circumstances.

There are four stages to the discipline procedure, as shown in the following table.

Four Stages

Stage	Description
1	Informal counselling — first time incident or misconduct
2	First written warning for serious misconduct or repeats of incidents.
3	Final written warning for more serious misconduct or further repeats
4	Termination of employee for most serious incidents of misconduct or a last resort after counselling steps

Stage 1 — Informal counselling—Reprimand

This level of counselling is appropriate for first time incidents of misconduct of a relatively minor nature. A reprimand is an informal chat that can be conducted on the job or in the office.

The purpose of the counselling session is to advise the employee personally of the conduct that is of concern and to establish if there are any reasons for the behaviour and whether the Company can provide assistance to avoid further instances of unacceptable behaviour through training or other action. The employee should be given an opportunity

to defend himself/herself against the complaint with assistance of another person (delegate or witness) if requested by the employee. The manager must give due consideration to matters raised by the employee.

The employee and manager should attempt to reach agreement on action required to rectify the problem. Progress on the corrective action should be reviewed on a specified date. The employee is to be informed that the counselling session will be recorded in manager's diary or in his/her personal file by way of a record of interview such as an *Employee warning record*.

Stage 2—Formal Counselling — First written warning

This level of warning is appropriate for more serious incidents of misconduct or for repeats of incidents that were the subject of previous counselling or warning.

The employee should be advised personally of the reason(s) for the disciplinary interview and be given an opportunity to defend himself/herself against the complaint(s) with assistance of another person (delegate or witness) if requested by the employee. The manager must give due consideration to matters raised by the employee which may require further investigation. If a warning is to be issued, the employee and manager should attempt to reach agreement on action required to rectify the problem. The employee should be informed that:

- a warning has been issued for unacceptable behaviour following earlier counselling (if appropriate), and is recorded in his/her personal file by way of a record of interview, or on the *Employee warning record*;
- a continuation of such conduct may lead to dismissal;
- his/her conduct will be reviewed on a specified date—the length of the period depending on what would be a reasonable time frame for required improvement to occur.;
- within 24 hours of the disciplinary interview, a written warning based on the record of interview will be issued to the employee and a copy placed on the employee's file. An *Employee warning record* can be used for this purpose.

It is preferred, but not essential that the employee signs an acknowledgement of the counselling. If it is not accepted, then actions in this regard should be noted.

Stage 3 — Final written warning

This is obviously for more serious misconduct or repeats of incidents that were the subject of previous counselling or warnings.

The employee is again personally advised of the reason(s) for the disciplinary interview and should be given an opportunity to defend himself or herself against the complaint(s) with assistance of another person (delegate or witness) if requested by the employee. A management representative is recommended. In a unionised situation it may be advisable to have a union representative present at this stage of the procedure.

The manager must give due consideration to matters raised by the employee which may require further investigation.

If a final written warning is to be issued, the employee and manager should attempt to reach agreement on action required to rectify the problem.

the employee should be informed that:

- a final warning has been issued for unacceptable behaviour following previous counselling and warnings, (if appropriate), and will be recorded in his/her personal file on the *Employee warning record*;
- a continuation of unacceptable behaviour will lead to dismissal;
- conduct will be reviewed on a specified date;
- within 24 hours of the disciplinary interview a written warning based on the record of the interview will be issued to the employee and a copy placed on the employee's file. An *Employee warning record* can be used for this purpose.

It is preferred, but not essential that the employee signs an acknowledgement of the counselling.

A copy of any final written warning will be forwarded to the appropriate representative of the Australian Worker's Union. Where an employee has been issued a final written warning, and after a 12-months period of no additional warnings, the final written warning will lapse back to the first written warning.

Stage 4 — Termination

This level of discipline is only appropriate for the most serious incidents of misconduct or as the last resort after prior warning efforts for the same incident.

Subject to:

- careful investigation of all the facts and,
- after the employee has had an adequate opportunity to defend himself or herself against the complaint, with the assistance of another person if requested by the employee,
- the manager has given due consideration to matters raised by the employee which may require further investigation.

It is open to the manager to dismiss the employee. In a unionised situation, a union representative/witness should be present. A Company witness must be present.

No action to effect dismissal must be taken without prior discussion with the Business General Manager and HR Department.

Summary dismissal

JHBS has a legal right to summarily dismiss any employee without notice for serious misconduct which justifies such dismissal. Taking the step to summarily dismiss an employee should be exercised most carefully. Summary dismissal may be justified in cases such as:

- Serious neglect of duty;
- Extreme inefficiency or incompetence;
- Gross insubordination and abuse;
- Dishonesty, including theft;
- Drunkenness
- Some forms of serious misbehaviour, including fighting;

- Serious workplace harassment;
- Serious and wilful disobedience;
- Serious EH&S breach.

These circumstances will still need to be the subject of procedural fairness.

Employee warning record

NAME: _____
 DEPARTMENT: _____
 EMPLOYEE NO: _____

1. REPRIMAND (informal)

Date: _____
 Reason for reprimand: _____

Supervisor: _____
 Employee: _____
 Delegate/Witness: _____

2. FIRST WRITTEN WARNING

Date: _____
 Reason for written warning: _____

Letter of written warning provided — YES / NO

Supervisor: _____
 Employee: _____
 Delegate/Witness: _____

3. FINAL WRITTEN WARNING

Date: _____
 Reason for final written warning: _____

Letter of final written warning provided — YES / NO

Supervisor: _____
 Employee: _____
 Delegate/Witness: _____

4. TERMINATION

Date: _____
 Reason for termination: _____

Supervisor: _____
 Employee: _____
 Delegate/Witness: _____

Forward to HR for forwarding to personnel file in Pay Office

HR: _____ Date: _____

Appendix E

SCHEDULE OF TOOLS

- 1 hammer
- 1 pliers
- 1 punch
- 1 number punch
- 1 Phillips screw driver
- 1 flat blade screw driver
- 1 batt drill
- 1 electric drill
- 1 extension cord
- 1 18" stillsons
- 1 9/16 spanner
- 1 scales
- 1 hand operated hilti gun

- 1 brush
- 1 stilastic gun
- 1 tape measure (5m)
- 1 bucket

JOBSKILLS TRAINEE MONOPAK PTY LTD AGREEMENT, 1996
No. AG 235 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Monopak Pty Ltd.

No. AG 235 of 1996.

Jobskills Trainee Monopak Pty Ltd Agreement, 1996.

SENIOR COMMISSIONER G.L. FIELDING.

10 October 1996.

Order:

HAVING heard Ms S. Ellery on behalf of the Applicant and Mr A. Foley on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 3rd day of September, 1996 entitled the Jobskills Trainee Monopak Pty Ltd Agreement, 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,

Senior Commissioner.

[L.S]

Schedule.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Application Pursuant to Section 41 of The Industrial Relations Act

PLASTICS JOBSKILLS AGREEMENT

1.—TITLE

This Agreement shall be referred to as the Jobskills Trainee Monopak Pty Ltd (Employer Name) Agreement, 1996.

2.—ARRANGEMENT

Clause	Subject Matter
4	Application
2	Arrangement
3	Definition
8	Dispute Resolution Procedure
6	Jobskills Trainee
7	No precedent
5	Parties Bound
1	Title
9	Reservation

3.—DEFINITION

A Jobskills Trainee is an employee who is employed under the conditions applying in the Commonwealth Government Jobskills programme.

4.—APPLICATION

This Agreement applies to employees of Monopak Pty Ltd (name of employer) engaged under the Jobskills programme as Job Trainees and insofar as the terms of this agreement vary from the terms of the relevant award, namely (Plastics

Manufacturing Award #5 of 1977) otherwise applying to the Jobskills Trainee(s), the terms of this Agreement shall prevail. In all other respects, the terms of the (Plastics Manufacturing Award #5 of 1977) and any other relevant award shall continue to operate.

For each Jobskills Position a procedure must be followed that is in accordance with the Commonwealth Jobskills Programme Guidelines. Where the procedure has not been followed to the satisfaction of the Department of Employment, Education and Training, and/or the broker and/or the respondent Union then the employer cannot employ a Jobskills Trainee.

The parties estimate that this agreement will apply to Four (employees covered) employees.

5.—PARTIES BOUND

This agreement shall be binding on the Monopak Pty Ltd (name of employer) in respect of Jobskills Trainees and on the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and its members.

6.—JOB SKILLS TRAINEE

Training Conditions

- (a) (i) A Jobskills Trainee shall attend approved on and off-the-job training prescribed in the relevant training agreement, or as notified to the Jobskills Trainee by the employer or agent.
- (ii) Jobskills Trainees will receive over a period of 26 weeks a mix of supervised work experience, structured training on-the-job and off-the-job and the opportunity to develop and practice new skills in a work environment.
- (iii) Jobskills Trainees may only be engaged by employers to undertake activities under the Jobskills programme guidelines. The employer shall ensure that the Jobskills Trainee is permitted to attend the prescribed off-the-job training and is provided with appropriate on-the-job training.
- (iv) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

Employment Conditions

- (b) (i) Any Jobskills Trainees employed pursuant to this award shall be engaged in addition to existing staff levels.
- (ii) 'Existing Staff Levels' in respect of this clause shall mean those staff/employee(s) levels, inclusive of employees on absences of workers compensation, paternity or long service leave, applying prior to the operation of this clause, and shall include:
 - existing casual and temporary employees; and
 - existing full time and part-time employees; and
 - existing permanent employees.
- (iii) In addition, no existing staff who fall within the definition of existing staff levels shall have hours reduced by the employment of a Jobskills Trainee.
- (iv) The provisions, as referred to herein, shall apply until such time as the period of the Jobskills placement has ended and no further Jobskills Trainee(s) have been appointed.
- (v) Jobskills Trainees shall be engaged for a period of 26 weeks as fulltime employees.
- (vi) Jobskills Trainees are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training plan. However, except for absences provided for under the relevant award referred to in Clause 4.—Application, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of absence.

- (vii) Overtime and shift work shall not be worked by Jobskills Trainees except to enable the requirements of the training plan to be effected. When overtime and shiftwork are worked the penalties and allowances prescribed in the relevant award referred to in Clause 4.—Application, will apply. No Jobskills Trainee shall work overtime or shiftwork on their own.
- (viii) The Union shall be afforded reasonable access to Jobskills Trainees for the purposes of explaining the role and functions of the Union and enrolment of the Trainee as a member.
- (ix) Where the employment of the Trainee is continued after completion of the Traineeship period, such Traineeship period shall be counted as service for the purpose of the relevant award referred to in clause 4.—Application.

Wages

- (c) The weekly wages payable to Jobskills Trainees shall be \$300 in accordance with the Commonwealth Jobskills Program Guidelines as varied from time to time. It is the rate for all purposes of the award and takes account of the range and extent of training provided.

7.—NO PRECEDENT

This agreement represents a compromise on the part of all parties and will not be used as a precedent in proceedings before industrial tribunals.

This agreement shall come into force from the beginning of the first pay period to commence on or after 5/8/96 (date) and shall continue in force for a period of twelve months or until the Jobskills program may be wound up.

8.—DISPUTE RESOLUTION PROCEDURE

The following procedure shall be followed in the event of any dispute arising relating to the operation of this agreement.

- (a) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s shall be present if requested by the employee/s.
- (b) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the Company.
- (c) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the Company and an appropriate Official of the Union.
- (d) If the matter is still not settled, it shall be submitted to the WA Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the Act, be final.
- (e) The parties will co-operate to ensure that these procedures are carried out expeditiously.

9.—RESERVATION

The parties to this Award reserve the right to seek its variation or revocation if circumstances develop in the operation of the Jobskills programme which adversely affect their interests or the interests of their members to the extent that the variation or revocation is warranted.

Signed for and on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, miscellaneous Workers' Division, WA Branch

Helen M. Creed (signed)	21/8/96
Helen Creed—Secretary	Date
Common Seal	
Signed for and on behalf of Monopak Pty Ltd (the employer) (indecipherable)	5/8/96
	Date

**JOBSKILLS TRAINEE NALLY (WA) PTY LTD
AGREEMENT, 1996
No. AG 234 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Nally (WA) Pty Limited.

No. AG 234 of 1996.

Jobskills Trainee Nally (WA) Pty Ltd Agreement, 1996.

SENIOR COMMISSIONER G.L. FIELDING.

10 October 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and Ms J.L. Dowling on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 3rd day of September, 1996 entitled the Jobskills Trainee Nally (WA) Pty Ltd Agreement, 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,

[L.S] Senior Commissioner.

Schedule.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Application Pursuant to Section 41 of The Industrial
Relations Act

JOBSKILLS AGREEMENT

1.—TITLE

This Agreement shall be referred to as the Jobskills Trainee Nally (WA) Pty Ltd (Employer Name) Agreement, 1996.

2.—ARRANGEMENT

Clause	Subject Matter
4	Application
2	Arrangement
3	Definition
8	Dispute Resolution Procedure
6	Jobskills Trainee
7	No precedent
5	Parties Bound
1	Title
9	Reservation

3.—DEFINITION

A Jobskills Trainee is an employee who is employed under the conditions applying in the Commonwealth Government Jobskills programme.

4.—APPLICATION

This Agreement applies to employees of Nally (WA) Pty Ltd (name of employer) engaged under the Jobskills programme as Job Trainees and insofar as the terms of this agreement vary from the terms of the relevant award, namely (Plastics Manufacturing Award #5 of 1977) otherwise applying to the Jobskills Trainee(s), the terms of this Agreement shall prevail. In all other respects, the terms of the (Plastics Manufacturing Award #5 of 1977) and any other relevant award shall continue to operate.

For each Jobskills Position a procedure must be followed that is in accordance with the Commonwealth Jobskills Programme Guidelines. Where the procedure has not been followed to the satisfaction of the Department of Employment,

Education and Training, and/or the broker and/or the respondent Union then the employer cannot employ a Jobskills Trainee.

The parties estimate that this agreement will apply to 6 (No. of employees covered) employees.

5.—PARTIES BOUND

This agreement shall be binding on Nally (WA) Pty Ltd (name of employer) in respect of Jobskills Trainees and on the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and its members.

6.—JOBSKILLS TRAINEE

Training Conditions

(a) (i) A Jobskills Trainee shall attend approved on and off-the-job training prescribed in the relevant training agreement, or as notified to the Jobskills Trainee by the employer or agent.

(ii) Jobskills Trainees will receive over a period of 26 weeks a mix of supervised work experience, structured training on-the-job and off-the-job and the opportunity to develop and practice new skills in a work environment.

(iii) Jobskills Trainees may only be engaged by employers to undertake activities under the Jobskills programme guidelines. The employer shall ensure that the Jobskills Trainee is permitted to attend the prescribed off-the-job training and is provided with appropriate on-the job training.

(iv) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

Employment Conditions

(b) (i) Any Jobskills Trainees employed pursuant to this award shall be engaged in addition to existing staff levels.

(ii) "Existing Staff Levels" in respect of this clause shall mean those staff/employee(s) levels, inclusive of employees on absences of workers compensation, paternity or long service leave, applying prior to the operation of this clause, and shall include:

- existing casual and temporary employees; and
- existing full time and part-time employees; and
- existing permanent employees.

(iii) In addition, no existing staff who fall within the definition of existing staff levels shall have hours reduced by the employment of a Jobskills Trainee.

(iv) The provisions, as referred to herein, shall apply until such time as the period of the Jobskills placement has ended and no further Jobskills Trainee(s) have been appointed.

(v) Jobskills Trainees shall be engaged for a period of 26 weeks as fulltime employees.

(vi) Jobskills Trainees are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training plan. However, except for absences provided for under the relevant award referred to in Clause 4.—Application, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of absence.

(vii) Overtime and shiftwork shall not be worked by Jobskills Trainees except to enable the requirements of the training plan to be effected. When overtime and shiftwork are worked the penalties and allowances prescribed in the relevant award referred to in Clause 4.—Application, will apply. No Jobskills Trainee shall work overtime or shiftwork on their own.

(viii) The Union shall be afforded reasonable access to Jobskills Trainees for the purposes of explaining the role and functions of the Union and enrolment of the Trainee as a member.

(ix) Where the employment of the Trainee is continued after completion of the Traineeship period, such Traineeship period shall be counted as service for the purpose of the relevant award referred to in Clause 4.—Application.

Wages

(c) The weekly wages payable to Jobskills Trainees shall be \$300 in accordance with the Commonwealth Jobskills Programme Guidelines as varied from time to time. It is the rate for all purposes of the award and takes account of the range and extent of training provided.

7.—NO PRECEDENT

This agreement represents a compromise on the part of all parties and will not be used as a precedent in proceedings before industrial tribunals.

This Agreement shall come into force from the beginning of the first pay period to commence on or after 20/5/96 (date) and shall continue in force for a period of twelve months or until the Jobskills program may be wound up.

8.—DISPUTE RESOLUTION PROCEDURE

The following procedure shall be followed in the event of any dispute arising relating to the operation of this agreement.

- (a) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s shall be present if requested by the employee/s.
- (b) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the Company.
- (c) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the Company and an appropriate Official of the Union.
- (d) If the matter is still not settled, it shall be submitted to the WA Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the Act, be final.
- (a) The parties will co-operate to ensure that these procedures are carried out expeditiously.

9.—RESERVATION

The parties to this Award reserve the right to seek its variation or revocation if circumstances develop in the operation of the Jobskills programme which adversely affect their interests or the interests of their members to the extent that the variation or revocation is warranted.

Signed for and on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, WA Branch

Helen M. Creed (signed) 21/8/96
Helen Creed—Secretary Date
Common Seal

Signed for and on behalf of Nally (WA) Pty Ltd (the employer)

John L. Murray (signed) 18/3/96
Date

**JOBSKILLS TRAINEE PLAS-PAK (WA) PTY LIMITED AGREEMENT, 1996
No. AG 236 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Plas-Pak (WA) Pty Limited.

No. AG 236 of 1996.

Jobskills Trainee Plas-Pak (WA) Pty Limited Agreement, 1996.

SENIOR COMMISSIONER G.L. FIELDING.

24 October 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and there being no appearance on behalf of the Respondent, and

by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 3rd day of September, 1996 entitled the Jobskills Trainee Plas-Pak (WA) Pty Limited Agreement, 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S]

Schedule.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Application Pursuant to Section 41 of The Industrial Relations Act

PLASTICS JOBSKILLS AGREEMENT

1.—TITLE

This Agreement shall be referred to as to the Jobskills Trainee Plas-Pak (WA) Pty Limited (**Employer Name**) Agreement, 1996.

2.—ARRANGEMENT

Clause	Subject Matter
4	Application
2	Arrangement
3	Definition
8	Dispute Resolution Procedure
6	Jobskills Trainee
7	No precedent
5	Parties Bound
1	Title
9	Reservation

3.—DEFINITION

A Jobskills Trainee is an employee who is employed under the conditions applying in the Commonwealth Government Jobskills programme.

4.—APPLICATION

This Agreement applies to employees of Plas-Pak (WA) Pty Limited (**name of employer**) engaged under the Jobskills programme as Job Trainees and insofar as the terms of this agreement vary from the terms of the relevant award, namely (**Plastics Manufacturing Award #5 of 1977**) otherwise applying to the Jobskills Trainee(s), the terms of this Agreement shall prevail. In all other respects, the terms of the (**Plastics Manufacturing Award #5 of 1977**) and any other relevant award shall continue to operate.

For each Jobskills Position a procedure must be followed that is in accordance with the Commonwealth Jobskills Programme Guidelines. Where the procedure has not been followed to the satisfaction of the Department of Employment, Education and Training, and/or the broker and/or the respondent Union then the employer cannot employ a Jobskills Trainee.

The parties estimate that this agreement will apply to 3 (**No. of employees covered**) employees.

5.—PARTIES BOUND

This agreement shall be binding on Plas-Pak (WA) Pty Limited (**name of employer**) in respect of Jobskills Trainees and on the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and its members.

6.—JOBSKILLS TRAINEE

Training Conditions

(a) (i) A Jobskills Trainee shall attend approved on and off-the-job training prescribed in the relevant training agreement, or as notified to the Jobskills Trainee by the employer or agent.

(ii) Jobskills Trainees will receive over a period of 26 weeks a mix of supervised work experience, structured training on-the-job and off-the-job and the opportunity to develop and practice new skills in a work environment.

(iii) Jobskills Trainees may only be engaged by employers to undertake activities under the Jobskills programme guidelines. The employer shall ensure that the Jobskills Trainee is permitted to attend the prescribed off-the-job training and is provided with appropriate on-the-job training.

(iv) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

Employment Conditions

(b) (i) Any Jobskills Trainees employed pursuant to this award shall be engaged in addition to existing staff levels.

(ii) 'Existing Staff Levels' in respect of this clause shall mean those staff/employee(s) levels, inclusive of employees on absences of workers compensation, paternity or long service leave, applying prior to the operation of this clause, and shall include:

- existing casual and temporary employees; and
- existing full time and part-time employees; and
- existing permanent employees.

(iii) In addition, no existing staff who fall within the definition of existing staff levels shall have hours reduced by the employment of a Jobskills Trainee.

(iv) The provisions, as referred to herein, shall apply until such time as the period of the Jobskills placement has ended and no further Jobskills Trainee(s) have been appointed.

(v) Jobskills Trainees shall be engaged for a period of 26 weeks as fulltime employees.

(vi) Jobskills Trainees are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training plan. However, except for absences provided for under the relevant award referred to in Clause 4.—Application, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of absence.

(vii) Overtime and shift work shall not be worked by Jobskills Trainees except to enable the requirements of the training plan to be effected. When overtime and shiftwork are worked the penalties and allowances prescribed in the relevant award referred to in Clause 4.—Application, will apply. No Jobskills Trainee shall work overtime or shiftwork on their own.

(viii) The Union shall be afforded reasonable access to Jobskills Trainees for the purposes of explaining the role and functions of the Union and enrolment of the Trainee as a member.

(ix) Where the employment of the Trainee is continued after completion of the Traineeship period, such Traineeship period shall be counted as service for the purpose of the relevant award referred to in clause 4.—Application.

Wages

(c) The weekly wages payable to Jobskills Trainees shall be \$300 in accordance with the Commonwealth Jobskills Program Guidelines as varied from time to time. It is the rate for all purposes of the award and takes account of the range and extent of training provided.

7.—NO PRECEDENT

This agreement represents a compromise on the part of all parties and will not be used as a precedent in proceedings before industrial tribunals.

This agreement shall come into force from the beginning of the first pay period to commence on or after 31/5/96 (date) and shall continue in force for a period of twelve months or until the Jobskills program may be wound up.

8.—DISPUTE RESOLUTION PROCEDURE

The following procedure shall be followed in the event of any dispute arising relating to the operation of this agreement.

- (a) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s shall be present if requested by the employee/s.
- (b) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the Company.

(c) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the Company and an appropriate Official of the Union.

(d) If the matter is still not settled, it shall be submitted to the WA Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the Act, be final.

(e) The parties will co-operate to ensure that these procedures are carried out expeditiously.

9.—RESERVATION

The parties to this Award reserve the right to seek its variation or revocation if circumstances develop in the operation of the Jobskills programme which adversely affect their interests or the interests of their members to the extent that the variation or revocation is warranted.

Signed for and on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, WA Branch

Helen M. Creed (signed) 21/8/96
Helen Creed—Secretary Date

Common Seal

Signed for and on behalf of Plas-Pak (WA) Pty Limited (the employer)

D.B. Thistlethwaite (signed) 15/5/96
Date

JOBSKILLS TRAINEE PLAS-PAK (WA) PTY LIMITED AGREEMENT, 1996 No. AG 237 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Plas-Pak (WA) Pty Limited.

No. AG 237 of 1996.

Jobskills Trainee Plas-Pak (WA) Pty Limited Agreement, 1996.

SENIOR COMMISSIONER G.L. FIELDING.

24 October 1996.

Order:

HAVING heard Ms S. Ellery on behalf of the Applicant and there being not appearance on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 3rd day of September, 1996 entitled the Jobskills Trainee Plas-Pak (WA) Pty Limited Agreement, 1996 be registered as an industrial agreement.

[L.S.] (Sgd.) G.L. FIELDING,
Senior Commissioner.

Schedule.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSIONApplication Pursuant to Section 41 of The Industrial
Relations Act

PLASTICS JOBSKILLS AGREEMENT

1.—TITLE

This Agreement shall be referred to as the Jobskills Trainee Plas-Pak (WA) Pty Limited (**Employer Name**) Agreement, 1996.

2.—ARRANGEMENT

Clause	Subject Matter
4.	Application
2.	Arrangement
3.	Definition
8.	Dispute Resolution Procedure
6.	Jobskills Trainee
7.	No precedent
5.	Parties Bound
1.	Title
9.	Reservation

3.—DEFINITION

A Jobskills Trainee is an employee who is employed under the conditions applying in the Commonwealth Government Jobskills programme.

4.—APPLICATION

This Agreement applies to employees of Plas-Pak (WA) Pty Limited (**name of employer**) engaged under the Jobskills programme as Job Trainees and insofar as the terms of this agreement vary from the terms of the relevant award, namely (**Plastics Manufacturing Award #5 of 1977**) otherwise applying to the Jobskills Trainee(s), the terms of this Agreement shall prevail. In all other respects, the terms of the (**Plastics Manufacturing Award #5 of 1977**) and any other relevant award shall continue to operate.

For each Jobskills Position a procedure must be followed that is in accordance with the Commonwealth Jobskills Programme Guidelines. Where the procedure has not been followed to the satisfaction of the Department of Employment, Education and Training, and/or the broker and/or the respondent Union then the employer cannot employ a Jobskills Trainee.

The parties estimate that this agreement will apply to one (**employees covered**) employees.

5.—PARTIES BOUND

This agreement shall be binding on the Plas-Pak (WA) Pty Limited (**name of employer**) in respect of Jobskills Trainees and on the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and its members.

6.—JOBSKILLS TRAINEE

Training Conditions

- (a) (i) A Jobskills Trainee shall attend approved on and off-the-job training prescribed in the relevant training agreement, or as notified to the Jobskills Trainee by the employer or agent.
- (ii) Jobskills Trainees will receive over a period of 26 weeks a mix of supervised work experience, structured training on-the-job and off-the-job and the opportunity to develop and practice new skills in a work environment.
- (iii) Jobskills Trainees may only be engaged by employers to undertake activities under the Jobskills programme guidelines. The employer shall ensure that the Jobskills Trainee is permitted to attend the prescribed off-the-job training and is provided with appropriate on-the-job training.
- (iv) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

Employment Conditions

- (b) (i) Any Jobskills Trainees employed pursuant to this award shall be engaged in addition to existing staff levels.
- (ii) 'Existing Staff Levels' in respect of this clause shall mean those staff/employee(s) levels, inclusive of employees on absences of workers compensation, paternity or long service leave, applying prior to the operation of this clause, and shall include:
- existing casual and temporary employees; and
 - existing full time and part-time employees; and
 - existing permanent employees.
- (iii) In addition, no existing staff who fall within the definition of existing staff levels shall have hours reduced by the employment of a Jobskills Trainee.
- (iv) The provisions, as referred to herein, shall apply until such time as the period of the Jobskills placement has ended and no further Jobskills Trainee(s) have been appointed.
- (v) Jobskills Trainees shall be engaged for a period of 26 weeks as fulltime employees.
- (vi) Jobskills Trainees are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training plan. However, except for absences provided for under the relevant award referred to in Clause 4.—Application, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of absence.
- (vii) Overtime and shift work shall not be worked by Jobskills Trainees except to enable the requirements of the training plan to be effected. When overtime and shiftwork are worked the penalties and allowances prescribed in the relevant award referred to in Clause 4.—Application, will apply. No Jobskills Trainee shall work overtime or shiftwork on their own.
- (viii) The Union shall be afforded reasonable access to Jobskills Trainees for the purposes of explaining the role and functions of the Union and enrolment of the Trainee as a member.
- (ix) Where the employment of the Trainee is continued after completion of the Traineeship period, such Traineeship period shall be counted as service for the purpose of the relevant award referred to in clause 4.—Application.

Wages

- (c) The weekly wages payable to Jobskills Trainees shall be \$300 in accordance with the Commonwealth Jobskills Program Guidelines as varied from time to time. It is the rate for all purposes of the award and takes account of the range and extent of training provided.

7.—NO PRECEDENT

This agreement represents a compromise on the part of all parties and will not be used as a precedent in proceedings before industrial tribunals.

This agreement shall come into force from the beginning of the first pay period to commence on or after 5/8/96 (**date**) and shall continue in force for a period of twelve months or until the Jobskills program may be wound up.

8.—DISPUTE RESOLUTION PROCEDURE

The following procedure shall be followed in the event of any dispute arising relating to the operation of this agreement.

- (a) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s shall be present if requested by the employee/s.
- (b) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the Company.
- (c) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the Company and an appropriate Official of the Union.

- (d) If the matter is still not settled, it shall be submitted to the WA Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the Act, be final.
- (e) The parties will co-operate to ensure that these procedures are carried out expeditiously.

9.—RESERVATION

The parties to this Award reserve the right to seek its variation or revocation if circumstances develop in the operation of the Jobskills programme which adversely affect their interests or the interests of their members to the extent that the variation or revocation is warranted.

Signed for and on behalf of The Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, WA Branch

Helen M. Creed (signed) 21/8/96
Helen Creed—Secretary Date

Common Seal

Signed for and on behalf of Plas-Pak (WA) Pty Limited (the employer)

D.B. Thistlethwaite (signed) 8/8/96
Date

JOBSKILLS TRAINEE PLASTIC INJECTION CO AGREEMENT, 1996 NO. AG 233 OF 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch

and

Plastic Injection Co.
No. AG 233 of 1996.

Jobskills Trainee Plastic Injection Co Agreement, 1996.

SENIOR COMMISSIONER G.L. FIELDING.

10 October 1996.

Order.

HAVING heard Ms S. Ellery on behalf of the Applicant and there being no appearance by the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 3rd day of September, 1996 entitled the Jobskills Trainee Plastic Injection Co Agreement, 1996 be registered as an industrial agreement.

[L.S] (Sgd.) G.L. FIELDING,
Senior Commissioner.

Schedule.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Application Pursuant to Section 41 of The Industrial Relations Act

PLASTICS JOBSKILLS AGREEMENT

1.—TITLE

This Agreement shall be referred to as the Jobskills Trainee Plastic Injection Co. (Employer Name) Agreement 1996.

2.—ARRANGEMENT

Clause	Subject Matter
4	Application
2	Arrangement
3	Definition
8	Dispute Resolution Procedure
6	Jobskills Trainee
7	No precedent
5	Parties Bound
1	Title
9	Reservation
3.	Definition

A Jobskills Trainee is an employee who is employed under the conditions applying in the Commonwealth Government Jobskills programme.

4.—APPLICATION

This Agreement applies to employees of Plastic Injection Co. (name of employer) engaged under the Jobskills programme as Job Trainees and insofar as the terms of this agreement vary from the terms of the relevant award, namely (Plastics Manufacturing Award #5 of 1977) otherwise applying to the Jobskills Trainee(s), the terms of this Agreement shall prevail. In all other respects, the terms of the (Plastics Manufacturing Award #5 of 1977) and any other relevant award shall continue to operate.

For each Jobskills Position a procedure must be followed that is in accordance with the Commonwealth Jobskills Programme Guidelines. Where the procedure has not been followed to the satisfaction of the Department of Employment, Education and Training, and/or the broker and/or the respondent Union then the employer cannot employ a Jobskills Trainee.

The parties estimate that this agreement will apply to 2 (Two) (No. of employees covered) employees.

5.—PARTIES BOUND

This agreement shall be binding on Plastic Injection Co. (name of employer) in respect of Jobskills Trainees and on the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, Western Australian Branch and its members.

6.—JOBSKILLS TRAINEE

Training Conditions

- (a) (i) A Jobskills Trainee shall attend approved on and off-the-job training prescribed in the relevant training- agreement, or as notified to the Jobskills Trainee by the employer or agent.
- (ii) Jobskills Trainees will receive over a period of 26 weeks a mix of supervised work experience, structured training on-the-job and off-the-job and the opportunity to develop and practice new skills in a work environment.
- (iii) Jobskills Trainees may only be engaged by employers to undertake activities under the Jobskills programme guidelines. The employer shall ensure that the Jobskills Trainee is permitted to attend the prescribed off-the-job training and is provided with appropriate on-the job training.
- (iv) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

Employment Conditions

- (b) (i) Any Jobskills Trainees employed pursuant to this award shall be engaged in addition to existing staff levels.
- (ii) "Existing Staff Levels" in respect of this clause shall mean those staff/employee(s) levels, inclusive of employees on absences of workers compensation, paternity or long service leave, applying prior to the operation of this clause, and shall include:

— existing casual and temporary employees; and

- existing full time and part-time employees; and
 - existing permanent employees.
- (iii) In addition, no existing staff who fall within the definition of existing staff levels shall have hours reduced by the employment of a Jobskills Trainee.
- (iv) The Provisions, as referred to herein, shall apply until such time as the period of the Jobskills placement has ended and no further Jobskills Trainee(s) have been appointed.
- (v) Jobskills Trainees shall be engaged for a period of 26 weeks as fulltime employees.
- (vi) Jobskills Trainees are permitted to be absent from work without loss of continuity of employment to attend the off-the-job training in accordance with the training plan. However, except for absences provided for under the relevant award referred to in Clause 4.—Application, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of absence.
- (vii) Overtime and shiftwork shall not be worked by Jobskills Trainees except to enable the requirements of the training plan to be effected. When overtime and shiftwork are worked the penalties and allowances prescribed in the relevant award referred to in Clause 4.—Application, will apply. No Jobskills Trainee shall work overtime or shiftwork on their own.
- (viii) The Union shall be afforded reasonable access to Jobskills Trainees for the purposes of explaining the role and functions of the Union and enrolment of the Trainee as a member.
- (ix) Where the employment of the Trainee is continued after completion of the Traineeship period, such Traineeship period shall be counted as service for the purpose of the relevant award referred to in Clause 4.—Application.

Wages

- (c) The weekly wages payable to Jobskills Trainees shall be \$300 in accordance with the Commonwealth Jobskills Program Guidelines as varied from time to time. It is the rate for all purposes of the award and takes account of the range and extent of training provided

7.—NO PRECEDENT

This agreement represents a compromise on the part of all parties and will not be used as a precedent in proceedings before industrial tribunals.

This Agreement shall come into force from the beginning of the first pay period to commence on or after 20/5/96(date) and shall continue in force for a period of twelve months or until the Jobskills program may be wound up.

8.—DISPUTE RESOLUTION PROCEDURE

The following procedure shall be followed in the event of any dispute arising relating to the operation of this agreement.

- (a) In the first instance all the facts of the dispute matter or grievance will be discussed without delay between the employee/s concerned and the appropriate supervisor/s. The appropriate Shop Steward/s shall be present if requested by the employee/s.
- (b) If not settled, the matter shall be discussed between an accredited Union Representative and the delegated Officer of the Company.
- (c) If agreement has not then been reached, the matter shall be discussed between a Management Representative of the Company and an appropriate Official of the Union.
- (d) If the matter is still not settled, it shall be submitted to the W A Industrial Relations Commission for decision which shall, subject to any appeal in accordance with the Act, be final.

- (e) The parties will co-operate to ensure that these procedures are carried out expeditiously.

9.—RESERVATION

The parties to this Award reserve the right to seek its variation or revocation if circumstances develop in the operation of the Jobskills programme which adversely affect their interests or the interests of their members to the extent that the variation or revocation is warranted.

Signed for and on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers' Division, WA Branch

Helen M. Creed (signed) 21/8/96

Helen Creed—Secretary Date

Common Seal

Signed for and on behalf of Plastic Injection Co. (the employer)

(indecipherable) 11/6/96

Date

KARRATHA COLLEGE ENTERPRISE AGREEMENT 1996 No. PSGAG 15 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia Incorporated; The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Karratha College.

No. PSGAG 15 of 1996.

Karratha College Enterprise Agreement 1996.

PUBLIC SERVICE ARBITRATOR A.R. BEECH.

11 October 1996.

Order:

HAVING heard Mr J. Dasey on behalf of the Applicants and Mr P. Connell on behalf of the Respondent and by consent, the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Karratha College Enterprise Agreement 1996 be registered in accordance with the following Schedule commencing on and from the 7th day of October 1996.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement shall be known as the Karratha College Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope of the Agreement
4. Parties to the Agreement
5. Definitions
6. Date and Period of Operation of the Agreement
7. No Further Claims
8. Relationship to Parent Awards and Agreements
9. Single Bargaining Unit
10. Audit of 4% Second Tier and 1989 SEP
11. Principles and Objectives
12. Productivity Improvement

13. Productivity Measurement
14. Monitoring Progress
15. Short Leave
16. Salary Increases
17. Dispute Resolution Procedure
18. Parental Leave
19. Family Carers Leave
20. Ceremonial Leave
21. Bereavement Leave
22. Potential Number of Employees Covered by this Agreement
23. Signatures of Parties to Agreement
 - Attachment A: Salary Schedules
 - Attachment B: Productivity Improvement at Karratha College
 - Attachment C: Implementation Schedules
 - Attachment D: Past Productivity Improvement 1994-95
 - Attachment E: Future Productivity Improvement Plan 1996-97

3.—SCOPE OF THE AGREEMENT

This Enterprise Agreement shall apply to all Karratha College employees including Senior Executive Service employees working in Karratha College who are members of or eligible to be members of The Civil Service Association of Western Australia Incorporated or the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers Division, Western Australian Branch.

4.—PARTIES TO THE AGREEMENT

- 4.1 Karratha College
- 4.2 The Civil Service Association of Western Australia Incorporated.
- 4.3 The Australian Liquor, Hospitality and Miscellaneous Workers Union

5.—DEFINITIONS

- 5.1 "Agreement": the Karratha College Enterprise Agreement of 1996.
- 5.2 "College": Karratha College
- 5.3 "Employee": person employed by the Karratha College Council.
- 5.4 "Employer": Karratha College Council.
- 5.5 "Government": the State of Government of Western Australia.
- 5.6 "Union": the Civil Service Association of Western Australia Incorporated and the Australian Liquor, Hospitality and Miscellaneous Workers' Union.
- 5.7 "WAIRC": the Western Australian Industrial Relations Commission.
- 5.8 "Stakeholders": includes employer, employees, students, Department of Productivity and Labour Relations, the Civil Services Association of Western Australia Incorporated and the Australian Liquor Hospitality and Miscellaneous Union.

6.—DATE AND PERIOD OF OPERATION OF THE AGREEMENT

- 6.1 This agreement shall operate from the beginning of the first pay period commencing on or after the 7th day of October 1996 and shall remain in operation until 30 June 1997.
- 6.2 The parties will review this agreement six months prior to the expiration of this agreement to commence negotiations for a new agreement.
- 6.3 The parties will assess achievements in performance, productivity and efficiency during the term of this agreement.
- 6.4 The pay quantum achieved as a result of this agreement will remain and form the new base pay rates for future agreements or continue to apply in the absence of a further agreement, except where the award rate is higher in which case the award shall apply.
- 6.5 The agreement will continue in force after the expiry of its term until such time as any of the parties withdraw from the agreement by notification in writing to the other party and to the WAIRC.

7.—NO FURTHER CLAIMS

7.1 The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement or provided for in a National or State Wage Case Decision.

7.2 This agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings.

8.—RELATIONSHIP TO PARENT AWARDS AND AGREEMENTS

This agreement shall be read in conjunction with the following Awards, which apply to the parties bound to this agreement. In the case of any inconsistencies this agreement shall have precedence to the extent of those inconsistencies. Where the agreement is silent on any matter, the relevant award and conditions will apply.

- Government Officers' Salaries, Allowances and Conditions Award 1989—No PSA A3 of 1989
- Gardeners (Government) 1986 Award No 16 of 1983—No. A 16 of 1983
- Cleaners and Caretakers (Government) Award, 1975—No 32 of 1975
- Storemen (Government) Consolidated Award 1979—No. 20 of 1969
- Childrens Services (Government) Award 1989—No A 29 of 1985 and PSA A 29A of 1985
- Miscellaneous Government Conditions and Allowances Award A4 of 1992.

9.—SINGLE BARGAINING UNIT

9.1 This agreement has been negotiated through a Single Bargaining Unit (SBU).

9.2 The SBU comprises representatives from Karratha College, the Civil Service Association of Western Australia Incorporated and the Australian Liquor, Hospitality and Miscellaneous Workers' Union.

10.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the "Restructuring and Efficiency Principle" of 1987, and the Structural Efficiency Principles of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of structural efficiency initiatives since the advent of the Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

11.—PRINCIPLES AND OBJECTIVES

11.1 The shared principles of the parties are set out below. They underpin the operations of the college and are essential to accomplishment of college objectives.

- a] *Community Orientation*: a commitment to servicing the West Pilbara region through consultation with industry and community groups and through the involvement of these groups in governing and advising the college.
- b] *Customer Focus*: makes the satisfaction of the requirements of clients, students and stakeholders the primary and central focus of the college.
- c] *Competitiveness*: a commitment to improving our competitiveness in existing programs and developing new operations by both seizing and creating new opportunities to do so.
- d] *Quality Service*: a commitment to the measured continual improvement of the processes of the education, training and cultural services we provide by encouraging staff involvement, team work and personal development.
- e] *Innovation*: taking the maximum advantage of new technologies and methods and providing staff with the knowledge and skills to improve the effectiveness of our services.

- f] *Respect for People*: underpins relationships between all involved in the college so that all are treated with integrity and equity and with a concern for a safe and effective work environment.

12.—PRODUCTIVITY IMPROVEMENT

Karratha College has significantly improved its performance over the past two years. The college has set in place strategies to improve its effectiveness, efficiency and flexibility. These strategies have resulted in a number of initiatives based on the College Strategic Plan 1995-1997.

12.1 Objectives of Performance Improvement

- a] Karratha College intends to establish a firm reputation for quality education, training and cultural services so that it becomes:
- a provider of choice for clients
 - a centre of stimulation and success for students
 - a model for other institutions
 - a source of pride for the community
- b] It is the purpose of Karratha College to serve the vocational education, training and cultural needs of the West Pilbara region through the provision of a wide range of quality services for industry, business, the public sector and the community.
- c] In order to achieve its purpose the college has two broad goals:
- i] to meet community, industry and individual skill formation and development needs with quality services in education and training resulting in an employable and adaptable workforce.
 - ii] to contribute to the self fulfilment of individuals and the quality of life of the community through the development and provision of cultural activities and facilities.

12.2 Strategic Directions to Achieve Objectives

The parties are committed to the development and implementation of a broad agenda of initiatives designed to increase the effectiveness and efficiency of program and service delivery at the college.

The parties agree productivity improvements will be developed and implemented in following the college's strategic directions:

- a] provide a broad and appropriate range of programs and activities;
- b] optimise delivery to as wide a range of the population as possible;
- c] respond to industry and community needs;
- d] continuously improve the quality of college program delivery;
- e] efficiently manage college facilities and resources so as to permit the effective delivery of programs.

12.3 Impact

The strategies and initiatives introduced over the life of the agreement will impact significantly on work practices, customer service and employee satisfaction.

12.4 Productivity Initiatives

The parties are committed to the development and implementation of the productivity improvement initiatives as detailed in Attachment B.

12.5 Future Issues for Negotiations

During the life of this agreement the parties will continue to address a range of issues and reforms specifically aimed at increasing productivity.

13.—PRODUCTIVITY MEASUREMENT

13.1 The parties agree that the measurement and monitoring of productivity improvements provides critical feedback on the performance of Karratha College to management, employees, unions and other relevant stakeholders.

13.2 The parties agree to assess organisational performance according to the extent to which the objectives of the college are achieved. The parties agree that performance measures

have a primary role to assist in the attainment of college goals in the interest of clients, employees, the college and the government on behalf of the community.

13.3 The performance measures outlined in Attachment E have been agreed to by the parties to be valid measures of progress in the performance of key elements of the agreement.

13.4 Comparisons between different levels of performance by the college are undertaken through the use of performance indicators.

13.5 It is agreed that an understanding of the concept of productivity measurement by employees is vital for performance monitoring arrangements to be successful on an ongoing basis.

13.6 The parties agree that the value of initiatives for salary increases included in this agreement and assessed through the application of performance measures is at least \$88 190 per annum.

14.—MONITORING PROGRESS

14.1 Monitoring progress is an integral part of this agreement and crucial to the measurement of performance. Salary increases specified in the EBA will be contingent on the achievement of targets set in the future productivity improvement plan.

14.2 Each future productivity initiative shall be monitored in terms of:

- a] efficiency measures specified as financial targets to be achieved
- b] effectiveness measures as specified in the future productivity document.

14.3 Efficiency measures will be collected and reported on a monthly basis by the Administrative Services Division.

14.4 Monthly reports compiled by Administrative Services Division will be reported to Finance and Staffing Committee. Reports once approved by Finance and Staffing Committee will be disseminated to staff on college notice boards.

14.5 Effectiveness measures will be collected on an annual basis as they become available and will be reported as available on a six monthly basis.

14.6 For the purposes of measuring performance improvement against the targets set in the future productivity plan (attachment E), the baseline figures will be taken from the college financial records as at 31 December 1995.

14.7 Any definitional changes in base data shall not be used to disadvantage staff.

15.—SHORT LEAVE

Short leave of three days per annum is surrendered.

16.—SALARY INCREASES

16.1 The following salary increases are payable on the basis of implementation and continued co-operation of those improvements in productivity and/or work practice changes outlined in the Productivity Improvement Plan.

16.2 The following increases, as specified in Attachment C, will be payable during the life of this Agreement:

- a] A first increase of 4% payable from the first pay period commencing on or after the 7th October 1996.
- b] A second increase of 2.45% payable from 1 January 1997 subject to the achievement of all productivity improvement targets in accordance with Attachment C.

17.—DISPUTE RESOLUTION PROCEDURE

Any questions, disputes or difficulties arising out of this industrial agreement will be dealt with in accordance with the following procedure:

- a] The employee (accompanied by a trades union representative or another staff member if the employee wishes) shall raise the issue with the appropriate head of division.
- b] If the dispute cannot be resolved satisfactorily by discussion with the head of division, the issue shall be submitted in writing to the head of division. The head of division shall organise a meeting to discuss the issue within five working days with the Director of the college.

- c] The employee has, at any time, the right to be accompanied by a support person or a trades union representative.
- d] The Director may refer the issue to the College Council if the Director considers it appropriate to do so.
- e] If the Director or the College Council do not resolve the dispute to the satisfaction of the parties then the trades union or the Director may refer the issue to the WA Industrial Relations Commission.

18.—PARENTAL LEAVE

18.1 Definitions

- a] "Employee" includes full time, part time, permanent and fixed term contract employees.
- b] "Replacement Employee" is an employee specifically engaged to replace an employee proceeding on parental leave.

18.2 Eligibility for Parental Leave

- a] Subject to subclause 18.8 of this clause an employee with more than 12 months service is entitled to a period of up to 52 weeks unpaid parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.
- b] An application for parental leave shall be in the form approved by the College Council and supported by a certificate of a registered medical practitioner stating the expected date of the birth of the child.
- c] Where the employee applying for the leave is the partner of a pregnant spouse one week's leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- d] An employee seeking to adopt a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.
- e] An employee seeking to adopt a child shall be entitled to three days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. The employee may take any paid leave entitlement in lieu of this leave.
- f] Subject to sub-clause 18.2.c of this clause where both partners are employed by Karratha College the leave shall not be taken concurrently except under special circumstances and with the approval of the Director.

18.3 Other Leave Entitlements

- a] An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- b] An employee may extend the maximum period of parental leave with a period of leave without pay subject to the approval of the College Council.
- c] An employee on parental leave is not entitled to paid sick leave and other paid award absences other than accrued annual leave and accrued long service leave.
- d] Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.

18.4 Qualification, Notice and Variation

- a] An employee is not entitled to take parental leave unless he or she has completed at least 12 months continuous service with Karratha College.
- b] The employee shall give not less than ten week's notice in writing to Karratha College of the date the employee proposes to commence parental leave stating the period of leave to be taken.
- c] An employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

18.5 Transfer to Safe Job

- a] Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of parental leave.
- b] If the transfer to a safe position is not practicable, the employee may take leave without pay for such period as is certified necessary by a registered medical practitioner.

18.6 Replacement Employee

Prior to engaging a replacement employee Karratha College shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

18.7 Return to Work

- a] An employee shall confirm the intention to return to work by notice in writing to the Director not less than four weeks prior to the expiration of the period of parental leave.
- b] An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause (18.5.a) hereof the employee is entitled to return to the position occupied immediately prior to the transfer.
- c] Subject to the convenience of the college an employee may return on a part-time basis either to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time Employment provisions of the relevant award.
- d] Where the position occupied by the employee no longer exists the employee shall be entitled to the position of the same classification level with duties similar to that of the abolished position.

18.8 Effect of Leave on Employment Contract

- a] Fixed Term Contract
An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.
- b] Continuous Service
Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.
- c] Termination of Employment
An employee on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the relevant award.

19.—FAMILY CARERS LEAVE

19.1 Use of Sick Leave

- a] Employees covered by this agreement may with the consent of the college use up to 5 days accrued sick leave per year in accordance with this clause to provide care for another family member who is ill subject to the employee being responsible for the care of the person concerned.
- b] The definition of family shall be the definition contained in the WA Equal Opportunity Act 1984, that is a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of the employee.
- c] The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the reasons for taking such leave and the estimated length of absence. If it is not

practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence.

- d] The employee shall, if required establish by production of a medical certificate or statutory declaration the nature of the illness of the person concerned.

19.2 Unpaid Leave for Family Purposes

An employee may elect with the consent of the college to take unpaid leave for the purpose of providing care to a family member who is ill once all annual leave entitlements are exhausted.

20.—CEREMONIAL LEAVE

20.1 Aboriginal or Torres Strait Islander employees who are legitimately required to be absent from work for their tribal/ceremonial purposes shall be entitled to take accrued annual leave or leave without pay, provided an application is made at least two days in advance and a return date is agreed upon.

21.—BEREAVEMENT LEAVE

21.1 In awards where it is applicable Bereavement Leave will replace Compassionate Leave.

21.2 Employees are entitled to bereavement leave of up to two days in the event of the death of:

- a] a spouse or de facto spouse
- b] a child or step child
- c] a parent or step parent
- d] siblings, grandparents and parents-in-law
- e] any other person who immediately before that person's death lived with the employee as a member of the employees family.

21.3 The two days need not be consecutive.

21.4 Bereavement leave may not be taken during a period of any other kind of leave.

21.5 Employees are required to provide evidence satisfactory to the college of the death and the employee's relationship to the deceased.

22.—POTENTIAL NUMBER OF EMPLOYEES COVERED BY THIS AGREEMENT

The potential number of employees covered by this agreement is 82.5 equivalent to 62 full time equivalent staff. These are classified as follows:

Award	Full Time Staff	Part-Time (Actual)	Part-time (FTE)	Casual (Actual)	Casual (FTE)	Total FTE
GOSAC	42.5	14	7.38	5	2.62	52.5
Gardeners & Caretakers	2	-	-	-	-	2
Cleaners & Caretakers	-	8	3.8	5	0.89	4.69
Children's Services	1	-	-	4	0.49	1.49
Storeperson's Award	1	-	-	-	-	1
Average monthly FTE in 1995 (based on the above sample) = 62						
Average payroll size in 1995 (based on the above sample) = 110.97						
% Admin/Support staff (based on the above sample) = 56%						

23.—SIGNATURES OF PARTIES TO AGREEMENT

Signatories

Signed for and on behalf of the Civil Service Association of Western Australia Incorporated by:

D. Robinson
Position General Secretary
Date 29.7.96

Signed for an on behalf of the Australian Liquor, Hospitality and Miscellaneous Workers' Union, Miscellaneous Workers Division, Western Australian Branch

Noel Whitehead
Position Research Officer
Date 1/8/96

Signed for and on behalf of Karratha College:

Murray Haase
Position A/Director, Karratha College
Date 19 July 1996

ATTACHMENT A—SALARY SCHEDULES
SALARY SCHEDULE FOR GOSAC STAFF UNDER THE KARRATHA COLLEGE ENTERPRISE BARGAINING AGREEMENT

LEVEL	CURRENT \$	4.00% \$	2.45% \$	INCREASE \$
LEVEL 1				
Under 17	10873.00	11308.00	11585.00	711.96
17 years	12707.00	13215.00	13539.00	832.05
18 years	14822.00	15415.00	15793.00	970.54
19 years	17157.00	17843.00	18280.00	1123.44
20 years	19267.00	20038.00	20529.00	1261.60
Adult Yr 1	21165.00	22012.00	22551.00	1385.88
Adult Yr 2	21817.00	22690.00	23246.00	1428.58
Adult Yr 3	22468.00	23367.00	23939.00	1471.20
Adult Yr 4	23115.00	24040.00	24629.00	1513.57
Adult Yr 5	23766.00	24717.00	25322.00	1556.20
Adult Yr 6	24417.00	25394.00	26016.00	1598.83
Adult Yr 7	25166.00	26173.00	26814.00	1647.87
Adult Yr 8	25684.00	26711.00	27366.00	1681.79
Adult Yr 9	26450.00	27508.00	28182.00	1731.95
LEVEL 2				
1st year	27367.00	28462.00	29159.00	1791.99
2nd year	28070.00	29193.00	29908.00	1838.02
3rd year	28809.00	29961.00	30695.00	1886.41
4th year	29590.00	30774.00	31528.00	1937.55
5th year	30407.00	31623.00	32398.00	1991.05
LEVEL 3				
1st year	31530.00	32791.00	33595.00	2064.58
2nd year	32405.00	33701.00	34527.00	2121.88
3rd year	33307.00	34639.00	35488.00	2180.94
4th year	34233.00	35602.00	36475.00	2241.58
LEVEL 4				
1st year	35503.00	36923.00	37828.00	2324.74
2nd year	36498.00	37958.00	38888.00	2389.89
3rd year	37522.00	39023.00	39979.00	2456.94
LEVEL 5				
1st year	39494.00	41074.00	42080.00	2586.07
2nd year	40827.00	42460.00	43500.00	2673.35
3rd year	42212.00	43900.00	44976.00	2764.04
4th year	43649.00	45395.00	46507.00	2858.14
LEVEL 6				
1st year	45960.00	47798.00	48969.00	3009.46
2nd year	47531.00	49432.00	50643.00	3112.33
3rd year	49157.00	51123.00	52376.00	3218.80
4th year	50893.00	52929.00	54225.00	3332.47
LEVEL 7				
1st year	53555.00	55697.00	57062.00	3506.78
2nd year	55397.00	57613.00	59024.00	3627.40
3rd year	57401.00	59697.00	61160.00	3758.62
LEVEL 8				
1st year	60658.00	63084.00	64630.00	3971.89
2nd year	62991.00	65511.00	67116.00	4124.65
3rd year	65884.00	68519.00	70198.00	4314.08
LEVEL 9				
1st year	69497.00	72277.00	74048.00	4550.66
2nd year	71938.00	74816.00	76649.00	4710.50
3rd year	74722.00	77711.00	79615.00	4892.80
LEVEL				
Class 1	78932.00	82089.00	84100.00	5168.47
Class 2	83142.00	86468.00	88586.00	5444.14
Class 3	87350.00	90844.00	93070.00	5719.68
Class 4	91560.00	95222.00	97555.00	5995.35

SALARY SCHEDULE FOR WAGES STAFF UNDER THE KARRATHA COLLEGE ENTERPRISE BARGAINING AGREEMENT ***

GROUP	LEVEL	CURRENT \$	4.00% \$	2.45% \$	INCREASE \$	PER ANNUM \$
Cleaners & Caretakers *	Level 1					
	1st year	9.45	9.83	10.07	0.62	
	2nd year	9.55	9.93	10.18	0.63	
	3rd year	9.66	10.05	10.29	0.63	
Gardeners & Caretakers **	Level 1					
	1st year	777.40	808.50	828.30	50.90	1327.75
	2nd year	785.00	816.40	836.40	51.40	1340.73
	3rd year	793.20	824.93	845.14	51.94	1354.74
Senior Gardener						
	1st year	831.20	864.45	885.63	54.43	1419.64
	2nd year	839.70	873.29	894.68	54.98	1434.15
	3rd year	846.60	880.46	902.04	55.44	1445.94
Tradesperson Gardener						
	1st year	867.60	902.30	924.41	56.81	1481.81
	2nd year	878.00	913.12	935.49	57.49	1499.57
	3rd year	886.40	921.86	944.44	58.04	1513.92

GROUP	LEVEL	CURRENT	4.00%	2.45%	INCREASE	PER ANNUM	
		\$	\$	\$	\$	\$	
Children's Services	Child Care Giver (Casual) *	1st year	12.40	12.90	13.21	0.81	
		2nd year	12.65	13.16	13.48	0.83	
		3rd year	12.90	13.42	13.74	0.84	
		4th year	13.22	13.75	14.09	0.87	
Senior Qualified Child Care Giver **	One level	1069.00	1111.76	1139.00	70.00	1825.78	
Storeperson **	Level 2	Grade 1	832.92	866.24	887.46	54.54	1422.57
		Grade 2	845.22	879.03	900.57	55.35	1443.58
		Grade 3	858.14	892.47	914.33	56.19	1465.65

* Hourly Rate

** Fortnightly Rate

*** Based on classification levels of staff currently employed at Karratha College

ATTACHMENT B—PRODUCTIVITY IMPROVEMENT AT KARRATHA COLLEGE

1. Introduction

Karratha College is an autonomous post secondary institution established under the Colleges Act 1978—82 to serve the post-secondary education and training needs of the West Pilbara region.

2. EBA and the Proposed VET Legislation

It is anticipated that the proposed Vocational Education and Training legislation will replace the Colleges Act during 1996. The college will then become one of a number of autonomous colleges reporting through the WA Department of Training to the Minister for Employment and Training instead of directly to the Minister as is now the case.

No decisions have been indicated regarding inclusion of the college in any current award or enterprise bargaining agreements being prepared by the WA Department of Training. The college has therefore proceeded to prepare an Enterprise Bargaining Agreement independently of the Department of Training.

3. College Structure

Karratha College serves the West Pilbara region with a main campus at Karratha which delivers 80% of the college student contact hours (SCH) and five annexes at Tom Price, Paraburdoo, Pannawonica, Onslow and Wickham which together deliver the remaining 20%.

The college has a close relationship with the large resource industries in the region. Industry representatives sit on the College Council and its committees. The college has initiated several joint venture projects with industry.

The college is governed by a Council appointed by the Minister for Employment and Training under the Colleges Act. There were in 1995, 111 full time equivalent staff of which 56 per cent were administrative and support staff.

It is with the administrative and support staff that this agreement is made. This includes staff employed under the following awards:

Government Officers' Salaries, Allowances and Conditions Award (GOSAC)

- Gardeners (Government) Award
- Cleaners and Caretakers (Government) Award
- Storemen (Government) Award
- Children's Services (Government) Award

4. Karratha College Goals

Under the Colleges Act it is the purpose of Karratha College to serve the vocational education, training and cultural needs of the West Pilbara region through the provision of a wide range of quality services for industry, business, the public sector and the community.

To do this the college has two broad goals:

- a] to deliver vocational education and training resulting in an employable and adaptable workforce;
- b] to provide cultural activities and facilities which contribute to the self fulfilment of individuals and the quality of life of the regional community.

A. Vocational Education and Training

The college delivers training in the following categories:

- access and participation courses for disadvantaged and specially targeted groups;

- initial training to include certificate level courses including apprentices and trainees;
- para-professional training at advanced certificate and diploma level;
- higher education under contract from tertiary institutions;
- fee for service customised training provided on a commercial basis.

B. Cultural Activities

In a remote region such as the West Pilbara the college performs an important function in providing cultural activities for the community. Activities which are regarded as forming part of the colleges cultural development function are:

- Karratha Community Library
- Walkington Theatre
- Adult Community Education Courses
- Access to college facilities.

The college has joint ownership with the Shire of Roebourne of the Karratha Community Library and the Walkington Theatre. The college has responsibility for day to day management of both of these facilities and for the staff who are college employees.

5. Measures of College Performance

In order to improve both effectiveness and efficiency Karratha College uses a performance target setting method as a measurement tool. This method is consistent with the key performance indicators and targets set in the college strategic plan 1995-97. Key performance indicators are also reported in the Annual Report to Parliament and as such are audited by the Auditor General.

As the governing body of the college, the College Council approves the strategic objectives and regularly reviews the performance of the college against the performance indicators.

5.1 Effectiveness Measures

College effectiveness in performing the function of vocational education and training is measured in several ways. It is measured by the successful student completion rate, the degree of student satisfaction with the training service provided by the college (through the annual Student Satisfaction Survey) and the number of graduates obtaining employment. This may be influenced however by other variables in the employment market besides the quality of training.

5.2 Efficiency Measures

Measures of efficiency in achieving the goals of vocational education and training may need to be qualified since these are influenced by factors beyond the control of the college. A base measure of efficiency is often taken to be student contact hours (SCH). This provides a measure of work load and when coupled with costs appears to show efficiency. Thus by using cost per SCH it is possible to show that between 1993 and 1995 there was a decrease of \$2.03 in cost per SCH at the college. However SCH should not be considered without due qualification since SCH and costs per SCH are affected by social and economic variables beyond the control of the college.

The Pilbara may be viewed as a migrant economy. People are attracted to the region to find employment in the large extractive resource industries or associated service industries. Once employment is no longer available many people leave the area. Thus population levels are dependent upon employment levels and this in turn affects college enrolments and SCH.

In 1992 and 1993 there was a substantial reduction in the population of the West Pilbara region when first the iron ore industry and then the natural gas industry substantially down sized their labour forces. In fact college enrolments were reduced in about the same proportion as student enrolments in the primary and secondary schools in the region.

This reduction in SCH obviously affected measures of efficiency such as cost per SCH since although SCH declined, the fixed costs of maintaining the college administration and teaching activity remained largely the same.

In 1995, there was a rise in college SCH of approximately nine percent. This may have been due to an increase in the population of the region, however, the latest estimates from the Australian Bureau of Statistics (ABS) for June 1995 show that this was not the case. In fact the population was still declining at this point. The contention that efficiency is increasing is further supported by the effectiveness indicator known as the college community participation rate which has increased from 17.9% in 1993 to 20.2% in 1995.

The community participation rate is the number of actual students enrolled in college courses as a proportion of the population of 15 years and over.

6. Costs per SCH

1993	1994	1995	1996 (estimate)
\$28.02	\$29.19	\$25.99	\$24.16

Between 1993 and 1995 there was a reduction in the cost per SCH of \$2.03 or 7.2%. It is estimated that in 1996 the cost per SCH will further decrease to \$24.16. This will occur as a result of a forecast increase in SCH in 1996 from 314 388 in 1995 to 334 000 against a budgeted expenditure for 1996 of \$8 069 277.

As indicated, however, costs per SCH can only be used to point to general trends. The measure of SCH is dependent on external factors and moreover the cultural development function cannot be measured in terms of SCH.

Cost per SCH although including the costs of the cultural development function cannot be used as a measure of the cost effectiveness of that function since the customers of the Walkington Theatre and the Community Library are not counted as student enrolments.

The college has therefore documented a series of productivity improvements which were initiatives of the past two years and at the same time has developed a plan for implementing future productivity initiatives in 1996 and 1997.

7. Productivity Improvements

In both the past and future productivity documents the productivity initiatives have been grouped under the headings of strategic directions set out in the college Strategic Plan 1995-7.

The major strategic directions used in preparation of both the past and future productivity documents state that the college will:

- provide a broad and appropriate range of programs and activities;
- optimise delivery to as wide a range of the population as possible;
- respond to industry and community needs;
- continuously improve the quality of program delivery and
- efficiently manage college facilities and resources.

8. Productivity Documents

The past productivity document and the future productivity plan are attached. They set out in detail the initiatives which have taken place in the period 1994-95 and those which are planned for 1996-97.

In order to calculate the value of staff effort in achieving the initiatives in the past productivity document and the future productivity plan a dollar value has been assessed for each initiative. The extent of staff effort involved in each initiative has been explained.

The past and future productivity initiatives are summarised below under the five strategic directions of the college. The values of each can be readily noted and the complementary nature of the past and future productivity claims is made apparent. Initiatives specified in the future productivity plan although following the same strategic directions do not duplicate the initiatives already taken in the past productivity document. They build on them and develop them further.

9. Summary

1. Provide a broad and appropriate range of programs and activities

In both the past and future productivity documents initiatives under this strategy are concerned with increasing and making more appropriate the range of all college courses and college services.

Past Productivity 1994-95		Future Productivity 1996-97	
	% claimed		% claimed
1.1 introduced a range of accredited courses—no claims	0	1.1 improve course advertising—cost savings	0.09
1.2 increased range of services in library—with no increase in staff increased services in theatre—decrease of 0.5 FTE	0.37	1.2 fee for service training	0.55
1.3 fee for service training—reduced FTE	0.37	1.3 improve Adult Community Education—no claim	0
1.4 improved Adult Community Education—included in 1.3	.89	1.4 increase surplus for use of College facilities	0.33
1.5 increased surplus for use of college facilities—included in 1.3	0		
Productivity Improvements	\$35 100 1.63%	\$20 808 0.97%	

2. Optimise delivery to as wide a range of the population as possible

Past and future initiatives under this strategy deal with making access to the college as open as possible so that the college effectively services the geographically remote areas and targets access and participation for groups such as women, and non-English speaking background persons and people with disabilities.

Past Productivity 1994-95		Future Productivity 1996-97	
	% claimed		% claimed
2.1 delivered programs throughout region	0	2.1 improve flexible and remote delivery	0
2.2 improved flexible and remote delivery—reduction of 1 FTE	.62	2.2 improve admission and enrolment procedures	.4
2.3 promoted college activities—additional workload	.15	2.3 improve access and bridging courses	0
2.4 provided access and bridging courses—additional workload	.04		
Productivity Improvement	\$17 440 0.81%	\$8 505 0.4%	

3. Respond to industry and community needs

Initiatives included under this strategy concern the means of assessing the training and other service needs of local industry and the community in order to ensure that college services remain relevant and cost effective.

Past Productivity 1994-95		Future Productivity 1996-97	
	% claimed		% claimed
3.1 involved industry and community in college decision making	0	3.1 identify regional training and service needs	.45
3.2 joint venture training with industry—staff effort	.26		
Productivity Improvements	\$5 579 0.26%	\$9 770 0.45%	

4. Continuously improve the quality of program delivery

Under this strategic direction are grouped the initiatives recognised as progress towards an improved quality system and by 1997 the status of a Quality Endorsed Training Organisation (QETO). QETO status will be accorded by the WA Department of Training. The college's ability to delivery services will be based on the achievement of QETO status.

Past Productivity 1994-95		Future Productivity 1996-97	
	% claimed		% claimed
4.1 introduced staff performance reviews—no claim	0	4.1 selection and recruitment	.22
4.2 developed new procedures for course delivery	.12	4.2 staff performance management	.45
4.3 introduced customer focus	.02	4.3 developing quality systems	.85
4.4 implemented course registration process	.1		
Productivity Improvement	\$5 334 0.24%	\$32 806 1.52%	

5. Efficiently manage college facilities and resources

Under this strategic direction are included initiatives implemented over the past two years as well as future initiatives concerned with improving the efficiency and effectiveness of corporate services.

Past Productivity 1994-95		Future Productivity 1996-97	
	% claimed		% claimed
5.1 operationalised new budget strategies	.22	5.1 improved use of college space	.08
5.2 upgraded information technology	0	5.2 improved management information	0
5.3 revised HR management policies	.74	5.3 automatic switchboard implementation	.42
5.4 implemented efficiencies in maintaining facilities	.41	5.4 improved OHS	.07
		5.5 economies in staff air travel	.19
Productivity Improvements	\$29 600 1.37%		\$16 301 0.76%
Total Productivity Improvement	\$93 053 4.3%		\$88 190 3.74%
less 2 x \$8 =	2.4%		
	1.9%		
Summary			
Alterations to Conditions:			
Surrender of one days short leave	0.45%	0.45%	
Past Productivity (Net)	1.90%		
Future Productivity	3.74%		
		6.00%	
Total			6.45%

ATTACHMENT C—IMPLEMENTATION SCHEDULES

1. Target savings to be achieved during the EBA.
2. Salary increase implementation schedule.

	Target Savings to be Achieved During EBA		1 January 1997	
	0 mths	%	\$	%
Past Productivity	40 964	1.9		
Surrender of three days Short Leave	9 702	0.45		
1.1 Course Advertising			1 848	0.09
1.2 Fee for Service Training			11 760	0.53
1.3 Adult Community Education			0	0.0
1.4 Use of College Facilities			7 200	0.33
2.1 Improve Flexible & Remote Delivery			0	0.00
2.2 Improve Admission & Enrolment			8 505	0.40
2.3 Improve Access & Bridging Courses			0	0.0
3.1 Identify Regional Training Needs			9 770	0.45
4.1 Selection & Recruitment			4 800	0.22
4.2 Staff Performance Management			9 770	0.45
4.3 Developing Quality Systems			18 236	0.85
5.1 Use of College Space			1 680	0.08
5.2 Management Information			0	0.0
5.3 Automatic Switchboard			9 000	0.42
5.4 Occupational Health & Safety			1 589	0.07
5.5 Staff Air Travel			4 032	0.19
Total	\$50 666	2.35%	\$88 190	4.1%

Salary Increase Implementation Schedule

0 months	4%
1 January 1997	2.45%
Total	6.45%

ATTACHMENT D—PAST PRODUCTIVITY IMPROVEMENT 1994-95

PAST PRODUCTIVITY 1994-95

Strategy 1. Provide a Broad and Appropriate Range of Programs and Activities

1.1 Introduced A Range of Accredited Courses

Rationale:

In a remote region it is a function of the college to provide as wide a range of options for study as possible. Since 1994 the college has introduced courses in hairdressing, hospitality and environmental technology as well as several access and equity courses. These courses have served the needs of the growing retail and tourism industries and they have also provided more training choices for the local population and in particular women for whom choices were previously relatively limited.

While these new courses were introduced using additional commonwealth resources for academic costs, the administrative costs to the college were not increased.

Strategies:

- courses established:
 - Certificate in Trades (Hairdressing) for all northwest apprentices—1994
 - Certificate in Food and Beverage Service—1994
 - Associate Diploma in Environmental Technology—1995
 - Certificate in Applied Women's Studies
 - Certificate of General Education for Adults

Intangible Savings:

- Successfully catered to industry needs, especially as tourism increased.
- Increased access for disadvantaged groups especially for Aboriginal and Torres Strait Islander groups.
- Provided improved opportunities for school leavers.
- Responded to a continually changing training market.
- Improved the quality of life in remote regions.
- Increased opportunities available to women.

1.2 Increased Range of Services in Library and Theatre

Library

Rationale:

The Karratha Community Library is a joint venture between the college and the Shire of Roebourne and is also a West Pilbara regional facility. In this way it is not only an efficient use of resources but it also plays a significant part towards improving the quality of life for residents in the region. Over the past two years the range of library services available has increased. Lending rates have not increased and the community library membership as a proportion of the population has not significantly increased.

Strategies:

- installed IT hardware and software for staff, students and public use
- bibliographic lists have been generated to assist clients in locating magazines, video, aboriginal materials etc
- reference queries now dealt with by staff not only the professional librarians (multi-skilling)
- increase in branch visits by regional librarian
- more availability of senior staff on customer service desks
- increase in children's activities

Savings estimated as being 0.5 level 2 FTE or \$20 000 with 40% attributed to staff effort = \$8 000 0.37%

Theatre

Rationale:

The Walkington Theatre is a joint venture between the college and the Shire of Roebourne thus providing a cost effective means of bringing performing arts to the community. The theatre offers a range of commercial live productions, community productions, commercial movie screenings as well as private hiring. The college has management responsibility for the theatre. The theatre is subsidised by both the college and the Shire.

Strategies:

- increased number of events held in theatre from 334 in 1993 to 464 in 1995
- planned and implemented open air live shows

However staffing resources were decreased by 0.5 (Level 2) FTE (\$40 000) = \$20 000—40% to administrative staff = \$8 000 0.37%

1.3 Fee for Service Customised Training

Rationale:

Fee for service (FFS) customised training is a major activity of the college. Both academic and administrative staff are involved in the delivery of training that would not normally be provided under government funding.

Fee for service customised training is marketed to the large extractive resource companies and to smaller business and public sector agencies in the region.

In 1993—94 there was a substantial reduction in activity due to a reduction in demand. This was taken account of in the restructuring of July 1994 when the section was reduced by 1 FTE (Level 6). Between 1994—95, activity increased with no increase in resource base but resulting in a corresponding increase in FFS income.

Strategies:

- reduction of administrative staffing by 0.5 FTE by eliminating a level 6 Customised Training Manager position and replacing it with 0.5 FTE at a lower level

- improved marketing methods involving the repackaging of course programs which reduce course cancellations and improve course enrolments
- improved front desk customer service including simplified enrolments, and the use of credit cards
- wider range of courses offered
- development of procedures to improve fee for service courses.

Intangible Savings:

- ensured a wider and more relevant training profile enabling the college to respond directly to industry needs
- enhanced reputation through high quality and professional programs
- increased opportunities for joint ventures with industry
- subsidised/supported college core delivery

Savings:

Reduction of Level 6 salary and on costs = \$68 000

Additional 0.5 Level 1 salary and on costs = 14 175

Reclassification of Level 2 to Level 3 6 075

\$47 750

40% is attributed to administrative staff effort = \$19 100
0.89%

Employee input:

- absorbing additional work from reduction of 0.5 FTE
- repackaging course programs for improved marketing
- development of procedures thus saving the need for a consultant
- improving customer service

1.4 Adult Community Education

Rationale:

Adult Community Education (previously known as General Interest Courses) is a partial cost recovery program designed to provide general education for the community. The program provides skills training in both leisure activities and areas which may improve employment or further training opportunities.

In the past two years the program has been more customer focussed and has provided a broader range of courses marketed in a more user friendly manner.

Strategies:

- increased the variety of courses delivered
- increased the number of courses delivered
- improved the enrolment procedures
- marketed the courses more effectively in a more cost efficient manner.

Intangible Savings:

- increased access to college programs
- enriched quality of life opportunities
- provided skills to the community in a non threatening/cost effective manner
- moved costs of training from public funds to industry

Productivity improvements included in 1.3 above.

1.5 Use of College Facilities

Rationale:

College facilities may be made available for community and commercial users. In a remote area the availability for college facilities either for training or other community and cultural uses is a very important function of the college.

Strategies:

- rented facilities to community and business groups for commercial purposes
- made facilities available without payment to community groups
- improved marketing of college facilities

Intangible Savings:

- promotion of college reputation and profile

Savings:

Productivity improvement included in 1.3 above.

Strategy 2. Optimise Delivery to as Wide a Range of The Population as Possible

2.1 Delivered Programs Throughout the Region

Rationale:

Karratha College services the entire West Pilbara region through its main campus at Karratha and its annexes at Wickham, Tom Price, Paraburdoo, Pannawonica and Onslow.

It has always been the aim of the college to deliver at least 20% of its activity outside of Karratha. This services the mining industry which has installations at these remote sites and also serves those individuals who are disadvantaged by their geographical isolation.

Strategies:

- maintained effort at college annexes
- ensured that annexes were adequately resourced
- ensured that annexes had sufficient autonomy to enable them to respond to local requirements
- ensured adequate communication between annexes and main campus

Measures:

Effectiveness 1:

- overall customer satisfaction as measured by the Student Satisfaction Survey

1993: NA 1994: 84.9% 1995: 78.3%

Effectiveness 2:

- proportion of SCH delivered through annexes:

1993: 22% 1994: 23% 1995: 21%

No claim made 0%

2.2 Flexible and Remote Delivery

Rationale:

Flexible delivery and open learning is a means of improving access to education and training for persons who are geographically remote from the training location. It also assists those who for occupational or domestic reasons find conventional face to face delivery difficult to access.

Karratha College has utilised the modes and technology of flexible delivery for several years. These include Computer Managed Learning (CML), Video Conferencing, Open Learning, and Recognition of Prior Learning (RPL). In the past two years there has been continual utilisation of these modes.

Strategies:

- continued utilisation of block delivery of modules to permit attendance by students on a residential basis
- improved procedures for the implementation of remote delivery computer managed Learning (CML)
- installation of improved technology for CML at main campus and modems installed at annexes
- installation of interactive video conferencing facilities
- development of procedures for RPL

Intangible Savings:

- improved effectiveness in recruiting
- improved credentialing of the workforce through RPL
- CML and Open Learning have enabled the College to provide a wider range of courses
- permitted access to a wider range of expertise
- more efficient use of training resources

Savings:

Reduction of I FTE level 5 CML Officer \$60 000

Total of \$60 000

40% attributable to staff effort = \$24 000

56% attributable administrative staff = \$13 440

As a consequence of increased team effort in:

- development of procedures for CML
- development of RPL procedures
- absorption of duties of Level 5 CML officer
0.62%

2.3 Promoted College Activities

Rationale:

Optimising delivery included promoting and marketing the college and its activities. This increased public awareness of the college contributed to the increased enrolment into college courses in 1995. Publicity and promotion was also an important factor in increasing theatre activities.

Strategies:

Establishment and ongoing development of:

- policy and procedure for college marketing and promotion (1995)
- a college prospectus (1994)
- a marketing program targeted at school leavers
- an Application for Entry form
- improving the quality of marketing for the Walkington Theatre
- improving library promotional activities through school visits and library displays in foyer
- employing a range of community marketing strategies using both local newspapers and radio

Savings:

Additional workload taken on by Level 2 FTE equivalent to 0.2FTE = \$8 000 40% to administrative staff = \$3 200

Fully attributable to increased staff effort. 0.15%

2.4 Provided Access & Bridging Courses to Specially Targeted Groups

Rationale:

In order to ensure that all sections of the community had opportunities to gain skills and enter the labour market, the college delivered bridging courses which permitted specially targeted groups to access skills for employment or further training.

During the past two years this involved not only delivering programs funded through state consolidated funds but also tendering for contracts let by the commonwealth and state governments.

Strategies:

- improved the process for tender submissions
- tendered successfully for bridging program contracts
- establishment of a contract lecturing position in access and equity programs as a focus for the program

Intangible Savings:

- improved effectiveness from 46, 218 SCH in 1994 to 116, 160 in 1995 due to an increase in resources allocated (ie 1 FTE lecturer in Access and Equity).

Savings:

Research Officers are responsible for preparing submissions rather than academic staff. Improved process for tender submissions by utilising the research officer's time rather than academic staff's time. Reduction in time taken and staff utilised are remunerated at a lower rate: 5% of 1 FTE (\$40,000) = \$2 000.

40% attributable to increased staff effort = \$800 .04%

Strategy 3. Respond to Industry and Community Needs

3.1 Involved Industry and Community in College Decision Making

Rationale:

There is a deliberate policy to involve representatives of industry and community groups in college decision making through membership of the college council and committees. This is not an initiative commenced in the last two years but it is an important part of our continuing efforts to assess the training needs and demands of industry and the community.

Strategies:

- maintained industry and community membership of council and committees in accordance with the College Act (1978 -83)
- provided industry and community members with full briefing papers and notes on their role

3.2 Joint Venture Training with Industry

Rationale:

Joint ventures with industry are a cost effective means of organising training and obtaining facilities and equipment for the college. At the college this includes joint courses, jointly funded courses and industry funded courses. This ensures that industry obtains the appropriate training on time and the college can operate with reduced costs for training and facilities or allow training to be delivered where otherwise it would not be possible.

Strategies:

- joint venture in purchase of 10 486 IBM PC's between the college and Robe River Iron Associates (RRIA) in 1994 at no cost to the college
- joint venture in delivering apprenticeship training for Hamersley Iron (HI) electrical apprentices at HI Paraburdoo utilising the HI Paraburdoo facilities
- utilisation of hospitality industry facilities for hospitality training
- joint venture training Certificate in Supervision with Comalco, Weipa

Intangible Savings:

- increased business for the College
- increased number of graduates
- more efficient use of both financial and training resources (ie through sharing courses with community providers)

Savings:

- costs saved to college on purchase of Wickham computers = \$8 000pa
- costs saved to college in utilising industry facilities = \$12,000pa
\$8 000 + \$12 000 = \$20 000
- developing concepts, preparing, negotiating and implementing proposals for joint ventures with RRIA, HI and Comalco.
- additional effort attributable to administrative staff as a consequence of having to install and maintain equipment.

Additional staff effort is equivalent to 3% of the time of heads of division.

HOD salary and on costs	\$77 490	
3% of HOD salary	2 324	
6 HODS	13 948	
40% return to administrative staff =	\$5 579	0.26%

Strategy 4. Continuously Improve the Quality of Program Delivery

4.1 Introduced Staff Reviews

Rationale:

In early 1994 the college introduced annual staff reviews to supplement the already existing review system for probationary staff.

The aim of the review system was to assist staff to improve performance by identifying areas for development in the coming year. The new review system also formed the basis for a more rigorous system to be introduced in 1996.

Strategies:

- annual review system introduced in 1994 for staff requiring incremental advancement
- review system extended to all staff in 1995
- identified more appropriate staff development

Savings:

Development and implementation of staff review procedures/policies

No claim is made here but included in the future productivity plan 6.4.3.

4.2 Procedures for Delivering High Quality Courses

Rationale:

From October 1994 to December 1995 a working party met to rewrite the college Academic Regulations and subsequently developed a set of academic policies and procedures.

The working party was drawn from the administrative and academic divisions and prepared policies and procedures which form a basis for improvements in college academic, administrative and training delivery. The working party will be ongoing and will continue to develop new procedures and revise existing procedures.

Strategies:

- the working party prepared policies and procedures in areas including:
 - course development and organisation
 - application and enrolments
 - training delivery
 - customer service and marketing
 - assessment and evaluation
 - student records

Savings:

Establishment and continued development of academic procedures. Effort equivalent to 0.25 Level 4 FTE = \$48 100 X 0.25 = \$12 025

40% to staff effort = \$4 810

56% attributed to administrative staff = \$2 694 0.12%

4.3 Introduced Customer Focus

Rationale:

In accordance with the directive of the government the college introduced a customer focus policy in October 1994. The policy was combined into the colleges own strategies for continuous improvement.

Strategies:

- preparation and distribution of Customer Service Charter 1994/5
- training in front counter customer service and telephone techniques
- development of customer service procedures and policies
- introduction of an Annual Student Satisfaction Survey 1994, 1995

Intangible Savings:

- improved customer satisfaction
- improved reputation of the College
- improved staff relations
- increased community awareness

Savings:-

Development, implementation and production of Customer Service Charter and annual Student Satisfaction Report.

Savings of 10 % of 1 FTE (\$40,000) = \$4,000.

40% return to administrative staff = \$1 600

amortised over 4 years = \$400

Fully attributable to increased staff effort. 0.02%

4.4 Guarantee Course Quality Through the Accreditation Process

Rationale:

It is important to the college that all vocational education and training courses are nationally accredited and that the college is acknowledged by the WA State Training Board as a registered provider of accredited programs.

Under previous arrangements the college had been automatically registered as a provider of TAFE courses. Under arrangements introduced in 1993 it became necessary for the college to register as a provider of each course delivered.

The preparation of registration documents involves significant work in order to demonstrate to the State Training Board that each course meets the criteria for quality course delivery.

Without this registration the college would be unable to deliver courses, students would not be eligible for Austudy or Abstudy and the college could not tender for government training delivery contracts.

The accreditation and registration process will be continuing in the future.

New courses will require registration and existing courses will be redeveloped and require re-registration.

Strategies:

- between mid 1993 and mid 1995 the college systematically applied for registration as a deliverer of each of the courses in its course program
- 1993 1 course registered
- 1994 26 courses registered
- 1995 44 courses registered

The registration process involved significant effort by staff in the development and preparation of registration documents while some increased resources were allocated to this function significant input was required from heads of division in excess of their normal duties. This is an on going requirement.

Time required for registration process was the equivalent of 10% of 1 FTE

(\$40 000 = \$4 000). 56% of this is attributed to the administration staff = \$2 240. 0.1%

Strategy 5. Efficiently Manage College Facilities and Resources so as to Permit the Effective Delivery of Programs

5.1 Operationalised Appropriate Budget Strategies

Rationale:

The college has operationalised appropriate budget strategies in order to maximise efficiency. In particular the college has absorbed the increase of 11% CPI since 1993.

Strategies:

- monthly cash flow budget monitoring
- monitoring of budget by college Finance and Staffing Committee
- improved reporting to Government Superannuation Board
- improved monitoring of excess staff hours
- efficiencies in accounting procedures (ie paying more through salaries rather than separate cheques)
- efficiencies in college bus operations
- improved procedures in purchasing

Savings:

Value of improved efficiencies are equivalent to savings to the value of 0.3 FTE directly attributable to increased staff effort arising from the above initiatives. 30% of \$40,000 = \$12,000pa.

40% return to administrative staff = \$4 800 0.22%

5.2 Upgraded Information Technology (IT)

Rationale:

The college requires a high quality IT network both for training delivery and for administration. Over the past three years the college has substantially improved its IT hardware and software so as to ensure that it remains within 3-5 years of the leading edge.

This has required substantial staff flexibility and development in adapting to IT changes.

Strategies:-

- development of a three year IT plan which is reviewed annually
- expansion and modernisation of the local area network
- implementation of new training and administration software
- rationalisation of telecommunications

Intangible Savings:

- ongoing efficiency
- smoother administration, less re-work
- people understand the direction of the College and their role in it

- dovetailing into bigger system of WADT to provide for a contribution to the effectiveness of the State training system and compliance of the public sector management requirements
- confidence in systems through increased uniformity within the College

5.3 Optimising Savings from Delayed Appointments

Rationale

Maximising savings by delaying administrative staff appointments where possible.

Strategies

- assessing ongoing need for position when vacant
- tailor hiring of administrative staff appointments in line with organisational requirements
- delaying appointment until appropriately qualified experienced staff are found

Intangible Savings

- more efficient use of staff resources
- wider range and more appropriate staff selected
- feedback provided to all unsuccessful applicants

Savings:

Salary savings of \$40,000 to the organisation, all attributable to administrative staff.

As a consequence of the additional effort and co-operation of staff, 40% of this can fairly be claimed.

40% of \$40 000 = \$16 000 0.74%

5.4 Maintained College Facilities

Rationale:

Cleaning and gardening activities are essential to the delivery of quality education and training and contribute significantly to occupational health and safety standards. In the past two years the college maintained its facilities effectively and increased efficiencies.

Strategies:

- cleaning staff has been reduced
- working hours have decreased with no reduction in workload

Savings:

Savings to the college as a consequence of more efficiently utilising resources devoted to cleaning and improved management of such resources. Savings of 16% of total cleaning wages = \$22, 000.

40% of \$22 000 = \$8 800. 0.41%

SUMMARY OF PAST PRODUCTIVITY

Item No	Productivity Initiative	Value \$	Item % of overall claim
1.1	Introduced a range of accredited courses	NIL	0.0
1.2	Increased range of services—Library	8 000	.37
	Increased range of services—Theatre	8 000	.37
1.3	Fee for service training	19 100	.89
1.4	Adult Community Education	NIL	0.0
1.5	Increased surplus for use of college facilities	NIL	0.0
2.1	Delivered programs throughout region	NIL	0.0
2.2	Improved flexible and remote delivery	13 440	0.62
2.3	Promoted college activities	3 200	0.15
2.4	Efficiencies in providing access and bridging courses	800	0.04
3.1	Involvement in college decision making	NIL	0.0
3.2	Joint venture training with industry	5 579	0.26
4.1	Introduced staff performance reviews	NIL	0.0
4.2	Procedure for delivery of courses	2 694	0.12
4.3	Introduced customer focus	400	0.02
4.4	Improved course quality through registration process	2 240	0.1
5.1	Operationalised new budget strategies	4 800	0.22
5.2	Upgraded Information Technology	NIL	0.0
5.3	Optimising Savings from Delayed Appointments	16 000	0.74
5.4	Efficiencies in maintaining college facilities	8 800	0.41
	Total value	\$93 053	4.3%
	Discount 2.4% for the two \$8 per week safety net increases		2.4%
	Total Nett Past Productivity		1.9%

Percentages are calculated as a proportion of the administrative staff salaries of \$2 156 000 pa. This is based on 1995 average administrative staffing levels of 62 FTES.

Therefore 62 FTES x (2 x \$8.00) x 52 weeks = \$51 584 or 2.4% of the administrative staff payroll for 1995 of \$2 156 000.

ATTACHMENT E—FUTURE PRODUCTIVITY IMPROVEMENT PLAN 1996-97

FUTURE PRODUCTIVITY IMPROVEMENT PLAN

1.1 Course Advertising

Objectives:

To increase the business of the college by improving market awareness of college services. In addition to this, improve the cost effectiveness of course advertising and promotion.

Strategies:

- decrease cost of newspaper advertising by rationalising the timing and placement of advertisements
- utilise less expensive media where appropriate.
- utilise newspaper articles and free radio interviews where possible.

Additional Employee Input

- responsibility for advertising is shared by all divisions since there is not central advertising office.
- staff take responsibility for designing, preparing, placing and monitoring advertising so as to achieve the most effective results.

Measurement:

Effectiveness:

- awareness of advertising as indicated in the annual student satisfaction surveys.

Target: 80% awareness

Efficiency:

- advertising costs per annum = \$55 000

Target: reduction of 10% in course advertising costs pa = \$5,500

60% attributable to staff input = \$3 300

56% attributable to administration staff effort = \$1 848
0.09%

1.2 Fee For Service Training

Objective:

To increase the amount of Fee for Service (FFS) training provided by the college. The college delivers a wide and varied program of fee for service training both in Karratha and the inland annexes. The training is targeted to meet the requirements of both the large resource companies in the region as well as smaller manufacturing and service industries.

In providing fee for service training the college is in competition with industry trainers, private providers, community providers and other publicly funded VET agencies.

The fee for service program generates substantial revenue for the college which is utilised to fund improvements to college facilities and equipment and substantially supplement state funding.

Strategies:

- continue to improve marketing of fee for service training through use of appropriate marketing materials
- improve customer service techniques through appropriate training
- improve course evaluation procedures in order to obtain more accurate customer feedback
- improve networking targets by FFS customised training staff in developing and implementing networking plans
- continue to package the course offerings so as to reduce course cancellations and thus improve customer satisfaction and college reputation
- improve the fee for service written procedures so as to improve customer service

Additional Employee Input

- improve marketing materials
- redevelop, administer and act on course evaluation instruments
- develop networking plan and network with fee for service clients
- redevelop and improve fee for service procedures

Measurement:

Effectiveness:

- increase in customer satisfaction through client survey
- increase in customer satisfaction through course evaluation survey
- meet targets set for networking contacts

Target: 90% satisfaction in both client and course evaluation survey

Efficiency:

- reduced net costs to FFS customised training

Target: \$35 000 reduction in net costs per year

Increased effort to the value of 0.75

1 Level 3 FTE = \$47 250

75% of \$47 250 = \$35 000

60% attributable to staff initiative = \$21 000

56% attributable to administration staff effort = \$11 760

0.55%

1.3 Adult Community Education

Objectives:

Increase the range of courses and the participation of the public in Adult Community Education (ACE). Adult Community Education is a partial cost recovery activity which provides instruction in leisure and general interest subjects.

ACE is a part of the college's program of cultural development. As such it is an important contribution to improving the quality of life for remote Pilbara communities. At the same time ACE may serve as an introduction into further accredited vocational education and training for many of those who enrol.

Strategies:

- conduct needs analysis and collect appropriate data so as to more accurately focus ACE activity by targeting customer demand. Information-nation to be collected from student satisfaction surveys and examination of historical patterns.
- continue implementation of the ACE customer survey and report four times each year
- package ACE offerings so as to improve targeting and reduce course cancellations occasioned by lack of student demand
- improve customer service techniques through appropriate staff training, e.g. train new staff telephonists in handling complaints
- introduce efficiencies in enrolment procedures so as to maximise SCH, eg telephone credit card access
- develop and implement procedures for the administration of ACE
- promote VET courses to ACE students by distributing marketing materials and providing advice on enrolment.

Additional Employee Input

- conduct needs analysis for ACE
- package ACE product appropriately
- develop written ACE procedures

Measurement:

Effectiveness:

- increase in overall student satisfaction in ACE courses

Target: 90% satisfaction

No individual claim made. This initiative supports general productivity improvement.

0%

1.4 Use of College Facilities by Community and Industry Groups

Objective:

To increase the use of college facilities by groups and individuals in local industry and communities. This provides a service to non college organisations in making available facilities for meetings, functions, productions etc and also improves networking between the college and the community.

This objective is part of the college program of cultural development and as such assists in improving the quality of life in the region. In addition it may also assist in creating more business for the college by making users aware of college programs and facilities.

The Seminar Centre, Cafeteria and Theatre already have structured systems for external users. The intention is to extend the systems to other facilities in the college. These facilities would usually be utilised between 8am and 10pm on weekdays when the college is in normal operations and air conditioning, lighting and cleaning are functioning. There would therefore be no additional cost to the college and any rent would be a generated surplus.

Strategies:

- publicise the availability of facilities in order to maximise use
- rationalise the facilities, booking service and fee schedules so as to make them more efficient
- formalise the booking arrangement, fee structure and publicity.

Additional Employee Input

- each section is responsible for activity in their area of responsibility and section staff are responsible for promoting the use of college facilities
- develop, prepare, place and monitor publicity for use of college facilities
- redevelop and rationalise the facilities reservation service and fee schedules
- take and confirm reservations, keep accounts etc.

Measurement:

Effectiveness:

- increase in number of hours booked by external users

Target: 10% increase in hours of usage pa

Efficiency:

- increase in usage as measured by the rent generated from college facilities

Target: 24 % increase

1995: \$50 000

1996: \$62 000

Increased staff effort to the value of 30% of I level 2 FTE (40 000)

30% x 40 000 = \$12 000

Additional usage equivalent to = \$12 000

60% attributable to staff effort = \$7 200

All attributable to administration staff = \$7 200 through: 0.33%

- improved marketing
- redevelopment of booking procedures

Strategy 2. Optimise Delivery to as Wide a Range of the Population as Possible

2.1 Flexible and Remote Delivery

Objective:

To increase the SCH associated with flexible delivery and open learning. Karratha College services a large sparsely populated geographical area of 120, 843 square kms. The population is scattered in small remote communities based largely on the locations of the resource extraction industries. In order to service these small yet economically significant communities the college employs strategies and technology to permit flexible delivery of courses.

At the same time a large proportion of the population is constrained in their availability for attendance at training sessions due to domestic or occupational commitments. The employment of flexible delivery and open learning techniques will enable such clientele to enrol in training.

Flexible delivery and open learning does not refer to a particular technique or item of technology. Rather it encompasses a range of delivery modes, training methods, availability of facilities and the employment of technology which permits a wider access to training.

At the same time flexible delivery also permits economies in course delivery. It makes possible the availability of subjects which under face to face mode would have insufficient numbers to allow the establishment of a viable class.

Given the cost of the technology associated with flexible delivery it is unlikely that it is less expensive than face to face mode in absolute terms. However in terms of marketing available training which would otherwise be completely inaccessible, flexible delivery is a much more efficient means of delivering training.

Strategies:

- improve marketing strategies for flexible delivery
- refine procedures for student administration in flexible delivery courses
- implement new administration procedures for student information, enrolment, progress reports and assessment
- improve data collection on student activity in flexible delivery.

Additional Employee Input

- redevelop procedures for flexible delivery courses
- implement new procedures specifically for flexible delivery
- develop and improve means of data collection for flexible delivery.

Measurement:

Effectiveness:

- level of satisfaction of those students enrolled in flexible delivery subjects

Target: 80%

Efficiency:

- Productivity savings included in 2.2 below

2.2 Admission and Enrolment Procedures

Objective:

To improve the accuracy and efficiency of student admission and enrolment procedures. It is important to ensure that these procedures are as customer friendly as possible. The intention is to provide accurate information at the point of enrolment and to process enrolments as efficiently as possible so as to minimise customer wait time and enrolment recording errors. This will reduce staff time and maximise customer service.

Strategies:

- improve levels of information available to customers enabling them to make a more informed choice
- implement procedures for continuous enrolments for relevant courses
- implement more flexible means of enrolment such as telephone enrolments
- improve enrolment forms so as to reduce completion time and increase the accuracy of information provided
- further document procedures to improve consistency in the context of a large staff transition rate
- provide customer service training for enrolment staff.

Additional Employee Input

- provide increased level of information to customers
- develop and implement continuous enrolment procedures
- implement telephone enrolment
- further document operational procedures
- improve accuracy and reduce enrolment processing time

Measurement:

Effectiveness:

- level of customer satisfaction with admission and enrolment process.

Target: 80%

Efficiency:

- Reduce enrolment errors by 20%
- Reduce enrolment processing time by 20%
- Reduce cost of overtime and casual staff.

Enrolment processing time equivalent to 30% of 1 FTE (Level 3) = \$47 250

30% of \$47 250 = \$14 175. Due to reduction in overtime and staff relief.

60% attributable to staff effort = \$8 505

All attributable to administration staff effort. 0.40%

2.3 Access and Bridging Courses

Objective:

To increase activity in access and bridging courses for groups within the community who are disadvantaged in terms of access to education and training opportunities. The intention in accordance with the National Training Reform Agenda is to increase the participation of these groups in education and training and thus in the workforce.

National priority target groups in this context are long term unemployed, unemployed youth, women, Aboriginal and Islander people and people with a disability.

To some extent the college competes for Commonwealth contracts to provide training services to these groups. However State Consolidated Funds (CF) are also utilised for these courses.

Strategies:

- provide staff training in tendering and contracting
- implement improved procedures in administering and evaluating courses
- implement appropriate student enrolment and certification procedures.

Measurement:

Effectiveness:

- proportion of successful contracts gained

Target: 80%

- student satisfaction with access and bridging course—measured by course evaluation instrument.

Target: 80%

Efficiency:

- increase in access and equity SCH without increase in cost for both contracted and CF courses.

This initiative is part of the general increase in productivity improvement. 0%

Strategy 3. Respond to Industry And Community Needs

3.1 Identify Regional Training and Service Needs

Objectives:

To improve methods of identifying regional industry and community training needs so as to more appropriately focus the college course profile. The intention is to better target the training market by being more aware of client demand.

An increasingly deregulated training market now makes it imperative that the college develops an appropriate training product and packages and promotes it in a way that is relevant and useful to customers and clients.

It is the intention of this initiative to reduce expenditure on developing and implementing methods of assessing industry and community need without increase in resources and to reduce expenditure on developing and preparing courses and subjects which are subsequently cancelled due to lack of demand. Costs involved in establishing such courses include enrolment time, refund of fees, raising of rolls, IT input, staff time etc.

Strategies:

- introduce annual client survey to obtain qualitative data on regional industry needs
- organise systematic scheme of networking with regional industry and service agencies in order to keep informed of changing needs and to inform them of our services
- develop and implement and analyse community library satisfaction survey
- continue the Annual Student Satisfaction Survey and ensure that the instrument and analysis is consistent.

- analyse and utilise the data provided by agencies such as the Pilbara Development Commission, industry training councils and other training providers.

Additional Employee Input

- network with local employers and agencies to gain information on their needs and inform them of college services
- obtain membership of local industry and employer groups
- develop and implement annual client survey
- develop and implement community library survey
- analyse and utilise survey results in improving services.

Measurement:

Effectiveness:

- 90% satisfaction with range of services offered as measured in client satisfaction survey.

Efficiency:

successful annual development and redevelopment implementation analysis and use of:

- client survey
- community library survey
- community theatre survey
- annual student satisfaction survey

Additional work performed by college staff within present staffing levels without the use of additional staff or consultants. In addition savings in labour costs through the reduction in the number of subjects offered and subsequently cancelled due to lack of demand.

Equivalent annual savings of 0.30 FTE (level 4) \$54 275 = \$16 283

60%—attributed to staff effort = \$9 770

all attributed to administration staff = \$9 770 0.45%

Strategy 4. Continuously Improve the Quality of College Program Delivery

4.1 Selection and Recruitment

Objective:

To improve the implementation of procedures in selecting and recruiting appropriately skilled staff.

In common with other agencies in the West Pilbara the college has a very high staff turnover rate (30%) therefore expends substantial resources in the selection and recruitment of new staff. In addition many staff must be recruited from outside of the region thus substantially increasing recruitment costs and often making communication difficult.

Inadequate or poorly implemented selection processes may result in expensive and time consuming errors which affect both the effectiveness and efficiency of the college.

In the past two years the College has substantially redeveloped its selection procedures. The focus of effort in the next two years will be to implement the changes.

Strategies:

- revise selection strategies so as to improve the selection process
- increase use of telephone and video conferencing to reduce interview costs
- continue regular staff training in selection techniques
- continue updating and revising duty statements and selection criteria annually
- increased opportunities for career development
- reduced advertising costs with the use of internal staff transfers

Additional Employee Input

- revise selection strategies and implement revisions
- place and monitor results of advertising
- update and revise duty statement and selection criteria annually
- participate in training in selection procedures in addition to other duties.

Measurement:

Effectiveness:

- Staff satisfaction with selection criteria measured in staff survey

Target: 80% satisfaction

Efficiency:

- Reduction in actual recruitment costs for administration staff

Target: 20% reduction in administration staff recruitment costs

20% of \$40 000 = \$8 000

Increase staff effort to the value of \$8 000

60% attributable to administration staff effort = \$4 800
0.22%

4.2 Improve Staff Performance Management

Objective:

To improve the effectiveness of staff through the implementation of a more rigorous performance management system.

A system of annual reviews of performance was introduced two years ago to replace and supplement the previous system of probationary reviews. After an initial trial period the performance review system was revised in late 1995 for implementation in 1996. The system is based on a systematic induction program, probationary performance review, annual reviews and a final exit interview. At the same time a system for dealing with more serious performance problems has also been introduced.

The implementation of the revised procedures will increase the effectiveness of staff through the mutual goals that are set between staff and supervisors. It will also result in a more efficient use of staff time by maintaining their focus on the shared objectives of the team/section and encouraging them to achieve individual targets.

Strategies:

- implement staff performance management procedures including induction procedures
 - probationary review
 - annual reviews
 - performance problem solving procedures
 - discipline procedures
 - exit interview
- staff training in performance management procedures

Additional Employee Input

- assist in redevelopment of performance management procedures
- conduct and participate in induction interviews, probationary reviews, annual reviews.

Measurement -

Effectiveness:

- Improve communication between employees and supervisors.
- Staff satisfaction with performance review system as measured in the staff satisfaction survey

Target: 80%

Efficiency:

Productivity improvement from improved staff performance valued at 30% of one level 4 \$54 275 = \$16 283.

All attributed to administrative staff

60% claimed for staff—\$9 770 0.45%

4.3 Developing Quality Systems

Objective:

In order to achieve the status of a Quality Endorsed Training Organisation (QETO), Karratha College will embark on a program of preparation and accreditation. QETO status will be important to the college in marketing its training and assuring customers that it meets recognised standards.

The development and improvement of college administration procedures is an important means of improving the quality of college services and will continue to involve efforts from all staff as members of team and working parties.

Improved procedures will also assist in the ease of 'handover' in a transient staff situation. It will permit the easy introduction of new processes, save staff time and improve staff communication. Better procedures will also improve customer service by increasing the speed and certainty of college processes.

Strategies:

- pilot QETO standards and work towards meeting the standards
- to develop, revise and implement college QETO procedures
- develop and (where necessary) revise operational procedures for each section.

Additional Employee Input

- involvement in QETO working parties
- involvement in developing revising and implementing QETO procedures for academic service delivery
- involvement in developing sectional operational procedures.

Measurement:

Effectiveness:

- revision and implementation of academic procedures October 1996
- full revision of college administration procedures

Target: January 1997

- development of section operational procedures

Target: December 1997

- staff satisfaction with procedures to date

Target: 80% satisfaction

Efficiency:

- Complete Quality Systems Self Assessment and gain QETO endorsement by June 1997 without increasing staffing costs.

Target: productivity improvement equivalent: I FTE Level 4 = \$54 275 since no other staff will be employed

60% attributable to staff effort = \$32 565

56% attributable to administration staff = \$18 236
0.85%

Strategy 5. Efficiently Manage College Resources

5.1 Rationalise and Improve the Use of Karratha College Space

Objective:

To maximise the use of college space and facilities so as to make the most effective and efficient use of classrooms, workshops, laboratories, the theatre, seminar centre and Audio Visual room.

This will enable the college to organise courses utilising optimum levels of college space and avoiding the use of unsuitable space or having to rent or lease space outside of the college. It will also reduce airconditioning and lighting costs.

Productivity improvements may be generated from the compilation and ongoing maintenance of the data base for room timetabling. The avoidance of the necessity to rent training facilities off campus, the maximisation of the use of specialist training facilities, the reduction of air conditioning costs.

Strategies:

- compile data base of college space and facilities for WADT and AVETMISS
- use the data base as a basis for room time tabling.
- reduce servicing and airconditioning costs
- make greater use of college facilities.

Additional Employee Input

- completion and use of data base without increased resources
- development of procedures for collecting timetabling information for the data base
- monitoring effects on servicing and airconditioning costs
- monitor use of college facilities.

Measurement:

Effectiveness:

- preparation of space utilisation data base

Target: June 1997 for completion of data base

Efficiency:

- Saving in avoiding need to rent off campus facilities, and saving on power costs.
- Improved efficiency in time tabling.

On going productivity improvement to the value of \$5 000pa
60%—attributed to staff effort = \$3 000

56%—attributed to administrative staff = \$1 680 pa .08%

5.2 Availability and Distribution of Management Information

Objective:

To improve the availability and distribution of data and information so that effective management decisions can be made. Improving the availability of information is crucial to improving the quality of college performance. It enables management decisions to be evaluated based on accurate information and feedback.

In the next two years the college plans to substantially improve the storage and retrieval of information both electronically and paper based. The introduction of a new data system will require a substantial financial outlay as well as some changes in work practices. It is anticipated there will be medium term gains in effectiveness and efficiency without an increase in staffing resources.

Strategies:

- improve the efficiency of the Library by computerising its operations in 1996
- improve student administration procedures through the adoption of the College Managed Information Systems
- improve personnel and payroll management through the adoption of People Management System (REMUS)
- improve general records management by reorganising the central paper based records management system.
- train staff in use of new software and paper based systems

Measurement:

Effectiveness:

- Customer satisfaction with Library service as measured by Library customer survey

Target: 80% satisfaction

- Customer satisfaction with student records system

Target: 80% satisfaction

- Staff satisfaction with People Management System

Target: 80% satisfaction

- Staff satisfaction with records management

Target: 80% satisfaction

Efficiency:

- more responsive service to customers, clients and stakeholders

Target: \$6,000 p.a. saved on overtime and replacement

40% attributable to staff effort = \$2,400

All attributable to administration staff effort = \$2,400.

However initial equipment and software costs of approximately \$100 000 or \$20 000 over 5 years. This outweighs staff earnings—NIL 0%

5.3 Automatic Switchboard System

Objective:

To improve the efficiency of telephone answering in order to permit the redeployment of the receptionist's time to work in other administration. The intention is to replace the present operator driven telephone service with an automatic switchboard. This would provide the same levels of customer satisfaction and give staff more time to perform productive work.

The redeployment of 0.5 FTE to other administration work would avoid the use of overtime or relief time and improve the efficiency of customer counter service and student records management.

Strategies:

- install automated switchboard system
- train staff in the implementation of the system
- redeploy 50% of the receptionists time to student administration
- increase the direct dial listings in the White Pages directory
- publicise the range of options for public contact with College

Additional Employee Input

- implement the automatic telephone system
- receptionist is redeployed to other duties in administration therefore reducing overtime costs in that area
- all staff required to adopt a customer focus telephone manner, take responsibility for picking up calls and redirect calls as necessary.

Measurement:

Effectiveness:

- Customer satisfaction with telephone answering service as measured in the student satisfaction survey

Target: no decrease in customer satisfaction.

Efficiency:

- Reduction in overtime and relief time required by administration with the redeployment of the reception to this area

Target: \$19 000 savings in overtime and relief

Overtime and relief savings: \$19 000

Cost of automatic phone system: \$4 000—amortised over 2 years

Saving: \$15 000

60% attributable to administration staff effort = \$9 000
0.42%

5.4 Occupational Health & Safety

Objective:

To improve the standard of occupational health and safety in the college so that the College exceeds the legislative requirements.

As a vocational education and training provider it is important that the college act as a model of occupational health and safety procedures. This is essential for the reputation of the College as a training provider, especially in this region where industry is particularly safety conscious.

At the same time the improvements of occupational health and safety procedures will also lead to a diminution in the time lost through accidents by both students and staff. At present this is not a significant figure due to the careful observance of exact procedure. Nevertheless it is important to maintain adherence to OHS standards since a lapse would both increase days lost through accidents might result in an accident which could cost a significant amount in compensation or damages of particular importance in the OHS implications of driving on unsealed roads.

Strategies:

- continue regular meetings of the occupational health and safety committee
- develop and finalise OHS policies and procedures and implement these throughout the college
- staff to participate in continual improvement and monitoring of OHS procedures
- staff to participate in relevant training in first aid, 4WD, evacuation procedures etc.

Additional Employee Input

- participate in occupational health and safety briefings and training
- assist in developing OHS policies and procedures and implement these throughout the college

- assist in the continual improvement and monitoring of OHS procedures.

Measurement:

Effectiveness:

- Student satisfaction with OHS procedures

Target: 90% satisfaction

- Staff satisfaction with OHS procedures

Target: 90% satisfaction

Efficiency:

- Reduction in number of staff hours lost due to accident

Target: reduction of 8 hours in total

- development of OHS policies and procedures without additional staff resources

Equivalent to 10% of 1 Level 3 FTE = \$47 275=10% = \$4 725

60% attributable to staff effort = \$2 837

56% attributable to administration staff effort = \$1 589
0.07%

5.5 Staff Air Travel

Objective:

To obtain economies in the purchase of staff air travel.

Remoteness from the metropolitan area means that in order to keep aware of new developments the college must pay a significant amount for air travel.

Economies in the purchasing of staff travel could be significant if staff are involved in improved forward planning of travel.

Strategies:

- utilise advance purchase air fares to reduce cost of travel.

Additional Employee Input

- organising travel arrangements more carefully
- arrange travel bookings carefully to comply with advanced purchase and special purchase procedures.

Measurement:

Effectiveness:

- Staff satisfaction with travel arrangements

Target: 80% satisfaction

Efficiency:

- Amount saved between 1995 and 1996

Target: saving of \$12,000

60% attributable to staff effort = \$7,200

56% attributable to administration staff effort = \$4 032
0.19%

SUMMARY OF FUTURE PRODUCTIVITY SAVINGS

Item No.	Productivity Initiative	Savings \$	Item % of overall claim
1.1	Course Advertising	1 848	0.09
1.2	Fee For Service Training	11 760	0.55
1.3	Adult Community Education	NIL	0.00
1.4	Use of College Facilities	7 200	0.33
2.1	Improve Flexible & Remote Delivery	NIL	0.00
2.2	Improve Admission & Enrolment Procedures	8 505	0.40
2.3	Improve Access & Bridging Courses	NIL	0.00
3.1	Identify Regional Training Needs	9 770	0.45
4.1	Selection & Recruitment	4 800	0.22
4.2	Staff Performance Management	9 770	0.45
4.3	Developing Quality Systems	18 236	0.85
5.1	Use of College Space and Facilities	1 680	0.08
5.2	Management Information	NIL	0.0
5.3	Automatic Switchboard	9 000	0.42
5.4	Occupational Health & Safety	1 589	0.07
5.5	Staff Air Travel	4 032	0.19
	Total Savings:	\$88 190	4.1%

KBE CONTRACTING INDUSTRIAL AGREEMENT.**No. AG 104 of 1996.**WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

KBE Contracting Pty Ltd.

No. AG 104 of 1996.

KBE Contracting Industrial Agreement.

COMMISSIONER A.R. BEECH.

1 November 1996.

*Order.*HAVING heard Mr G Giffard on behalf of the Applicant, the
Commission, pursuant to the powers conferred on it under the
Industrial Relations Act, 1979, hereby orders—THAT the KBE Contracting Industrial Agreement be
registered in accordance with the following Schedule
commencing on and from the 1st day of November 1996.(Sgd.) A. R. BEECH,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement will be known as the KBE Contracting
Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of
Prior Learning
 14. Seniority
 15. Sick Leave
 16. Pyramid Sub-Contracting
 17. All-In Payments
 18. Drug and Alcohol, Safety and Rehabilitation Pro-
gramme
 19. Signatories
- Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Reha-
bilitation Programme

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian
Builders' Labourers, Painters and Plasterers Union of Workers
(hereinafter referred to as the "Union") and KBE Contracting
Pty Ltd (hereinafter referred to as the "Company") in the State
of Western Australia.

4.—APPLICATION

(1) This Agreement shall be binding upon the Company, the
Union, its officers and members, and any person eligible to be
a member of the Union employed by the Company on work
covered by the terms of the Building Trades (Construction)
Award 1987, No. R 14 of 1978 (the "Award").(2) This agreement shall be read in conjunction with the
KBE Contracting Asbestos Eradication Industrial Agreement.(2) There are approximately 20 employees covered by this
Agreement.

5.—DURATION

This Agreement shall commence from the first pay period
on or after the date of signing and shall continue in effect until
31 July 1997.The parties agree to commence discussion on the terms and
conditions of any future agreement three calendar months prior
to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising
out of the operation of this Agreement the dispute settlement
procedure that shall apply shall be in the same terms as that
outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single
enterprise as defined in Clause 41A(2) of the Industrial
Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with
the Award. Where this Agreement is silent on rates of pay and
other matters pertaining to the employment relationship, the
Award shall apply. Where there is conflict between the rates
of pay, conditions, allowances and other matters in this
Agreement and the Award, the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company
agreeing on the terms of a comprehensive enterprise agreement,
this Agreement may be terminated in accordance with the
requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate
resulting in the wage rates in Appendix A—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue
to meet its current level of payment into the Western Australian
Construction Industry Redundancy Fund and will immediately
increase its level of payment into the Construction + Building
Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee
by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair
wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair
wear and tear basis.
- (c) 1 bluey jacket for each employee employed during
the period 1 April to 31 October. (One issued per
year.)

(2) The Company will also make available to each employee,
when requested by them, sun screen lotion and sun brims to
fit over safety helmets.13.—TRAINING ALLOWANCE, TRAINING LEAVE,
RECOGNITION OF PRIOR LEARNING(1) A training allowance of \$11.00 per week per employee
shall be paid by the employer to the Union Education and
Training Fund.(2) Subject to all qualifications in this clause, an employee
shall, upon application in writing to and with approval of the
employer, be granted leave with pay each calendar year pro-
rata to attend courses conducted or approved by the NBCITC.
The employer's approval shall not be unreasonably withheld.The application for leave shall be given to the employer at
least two weeks in advance of the date of commencement of
the course.The time of taking leave shall be arranged so as to minimise
any adverse effect on the employer's operations. The onus
shall rest with the employer to demonstrate an inability to grant
leave where an employee is otherwise entitled.An employer shall not be liable for any additional expenses
associated with an employee's attendance at a course other
than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per subclause (2) of this clause for such purposes including, but not limited to, securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed, subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the 15th April 1996 the following will apply:

(1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.

(2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

17.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the

difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

Bernard Brosztl

On behalf of KBE Contracting Pty Ltd

Dated this 15th day of April 1996.

APPENDIX A—WAGE RATES

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	HOURLY RATE \$	HOURLY RATE \$	HOURLY RATE \$	HOURLY RATE \$
Labourer Group 1	13.75	14.21	14.66	15.11
Labourer Group 2	13.27	13.71	14.15	14.59
Labourer Group 3	12.92	13.35	13.77	14.20
Plasterer, Fixer	14.29	14.76	15.23	15.70
Painter, Glazier	13.97	14.43	14.89	15.35
Signwriter	14.26	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

- (a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.
- (b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.
- (c) There will be no payment of lost time to an employee unable to work in a safe manner.
- (d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.
- (e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.

- (f) An employee having problems with alcohol and/or other drugs:
- Will not be sacked if he/she is willing to get help.
 - Must undertake, and continue with, the recommended treatment to maintain the protection of this programme.
 - Will be entitled to sick leave or leave without pay while attending treatment.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

- (a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.
- (b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.
- (c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

—————

**KEWDALE ENGINEERING & CONSTRUCTION
ENTERPRISE BARGAINING AGREEMENT-No 3
No. AG 225 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australia
Branch

and

Kewdale Engineering and Construction.

No. AG 225 of 1996.

Kewdale Engineering & Construction Enterprise Bargaining
Agreement-No 3.

CHIEF COMMISSIONER W.S. COLEMAN.

8 November 1996.

Order.

HAVING heard Mr G. Sturman on behalf of the Applicant and Mr K. Patterson on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the "Kewdale Engineering & Construction Enterprise Bargaining Agreement-No 3." attached hereto be and is hereby registered as an industrial agreement and shall operate on and from the 23rd day of September, 1996.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S]

—————

1.—TITLE

This Agreement shall be known as the Kewdale Engineering & Construction Enterprise Bargaining Agreement-No 3.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Incidence and Parties Bound
4. Period of Operation and Review
5. Relationship to Parent Award
6. Objectives

7. Aims Achievement Strategy
8. Productivity Improvement Agenda
9. Journey Cover
10. Resolution of Disputes
11. No Extra Claims Commitment
12. Wages
13. Cessation of Agreement Signatories

3.—INCIDENCE AND PARTIES BOUND

This agreement shall apply to Kewdale Engineering & Construction and approximately 65 employees of Kewdale Engineering & Construction who are members, or eligible to be, members of the Metals and Engineering Workers Union-Western Australia.

The parties to this agreement are:—

Kewdale Engineering and Construction (*hereinafter called Kewdale*)

13 Stott Street, Welshpool WA 6106

Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union—Western Australian Branch
(*hereinafter called AMWU*), 1111 Hay Street, West Perth
WA 6005

4.—PERIOD OF OPERATION AND REVIEW

(1) This agreement shall operate on and from 1st April 1996 until 31st March 1998 and shall remain in force after that date until replaced or either party withdraws from the agreement.

(2) During the term of this Agreement the Workshop Committee shall meet regularly to discuss any matters arising from this agreement.

(3) The Workshop Committee shall review this agreement two months prior to its cessation.

5.—RELATIONSHIP TO PARENT AWARD

(1) The provisions of this Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966, No. 13 of 1965.

(2) Where there is any inconsistency, the provisions of this Agreement shall prevail to the extent of such inconsistency.

6.—OBJECTIVES

This Agreement:—

- (1) Implements in a formal manner a pay increase arising from changes in market demand for metalworking and heavy engineering skills created by Western Australia's project development boom and market forces.
- (2) States clearly that the employer and the employees agree that the initiation of change should, as far as possible, focus on the workplace and allow local solutions to be found for as many issues as possible.
- (3) Focuses the employer and the employees on the fact that local flexibility exists to develop operational and work practice solutions within the current framework of Awards, relevant legislation, work level standards, delegations, occupational health and safety requirements and other formal policies. The employer and the employees at the local level will continue to examine ways for greater flexibility to be introduced for the benefit of the Company and the employees.
- (4) States that the majority of employees directly affected by the proposed change must genuinely agree to the change prior to it being introduced and neither party shall unreasonably oppose any agreement.

7.—AIMS ACHIEVEMENT STRATEGY

To achieve the aims specified in Clause 6.—Objectives of this Agreement, the following strategy has been agreed upon:—

- (1) A Workshop Committee continues to monitor the progress of this Agreement.
- (2) The Workshop Committee shall be comprised of five employee and three employer representatives.
A minimum quorum shall be three Workers Representatives and one senior Kewdale staff representative.
- (3) (a) On-going discussions regarding productivity, work practices, management/employee

relations and general proposals for improvement of any aspect of operations will take place on a regular basis being the last Friday of each month.

- (b) Management and employees have agreed to a continuing consultative process to enable ongoing changes throughout the Workshop and work processes to enable ongoing improvement and efficiency to the advantage of both the employer and employees.

- (4) The Workshop Committee will continue to address issues designed to increase productivity and flexibility in the Kewdale works.

8.—PRODUCTIVITY IMPROVEMENT AGENDA

The parties agree and acknowledge that there are no real and tangible productivity improvement measures that can be implemented in this agreement to form any entitlement or create any cost saving to offset the wage increase in Clause 12.—Wages of this Agreement.

The following agenda items have been carried over from the previous agreements in the interest of maintaining benefits to the employees and the Company arising from the previous productivity agendas.

- (1) The parties agree the workplace will be a “No Shop Steward” Workshop all disputes etc. to be settled by the Workshop committee and an agreed “Disputes Settlement Procedure” which is to be followed and adhered to by all parties. The parties agree the worker elected representatives of the Workshop Committee will fulfil the role of Shop Steward.

- (2) (a) The parties acknowledge that the normal working hours at Kewdale is 38 hours /week however it is the Company’s intention to endeavour to provide sufficient work for the Workshop so as to enable overtime to be worked each week.
- (b) Day labour (subcontractors) will be permitted for top up purposes and the Committee will be informed of management’s intention.
- (c) Day labour (subcontractors) shall not be employed at a rate of pay below the Kewdale base rate of pay.
- (d) Day labour (subcontractors) will be laid off before Kewdale employees except where the employee is being terminated for misconduct, poor workmanship, poor performance etc in accordance with the Award.
- (e) Day labour (subcontractors) will not be hired at the expense of current Kewdale labour.
- (f) If a downturn in work results in a reduction of overtime in particular sections or bays, then the Company will endeavour to redeploy employees, dependent on their particular skills and the Company’s requirements, throughout the Workshop so as to attempt to minimise the effect of the overtime reduction on as many employees as possible.

- (3) The health and safety of the employees is a prime consideration of management and the workforce will endeavour to decrease the numbers and type of accidents so as to increase the health and safety of the workforce with the secondary benefit to the Company of maintaining or decreasing the workers compensation costs as compared to the 1995/1996 year.

- (4) There will be no barriers to management introducing and implementing performance indicators in listed areas i.e. reduced turnover, absenteeism, lost time, revenue per enterprise and per employee average, production costs, quality, safety etc.

All results or performance indicators acquired, calculated or collected as a result of this monitoring will be made available to all employees either by Public posting, circulation of reports or minuted at Workshop Committee meetings.

(5) Sick Leave Entitlements—

- (a) In an effort to reduce absenteeism the Company will pay 40 hours at the rate of ordinary time from sick leave accrued during a 12 month qualifying period where sick leave does not exceed 5 days. The operation of this Clause commences from 1st July 1995.
- (b) For the purposes of this Clause the employee will accrue 10 sick days per 12 month qualifying period and the paid sick leave provisions of the Metal Trades (General) Award 1966, No. 13 of 1965 will be strictly enforced.
- (c) Where the sick leave is 6 days or more it is agreed that the entitlement under Clause 6(a) is forfeited. For the purposes of Clause 6(a) and this Clause any unauthorised absence will be deemed to be sick leave.
- (d) Where the payment is made under Clause 6(a) the annual sick leave entitlement is decreased and is not carried forward to any subsequent period. The payment after the 12 month qualifying period will be made to employees over a 12 week period ending no later than 30th September.
- (e) In the event of an employee leaving the Company or being employed by the Company part way through a 12 month qualifying period such employee will be paid a pro-rata portion of his entitlement paid in accordance with the formulae.

$$40 \text{ hrs x } \left[5 - \frac{(\text{no sick days taken x 12})}{(\text{no months worked})} \right]$$

(7) Rostered Days Off

- (a) It is agreed that the ordinary working week is 38 ordinary hours worked as 8 ordinary hours Monday to Thursday and **6 ordinary hours on Friday.**
- (b) The official working hours for Kewdale Engineering and Construction is 7 am to 3.30 p.m.

(8) Multi-skilling

Employees will carry out all duties within the limits of their, skill and competence, and within the appropriate wage level.

(9) Training

- (a) The parties agree that a commitment to training and skills development may be required in order to :—
- Meet the current and future skill needs of the employer
 - Increase efficiency, productivity and competitiveness; and
 - Provide employees with improved career opportunities
- (b) All training undertaken by employees will comply with a training programme and this training shall be where possible and appropriate accredited training.

(10) Consumables

- (a) Employees will endeavour to reduce the wastage level of consumables used. These will include, but not be limited to, welding rods and wire, all grinding discs and safety equipment.
- (b) Target—A reduction in the wastage level of consumables of 10%.

(11) Power Cost Reduction

Employees will turn off welding machines during smoko and lunch breaks and extended periods when machines are not in use.

(12) Minor Maintenance

- (a) Trades persons will keep their machines free of dust, clean out liners, keep hand pieces and leads in good condition.

- (b) Before and after use, employees will check oxy acetylene equipment for leaks or damage.
- (c) Tradesmen will supply their own hand tools, as per the tool allowance.

(13) Utilisation of Scrap Material/Waste

Employees will undertake to recycle re-useable material wherever possible e.g. strong backs and bracing instead of using new material.

All employees shall return equipment to its correct location after use.

(14) Union Representation

Union Representatives will be permitted to visit the Workshop in accordance with Clause 26 of the Metal Trades (General) Award 1966, No. 13 of 1965 provided that they advise the Managing Director or his/her representative of their intentions at least 24 hours prior to their visit.

9.—JOURNEY COVER

(1) (a) The Company will continue to provide insurance cover, with a credible insurance Company, for any injury incurred by an employee travelling to and from work.

(b) This cover will provide for wages lost, being 100% of earnings up to a maximum of \$1,000.00 per week and death and capital benefits to a value of \$100,000.00

(2) This cover is provided on an arms length basis and all claims administration and approvals are between individual claimant employees and the insurance Company and it is expressly acknowledged that Kewdale will have no involvement other than payment of annual premiums.

10.—RESOLUTION OF DISPUTES

The objective of this Disputes Settlement Procedure is to ensure that all parties are treated in a fair and equitable manner without fear or favour with minimal loss or disruption to personal income, productivity etc. In the event of a dispute the parties involved are to suffer the least embarrassment and maintain their personal dignity and standing within the Organisation at all times.

- (1) (a) Any employee with a grievance over any matter what so ever should first contact his immediate supervisor and air the grievance, both parties should attempt to resolve the matter immediately.
- (b) It is expressly agreed by all parties that throughout the above proceedings at Clause 10(1)(a) work will continue.
- (2) (a) If the matter is not resolved either the employee or the supervisor should bring the matter to the attention of more senior management (i.e. Works Manager) within the period of that shift who should then make every effort to resolve the matter. If necessary put in place the necessary procedures to ensure the grievance will not arise again and is not happening elsewhere in the Company.
- (b) It is expressly agreed by all parties that throughout the above proceedings at Clause 10(2)(a) work will continue.
- (3) (a) If the matter is still not resolved the matter will be referred to the Workers Representatives and or the General Manager direct without fear or favour the matter is to then be resolved within 3 working days to the satisfaction of both parties and if necessary written procedures or practices are to be put in place to ensure all parties are aware of the outcome and the intended future practice and philosophy of the management and employees.
- (b) Failure to satisfy either party at Clause 10(3)(a) both parties will enter into an agreed cooling off period of 5 working days during which time they will maintain the "Status Quo" and both

may independently seek external advice i.e. CCI, Unions, DOHSA etc. Wherever possible first course of action is to ensure that both parties are adhering to:

- i) The appropriate Award
- ii) Enterprise bargaining agreement

These are all legal ratified agreements that take precedent over common practice, industry practices etc.

- (c) It is expressly agreed by all parties that throughout the above proceedings at Clause 10(3)(a) and (b) work will continue.
- (4) (a) Failure to resolve the matter at Clause 10(3) will entitle either party to lodge the dispute with the Western Australian Industrial Relations Commission with or without independent representation including legal representation if necessary.
- (b) It is expressly agreed by all parties that throughout the above proceedings at Clause 10(4)(a) work will continue whilst the Western Australian Industrial Relations Commission reviews the matter and has made a determination. The decision of the Western Australian Industrial Relations Commission will be accepted by the parties and the employees subject to rights of appeal under the Act.

Notes

- (a) At any stage the employee may if he/she chooses take the matter direct to the Workshop Committee and/or the General Manager direct who will act on his/her behalf in accordance with the steps outlined above.
- (b) The provisions of this Clause do not preclude procedures under the Occupational Health, Safety and Welfare Regulations 1988 being undertaken with respect to a bona fide safety concern or issue. Persons thus affected are to accept other work elsewhere until the issue is resolved and safety will not be comprised.
- (c) In the event that an employee is terminated for reasons other than retrenchment or redundancy, the Union reserves its rights in respect of a claim for "unfair dismissal". In such a case, the parties agree that a time frame of less than seven days for discussions may be appropriate.

11.—NO EXTRA CLAIMS COMMITMENT

- (1) There shall be no further wage increase for the life of this Agreement.
- (2) The parties to this Agreement shall be bound by the terms prescribed herein for its duration.
- (3) The parties shall oppose any application by other parties to be joined to this Agreement.
- (4) The terms of this Agreement shall not be used to progress or obtain similar arrangements or benefits in any other enterprise.

12.—WAGES

(1) It is agreed that the wage rates of employees covered by this agreement shall be increased by a total of 15% across the term of this agreement. Such increases will be granted in non cumulative instalments as detailed in Clause 12(2).

It is agreed that the base for calculation of any wage increase for any employee irrespective of their classification is the basic employee's trade classification only. Any amount or amounts paid over the base trade classification such as machine allowance, Computer Numerically Controlled allowance, leading hand allowance, years of service allowance, tool allowance or supervision allowance are expressly agreed by all parties as outside the scope and meaning of this Clause.

(2) Wage structure: All Purpose Rate Per Week (38 Ordinary Hours)

CLASSIFICATION	Current Rate	1	2	3	4
A-BOILERMAKER/ ELECT/FITTER	540.89	561.18	582.81	604.45	622.03
B-WELDER	535.99	556.08	577.52	598.96	616.38
C-T/A	473.98	491.75	510.71	529.67	545.08

Column 1. Paid 3.75% effective in the first full pay period after April 1st 1996 and payable in the first full pay period after all parties have signed this document

Column 2. Paid 4 % increase in the first full pay period after 1st October 1996

Column 3. Paid 4% increase in the first full pay period after 1st April 1997

Column 4. Paid 3.25% increase in the first full pay period after 1st October 1997

13.—CESSATION OF AGREEMENT

Notwithstanding the provisions of Clause 4 of this Agreement, the provisions of Clauses 6, 7, 8, 9, 10, 11 and 12 of this Agreement shall cease to operate upon any event in contravention of the agreement under Clauses 10(1)(b), 10(2)(b), 10(3)(c) and 10(4)(b).

SIGNATORIES

Signed for and on behalf of
Kewdale Engineering and Construction Signed
Director

Seal: Seal Affixed Signed
Director

Signed for and on behalf of
Kewdale Engineering & Construction
employees by the Workshop Committee Signed
Signed
Signed
Signed
Signed

Signed for and on behalf of the: Seal Affixed
Automotive, Food, Metals, Engineering,
Printing and Kindred Industries Union—
Western Australia- Signed

Dated this 2nd day of August 1996

KLM ELECTRICAL CONTRACTING (WA) PTY LTD ENTERPRISE AGREEMENT 1996 No. AG 275 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

KLM Electrical Contracting (WA) Pty Ltd
and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch.

No. AG 275 of 1996.

KLM Electrical Contracting (WA) Pty Ltd Enterprise
Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

16 October 1996.

Order.

HAVING heard Ms S. Sanderson on behalf of the Applicant
and Mr P.J. Carter on behalf of the Respondent and by consent,

the Commission, pursuant to the powers conferred on it under
the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the
terms of the following schedule and lodged in the Com-
mission on the 10th day of October, 1996 entitled the
KLM Electrical Contracting (WA) Pty Ltd Enterprise
Agreement 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

KLM ELECTRICAL CONTRACTING (WA) PTY LTD ENTERPRISE AGREEMENT

1.—TITLE

This Agreement will be known as the KLM Electrical
Contracting (WA) Pty Ltd Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Parties Bound
5. Date and Period of Operation
6. Application of Agreement
7. No Extra Claims
8. Objectives of Agreement
9. Dispute Procedure
10. Consultative Processes
11. Training
12. Measures to Achieve Gains in Productivity, Efficiency and Flexibility
13. Monitoring of Agreement
14. Wages
15. Date and Signatures

3.—AREA AND SCOPE

Subject to clause 6 below, this Agreement will apply to KLM
Electrical Contracting (WA) Pty Ltd (**KLM**), its employees
who are members or eligible to be members of the
Communications, Electrical, Electronics, Energy, Information,
Postal, Plumbing and Allied Workers' Union of Australia,
Engineering and Electrical Division, WA Branch (**Union**),
employed in the classifications set out in Clause 14—Wages,
and the Union and will operate within the State of Western
Australia.

It is estimated that the number of employees who will be
bound by this Agreement upon registration is 20.

4.—PARTIES BOUND

This Agreement is made between KLM and the Union.

5.—DATE AND PERIOD OF OPERATION

This Agreement will operate from 1 July 1996 and will
remain in force until 31st December 1997 or its earlier cessation
in accordance with clause 6.

6.—APPLICATION OF AGREEMENT

(1) Specific Sites and Projects

- (a) Where the parties to this Agreement are also parties
to a written agreement which applies to a specific
project the parties agree to discuss whether the pro-
visions of this Agreement will apply to that project
in lieu of the specific project agreement.
- (b) If it is agreed that the specific project agreement
applies then the conditions of this Agreement will
not apply.
- (c) This Agreement will not apply to certain contracts
entered into by KLM as determined from time to
time and agreed to by the parties to this Agreement.
- (d) Where a specific project or site agreement is appli-
cable to work undertaken by KLM and the Union
are a party to that specific project or site agreement,
the specific project or site agreement will take prece-
dence over this Agreement.
- (e) Where a specific project or site agreement is appli-
cable to work KLM are contracted to carry out, and

KLM and the Union are not a party to that specific project or site agreement, it is agreed that the parties will discuss the application of this Agreement to that work.

- (f) Where the parties are unable to agree upon the applicability or otherwise of this Agreement to the work, both parties acknowledge the other party's legal rights to protect their respective interests.
- (g) Both parties have the option of suspending this Agreement effective immediately, provided that the suspension will only extend to the application of this Agreement to the work on the specific project or site.

(2) If it is agreed that meaningful productivity increases can be achieved, but this Agreement cannot be implemented in full, then wage increases available from this Agreement may be introduced on a "pro rata" basis. The increases available from this Agreement will be a maximum of those contained in Clause 14—Wages.

(3) The parties agree that if, following a review of this Agreement by the parties and the Consultative Committee, agreement is reached that this Agreement places and continues to place KLM and its employees at a competitive disadvantage, and productivity and flexibility have not improved then KLM have the option of reverting to work under the Electrical Contracting Industry Award R22 of 1978 (**Award**).

(4) No part of this Agreement is to be used by the Union, KLM, or its employees as evidence or example before any industrial tribunal or proceedings not directly concerned with work covered under this Agreement.

(5) No part of this Agreement is to be otherwise used by the Union, KLM, or its employees as evidence or example before any industrial tribunal or any other contractor.

(6) Pursuant to this Agreement and its measures to achieve gains in productivity, efficiency and flexibility, KLM will provide the rates of pay prescribed in Clause 14—Wages which will be paid in lieu of the minimum weekly rate provided for in the Award.

(7) This Agreement will operate in conjunction with the Award. Where any inconsistency exists between this Agreement and the Award, this Agreement will take precedence to the extent of the inconsistency.

(8) The parties agree that registration of this agreement in the Western Australian Industrial Relations Commission will not prejudice either the Union or KLM's right to claim, pursue and achieve an award or enterprise bargaining agreement in the Australian Industrial Relations Commission.

7.—NO EXTRA CLAIMS

(1) The employees and the Union will not pursue any extra claims in relation to the Award, with the exception of future State Wage Decisions, for the life of this Agreement.

(2) Consistent with the Arbitrated Safety Net Adjustment Principle any future safety net adjustment will be absorbable to the extent of any equivalent amount in rates of pay paid pursuant to this Agreement. Future safety net adjustments will not increase the wage rates contained at Clause 14—Wages.

8.—OBJECTIVES OF AGREEMENT

(1) The parties acknowledge their commitment to the principles of enterprise bargaining.

(2) The parties agree that as a result of this Agreement, KLM need to achieve productivity improvements to continue to hold a competitive edge within the market place by:

- (a) heightening awareness and acceptance of accountability levels of all in the contracting process within KLM's operations;
- (b) encouraging KLM's employees to accept responsibility in helping manage the total project performance including that of subcontractors;
- (c) developing concepts of best practice, continuous improvement and quality control to enhance productivity and efficiency;
- (d) developing a co-operative and harmonious working environment in the enterprise;
- (e) developing better employee management practices that promote shared concepts of skill formation,

learning, teamwork, participation, flexibility and communication;

- (f) introducing best practice procedures in workplace safety and health and personnel management;
- (g) developing and following procedures to eliminate lost time and make better use of available working time, eg, start and finish at the designated workplace at normal start and finish times;
- (h) establishing measures to ensure ordered relations exist between KLM and the Union on KLM's work sites.
- (i) enhancing job satisfaction;
- (j) improving KLM's competitiveness to help improve job security.

(3) It is agreed that the measures in this Agreement, properly implemented and carried out, will assist in the achievement of those objectives.

9.—DISPUTE PROCEDURE

(1) The Union undertakes to comply with the procedures contained in Clause 27—Grievance Procedure and Special Allowance of the Award without exception when any question, dispute or difficulty arises between the Union and KLM in relation to the Award or this Agreement.

10.—CONSULTATIVE PROCESSES

(1) Effective participation and acceptance of accountability levels in the construction process, and achievement of the common goal and objectives of this Agreement, are enhanced by genuine consultation between KLM and its employees.

(2) A Consultative Committee (the Committee) may be established within KLM. The composition and size of Committee will be determined by the parties.

(3) The Committee will initially be chaired by KLM's State Manager or nominee. A representative of the Union may attend meetings. A representative of the Electrical Contractors' Association of WA (**ECA**) and/or CCI may attend the meetings.

(4) The role of the Committee is to act as a forum for consultation, guidance and advice between KLM and its employees on matters such as monitoring and reviewing:

- (a) implementation of this Agreement and its objectives;
- (b) determination of benchmarks, best practice and continuous productivity improvement;
- (c) the skills formation programme and ancillary training;
- (d) the productivity improvement programme;
- (e) communication between KLM and its employees;
- (f) fostering a consultative and co-operative environment and setting and accepting appropriate levels of accountability and responsibility.

(5) The Consultative Committee is a consultative and advisory group and it is recognised by all parties that final and overall accountability for company performance rests with KLM.

11.—TRAINING

(1) KLM acknowledge the changing pace of technology in the electrical contracting industry and the need for employees to understand those changes and have the necessary skill requirements to keep KLM at the forefront of the industry.

(2) The parties to this Agreement recognise that in order to increase the efficiency, productivity and competitiveness of KLM, a commitment to training and skill development is required. Accordingly, the parties commit themselves to:

- (a) developing a more highly skilled and flexible workforce; and
- (b) providing employees with career opportunities through appropriate training to acquire the additional skills as required by KLM.

(3) It is agreed that a training programme be developed consistent with:

- (a) the current and future skill needs of KLM;
- (b) the size, structure and nature of KLM;
- (c) the need to develop vocational skills relevant to KLM and the electrical contracting industry.

12.—MEASURES TO ACHIEVE GAINS IN PRODUCTIVITY, EFFICIENCY AND FLEXIBILITY

(1) Award Matters

It is agreed between the parties that all work performed for KLM will be performed in accordance with this Agreement and with the Award as varied by this Agreement and, if applicable, in conjunction with other industry agreements.

(2) Flexibility of Hours, Breaks and RDO's

- (a) It is agreed that employees will be flexible in the following areas:
- (i) where it is agreed between KLM and the majority of affected employee(s) KLM may reschedule ordinary working hours;
 - (ii) the spread of hours may be altered by agreement between KLM and the majority of employees in the plant or section(s) concerned;
 - (iii) agreement to reschedule ordinary working hours and to alter the spread of hours will not unreasonably be withheld;
 - (iv) flexibility of rest periods and meal intervals which may be staggered or otherwise arranged at a time and in a manner to suit the convenience of KLM in conjunction with the provisions in paragraph (1)(e) and (f) of Clause 11—Hours, of the Award;
 - (v) flexibility of rostering employees' days off.
- (b) It is agreed that when KLM wish to reschedule an RDO, KLM will endeavour to provide reasonable notice to the employee(s). RDO's may be substituted by agreement in accordance with the Award, which agreement will not unreasonably be withheld.

(3) Maintenance of Workplace

All employees are committed to ensure their workplace is maintained in a clean and safe condition.

(4) Overtime

- (a) Overtime will be worked in accordance with Clause 12—Overtime of the Award. In particular the employees agree to strictly adhere to sub-paragraphs (2)(f)(i) and (ii) of Clause 12—Overtime:

“(2)(f)(i) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirement.

(2)(f)(ii) The union party to this award, or employee or employees covered by this award, shall not in any way, whether directly or indirectly, be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.”

- (b) Overtime may be worked on an RDO weekend as required by KLM. KLM will endeavour to give employees who are required to work on an RDO weekend such prior notice as is reasonable in all the circumstances.
- (c) KLM will introduce a roster system to endeavour to allocate overtime hours in a fair and equitable manner at KLM's discretion, provided that this will not disadvantage KLM in any way.
- (d) In conjunction with the roster system KLM will select the employees required to work overtime according to the needs of KLM and the particular project.
- (e) When overtime has been scheduled and an employee has committed himself or herself to work overtime, such commitment must be honoured. Where an employee has a valid reason to be absent, in accordance with Award provisions, the employee is obligated to advise KLM, as soon as possible prior to overtime commencement of that fact and the reasons therefore, so that alternative arrangements may be made.

(5) Place of Start and Finish Work

It is agreed that all employees will be dressed and ready to start work at their normal start time at the designated workplace and work will finish at their normal finish time and place. On construction work the workplace will be deemed to be the nearest KLM compound or smoko shed.

(6) Footwear

It is agreed that employees who have been issued with safety footwear will have such safety footwear replaced on a fair wear and tear basis. There will be no automatic reissue of footwear where an employee is placed on a new site.

(7) Uniforms and Clothing

- (a) It is agreed that employees issued with KLM uniforms and clothing, in accordance with company policy as amended from time to time, will wear such items during all work hours and each employee will maintain his or her uniform and clothing in a respectable condition as approved by KLM.
- (b) It is agreed that employees who have been issued with clothing will have such clothing replaced on a fair wear and tear basis. There will be no automatic reissue of clothing where an employee is placed on a new site.
- (c) A suitable jacket will be supplied and/or replaced on a fair wear and tear basis and will only be available for issue between the 1st April and 30th September each year.

(8) Care of KLM Property

- (a) It is agreed that employees will treat all property, plant and equipment owned or hired by KLM with due care and respect to ensure replacement is kept to a minimum. All property, plant and equipment will be returned to the designated storage area each day.
- (b) A tradesperson or apprentice will replace or pay for any tools supplied by the company if lost through his or her negligence.
- (c) It is agreed that all employees are committed to reducing the cost of maintenance and minimising theft and time spent looking for equipment not returned to its designated storage area.

(9) Company Vehicles

Where an employee is provided the use of a company vehicle to conduct company business that employee will ensure that:

- (a) the vehicle is kept clean, free of rubbish and washed;
- (b) the vehicle's oil and fuel requirements are regularly checked to maintain the vehicle in a ready-for-use condition; and
- (c) any defects that come to the employee's attention are reported to KLM immediately.

(10) Care of Consumables

It is agreed that all employees are committed to ensure maximum usage of KLM's materials and consumables is achieved and will exercise due care and precaution to prevent wastage. All employees are committed to identifying further ways in which wastage can be reduced.

(11) Quality Management

It is agreed that employees will co-operate fully with the development and implementation of KLM's quality management systems and procedures, and will continually strive to improve the quality of the products and services supplied by KLM. Employees are committed to reduce rework and complete tasks the first time, and eliminate the need to return to finish incomplete work.

(12) Daily Labour Reports

It is agreed that employees will take an active role in the production reporting and production strategy meetings by punctually and correctly filling in KLM's daily labour reports.

(13) Co-operation Between Employees and Supervisors

- (a) It is agreed that employees will assist in the management of efficiency and production of sites by advising the supervisory staff at the earliest available opportunity if:
 - (i) it is anticipated that a material shortfall may occur, and if a shortfall does occur;

- (ii) faulty hand tools are on site;
- (iii) production is likely to be delayed or is delayed by other trades;
- (iv) work is not being installed in accordance with the specifications or with SAA Wiring Rules.

(b) Employees will take an active role to ensure that sufficient quantities and correct types of materials are available at the job site to maximise time at the workplace.

(c) Employees will take an active role in tool box meetings to eliminate safety hazards.

(14) Use of Expertise and Duties

(a) It is agreed that employees who have undertaken the appropriate training or obtained the appropriate license to operate plant and equipment, such as cherry pickers, boom lifts and hiab trucks, will exercise these skills or use such licenses when required to by KLM.

(b) Employees' duties will include any work for which the employee has requisite qualifications required in connection with the electrical contracting industry.

(c) The parties agree to use their best endeavours to avoid demarcation disputes.

(15) Qualified Personnel

KLM supervisory personnel and foremen may work on the tools for the purpose of demonstration and tuition on the job or extreme situations affecting safety on site.

(16) Rest Period

(a) A rest period of 10 minutes will be allowed in accordance with the following:

(i) Subject to the provisions of this paragraph, a rest period of 10 minutes from the time of ceasing to the time of resumption of work will be allowed each morning.

(ii) The rest period will be counted as time off duty without deduction of pay and will be arranged at a time and in a manner to suit the convenience of the employer.

(iii) Refreshments may be taken by an employee during the rest period but the period of 10 minutes will not be exceeded under any circumstances.

(iv) An employer who satisfies the Commission that any employee has breached any condition expressed or implied in this paragraph may be exempted from liability to allow the rest period.

(b) This arrangement may be altered to suit the convenience of KLM.

(17) Unauthorised Absences

(a) KLM will:

(i) arrange an employee's ordinary hours of work which will average 38 hours per week; and

(ii) select the method of implementation of the 38 hour week.

(b) An employee agrees to present himself or herself for duty and remain on duty during the ordinary hours of work.

(c) KLM will be under no obligation to pay for any hours not worked during those ordinary hours unless it is an authorised absence in accordance with:

(i) Award provisions; or

(ii) an instruction from KLM that the employee may leave site without loss of pay.

(18) Safety Disputes

(a) Where a KLM employee is affected by a safety dispute an employee will comply with KLM's instructions to either:

(i) continue work when the area in which the employee is working is not affected by the condition giving rise to the dispute; or

(ii) accept a transfer to work in an area of the site not affected by the condition giving rise to the dispute; or

(iii) accept a transfer from one site to another site; or

(iv) leave the site without loss of pay.

(b) An employee who does not comply with KLM instructions agrees to forfeit wages for time not worked.

(19) Inclement Weather (Wet or Hot)

(a) Where a KLM employee is affected by inclement weather an employee agrees to comply with KLM's instructions to either:

(i) continue work when the area in which the employee is working is not affected by inclement weather; or

(ii) accept a transfer to work in an area of the site not affected by the inclement weather; or

(iii) accept a transfer from one site to another site not affected by inclement weather; or

(iv) leave the site without loss of pay.

(b) Where KLM requires an employee to traverse open ground KLM will provide the employee with protective clothing. Such clothing will remain the property of KLM and will be returned to KLM. Employees will take reasonable care of the clothing and pay the cost of its replacement if lost or damaged due to an employee's negligence.

(c) An employee will not be affected by inclement weather unless by virtue of the weather conditions it is not reasonable and it is not safe for work to continue.

(d) An employee who does not comply with KLM's instructions agrees to forfeit wages for time not worked.

(20) All Other Disputes

(a) Where a KLM employee is affected by any other dispute an employee agrees to comply with KLM's instructions to either:

(i) continue work when the area in which the employee is working is not affected by the condition, situation or grievance giving rise to the dispute; or

(ii) accept a transfer to work in an area of the site not affected by the condition, situation or grievance giving rise to the dispute; or

(iii) accept a transfer from one site to another site; or

(iv) leave the site without loss of pay.

(b) An employee who does not comply with KLM's instructions agrees to forfeit wages for time not worked.

(21) Movement of Material

It is agreed that employees will, where reasonably safe to do so, and in compliance with WorkSafe Western Australia's requirements, load and unload materials, plant and equipment from delivery vehicles and move such materials, plant and equipment as required without impediment.

(22) New Technology

It is agreed that employees will fully utilise all new technological advances implemented by KLM including, but not limited to, technological advances in relation to materials, methods, plant and equipment.

(23) Work on Ladders

It is agreed that employees will work on ladders where they are required to do so and such work complies with the Occupational Safety and Health Act and Regulations.

(24) Client Satisfaction

(a) The employees will take an active role in ensuring client satisfaction and acknowledge that client relationships are important to the growth of KLM and its ability to offer continuing employment to its employees. All employees agree to treat customers with courtesy and respect and to consider the customers' interests in their actions.

(b) KLM and its employees recognise that a commitment to complete the project work on time and on budget is essential to the ongoing viability of the company and the prospects of long term employment of employees.

(25) Tools

- (a) Employees will supply, as a minimum, and maintain the tools listed or tools comparable to those listed in the Award. The employee agrees to maintain such tools in good working order at all times.
- (b) KLM may from time to time request inspection of an employee's tools. If KLM are of the opinion that the employee's tools are not in good working order, KLM can instruct the employee to replace such tools. The employee agrees to abide by any KLM instruction to replace tools.

(26) Injured Workers Rehabilitation

KLM is actively involved in ensuring any injured employee is rehabilitated back into the workforce at the first reasonable opportunity. To ensure this policy is maintained, employees who suffer an injury may be required to consult a medical practitioner nominated by KLM. This provision will not prevent an employee from consulting and being treated by his or her own personal medical practitioner in the first instance.

(27) Payment of Wages

Employees will be paid by electronic funds transfer or, where KLM and the employee agree, the employee may be paid by cash or cheque.

13.—MONITORING OF AGREEMENT

The parties to this Agreement will continually monitor the development of the Agreement and will review the effect of this Agreement three months prior to its expiration.

If it is felt by the employees that the interpretation of this Agreement places them at a disadvantage then the parties will reconvene to resolve the issue.

14.—WAGES

(1) The following weekly wage rates will apply from the first full pay period to commence on or after 1 July 1996, subject to registration of this Agreement in the Western Australian Industrial Relations Commission and the successful implementation of the principles contained within this document.

	Beginning of 1st full pay period to commence on or after ..1.../7.../96	Beginning of 1st full pay period to commence on or after ..1.../1.../97	Beginning of 1st full pay period to commence on or after ..1.../7.../97
Electrical Installer	\$562.77	\$583.87	\$605.77
Electrical Fitter	\$562.77	\$583.87	\$605.77
Electronics Tradesperson	\$660.59	\$685.36	\$711.06
Electrician Special Class	\$591.44	\$613.62	\$636.63
Instrument Fitter/ Electrician Grade 2	\$600.55	\$623.07	\$646.43
Instrument Fitter/ Electrical Grade 1	\$583.60	\$605.49	\$628.20
Linesperson Grade 1	\$562.77	\$583.87	\$605.77
Cable Jointer	\$562.77	\$583.87	\$605.77
Linesperson Grade 2	\$541.45	\$561.76	\$582.82
Electrical Assistant	\$476.83	\$494.71	\$513.26
Apprentices			
1st Year	\$219.48	\$227.71	\$236.25
2nd Year	\$287.01	\$297.78	\$308.94
3rd Year	\$377.06	\$391.19	\$405.87
4th Year	\$444.59	\$461.26	\$478.56

(2) Apprentices will be paid wages at the appropriate percentage shown in the Award, ie. 39%, 51%, 67%, 79%, of the Electrical Installer's rate referred to in subclause 14(1) above.

(3) The above weekly wage rates are paid in lieu of the rate of wages and safety net adjustment payment pursuant to subclause 2 of the First Schedule—Wages, of the Award, and are exclusive of allowances and other special payments payable pursuant to the Award.

15.—DATE AND SIGNATURES

FOR AND ON BEHALF OF KLM ELECTRICAL CONTRACTING (WA) PTY LTD.

Peter Jinks G. Gray

SIGNED WITNESSED

M.D. Common Seal

TITLE

8.10.96

DATE

THE COMMON SEAL OF THE COMMUNICATIONS, ELECTRICAL, ELECTRONICS, ENERGY, INFORMATION, POSTAL, PLUMBING AND ALLIED WORKERS' UNION OF AUSTRALIA, ENGINEERING AND ELECTRICAL DIVISION, WA BRANCH was hereto affixed in the presence of:

P. Carter Les McLaughlan

SIGNED WITNESSED

ORGANISER Affix Seal

TITLE Common Seal

27.9.96

DATE

LEIGHTON CONTRACTORS MAINTENANCE PERSONNEL AGREEMENT 1996 AG 247 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Leighton Contractors Pty Limited

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australia Branch.

No. AG 247 of 1996.

Leighton Contractors Maintenance Personnel Agreement 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

25 October 1996.

Order.

HAVING heard Ms G. Kristianopoulos on behalf of the Applicant and Mr D. Hicks on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT "Leighton Contractors Maintenance Personnel Agreement 1996." attached hereto be and is hereby registered as an industrial agreement and shall operate on and from the 11th day of October, 1996.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S]

PART I—APPLICATION AND OPERATION OF AWARD

1.—TITLE

This Agreement will be known as the Leighton Contractors Maintenance Personnel Agreement 1996, No. AG247 of 1996.

2.—ARRANGEMENT

This Agreement is arranged as follows:

Part I—Application and Operation of Award

1. Title
2. Arrangement
3. Definitions
4. Commencement Date and Period of Operation
5. Coverage of Agreement
6. Parties Bound
7. Relationship with Other Awards

Part II—Employees Performance Review

8. Targets
9. Performance Review Procedure
10. Classification and Rates of Pay
11. Employee Transfers
12. Employee Counselling and Discipline Procedure

Part III—Productivity Initiatives

13. Objectives
14. Hours of Work
15. Agreement Implementation and Transition Arrangements—For Sites Working Under the Same Arrangements as Paddington Gold Mine
16. Multi-Skilling
17. Supervision and Training
18. Clothing and Personal Protective Equipment
19. Grievance Resolution Procedure
20. Signatories

Part IV—Schedules

23. Schedule 1—Plant Employee Competency/Appraisal Form and Instructions
24. Schedule 2—Rates of Pay

3.—DEFINITIONS

(1) Agreement

Agreement means the Leighton Contractors Maintenance Personnel Agreement 1996.

(2) Company

Company means Leighton Contractors Pty Limited

(3) Employee

Employee means for the purposes of this Agreement someone who is referred to in Clause 5.—Coverage of Agreement.

(4) Union

Union means the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

(5) Parties

Parties means the Company, Employees and Union when referred to jointly in these terms and conditions.

4.—COMMENCEMENT DATE AND PERIOD OF OPERATION

(1) This Agreement will operate for two (2) years from the date of registration.

(2) This Agreement will continue to operate after its expiry unless another agreement has been negotiated and registered to take its place.

(3) The implementation of this Agreement will be reviewed after it has been in operation for 12 months. The review will be conducted by a Committee of three (3) workforce representatives and three (3) company representatives.

(4) Negotiations for a replacement to this Agreement will commence six (6) months prior to the expiry of this Agreement.

(5) A Committee comprising three (3) employee representatives elected from the workplace and three (3) Company representatives nominated by the Company will be formed to conduct the negotiations of the new Agreement.

(6) No further claims for increases in wages or conditions will be made during the period of this Agreement.

5.—COVERAGE OF AGREEMENT

(1) This Agreement will apply to approximately 240 employees of Leighton Contractors Pty Limited engaged at mine sites and who are involved in the maintenance of the Company's plant and equipment throughout the State of Western Australia excluding those employees engaged at the Welshpool Workshop and metropolitan workshops.

6.—PARTIES BOUND

(1) The Employer

Leighton Contractors Pty Limited

(2) The Union

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

7.—RELATIONSHIP WITH OTHER AWARDS

(1) This Agreement shall be read and interpreted wholly in conjunction with the Award by which the Company would be bound if not for this Agreement.

(2) Where there is any inconsistency between this Agreement and the parent award, this Agreement will prevail to the extent of any inconsistency.

PART II—EMPLOYEES PERFORMANCE REVIEW

8.—TARGETS

(1) A Workforce Committee will be formed on each site consisting of two (2) representatives nominated by the Company and two (2) representatives elected from the workforce. This Committee will conduct the employee appraisal process.

(2) As a guide to the members of the Committee, the following indicators are provided showing the percentages of the workforce expected to be in each level. The Committee is not bound to ensure that these levels are achieved in their workplace.

Level III	15%—35%
Level II	40%—60%
Level I	0%—25%

Note that Level I will be the lowest skill level and Level III will be the highest skill level.

9.—PERFORMANCE REVIEW PROCEDURE

(1) The Employee's Performance Review will be conducted annually as near as possible to the anniversary of the employee's commencement date with the Company.

(2) For probationary employees only, the Employees Performance Review will be conducted at the conclusion of the employee's probation period, and then annually as near as possible to the date of their first performance review.

(3) Should any employee believe they are entitled to progress to the next level, they may request the Committee to conduct a review of their performance, providing it is at least six (6) months since their last performance review.

(4) The Committee will complete the review in accordance with the instructions and format shown in Schedule 1—Plant Employee Competency/Appraisal Form and Instructions. Forms similar to this will be developed to apply to non-trades areas and will be used by the Committee as is appropriate.

(5) The employee's overall score obtained at the completion of the appraisal will be benchmarked against other employees on site.

(6) The employee will be notified by the Committee in writing within 14 days of the result of the employee's appraisal.

(7) The decision of the Committee will be final and binding on all parties.

(8) The Committee will not be required to meet more than once per month.

(9) Should the Committee be deadlocked and not be able to reach a decision, then a mutually agreed independent arbitrator will be called in to resolve the matter. The arbitrator should be a person familiar with the workplace but not necessarily all aspects of the work, such as a nominated representative from the Client on the project.

10.—CLASSIFICATION AND RATES OF PAY

(1) Employees will be paid in accordance with the rates corresponding to the employee's classification shown at Schedule 2 of this Agreement. These rates will be effective from the date the Union agrees in writing to accept this Agreement.

(2) Any variation in the rate of pay resulting from the employee's Performance Review will take effect two (2) weeks from the date the employee receives written notice of the Committee's decision.

(3) Wage rates contained in Column B of Schedule 2 of this Agreement will become available from the first pay period commencing on or after the 12 month anniversary date of the registration of this Agreement.

(4) Any variation in pay that may result from the Committee applying the Employee Counselling and Disciplinary Procedure, as set out in Clause 12 of this Agreement, will take effect 14 days from the date the Committee advises the employee in writing of its decision under this procedure.

11.—EMPLOYEE TRANSFERS

(1) Employees transferred from one site to another will remain on their current level.

(2) Notwithstanding the above, Leading Hand allowances will cease to be paid on commencement at the new site unless the employee is required to work in the capacity of Leading Hand in which case the allowance will apply and be paid accordingly.

(3) The Company may commence any new employee on a pay classification determined by the Company notwithstanding any prior service the employee may have had with the Company.

12.—EMPLOYEE COUNSELLING AND DISCIPLINE PROCEDURE

(1) If in the opinion of the Company Supervisor an employee's performance has deteriorated for whatever reason, the Supervisor may refer the matter to the workplace Committee for consideration and action.

(2) Once such a reference is received by the Committee as constituted under Clause 8.—Targets, subclause (1), the following actions will be taken by the Committee:

- (a) Arrange a meeting between the Committee and the employee and his/her representative. Notice must be given to the employee of the meeting and its purpose in sufficient time for the employee to obtain satisfactory representation.
- (b) The concerns of the Supervisor will then be detailed to the employee.
- (c) The employee may then respond to the concerns expressed. This response is to be recorded and duly considered by the Committee.
- (d) The Committee will then consider possible courses of action which may include but not be limited to:
 - Additional training or re-training required for the employee.
 - Reference to internal or external counselling services that may be available.
 - Continuing to monitor the situation.

— Issuing warnings under the system described in Clause 12, subclause (3).

— Recommending an employee be returned to a lower level.

(e) Once the Committee has collected and considered all the evidence presented to it, it will then make a determination as to the most appropriate action to pursue. This action will be conveyed to the employee in writing.

(f) The employee may respond to the Committee's decision in writing and this response will be recorded on the employee's file.

(g) The Committee's decision will be binding on all parties to this Agreement.

(3) Should the Committee decide to issue a warning to the employee, the following procedure will be followed:

(a) A first verbal warning will be issued and a note made on the employee's file.

(b) A second written warning may be issued and this will be kept on the employee's file with any response the employee wishes to make.

(c) A third written warning may be issued and this will be kept on the employee's file with any response the employee wishes to make.

(d) Should the employee continue with their actions after being issued with a third warning, the Committee may recommend that the employee be demoted or dismissed.

(4) Notwithstanding anything contained in the Agreement to the contrary, it remains at the Company's absolute discretion to counsel and discipline, employees without reference to the Committee pursuant to Clause 12 of this Agreement.

PART III—PRODUCTIVITY INITIATIVES

13.—OBJECTIVES

(1) The Parties agree to put in place strategies which achieve the following objectives:

(a) Gain the Parties endorsement and commitment to the implementation of measures which will improve the effectiveness, productivity and efficiency of the Company's operations; and

(b) Employees will implement productivity improvements as proposed by the Company which aims to reduce staff turnover and increase efficiency.

(2) (a) Identify and implement measures which will reduce the Company's operating costs of equipment and workshops.

(b) The measures will aim at—

(i) reducing waste of consumable items and parts and;

(ii) extending the life of equipment through improved maintenance performance and controls; and

(c) Employees will implement controls and reporting as required by the Company to measure costs of equipment and workshops.

14.—HOURS OF WORK

(1) Ordinary hours of work will be 38 hours per week.

(2) Employees rostered hours of work will be as agreed between the Company and the majority of employees affected.

(3) Employees will only be paid for actual hours of work authorised by the Company.

SCHEDULE 1 - PLANT EMPLOYEES COMPETENCY/APPRaisal FORM
COMPETENCY ASSESSMENT/APPRaisal

Leighton Emblem
 Leighton Contractors
 Pty Limited
 A.C.N. 000 893 667

PLANT EMPLOYEE:		JOB TITLE:		LEVEL:	
EMPLOYEE NUMBER:		PROJECT:		DATE: / /	
DATE OF COMMENCEMENT WITH COMPANY: / /		DATE OF COMMENCEMENT ON SITE: / /		LENGTH OF SERVICE WITH COMPANY: / /	
LENGTH OF SERVICE ON SITE:		LENGTH OF SERVICE ON SITE:		LENGTH OF SERVICE ON SITE:	
See Page 7 for guidance on completion of this appraisal					
A WORK PERFORMANCE		GRADING (Circle)			
		Outstanding Performer	Very Competent Performer	Competent Performer	Poor Performer
1. Organisational Ability Points to be considered for this criteria <ul style="list-style-type: none"> *always prepared for work *thinks ahead and prepares for possible problems *aware of all parts required and obtains them in advance *completes work in minimum possible time 		10 9	8 7	6 5 4	3 2 1
2. Knowledge Points to be considered for this criteria <ul style="list-style-type: none"> *has knowledge of all machines on site *can quickly and accurately use manuals and parts books *can quickly assess tooling requirements of a task *use tooling skillfully and safely 		10 9	8 7	6 5 4	3 2 1
3. Diagnostic Skills Points to be considered for this criteria <ul style="list-style-type: none"> *quickly and accurately assesses the cause of a problem *rarely has a call in specialists to solve problems *follows systematic methods to isolate problems 		10 9	8 7	6 5 4	3 2 1
4. Housekeeping Points to be considered for this criteria <ul style="list-style-type: none"> *always cleans up the work area after completion of a job *always returns tooling after a job *maintains a clean work area during a job *keeps parts clean and orderly until used 		10 9	8 7	6 5 4	3 2 1
PAGE 1 OF 7					

COMPETENCY ASSESSMENT/APPRaisal		Leighton Emblem	Leighton Contractors Pty Limited A.C.N. 000 893 667
PLANT EMPLOYEE:	JOB TITLE:	LEVEL:	
GRADING (Circle)			
		Outstanding Performer	Very Competent Performer
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		6 5 4	3 2 1

COMPETENCY ASSESSMENT/APPRaisal		Leighton Contractors Pty Limited A.C.N. 000 893 667	Leighton Emblem		
PLANT EMPLOYEE	JOB TITLE	LEVEL			
GRADING (Circle)		Outstanding Performer	Very Competent Performer	Competent Performer	Poor Performer
See Page 7 for guidance on completion of this appraisal					
B TRAINING PERFORMANCE					
9. Relevant Trades Qualifications Points to be considered for this criteria *has trade qualifications or experience relevant to the company's requirements		10 9	8 7	6 5 4	3 2 1
					*has no trade qualifications or relevant experience
10. Experience Points to be considered for this criteria *has many years of experience on equipment on site *rarely comes across problems that have not been seen before		10 9	8 7	6 5 4	3 2 1
					*has little if any experience with equipment on site *often has problems which have not been seen before
11. Additional Training Points to be considered for this criteria *documented proof of additional training on equipment relevant to company requirements - licences and practical experience on - cranes - forklifts - dogmans ticket *long experience on equipment or tasks of a specialists nature		10 9	8 7	6 5 4	3 2 1
					*has little or no additional training *no additional licences *no specialist skills
PAGE 3 OF 7					

PLANT EMPLOYEE		JOB TITLE:		LEVEL:	
<p align="center">COMPETENCY ASSESSMENT/APPRaisal</p>				Leighton Contractors Pty Limited A.C.N. 000 893 667	
See Page 7 for guidance on completion of this appraisal		GRADING (Circle)			
		Outstanding Performer	Very Competent Performer	Competent Performer	Poor Performer
C	<p>HEALTH, SAFETY AND ENVIRONMENTAL PERFORMANCE</p> <p>12. Follows Safe Work Practices Points to be considered for this criteria</p> <ul style="list-style-type: none"> •knows and follows safe work procedures •contributes to improving safety of work procedures •takes safety seriously •always uses correct PPE •maintains PPE in good working order •always uses tag out procedures 	10 9	8 7	6 5 4	3 2 1
					<ul style="list-style-type: none"> •rarely if ever considers safety when performing tasks •does not contribute to improving safety of work procedures •thinks safety is a joke and only to be obeyed when supervisors are present •rarely if ever uses correct PPE •never maintains PPE •never uses tag out procedures
	<p>13. Housekeeping Practices Points to be considered for this criteria</p> <ul style="list-style-type: none"> •constantly on the lookout for rubbish to be removed •always returns tools and parts to correct locations •always neatly stores items for future use •cleans work area as work proceeds 	10 9	8 7	6 5 4	3 2 1
					<ul style="list-style-type: none"> •rarely if ever notices rubbish in work area •constantly leaves tools and parts where they are when job is finished •leaves items anywhere •works in constant mess
	<p>14. Tool Operation Points to be considered for this criteria</p> <ul style="list-style-type: none"> •learns how tools are supposed to be used before using them •considers the safety aspect of a job and chooses the right tool •cleans and maintains tools after use 	10 9	8 7	6 5 4	3 2 1
					<ul style="list-style-type: none"> •only worries about how a tool is supposed to be used when it fails •uses the most convenient tool which may not be correct for the job •returns tools dirty and broken

COMPETENCY ASSESSMENT/APPRaisal		Leighton Contractors Pty Limited A.C.N. 000 893 667	Leighton Emblem		
PLANT EMPLOYEE	JOB TITLE:	LEVEL:			
		GRADING (Circle)			
		Outstanding Performer	Very Competent Performer	Competent Performer	Poor Performer
See Page 7 for guidance on completion of this appraisal					
15. Observes Site Safety Rules Points to be considered for this criteria *knows and regularly reviews site safety rules and procedures *supports the enforcement of site safety rules		10 9	8 7	6 5 4	3 2 1
16. Duty of Care Points to be considered for this criteria *constantly watches fellow employees to ensure they are working safely *organises own work to take account of the safety of others *promotes correct use of PPE by all personnel		10 9	8 7	6 5 4	3 2 1
17. Participation in Safety Meetings Points to be considered for this criteria *constantly contributes suggestions in safety meetings *is willing to take responsibility for safety issues *encourages others to see safety in a positive way *sees safety as too important to be used to manipulate other issues *is focused on improving safety not blaming someone else		10 9	8 7	6 5 4	3 2 1
18. Participation in Safety Audits Points to be considered for this criteria *looks for positive ways to improve safety *can identify good safety performances as well as bad *looks to the way things are done not only the environment *sees safety audits as opportunity for improvement		10 9	8 7	6 5 4	3 2 1
		PAGE 5 OF 7			

COMPETENCY ASSESSMENT/APPRaisal		Leighton Emblem	Leighton Contractors Pty Limited A.C.N 000 893 667	
PLANT EMPLOYEE	JOB TITLE	LEVEL		
GRADING (Circle)				
See Page 7 for guidance on completion of this appraisal	Outstanding Performer 10 9	Very Competent Performer 8 7	Competent Performer 6 5 4	Poor Performer 3 2 1
19. Environmental Performance Points to be considered for this criteria *is aware of and supports site environmental procedures *cleans up any spills immediately *conserves consumable items *uses washdown slab for all cleaning	*shows no interests in site environmental procedures *does not clean up spills leaves them for others to attend to *uses consumable items recklessly *cleans items wherever they are			ACHIEVED SCORE = _____ = % POSSIBLE TOTAL
COMMENTS BY ASSESSOR Overall Competency Assessment (how competent is the employee to perform the tasks required)				
Recommendations (requirements for future training or re-training other comments on employee suitability)				
Assessment performed by: _____ Name: _____ Employee Signature: _____ Signature: _____				
PAGE 6 OF 7	Percentage Ranking of employee within Workforce: Pay level appropriate to employee: _____ (Plant Superintendent to Complete)			
ISSUE A COPY OF THIS ASSESSMENT TO THE EMPLOYEE. SEND ORIGINAL COPY TO PLANT SUPERINTENDENT.				

15.—AGREEMENT IMPLEMENTATION AND TRANSITION ARRANGEMENTS—FOR SITES WORKING UNDER THE SAME ARRANGEMENTS AS PADDINGTON GOLD MINE

(1) For service after the implementation of this Agreement, an employee will only accrue entitlements to sick leave and rostered days off in accordance with Clause 24.—Payment for Sickness and Clause 16.—Payment of Wages of the Metal Trades (General) Award 1966.

(2) For employees who have accrued entitlements to lay days prior to the implementation of this Agreement, these accrued entitlements on the implementation of this Agreement will be converted to Rostered Days Off (RDO's) on the basis of 1 lay day hour equalling 1RDO hour.

16.—MULTI-SKILLING

(1) Employees will perform all work within their skill, competence and training as required by the Company.

(2) The parties to this Agreement recognise the need for the co-operative use of skills and competencies held by the workforce across the Company's operations.

17.—SUPERVISION AND TRAINING

(1) Employees will assist in the training or supervision of other employees as required by the Company, provided that the employee is in the opinion of the Company passed as competent to do so.

(2) All employees will be ready, willing and able to participate in agreed training programs applicable to the Company's operations.

18.—CLOTHING AND PERSONAL PROTECTIVE EQUIPMENT

(1) If an employee of their own volition decides to terminate their services within three (3) months of employment, the Company will be entitled to deduct 50% of the cost of any personal items issued to them (such as clothing and boots) from their termination pay.

(2) If an employee of their own volition decides to terminate their services within three (3) months of employment, the Company will be entitled to deduct 100% of the cost of any Personal Protective Equipment issued to them from their termination pay, unless such equipment is handed back in, in which case no deduction will be made.

19.—GRIEVANCE RESOLUTION PROCEDURE

(1) To resolve any grievances or disputes, questions or difficulties arising under this Agreement, the following procedure will be adhered to:

- (a) At all stages in the dispute resolution procedure, and to allow for the peaceful resolution of issues, the parties will commit to avoiding industrial action in any form, and will continue to work uninterrupted whilst the parties follow the dispute resolution procedure.
- (b) At any stage during the dispute settlement procedure an employee is entitled to seek either an employee representative or union representative nominated by the employee.
- (c) The following four stage procedure will be used to resolve any disputes or grievances:
 - (i) Should any matter arise which gives cause for concern to the employee, the matter will be brought to the attention of the immediate supervisor.
 - (ii) If the matter is not settled within a time frame agreed by the parties, it may be brought to the attention of the area supervisor for resolution.

(iii) Should the matter not be resolved within a time frame agreed by the parties, it may be brought to the attention of the Project Manager.

(iv) Should there be no resolution of the matter within a further agreed time frame, either party will have the right to have the matter referred to the Western Australian Industrial Relations Commission for resolution in accordance with the Industrial Relations Act 1979.

(d) There will be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

(e) All relevant facts will be documented when requested by the employee/s or the Company.

(f) Sensible time limits will be allowed for the completion of the various stages of the procedure.

20.—SIGNATORIES

Signed for and on behalf of Leighton Contractors Pty Ltd

E. E. Young

Signed for and on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

J. Sharp-Collett

COMPETENCY ASSESSMENT/APPRaisal GUIDELINES

INSTRUCTIONS FOR USE OF PLANT EMPLOYEE COMPETENCY/APPRaisal FORM

1. Ensure that the appraisal form is related to the employee's occupation.

2. The Appraisal must be discussed with the employee and signed by the employee and the persons conducting the assessment prior to submission to the Plant Superintendent.

3. Perform the assessment honestly informing the employee of the things that they do well and giving examples of how performance could be improved in the areas where they have a poor performance.

4. Avoid the tendency to grade all employees as average as this does not reinforce the positive efforts the employees has been making and does not inform them of the areas in which they could improve.

5. Points to be considered are provided under each area of assessment. These are not exhaustive and other criteria may be more appropriate to consider in relation to a particular employee. Only one grading for each heading needs to be completed, that is each point does not have to be graded.

6. In an employee does not know what is meant by a particular criteria then it should be clarified in concrete terms. For example what does it mean to clean up after a job is completed, it could be within 5 minutes or before any other task is undertaken. The supervisor must set these criteria for their workshop.

7. On completion of the Competency Assessment/Appraisal form must be completed and handed to the employees advising them of any change to their current pay rate as a result of this the competency assessment/appraisal.

8. The competency Assessment/Appraisal form must be forwarded to the Plant Superintendent.

SCHEDULE 2 - CLASSIFICATION AND RATES OF PAY

1. Hourly Rates:

COLUMN A		COLUMN B	
Trades Persons Level 3 - \$14.75p/h Level 2 - \$14.25 p/h Level 1 - \$13.75 p/h	Leading Hand 1 - 3 People \$15.21	Leading Hand 3 - 10 People \$15.42	Leading Hand > 10 People \$15.61
		Trades Persons Level 3 - \$15.00p/h Level 2 - \$14.50 p/h Level 1 - \$14.00 p/h	Leading Hand 1 - 3 People \$15.46
Service People and Trades Assistants Level 3 - \$13.75p/h Level 2 - \$13.25 p/h Level 1 - \$12.75 p/h	Leading Hand 1 - 3 People \$14.21	Leading Hand 3 - 10 People \$14.42	Leading Hand > 10 People \$14.61
		Service People and Trades Assistants Level 3 - \$14.00p/h Level 2 - \$13.50 p/h Level 1 - \$13.00 p/h	Leading Hand 1 - 3 People \$14.46
		Leading Hand 3 - 10 People \$14.67	Leading Hand > 10 People \$15.86

2. Allowances:

The only allowances payable in addition to the above pay rates are as follows:

- * Shift Allowance
- * Overtime
- * Leading Hand allowances as detailed above
- * Crane Allowance

All allowances otherwise payable under the award are contemplated in the above hourly rates.

3. Effective Date

- 3.1 The rates of pay in Column A will take effect from the date nominated in Clause 4 subclause (1) of the Agreement.
- 3.2 The rates of pay in Column B will take effect from the first pay period commencing on or after the 12 month anniversary date of the date nominated in Clause 4 subclause (1) of the Agreement.

**MIKE HARPER INDUSTRIAL AGREEMENT
No. AG 227 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Mike Harper.

No. AG 227 of 1996.

Mike Harper Industrial Agreement.

COMMISSIONER P.E. SCOTT.

21 October 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Mike Harper Industrial Agreement in the terms of the following schedule be registered on the 20th day of September 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Mike Harper Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship with Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
 16. All-In Payments
 17. Pyramid Sub-Contracting
 18. Drug and Alcohol, Safety and Rehabilitation Program
- Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Mike Harper (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately three employees covered by this Agreement. The scope of work covered by this Agreement applies to Commercial and Housing construction work where more than four (4) dwellings are being constructed or on projects where the total value of the contract exceeds \$284,000.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of \$11.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and material
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreed classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of signing this Agreement the following will apply:

- (a) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (b) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—ALL-IN PAYMENTS

1. All-In methods of payments shall be prohibited.

2. "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or Agreement.

3. If an employer has been paying an employee an all in-rate he/she shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his period of employment.

In addition to making the appropriated taxation deductions from the employee's wages, the employer shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

4. If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

5. Any industrial action that may arise, shall be confined to the employer in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

Common Seal

Signed for and on behalf of:

The Union:	(signed)
	Date: 26/8/96
The Company:	(signed)
	Date: 20/8/96
	Mike Harper
	(Print Name)

APPENDIX A—WAGE RATES

	Date of Signing	1 August 1996	1 February 1997
	HOURLY RATE	HOURLY RATE	HOURLY RATE
Labourer Group 1	14.21	14.66	15.11
Labourer Group 2	13.71	14.15	14.59
Labourer Group 3	13.35	13.77	14.20
Plasterer, Fixer	14.76	15.23	15.70
Painter, Glazier	14.43	14.89	15.35
Signwriter	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

- (a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- (b) The decision on a person's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.

- (c) There will be no payment of lost time to a person unable to work in a safe manner.
- (d) If this happens 3 times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.
- (e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- (f) An employee having problems with alcohol and/or other drugs:
- Will not be sacked if he/she is willing to get help.
 - Must undertake and continue with the recommended treatment to maintain the protection of this program.
 - Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

- (a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- (b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- (c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

**MINISTRY OF PREMIER & CABINET,
MINISTERIAL OFFICERS ENTERPRISE
BARGAINING AGREEMENT 1996
No. PSA AG 158 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Civil Service Association of Western Australian
Incorporated
and

Office of State Administration, Department of Premier and
Cabinet.

No. PSA AG 158 of 1996.

Ministry of Premier & Cabinet, Ministerial Officers
Enterprise Bargaining Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

7 November 1996.

Order.

HAVING heard Mr O. Wood on behalf of the Applicant and Mr G Moore on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the Ministry of Premier & Cabinet, Ministerial Officers Enterprise Bargaining Agreement 1996 attached hereto be and is hereby registered as an industrial agreement and shall have effect from the first pay period commencing on and from 28 October 1996.

[L.S]

(Sgd.) R.N. GEORGE,
Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "Ministry of the Premier & Cabinet, Ministerial Officers Enterprise Bargaining Agreement 1996".

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties Bound
5. Number of Employees bound by the Agreement
6. Definitions
7. Date and Operation of this Agreement
8. No Further Claims
9. Relationship to the Parent Award
10. Single Bargaining Unit
11. Audit of 4% Second Tier and 1989 SEP
12. Continuous Improvement and Future Productivity Initiatives
13. Productivity Measurement
14. Hours
15. Public Holidays
16. Annual Leave Loading
17. Ceremonial/Cultural Leave
18. Carer's Leave
19. Parental Leave
20. Bereavement Leave
21. Union Facilities—Access
22. Workforce Development and Career Mobility
23. Skills Development Leave
24. Dispute Settlement Procedure
25. Re-open Negotiations
26. Salaries
27. Signatories

3.—SCOPE

The Agreement shall apply to all officers employed pursuant to the Public Service Award 1992 at the Ministry of the Premier and Cabinet in a Ministerial Office.

4.—PARTIES BOUND

This Agreement shall be binding according to its terms upon:

1. The Civil Service Association of Western Australia (Inc);
and
2. Chief Executive, Office of State Administration, Ministry of the Premier & Cabinet.

5.—NUMBER OF EMPLOYEES BOUND BY THE AGREEMENT

It is estimated that 50 employees will be bound by this agreement upon registration.

6.—DEFINITIONS

In this agreement, the following expressions shall have the following meaning:

"The Ministry" means the Ministry of the Premier and Cabinet

"The Office" means the office of the Political Office Holder as defined in the Public Sector Management Act.

"The Employer" means the Chief Executive, Office of State Administration (OSA).

"The Employee" means full time, part time, permanent and fixed term contract employees employed by the Chief Executive, OSA in a Ministerial Office.

"Agreement" means this Enterprise Bargaining Agreement

"The Parties" means the Employer and Union when referred to jointly in this Agreement

"Parental Leave" is a period of unpaid leave available to an employee

"Replacement Employee" means an employee specifically engaged to replace an employee proceeding on parental leave

“Permanent Part-time Employment” is defined as regular and continuing employment up to a maximum of 30.4 hours per week.

“Spouse” shall include de facto spouse.

7.—DATE AND OPERATION OF THIS AGREEMENT

1. The Agreement shall operate from the beginning of the first pay period commencing on or after 28 October 1996, under terms of Section 41 of the Industrial Relations Act 1979.

2. The Agreement shall remain in operation for a fixed period of 12 months from the date of operation provided discussions between the parties shall commence not later than three (3) months before the expiry date of the Agreement.

3. This Agreement shall not be cancelled or varied during its term, unless otherwise provided for.

8.—NO FURTHER CLAIMS

1. The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement.

2. This agreement shall not operate so as to cause an employee a reduction in ordinary time earnings.

9.—RELATIONSHIP TO THE PARENT AWARD AND/OR CONTRACT OF EMPLOYMENT

1. This Agreement shall be read and interpreted wholly in conjunction with the Public Service Award 1992, the parent Award.

2. Where there is an inconsistency between this Agreement and the parent Award, this Agreement shall prevail to the extent of any inconsistency.

3. To the extent that the terms of this Agreement are inconsistent with any terms or conditions contained in Contract of Employment with a Ministerial Officer (Term of Government Employment Contract), the said terms and conditions contained in the Contract shall prevail.

10.—SINGLE BARGAINING UNIT

1. This agreement has been negotiated through a Single Bargaining Unit (SBU).

2. The SBU comprises representatives from the Employer and the Union.

11.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the “Restructuring and Efficiency Principle of 1987 and the Structural Efficiency Principle of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

12.—CONTINUOUS IMPROVEMENT AND FUTURE PRODUCTIVITY INITIATIVES

1. Continuous Improvement

The parties agree that there will be full support and involvement in the process of continuous improvement. Employees are expected to contribute to the improvement of performance and productivity in Ministerial Offices by:

- (a) Making regular and consistent suggestions to ensure there is no duplication and double handling and to improve performance and productivity of the Office.
- (b) Periodical review of work practices to ensure maximum productivity gains are obtained from existing and emerging technologies and undertaking necessary training.
- (c) Periodical planning and initiating innovative practices in the office.
- (d) Participating with other employees to ensure the optimum utilisation of resources and the effective operation of the Office.

The parties agree that in each Office a committee will be established, or where appropriate an officer will be given responsibility, to facilitate the development of specific measures for this programme during the period of this Agreement, and which may be included in the next enterprise agreement.

2. The parties undertake to commence negotiations on development of a comprehensive staff development and career development policy within six (6) months of the date of registration of this Agreement.

3. Improving Future Productivity

The parties agree on the initiatives detailed below and on the timetabling for their implementation. It is further agreed that the Single Bargaining Unit will appoint a representative committee, which shall meet on a monthly basis, to monitor and take responsibility for the implementation of these initiatives according to their respective timetabling. The committee shall report progress on each initiative, including detailing benefits arising, on 30 April, 1997 and again prior to the Agreement ceasing operation.

- i) Investigation to be carried out to identify areas for improvement in the delivery of services to Ministerial Offices’ customers.

Timetable

15 December, 1996 Parameters and methodologies determined and investigation commenced.

30 April, 1997 Investigation complete and recommendations received.

- ii) Undertake a strategic re-assessment of existing indicators of performance and identify additional appropriate indicators

Timetable

15 December, 1996 Methodology determined and re-assessment commenced.

30 April, 1997 Recommendations drafted to Chief Executive

- iii) Subject to appropriate approvals, participate in a full review of operations in each Ministerial office, including consideration of staffing profiles, resourcing, work processes and interaction with the Ministry.

Timetable

15 December, 1996 Review parameters determined and review commenced.

30 April, 1997 Review completed and, subject to necessary approvals, implementation commenced

- iv) Develop and implement an enhanced performance management system to facilitate the performance appraisal process and to assist in identifying appropriate training and development requirements.

Timetable

15 December, 1996 Development of enhanced PMS in progress, consultation commenced

30 April, 1997 Implementation commenced.

- v) Determine and implement strategies for ensuring better use of the Ministry’s comprehensive communications network by Ministerial Officers.

Timetable

15 December, 1996 Strategies identified, developed and implementation commenced

30 April, 1997 Implementation completed

- vi) Implement procedures to ensure compliance with the requirements for the quarterly reporting of travel arrangements by each Ministerial Office.

Timetable

15 December, 1996 Strategy determined, implementation commenced

30 April, 1997 Substantial compliance achieved

- vii) Implement procedures to ensure compliance with the requirements for the reporting of consultant usage by each Ministerial Office.

Timetable

15 December, 1996 Strategy determined, implementation commenced

30 April, 1997 Substantial compliance achieved

- viii) Develop and implement a strategy to ensure compliance with the requirements for submissions to the Merit Panel by each Ministerial Office.

Timetable

15 December, 1996	Strategy determined and in implementation phase
30 April, 1997	Substantial compliance achieved

13.—PRODUCTIVITY MEASUREMENT

1. The parties agree that the assessment and monitoring of productivity improvements is important because it provides critical feedback on the performance of the organisation to management, workforce and stakeholders.

2. It is agreed that management and employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

3. Consistent with the above it is agreed that a performance improvement monitoring program be jointly developed between management, employees and the union.

14.—HOURS

1. Notwithstanding Clause 16. of the Public Service Award, 1992, employees will be required to work thirty eight (38) hours per week instead of thirty seven (37) hours thirty (30) minutes per week.

2. Notwithstanding the provisions of Clauses 17, 18 and 22 of the Public Service Award, 1992, entitlements shall be calculated on the basis of a thirty eight (38) hour week.

3. The provisions of this clause will only be applied to entitlements accrued after the date of registration of this Agreement.

15.—PUBLIC HOLIDAYS

1. The following days will be observed as fully paid holidays unless an officer is required to work on any of these days:

New Year's Day; Australia Day; Labour Day; Good Friday; Easter Monday; Anzac Day; Foundation Day; Queen's Birthday; Christmas Day and Boxing Day.

2. When any of the days mentioned in subclause (1) of this clause falls on a Saturday or Sunday, the holiday will be observed on the next succeeding Monday.

When Boxing Day falls on a Sunday or Monday, the holiday will be observed on the next Tuesday.

In each case the substituted day will be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

16.—ANNUAL LEAVE LOADING

Notwithstanding clause 19. Annual Leave of the Public Service Award, 1992, Annual Leave Loading will no longer apply at the time of taking annual leave but will instead be incorporated into the annual salary and paid on a fortnightly basis.

Annual Leave Loading accrued prior to the Registration of this Agreement shall be paid as and when the Annual Leave to which it applies is taken.

17.—CEREMONIAL/CULTURAL LEAVE

1. An employee covered by this Agreement is entitled to time off without loss of pay for tribal/ceremonial/cultural purposes.

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

3. Each day or part thereof, taken in accordance with subclause (1) shall be deducted from agreed leave provisions.

4. Time off without pay may be granted by agreement between the employer and the employee for tribal/ceremonial/cultural purposes.

5. Ceremonial/Cultural leave shall be available, but not limited to Aboriginals and Torres Strait Islanders.

18.—CARER'S LEAVE

1. An employee with responsibilities in relation to either members of their family or members of the household who need their care and support, shall be entitled to use, in

accordance with this clause, up to 5 days per annum without loss of pay to provide care and support for such persons when they are ill.

2. Any entitlements to carer's leave shall be deducted from:

- accrued sick leave entitlements, in accordance with Clause 22 of the parent Award, to a maximum of 5 days per annum; or
- annual leave entitlements.

3. Carer's leave will be available on an hourly basis.

4. The entitlement to carer's leave in accordance with this clause is subject to:

- the employee being responsible for the care of the person concerned; and
- the person concerned being a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependant on, or is a member of the household of, the employee.

5. The employee shall, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

6. In normal circumstances an employee shall not take carer's leave under this clause where another person has taken leave to care for the same person.

7. The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee (where applicable), the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

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

19.—PARENTAL LEAVE

1. Eligibility for Parental Leave

- An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.
- Notwithstanding subclause (c) of this clause, where the employee applying for the leave is the partner of a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.
- Where both partners are employed by the Ministry the leave shall not be taken concurrently except under special circumstances.
- An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks. Where both partners are employed by the agency, the three week leave period may be taken concurrently.
- An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

2. Other Leave Entitlements

- An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- An employee may extend the maximum period of parental leave with a period of leave without pay subject to the employer's approval.
- An employee on parental leave is not entitled to paid sick leave and other paid award absences except where otherwise provided for in this clause.

- (d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.
- (e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

3. Notice and Variation

- (a) The employee shall give not less than four week's notice in writing to the Employer of the date the employee proposes to commence parental leave stating the period of leave to be taken.
- (b) An employee seeking to adopt a child shall not be in breach of subclause 4(a) as a consequence of failure to give the stipulated period of notice, if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.
- (c) An employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave with approval of the employer elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

4. Transfer to Safe Job

- (a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of parental leave
- (b) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary be a registered medical practitioner.

5. Replacement Employee

Prior to engaging a replacement employee the employer shall inform the person of the temporary nature of the employment and the entitlements relating to return to work of the employee on parental leave.

6. Return to Work

- (a) An employee shall confirm the intention to return to work by notice in writing to the employer not less than four weeks prior to the expiration of the period of parental leave.
- (b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause 4 hereof the employee is entitled to return to the position occupied immediately prior to the transfer.
- (c) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level with duties similar to that of the abolished position.
- (d) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the parent award.
- (e) An employee who has returned on a part-time basis may revert to full time employment at the same classification level within one year of the recommencement of work.

7. Effect of Leave on Employment Contract

- (a) Fixed Term Contract
An employee employed for a fixed term contract shall have the same entitlement to parental leave,

however the period of leave granted shall not extend beyond the term of that contract.

(b) Continuous Service

Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.

(c) Termination of Employment

An employee on parental leave may terminate employment at any time during the period of level by written notice in accordance with the relevant award.

An employer shall not terminate the employment of an employee on the grounds of the employee's application for parental leave, or absence on parental leave, but otherwise the rights of the employer in relation to termination of employment are not affected.

20.—BEREAVEMENT LEAVE

1. An employee shall be entitled to two days paid leave on the death of a spouse, child, stepchild, father, mother, brother, sister, grandparent, parent in law, son-in-law, daughter-in-law or any other person, who immediately before that person's death lived with the employee as a member of the employee's family.

2. Notwithstanding subclause 1, an employee may seek the employer's approval for bereavement leave on the death of any person.

3. This clause replaces an employee's entitlement to Short Leave as provided for in Clause 26 of the Public Service Award 1992.

21.—UNION FACILITIES—ACCESS

1. The Ministry recognises and supports the rights of unions to organise and represent employees. Constructive and consultative labour relations are important for economic development and increased organisational productivity and rely on co-operation between the industrial partners based on mutual recognition and respect.

2. Role and Responsibilities of Workplace Delegates

As representatives of the union, workplace delegates have a legitimate role and function in assisting the union in the tasks of recruiting members, communicating with those members and providing them with relevant union information and services.

Furthermore, there may be issues within the agency that relate to employee grievances. Such issues may also relate directly to the employee/employer relationship and the appropriate involvement of a workplace delegate will generally assist in resolving the grievance and thereby contributing to harmonious labour relations with the agency.

A workplace delegate also needs to be aware that the primary role of an employee is to fulfil the contract of employment and that union activities undertaken will not unreasonably interfere with work duties.

3. Workplace Delegates—Role in respect to other Authorised Employee Representatives

Where there are agreed procedures designed to deal with specific issues such as Equal Employment Opportunity and Occupational Health Safety and Welfare for which legitimate authorised and trained representatives have been appointed a workplace delegate will refer any such issues arising to the appropriate representative.

4. The Agencies role and responsibilities

The Ministry recognises appointed/elected workplace delegates and will provide co-operation and support, so that they are able to carry out their role and functions effectively. These functions should relate to the rights and interests of the employees in the workplace.

5. The parties agree to adopt the definition of a workplace as defined in the Occupational Health, Safety & Welfare Act 1984 as "a place, whether or not in an aircraft, ship, vehicle, building or other structure, where employees work or are likely to be in the course of their work".

6. Following the election or appointment of a workplace delegate the union will advise the Ministry in writing, of such election or appointment. The workplace delegate will be issued with written credentials by the union authorising them to act as a workplace delegate in accordance with the provisions of this clause.

7. The Ministry shall also recognise the authorisation of each person so elected/appointed to act in accordance with the duties of a workplace delegate. In recognising workplace delegates, the Ministry acknowledges that they have a significant role to play in the workplace. Such a role includes both rights and responsibilities.

8. The Ministry and workplace delegates are committed to effective consultation in the workplace, which can improve the working lives of employees and productivity of the Ministry.

9. Workplace delegates shall be protected from any victimisation which may arise out of their need to carry out their duties as a delegate. The Ministry recognises that workplace delegates will not be threatened or disadvantaged in any way as a result of their role as workplace delegates.

10. Workplace delegates shall be granted reasonable access to facilities required for the purpose of carrying out their duties. Facilities may include but not be limited to access to relevant documents, the reasonable use of photocopiers, filing cabinets, meeting room, telephones and typing facilities. Such access to facilities shall be negotiated within the branch and shall not unreasonably be withheld or affect the operation of the Ministry.

11. Workplace delegates shall have the right to display union material at the workplace on a notice board provided by the Ministry.

12. On request, delegates shall be provided with the names and locations of new employees. It is recognised that such information is necessary to permit execution of the duties of workplace delegate.

13. Any dispute concerning the interpretation of this clause should be resolved within the Ministry where possible, however this does not preclude either party from seeking advice in order to resolve the dispute at any stage in the process.

14. The duly authorised official of the union shall on notification to the Ministry have the right to enter the agency's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this agreement, the legitimate business of the union or for the purpose of investigating complaints concerning the application of this agreement, but shall in no way interfere with the work of employees.

22.—WORKFORCE DEVELOPMENT AND CAREER MOBILITY

1. Training, Appointments and Career Development

In line with the desired outcomes (specifically Clause 12) of this Agreement the parties agree that recruitment, development and retention of a highly skilled and stable workforce is essential to on-going development of an efficient, productive and flexible organisation which is responsive to change. Key to this aim is the provision of training, an equitable appointment system, and career development opportunities for all employees.

2. Training

- (a) The parties shall develop and/or source accredited training programs consistent with:
 - (i) the size, structure and nature of the operations of the organisation, and
 - (ii) the current and future skills, needs of the organisation and the employees.
- (b) The employer commits to the promotion of equitable access to training. All employees will be provided with relevant and appropriate training and development opportunities. In every instance, attendance at training programmes and courses is dependent upon approval by the employer.
- (c) The employer may meet the costs associated with all approved training courses.

(d) It is anticipated that training, which may be undertaken either on or off the job, will normally be conducted during working hours in which case the employee concerned shall not suffer any loss of ordinary pay as a result of attendance at approved training courses.

(e) All training will be documented and recorded in the employees record of service.

3. Career Development

- (a) The parties recognise that provision of a skilled and stable workforce requires retention of the valuable skills, experience and expertise of employees and that this is dependent upon the provision of career opportunities for employees. To this end the employer commits to the concept of career development.
- (b) It is recognised that career development will require employees to move between positions. The employer undertakes to take whatever measures are necessary and desirable to ensure career development is facilitated within the organisation.
- (c) The employer may require an employee to transfer to another position at the same level of classification, within the Office for operational purposes.

23.—SKILLS DEVELOPMENT LEAVE

1. The employer may grant the employee paid skills development leave for accredited and non accredited courses of study and TEE study.

2. In the case of accredited courses of study at Public Institutions the employer may agree to pay the required fees. However, if the employee does not attain satisfactory results for the study the employer is entitled to seek reimbursement of these fees from the employee.

3. Paid development leave will normally be granted where the activity being undertaken:

- (a) is directly relevant to the duties being undertaken by the employee; or
- (b) is directly relevant to the business needs of the Office; and
- (c) enhances the career development opportunities of the employee; and
- (d) does not unduly affect or inconvenience the operations of the Office.

4. To obtain skills development leave for accredited courses and TEE study, the employee must demonstrate his/her personal commitment to learning and studying by undertaking an acceptable formal study load in his/her own time.

5. The employer may grant the employee leave without pay to undertake full-time study for a period of up to 12 months and subject to the conditions specified in sub-clause (3).

24.—DISPUTE SETTLEMENT PROCEDURE

1. In the event of any disagreement, question, dispute or difficulty between the parties as to the interpretation and implementation of this Agreement the following procedures shall apply:

- (a) The CSA representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA Representative.
- (b) If the matter is not resolved within 5 working days following the discussion in accordance with sub-clause (a) hereof the matter shall be referred by the CSA Representative to the employer or his/her nominee for resolution.
- (c) If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the employer it may be referred by either party to the Western Australian Industrial Relations Commission.

25.—RE-OPEN NEGOTIATIONS

The parties undertake to re-open negotiations at least three (3) months prior to the expiry of the period of this Agreement with a view to negotiating and settling any replacement Agreement.

26.—SALARIES

The parties agree that a salary increase of 9.5% payable in two instalments as detailed below shall apply.

LEVEL	ANNUAL SALARY	+7.5% Payable from 1 April 1996	+2% Payable from the first pay period commencing on or after 28 October 1996
	\$	\$	\$
U/17	10873	11688	11922
17 yrs	12707	13660	13933
18 yrs	14822	15934	16252
19 yrs	17157	18444	18813
20 yrs	19267	20712	21126
1.1	21165	22752	23207
1.2	21817	23453	23922
1.3	22468	24153	24636
1.4	23115	24849	25346
1.5	23766	25548	26059
1.6	24417	26248	26773
1.7	25166	27053	27595
1.8	25684	27610	28163
1.9	26450	28434	29002
2.1	27367	29420	30008
2.2	28070	30175	30779
2.3	28809	30970	31589
2.4	29590	31809	32445
2.5	30407	32688	33341
3.1	31530	33895	34573
3.2	32405	34835	35532
3.3	33307	35805	36521
3.4	34233	36800	37536
4.1	35503	38166	38929
4.2	36498	39235	40020
4.3	37522	40336	41143
5.1	39494	42456	43305
5.2	40827	43889	44767
5.3	42212	45378	46285
5.4	43649	46923	47861
6.1	45960	49407	50395
6.2	47531	51096	52118
6.3	49157	52844	53901
6.4	50893	54710	55804
7.1	53555	57572	58723
7.2	55397	59552	60743
7.3	57401	61706	62940
8.1	60658	65207	66511
8.2	62991	67715	69070
8.3	65884	70825	72242
9.1	69497	74709	76203
9.2	71938	77333	78880
9.3	74722	80326	81933
Class 1	78932	84852	86549
Class 2	83142	89378	91165
Class 3	87350	93901	95779
Class 4	91560	98427	100396

27.—SIGNATORIES

Dated: _____

Signed on behalf of
CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA (INC)

(Secretary)

Signed on behalf of
MINISTRY OF THE PREMIER & CABINET,
OFFICE OF STATE ADMINISTRATION

(Chief Executive)

MINISTRY OF PREMIER & CABINET, OFFICE OF THE LEADER OF THE OPPOSITION, ENTERPRISE BARGAINING AGREEMENT 1996
No. PSA AG 159 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australian
Incorporated

and

Office of State Administration, Department of Premier and
Cabinet.

No. PSA AG 159 of 1996.

Ministry of Premier & Cabinet, Office of the Leader of the
Opposition, Enterprise Bargaining Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

7 November 1996.

Order:

HAVING heard Mr O. Wood on behalf of the Applicant and Mr G Moore on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the Ministry of Premier & Cabinet, Office of the Leader of the Opposition, Enterprise Bargaining Agreement attached hereto be and is hereby registered as an industrial agreement and shall have effect from the first pay period commencing on and from 28 October 1996.

(Sgd.) R.N. GEORGE,

[L.S] _____
Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the "Ministry of the Premier & Cabinet, Office of the Leader of the Opposition, Enterprise Bargaining Agreement 1996".

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Scope
4. Parties Bound
5. Number of Employees bound by the Agreement
6. Definitions
7. Date and Operation of this Agreement
8. No Further Claims
9. Relationship to the Parent Award
10. Single Bargaining Unit
11. Audit of 4% Second Tier and 1989 SEP
12. Continuous Improvement and Future Productivity Initiatives
13. Productivity Measurement
14. Hours
15. Public Holidays
16. Annual Leave Loading
17. Ceremonial/Cultural Leave
18. Carer's Leave
19. Parental Leave
20. Bereavement Leave
21. Union Facilities—Access
22. Workforce Development and Career Mobility
23. Skills Development Leave
24. Dispute Settlement Procedure
25. Re-open Negotiations
26. Salaries
27. Signatories

3.—SCOPE

The Agreement shall apply to all officers employed pursuant to the Public Service Award 1992 at the Ministry of the Premier and Cabinet in the Office of the Leader of the Opposition.

4.—PARTIES BOUND

This Agreement shall be binding according to its terms upon:

1. The Civil Service Association of Western Australia (Inc);
and
2. Chief Executive, Office of State Administration, Ministry of the Premier & Cabinet.

5.—NUMBER OF EMPLOYEES BOUND BY THE AGREEMENT

It is estimated that 15 employees will be bound by this agreement upon registration.

6.—DEFINITIONS

In this agreement, the following expressions shall have the following meaning:

“The Ministry” means the Ministry of the Premier and Cabinet.

“The Office” means the Office of the Leader of the Opposition.

“The Employer” means the Chief Executive, Office of State Administration (OSA)

“The Employee” means full time, part time, permanent and fixed term contract employees employed by the Chief Executive, OSA in the Office of the Leader of the Opposition

“Agreement” means this Enterprise Bargaining Agreement

“The Parties” means the Employer and Union when referred to jointly in this Agreement

“Parental Leave” is a period of unpaid leave available to an employee

“Replacement Employee” means an employee specifically engaged to replace an employee proceeding on parental leave

“Permanent Part-time Employment” is defined as regular and continuing employment up to a maximum of 30.4 hours per week.

“Spouse” shall include de facto spouse.

7.—DATE AND OPERATION OF THIS AGREEMENT

(1) The Agreement shall operate from the beginning of the first pay period commencing on or after 28 October 1996, under terms of Section 41 of the Industrial Relations Act 1979.

(2) The Agreement shall remain in operation for a fixed period of 12 months from the date of operation provided discussions between the parties shall commence not later than three (3) months before the expiry date of the Agreement.

(3) This Agreement shall not be cancelled or varied during its term, unless otherwise provided for.

8.—NO FURTHER CLAIMS

1. The parties to this agreement undertake that for the duration of the agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this agreement.

2. This agreement shall not operate so as to cause an employee a reduction in ordinary time earnings.

9.—RELATIONSHIP TO THE PARENT AWARD AND/OR CONTRACT OF EMPLOYMENT

1. This Agreement shall be read and interpreted wholly in conjunction with the Public Service Award 1992, the parent Award.

2. Where there is an inconsistency between this Agreement and the parent Award, this Agreement shall prevail to the extent of any inconsistency.

3. To the extent that the terms of the Agreement are inconsistent with any terms or conditions contained in a Contract of Employment with a Ministerial Officer (Term of Government Employment Contract), the said terms and conditions contained in the Contract shall prevail.

10.—SINGLE BARGAINING UNIT

1. This agreement has been negotiated through a Single Bargaining Unit (SBU).

2. The SBU comprises representatives from the Employer and the Union.

11.—AUDIT OF 4% SECOND TIER AND 1989 SEP

The parties agree that matters arising from previous industrial agreements or award changes emanating from the “Restructuring and Efficiency Principle of 1987 and the Structural Efficiency Principle of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

12.—CONTINUOUS IMPROVEMENT AND FUTURE PRODUCTIVITY INITIATIVES

1. Continuous Improvement

The parties agree that there will be full support and involvement in the process of continuous improvement. Employees are expected to contribute to the improvement of performance and productivity in the Office of the Leader of the Opposition by:

- (a) Making regular and consistent suggestions to ensure there is no duplication and double handling and to improve performance and productivity of the Office.
- (b) Periodical review of work practices to ensure maximum productivity gains are obtained from existing and emerging technologies and undertaking necessary training.
- (c) Periodical planning and initiating innovative practices in the office.
- (d) Participating with other employees to ensure the optimum utilisation of resources and the effective operation of the Office.

The parties agree that a committee will be established to facilitate the development of specific measures for this programme during the period of this Agreement, and which may be included in the next enterprise agreement.

2. The parties undertake to commence negotiations on development of a comprehensive staff development and career development policy within six (6) months of the date of registration of this Agreement.

3. Improving Future Productivity

The parties agree on the initiatives detailed below and on the timetabling for their implementation. It is further agreed that the Single Bargaining Unit will appoint a representative committee, which shall meet on a monthly basis, to monitor and take responsibility for the implementation of initiatives according to their respective timetabling. The committee shall report progress on each initiative, including detailing benefits arising, on 30 April, 1997 and again prior to the Agreement ceasing operation.

- i) Investigation to be carried out to identify areas for improvement in the delivery of services to Shadow Ministers, Opposition Members of Parliament and constituents.

Timetable

15 December, 1996	Parameters and methodologies determined and investigation commenced.
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30 April, 1997	Investigation complete and recommendations received.
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- ii) Undertake a strategic re-assessment of existing indicators of performance and identify additional appropriate indicators

Timetable

15 December, 1996	Methodology determined and reassessment commenced.
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30 April, 1997	Recommendations drafted to Leader of the Opposition
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- iii) Subject to appropriate approvals, participate in a full review of operations in the Leader of the Opposition's Office, including consideration of staffing profiles, resourcing, work processes and interaction with the Office of State Administration.

Timetable	
15 December, 1996	Review parameters determined and review commenced.
30 April, 1997	Review completed and recommendations ready for implementation.
iv)	Develop and implement an enhanced performance management system to facilitate the performance appraisal process and to assist in identifying appropriate training and development requirements.
Timetable	
15 December, 1996	Development of enhanced PMS in progress, consultation commenced
30 April, 1997	Implementation commenced
v)	Determine and implement strategies for ensuring better use of the Offices' information systems.
Timetable	
15 December, 1996	Strategies identified and developed.
30 April, 1997	Implementation completed.
vi)	Review selection procedures with a view to developing a policy which ensures the best selection practices without a loss of flexibility.
Timetable	
15 December, 1996	Review parameters and methodologies determined and review commenced.
30 April, 1997	Review completed and policy drafted.
vii)	Review funding arrangements and budgetary processes in order to identify possible efficiencies, streamlining and adequacy of general funding levels.
Timetable	
15 December, 1996	Review commenced
30 April, 1997	Review, with recommendations, complete

13.—PRODUCTIVITY MEASUREMENT

1. The parties agree that the assessment and monitoring of productivity improvements is important because it provides critical feedback on the performance of the organisation to management, workforce and stakeholders.

2. It is agreed that management and employees' understanding of productivity measurement concepts is vital for performance monitoring arrangements to be successful on an ongoing basis.

3. Consistent with the above it is agreed that a performance improvement monitoring program be jointly developed between management, employees and the union.

14.—HOURS

1. Notwithstanding Clause 16. of the Public Service Award, 1992, employees will be required to work thirty eight (38) hours per week instead of thirty seven (37) hours thirty (30) minutes per week.

2. Notwithstanding the provisions of Clauses 17, 18 and 22 of the Public Service Award, 1992, entitlements shall be calculated on the basis of a thirty eight (38) hour week.

3. The provisions of this clause will only be applied to entitlements accrued after the date of registration of this Agreement.

15.—PUBLIC HOLIDAYS

1. The following days will be observed as fully paid holidays unless an officer is required to work on any of these days: New Year's Day; Australia Day; Labour Day; Good Friday; Easter Monday; Anzac Day; Foundation Day; Queen's Birthday; Christmas Day and Boxing Day.

2. When any of the days mentioned in subclause (1) of this clause falls on a Saturday or Sunday, the holiday will be observed on the next succeeding Monday.

When Boxing Day falls on a Sunday or Monday, the holiday will be observed on the next Tuesday.

In each case the substituted day will be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

16.—ANNUAL LEAVE LOADING

Notwithstanding clause 19. Annual Leave of the Public Service Award, 1992, Annual Leave Loading will no longer apply at the time of taking annual leave but will instead be incorporated into the annual salary and paid on a fortnightly basis.

Annual Leave Loading entitlements accrued prior to Registration of the Agreement shall be paid as and when the Annual Leave to which it applies is taken.

17.—CEREMONIAL/CULTURAL LEAVE

1. An employee covered by this Agreement is entitled to time off without loss of pay for tribal/ceremonial/cultural purposes.

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

3. Each day or part thereof, taken in accordance with subclause (1) shall be deducted from agreed leave provisions.

4. Time off without pay may be granted by agreement between the employer and the employee for tribal/ceremonial/cultural purposes.

5. Ceremonial/Cultural leave shall be available, but not limited to Aboriginals and Torres Strait Islanders.

18.—CARER'S LEAVE

1. An employee with responsibilities in relation to either members of their family or members of the household who need their care and support, shall be entitled to use, in accordance with this clause, up to 5 days per annum without loss of pay to provide care and support for such persons when they are ill.

2. Any entitlements to carer's leave shall be deducted from:

(a) accrued sick leave entitlements, in accordance with Clause 22 of the parent Award, to a maximum of 5 days per annum; or

(b) annual leave entitlements.

3. Carer's leave will be available on an hourly basis.

4. The entitlement to carer's leave in accordance with this clause is subject to:

(a) the employee being responsible for the care of the person concerned; and

(b) the person concerned being a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependant on, or is a member of the household of, the employee.

5. The employee shall, if required by the employer, establish by production of a medical certificate or statutory declaration, the illness of the person concerned and that the illness is such as to require care by another.

6. In normal circumstances an employee shall not take carer's leave under this clause where another person has taken leave to care for the same person.

7. The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee (where applicable), the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

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

19.—PARENTAL LEAVE

1. Eligibility for Parental Leave

(a) An employee is entitled to a period of up to 52 weeks parental leave in respect of the birth of a child to the employee or the employee's spouse/partner.

(b) Notwithstanding subclause (c) of this clause, where the employee applying for the leave is the partner of

a pregnant spouse one week leave may be taken at the birth of the child concurrently with parental leave taken by the pregnant employee.

- (c) Where both partners are employed by the Ministry the leave shall not be taken concurrently except under special circumstances.
- (d) An employee adopting a child under the age of five years shall be entitled to three weeks parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks. Where both partners are employed by the agency, the three week leave period may be taken concurrently.
- (e) An employee seeking to adopt a child shall be entitled to two days unpaid leave for the employee to attend interviews or examination required for the adoption procedure. Employees working or residing outside the Perth metropolitan area are entitled to an additional days leave. The employee may take any paid leave entitlement in lieu of this leave.

2. Other Leave Entitlements

- (a) An employee proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave or extend the period of parental leave with such leave.
- (b) An employee may extend the maximum period of parental leave with a period of leave without pay subject to the employer's approval.
- (c) An employee on parental leave is not entitled to paid sick leave and other paid award absences except where otherwise provided for in this clause.
- (d) Where the pregnancy of an employee terminates other than by the birth of a living child then the employee shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.
- (e) Where a pregnant employee not on parental leave suffers illness related to the employee's pregnancy or is required to undergo a pregnancy related medical procedure the employee may take any paid sick leave to which the employee is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

3. Notice and Variation

- (a) The employee shall give not less than four week's notice in writing to the Employer of the date the employee proposes to commence parental leave stating the period of leave to be taken.
- (b) An employee seeking to adopt a child shall not be in breach of subclause 4(a) as a consequence of failure to give the stipulated period of notice, if such failure is due to the requirement of the adoption agency to accept earlier or later placement of a child, or other compelling circumstances.
- (c) An employee proceeding on parental leave may elect to take a shorter period of parental leave and may at any time during that period of leave with approval of the employer elect to reduce or extend the period stated in the original application provided four weeks written notice is provided.

4. Transfer to Safe Job

- (a) Where illness or risks arising out of pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue in her present duties, the duties shall be modified or the employee may be transferred to a safe position of the same classification until the commencement of parental leave
- (b) If the transfer to a safe position is not practicable, the employee may take leave for such period as is certified necessary be a registered medical practitioner.

5. Replacement Employee

Prior to engaging a replacement employee the employer shall inform the person of the temporary nature of the employment

and the entitlements relating to return to work of the employee on parental leave.

6. Return to Work

- (a) An employee shall confirm the intention to return to work by notice in writing to the employer not less than four weeks prior to the expiration of the period of parental leave.
- (b) An employee on return from parental leave shall be entitled to the position which the employee occupied immediately prior to proceeding on parental leave. Where an employee was transferred to a safe job pursuant to sub-clause 4 hereof the employee is entitled to return to the position occupied immediately prior to the transfer.
- (c) Where the position occupied by the employee no longer exists the employee shall be entitled to a position of the same classification level with duties similar to that of the abolished position.
- (d) An employee may return on a part-time basis to the same position occupied prior to the commencement of leave or to a different position at the same classification level on a part-time basis in accordance with the Part-Time provisions of the parent award.
- (e) An employee who has returned on a part-time basis may revert to full time employment at the same classification level within one year of the recommencement of work.

7. Effect of Leave on Employment Contract

- (a) **Fixed Term Contract**
An employee employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.
- (b) **Continuous Service**
Absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.
- (c) **Termination of Employment**
An employee on parental leave may terminate employment at any time during the period of level by written notice in accordance with the relevant award.
An employer shall not terminate the employment of an employee on the grounds of the employee's application for parental leave, or absence on parental leave, but otherwise the rights of the employer in relation to termination of employment are not affected.

20.—BEREAVEMENT LEAVE

1. An employee shall be entitled to two days paid leave on the death of a spouse, child, stepchild, father, mother, brother, sister, grandparent, parent in law, son-in-law, daughter-in-law or any other person, who immediately before that person's death lived with the employee as a member of the employee's family.

2. Notwithstanding subclause 1, an employee may seek the employer's approval for bereavement leave on the death of any person.

3. This clause replaces an employee's entitlement to Short Leave as provided for in Clause 26 of the Public Service Award 1992.

21.—UNION FACILITIES — ACCESS

1. The Ministry recognises and supports the rights of unions to organise and represent employees. Constructive and consultative labour relations are important for economic development and increased organisational productivity and rely on co-operation between the industrial partners based on mutual recognition and respect.

2. Role and Responsibilities of Workplace Delegates

As representatives of the union, workplace delegates have a legitimate role and function in assisting the union in the tasks of recruiting members, communicating with those members and providing them with relevant union information and services.

Furthermore, there may be issues within the agency that relate to employee grievances. Such issues may also relate directly to the employee/employer relationship and the appropriate involvement of a workplace delegate will generally assist in resolving the grievance and thereby contributing to harmonious labour relations with the agency.

A workplace delegate also needs to be aware that the primary role of an employee is to fulfil the contract of employment and that union activities undertaken will not unreasonably interfere with work duties.

3. Workplace Delegates—Role in respect to other Authorised Employee Representatives

Where there are agreed procedures designed to deal with specific issues such as Equal Employment Opportunity and Occupational Health Safety and Welfare for which legitimate authorised and trained representatives have been appointed a workplace delegate will refer any such issues arising to the appropriate representative.

4. The Agencies role and responsibilities

The Ministry recognises appointed/elected workplace delegates and will provide co-operation and support, so that they are able to carry out their role and functions effectively. These functions should relate to the rights and interests of the employees in the workplace.

5. The parties agree to adopt the definition of a workplace as defined in the Occupational Health, Safety & Welfare Act 1984 as “a place, whether or not in an aircraft, ship, vehicle, building or other structure, where employees work or are likely to be in the course of their work”.

6. Following the election or appointment of a workplace delegate the union will advise the Ministry in writing, of such election or appointment. The workplace delegate will be issued with written credentials by the union authorising them to act as a workplace delegate in accordance with the provisions of this clause.

7. The Ministry shall also recognise the authorisation of each person so elected/appointed to act in accordance with the duties of a workplace delegate. In recognising workplace delegates, the Ministry acknowledges that they have a significant role to play in the workplace. Such a role includes both rights and responsibilities.

8. The Ministry and workplace delegates are committed to effective consultation in the workplace, which can improve the working lives of employees and productivity of the Ministry.

9. Workplace delegates shall be protected from any victimisation which may arise out of their need to carry out their duties as a delegate. The Ministry recognises that workplace delegates will not be threatened or disadvantaged in any way as a result of their role as workplace delegates.

10. Workplace delegates shall be granted reasonable access to facilities required for the purpose of carrying out their duties. Facilities may include but not be limited to access to relevant documents, the reasonable use of photocopiers, filing cabinets, meeting room, telephones and typing facilities. Such access to facilities shall be negotiated within the branch and shall not unreasonably be withheld or affect the operation of the Ministry.

11. Workplace delegates shall have the right to display union material at the workplace on a notice board provided by the Ministry.

12. On request, delegates shall be provided with the names and locations of new employees. It is recognised that such information is necessary to permit execution of the duties of workplace delegate.

13. Any dispute concerning the interpretation of this clause should be resolved within the Ministry where possible, however this does not preclude either party from seeking advice in order to resolve the dispute at any stage in the process.

14. The duly authorised official of the union shall on notification to the Ministry have the right to enter the agency's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this agreement, the legitimate business of the union or for the purpose of investigating complaints concerning the application of this agreement, but shall in no way interfere with the work of employees.

22.—WORKFORCE DEVELOPMENT AND CAREER MOBILITY

1. Training, Appointments and Career Development

In line with the desired outcomes (specifically Clause 12) of this Agreement the parties agree that recruitment, development and retention of a highly skilled and stable workforce is essential to on-going development of an efficient, productive and flexible organisation which is responsive to change. Key to this aim is the provision of training, an equitable appointment system, and career development opportunities for all employees.

2. Training

- (a) The parties shall develop and/or source accredited training programs consistent with:
 - (i) the size, structure and nature of the operations of the organisation, and
 - (ii) the current and future skills, needs of the organisation and the employees.
- (b) The employer commits to the promotion of equitable access to training. All employees will be provided with relevant and appropriate training and development opportunities. In every instance, attendance at training programmes and courses is dependent upon approval by the employer.
- (c) The employer may meet the costs associated with all approved training courses.
- (d) It is anticipated that training, which may be undertaken either on or off the job, will normally be conducted during working hours in which case the employee concerned shall not suffer any loss of ordinary pay as a result of attendance at approved training courses.
- (e) All training will be documented and recorded in the employees record of service.

3 Career Development

- (a) The parties recognise that provision of a skilled and stable workforce requires retention of the valuable skills, experience and expertise of employees and that this is dependent upon the provision of career opportunities for employees. To this end the employer commits to the concept of career development.
- (b) It is recognised that career development will require employees to move between positions. The employer undertakes to take whatever measures are necessary and desirable to ensure career development is facilitated within the organisation.
- (c) The employer may require an employee to transfer to another position at the same level of classification, within the Office for operational purposes.

23.—SKILLS DEVELOPMENT LEAVE

1. The employer may grant the employee paid skills development leave for accredited and non accredited courses of study and TEE study.

2. In the case of accredited courses of study at Public Institutions the employer may agree to pay the required fees. However, if the employee does not attain satisfactory results for the study the employer is entitled to seek reimbursement of these fees from the employee.

3. Paid development leave will normally be granted where the activity being undertaken:

- (a) is directly relevant to the duties being undertaken by the employee; or
- (b) is directly relevant to the business needs of the Office; and
- (c) enhances the career development opportunities of the employee; and
- (d) does not unduly affect or inconvenience the operations of the Office.

4. To obtain skills development leave for accredited courses and TEE study, the employee must demonstrate his/her personal commitment to learning and studying by undertaking an acceptable formal study load in his/her own time.

5. The employer may grant the employee leave without pay to undertake full-time study for a period of up to 12 months and subject to the conditions specified in sub-clause (3).

24.—DISPUTE SETTLEMENT PROCEDURE

1. In the event of any disagreement, question, dispute, or difficulty between the parties as to the interpretation and implementation of this Agreement the following procedures shall apply:

- (a) The CSA representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA Representative.
- (b) If the matter is not resolved within 5 working days following the discussion in accordance with sub-clause (a) hereof the matter shall be referred by the CSA Representative to the employer or his/her nominee for resolution.
- (c) If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the employer it may be referred by either party to the Western Australian Industrial Relations Commission.

25.—RE-OPEN NEGOTIATIONS

The parties undertake to re-open negotiations at least three (3) months prior to the expiry of the period of this Agreement with a view to negotiating and settling any replacement Agreement.

26.—SALARIES

The parties agree that a salary increase of 9.5% payable in two instalments as detailed below shall apply.

LEVEL	ANNUAL SALARY	+7.5% Payable from 1 April 1996	+2% Payable from the first pay period commencing on or after 28 October 1996
	\$	\$	\$
U/17	10873	11688	11922
17 yrs	12707	13660	13933
18 yrs	14822	15934	16252
19 yrs	17157	18444	18813
20 yrs	19267	20712	21126
1.1	21165	22752	23207
1.2	21817	23453	23922
1.3	22468	24153	24636
1.4	23115	24849	25346
1.5	23766	25548	26059
1.6	24417	26248	26773
1.7	25166	27053	27595
1.8	25684	27610	28163
1.9	26450	28434	29002
2.1	27367	29420	30008
2.2	28070	30175	30779
2.3	28809	30970	31589
2.4	29590	31809	32445
2.5	30407	32688	33341
3.1	31530	33895	34573
3.2	32405	34835	35532
3.3	33307	35805	36521
3.4	34233	36800	37536
4.1	35503	38166	38929
4.2	36498	39235	40020
4.3	37522	40336	41143
5.1	39494	42456	43305
5.2	40827	43889	44767
5.3	42212	45378	46285
5.4	43649	46923	47861
6.1	45960	49407	50395
6.2	47531	51096	52118
6.3	49157	52844	53901
6.4	50893	54710	55804

LEVEL	ANNUAL SALARY	+7.5% Payable from 1 April 1996	+2% Payable from the first pay period commencing on or after 28 October 1996
	\$	\$	\$
7.1	53555	57572	58723
7.2	55397	59552	60743
7.3	57401	61706	62940
8.1	60658	65207	66511
8.2	62991	67715	69070
8.3	65884	70825	72242
9.1	69497	74709	76203
9.2	71938	77333	78880
9.3	74722	80326	81933
Class 1	78932	84852	86549
Class 2	83142	89378	91165
Class 3	87350	93901	95779
Class 4	91560	98427	100396

27.—SIGNATORIES

Dated: _____

Signed on behalf of
CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA (INC)

(Secretary)

Signed on behalf of
MINISTRY OF THE PREMIER & CABINET,
OFFICE OF STATE ADMINISTRATION

(Chief Executive)

MINISTRY OF PREMIER & CABINET, PUBLIC SECTOR MANAGEMENT OFFICE, ENTERPRISE BARGAINING AGREEMENT 1996 No. PSA AG 160 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australian
Incorporated

and

Public Sector Management Office.

No. PSA AG 160 of 1996.

Ministry of Premier & Cabinet, Public Sector Management
Office, Enterprise Bargaining Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

5 November 1996.

Order.

HAVING heard Mr R. Carlton on behalf of the Applicant and Mr J. Fortune on behalf of Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the Ministry of Premier & Cabinet, Public Sector Management Office, Enterprise Bargaining Agreement 1996 and attached hereto be and is hereby registered as an industrial agreement and shall have effect from the first pay period commencing on or after 31 October 1996.

(Sgd.) R. N. GEORGE,
Commissioner.

[L.S.]

1.—TITLE

This Agreement shall be known as the Ministry of the Premier & Cabinet, Public Sector Management Office, Enterprise Bargaining Agreement 1996".

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Scope
 4. Parties Bound
 5. Number of Employees Bound by the Agreement
 6. Definitions
 7. Date and Operation of this Agreement
 8. No Further Claims
 9. Relationship to the Parent Award
 10. Single Bargaining Unit
 11. Audit of 4% Second Tier and 1989 Structural Efficiency Principle
 12. Purpose of Agreement
 13. Context of the Agreement
 14. External Productivity
 15. Continuous Improvement
 16. Terms of Employment
 17. Right to Transfer
 18. Termination of Contract
 19. Hours of Duty
 20. Overtime
 21. Public Holidays
 22. Rates of Pay
 23. Higher Duties
 24. Employee Records
 25. Certificate of Service
 26. Expenses
 27. Payment Arrangements
 28. Effect of Agreement on Accrued Leave Entitlements
 29. Annual Recreation Leave
 30. Annual Leave Loading
 31. Long Service Leave
 32. Sick Leave
 33. Parental Leave
 34. Bereavement leave
 35. Special Purpose Leave
 36. Witness or Jury Duty Leave
 37. Skills Development Leave
 38. Leave Without Pay
 39. Motor Vehicles
 40. Performance Management
 41. Bursaries
 42. Notification of Significant Change
 43. Redundancy
 44. Dispute Settlement Procedure
 45. Union Facilities—Access
 46. Re-Open Negotiations
 47. Signatories to Agreement
- Appendix 1: Salary Schedule

3.—SCOPE

3.1 This Agreement shall apply to all officers employed in the Public Sector Management Office who are members of, or are eligible to be, members of the Civil Service Association subject to the provisions of sub-clause 3.2.

3.2 The Agreement shall not apply to employees who are signatories to the PSMO registered Workplace Agreement.

4.—PARTIES BOUND

This Agreement shall be binding according to its terms upon:

1. The Civil Service Association of Western Australia (Inc);
and
2. The Public Sector Management Office.

5.—NUMBER OF EMPLOYEES BOUND BY THE AGREEMENT

It is estimated that 91 employees will be eligible to be covered by this agreement upon registration.

Only 2 employees are currently non signatories to the PSMO Workplace Agreement, however, employees have the option to opt out of the WPA upon registration of this agreement.

6.—DEFINITIONS

PSMO—means the Public Sector Management Office

Office—means the Public Sector Management Office

The Employer—means the Chief Executive, Public Sector Management Office

Employee—means a person who is covered by this Agreement

Family—in relation to a person, means a person who is related to the employee by blood, marriage, affinity or adoption and includes a person who is wholly or mainly dependent on, or is a member of the household of, the employee (as defined in the *Equal Opportunity Act (1984)* of Western Australia)

Ordinary Rate of Pay—means the rate of pay as specified in Appendix 1 of this Agreement

Agreement—means this Enterprise Bargaining Agreement

Parties—means the employer and employee when referred to jointly in this Agreement

Manager—means Manager of a PSMO Branch

7.—DATE AND OPERATION OF THIS AGREEMENT

1. The Agreement shall operate from the pay period commencing on or after 31 October 1996, under terms of Section 41 of the *Industrial Relations Act 1979*.

2. The Agreement shall remain in operation until 1 April 1997. Discussions on renegotiating the Agreement, between the parties, shall commence not later than three (3) months before the expiry date of the Agreement.

3. This Agreement shall not be cancelled or varied during its term, unless otherwise provided for.

8.—NO FURTHER CLAIMS

1. The parties to this Agreement undertake that for the duration of the Agreement there shall be no further salary or wage increases sought or granted except for those provided under the terms of this Agreement.

2. This Agreement shall not operate so as to cause an employee a reduction in ordinary time earnings.

9.—RELATIONSHIP TO THE PARENT AWARD

1. This Agreement shall be read and interpreted wholly in conjunction with the Public Service Award 1992, the parent Award.

2. Where there is an inconsistency between this Agreement and the parent Award, this Agreement shall prevail to the extent of any inconsistency.

10.—SINGLE BARGAINING UNIT

1. This agreement has been negotiated through a Single Bargaining Unit (SBU).

2. The SBU comprises representatives from the Employer and the Union.

11.—AUDIT OF 4% SECOND TIER AND 1989 STRUCTURAL EFFICIENCY PRINCIPLE

The parties agree that matters arising from previous industrial agreements or award changes emanating from the Restructuring and Efficiency Principle of 1987 and the Structural Efficiency Principle of the 1988 and 1989 National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

12.—PURPOSE OF AGREEMENT

12.1 The purpose of this Agreement is to ensure that the Public Sector Management Office can fulfil its role to:

- Provide advice to government on structuring, managing and resourcing the public sector;
- Help Ministers and agencies to carry out government policies and improve management practices;
- Promote good management practice across the public sector.

12.2 The Agreement provides officers of the PSMO with greater flexibility in employment conditions to facilitate the achievement of their commitments to their customers. The PSMO is committed to:

- Actively consulting with customers to understand their needs;
- Providing advice and making recommendations that are consistent and based on proper analysis;
- Maintaining the highest ethical standards; and
- Continually monitoring and improving standard of service.

12.3 Based on experience since the March 1995 restructure, the achievement of current commitments to customers has necessitated a large number of these functions to be performed outside of normal hours.

The nature of PSMO related work frequently necessitates consultation with Ministers and CEOs outside of normal working hours. Attendance at functions and convening meetings, training seminars and conferences are significant ongoing requirements determining this need.

13.—CONTEXT OF THE AGREEMENT

13.1 On 30 March 1993 the Public Sector Management Office was created as a subdepartment of the Ministry of Premier and Cabinet. This change was initiated to improve productivity by ensuring direct communication between the Premier in his role as Minister for Public Sector Management and the PSMO as the government's principal source of expertise and advice on public sector management.

13.2 The strategic role of the PSMO assumed a greater importance to Government upon the abolition of the Department of the Cabinet on 1 July 1993, the abolition of the Public Service Commission in October 1994, and the subsequent revamping of the Workforce Development Management Office. PSMO staff have responded positively to these changes, absorbing a range of functions thus ensuring that gains of productivity, envisaged prior to these reorganisations, are being realised.

13.3 In March 1995 the PSMO was again rationalised which resulted in a further reduction of 60 FTEs. This represents a 47% decrease in staffing resources and given that the Office is still required to produce the same or greater outcomes, this is a considerable future productivity requirement of current staff.

13.4 The Public Sector is going through a period of significant change and sustained reform. One of the most important reforms in recent times is the introduction of new public sector management legislation which governs the administration and management of the public sector in Western Australia. The Public Sector Management Office has played the leading role in implementing the *Public Sector Management Act 1994*.

13.5 The Public Sector Management Office has provided public sector agencies with support to achieve the Government's reform agenda. In so doing, the PSMO has been required to provide sound advice, to develop management tools and techniques, and to promote the application of the reforms across the public sector. These requirements have been met whilst the PSMO has sustained a rationalisation of resources. These resource constraints will continue.

13.6 With the proclamation of the *Public Sector Management Act* in October 1994, the PSMO shifted its focus from the Public Service (approximately 25,000 public servants) to the wider Public Sector (approximately 88,000 employees). The PSMO has made this transition without any additional staff resources, in fact with significantly decreased resource.

14.—EXTERNAL PRODUCTIVITY

14.1 The PSMO contributes to savings in government as well as productivity increases across government. In this regard the PSMO has specifically contributed to the following:

- (i) input into the Independent Commission to Review Public Sector Finances;
- (ii) assisting the implementation of the Government's Public Sector Reform Agenda;
- (iii) identifying savings and improvements in management practices in the course of agency reviews;
- (iv) identifying new ways of managing Information, Information Technology and Telecommunications to help agencies achieve efficiencies; and
- (v) developing and promoting specific initiatives such as Competitive Tendering and Contracting, the Better Government Agreement and the Telecommunications Management initiatives.

15.—CONTINUOUS IMPROVEMENT

15.1 Employees are expected to contribute to a continuous Improvement Program in the PSMO by:

- (i) making regular and continuous suggestions to improve performance and productivity of the office as a whole and to improve service to the public;
- (ii) participating in project teams;
- (iii) periodically planning and initiating innovative practices, subject to approval by the Chief Executive; and
- (iv) participating with other employees in the effective operation of the Office.

16.—TERMS OF EMPLOYMENT

16.1 An employee may be employed on a full time, part-time, or fixed term contract basis.

16.2 A full time employee is an employee engaged in regular and continuing employment for an average of 40 hours per week.

- 16.3 (a) A part-time employee is an employee who is engaged in regular and continuing employment for less than the average 40 hours per week.
- (b) The rate of pay for a part-time employee will be proportionate to the hours worked relative to a full time employee.
- (c) A part-time employee will be entitled to the same leave and conditions described in this Agreement as for a full time employee proportionate to the hours worked.
- (d) Payment to a part-time employee proceeding on annual or long service leave will be calculated on a pro rata basis having regard for any variations to the employee's ordinary working hours during the accrual period.
- (e) Payment of overtime to a part-time employee will not be payable unless the total time worked in any day exceeds the ordinary average daily hours plus one hour.
- (f) Part-time employees are entitled to the Public Holidays, outlined in Clause 21 of this Agreement without variation to their fortnightly pay provided the holidays occur on a day that is normally worked.
- (g) Except with the prior agreement of the part time employee, the employer will give four weeks notice of any requirement to vary the normal days or hours of work.

16.4 Full time employees may be granted approval by the Chief Executive to work part-time subject to the operations of the PSMO not being disrupted unduly and appropriate work, for their classification and experience being available.

16.5 Part time employees may be granted approval by the Chief Executive to work full time subject to the operations of the PSMO not being disrupted unduly and work appropriate to their classification and experience being available.

17.—RIGHT TO TRANSFER

The Chief Executive may require an employee to transfer to another position, at the same level of classification, within the PSMO for operational purposes.

18.—TERMINATION OF CONTRACT

Subject to Clause 44:

- 18.1 Except in the case of gross misconduct the parties agree that one month's notice, in writing, shall be given by either the Chief Executive or an employee, as the case may be, when terminating employment, or, by the payment of forfeiture, as the case may be, of one month's ordinary rate of pay in lieu of such notice.
- 18.2 In the case of gross misconduct the employment may be terminated immediately and without notice.
- 18.3 Notwithstanding any of the provisions contained in this clause, a lesser period of notice may be agreed between the Chief Executive and an employee.

19.—HOURS OF DUTY

Flexible Working Hours

19.1 It is agreed that the provision of flexible working hours will take account of customer needs, business flexibility and the preferences of employees.

19.2 Flexible working hours are only applicable to affected employees classified at Level 5 and below.

19.3 Subject to the concurrence of the Manager, affected employees may select their own starting and finishing times within the following periods:

7.00am	to	9.30am
12.00 noon	to	2.00pm (minimum half an hour break)
3.30pm	to	6.30pm

19.4 Levels 1 to 5 employees will work an average of 40 hours per week over a 12 week cycle (6 pay periods) of 480 hours.

19.5 Unless in the Managers opinion exceptional circumstances prevail, employees utilising flexitime provisions will not accrue more than 16 hours of flexitime debits or credits in any 4 weekly (2 pay period) cycle. Credits and debits may be carried over to the next pay period.

19.6 Unless in the Manager s opinion exceptional circumstances prevail, eligible employees will not take more than 16 hours of flexi leave in any 4 weekly (2 pay period) cycle. The granting of such leave is subject to the PSMO's operational requirements.

19.7 In addition to the standard 40 hours per week, employees Level 6 and above may be required to work additional hours on an outcome basis to ensure that the needs of clients are met as they arise and the objectives of PSMO and Government are satisfied.

19.8 The working days and hours of operation will be reviewed during the life of this Agreement in consultation with the Single Bargaining Unit.

Ordinary Hours of Work

19.9 Ordinary hours of work may be worked between 7.00 am and 6.30 pm Monday to Friday and count towards the required average of 40 hours per week.

Meal Breaks

19.10 The ordinary hours of duty will be consecutive except for an unpaid meal break of not less than 30 minutes.

19.11 Employees will be expected to take an unpaid meal break after not more than 6 consecutive hours of work unless an emergency situation exists. In this situation, employees may be required to work for more than 6 hours without a break, in which case, the employee will take a meal break as soon as is possible after the emergency situation.

19.12 Subject to the provision of subclause 19.10 the time and length of meal breaks may be altered to suit the operational requirements of the PSMO and the employee.

Outside Hours Work

19.13 Attendance at functions, provision of lectures and presentations outside the ordinary hours of work may be counted as working time. With the PSMO's agreement these times may be included in hours worked or taken as time in lieu.

Working From Home

19.14 With the agreement of both parties working from home may be considered. Working from home would only be agreed to if it did not inhibit service to customers and is cost effective for the PSMO.

20.—OVERTIME

20.1 An employee will work reasonable overtime when required and authorised by the Chief Executive.

20.2 Work required to be performed by the PSMO outside the ordinary hours of 7.00 am to 6.30 pm will be treated as overtime for employees classified Level 5 and below and with the exception of employees covered by the provisions under subclauses 19.13 and 19.14.

20.3 Based on ordinary rates of pay, overtime will be calculated as follows:

- (i) The first three hour period of overtime worked Monday through to, and including, Saturday will be paid at time and a half;

- (ii) Over time worked on Monday through to, and including, Saturday after the first three hour period will be paid at double time;
- (iii) Overtime worked on Sunday will be paid at double time;
- (iv) Overtime worked on a Public Holiday will be paid at time and a half for hours during normal hours of duty and for time outside these hours at double and a half time.

21.—PUBLIC HOLIDAYS

21.1 The following days will be observed as fully paid holidays unless an officer is required to work on any of these days:

New Year's Day; Australia Day; Labour Day; Good Friday; Easter Monday; Anzac Day; Foundation Day; Queen's Birthday; Christmas Day and Boxing Day.

- 21.2 (a) When any of the days mentioned in subclause (1) of this clause falls on a Saturday or Sunday, the holiday will be observed on the next succeeding Monday.
- (b) When Boxing Day falls on a Sunday or Monday, the holiday will be observed on the next Tuesday.
- (c) In each case the substituted day will be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

22.—RATES OF PAY

22.1 An employee will be paid the ordinary rate of pay as specified in Appendix 1 applicable to his/her classification level in addition to Higher Duties Allowance and Temporary Special Allowance as applicable.

22.2 Employees will be classified according to the requirements of their position based on the application of the standard Public Sector classification system.

22.3 Standard increments within salary levels will be paid subject to satisfactory performance and appraisal.

22.4 By applying the approved productivity framework guidelines, PSMO will submit a further productivity claim to the Labour Relations Sub Committee. The claim will clearly outline the proposed productivity measures and associated savings.

A further salary adjustment will then be sought on the basis that the savings will be equally shared between Government and PSMO.

23.—HIGHER DUTIES

23.1 An employee who undertakes the duties of a higher classification will be paid proportionate to the level of duties and responsibilities assigned to the employee as follows:

- (a) for Level 6 and above positions, the employee will be paid at the rate applicable to the higher duties if the duties are undertaken for 10 consecutive working days or more; or
- (b) for Level 5 and below positions, the employee will be paid at the rate applicable to the higher levels if the duties are undertaken for 5 consecutive working days or more.

23.2 For the purposes of this clause consecutive working days does not include periods of leave or public holidays.

23.3 Periods of Higher Duties, either paid or unpaid, will be noted on the employee s records.

23.4 The higher rates of pay will apply to an employee who proceeds on normal annual leave of absence and any other approved leave of absence of not more than 4 weeks, provided the employee was in receipt of the additional payment for a continuous period of 12 months or more.

24.—EMPLOYEE RECORDS

The PSMO will keep or cause to be kept employee records showing:

- (a) the name of each employee;
- (b) the classification of the employee;
- (c) the gross and net amounts paid to the employee;
- (d) any overtime paid to and all leave taken by the employee whether paid, partly paid or unpaid;

- (e) any deductions made from the employee's pay on their behalf; and
- (f) if an employee is under 21 years of age the records must also state his or her birth date.

25.—CERTIFICATE OF SERVICE

On request of an employee and prior to the termination of service, the Chief Executive will provide a Certificate of Service containing full information as to the period of service and the nature of the duties performed by the employee.

26.—EXPENSES

26.1 The PSMO will reimburse to the employee any approved and reasonable work related expenses incurred by him/her. All requests for reimbursement must include receipts for such expenses.

26.2 Expenses associated with travel will be reimbursed at the rates set out in Schedule 1 Travelling, Transfer and Relieving Allowance (Public Service Award 1992).

27.—PAYMENT ARRANGEMENTS

27.1 Salaries will be paid fortnightly but where the usual pay falls on a public holiday, payment will be made on the previous working day.

27.2 Salaries will be paid by direct funds transfer to an account nominated by the employee at an approved bank, building society or credit union.

27.3 If this form of payment is not possible, or if some exceptional circumstances exist, agreements may be made between the employee and the Chief Executive to be paid by cheque.

28.—EFFECT OF AGREEMENT ON ACCRUED LEAVE ENTITLEMENTS

28.1 Annual leave, long service leave and sick leave (expressed as days) accrued from earlier Public Sector employment will be carried over and be recognised for the purposes of this Agreement.

28.2 Accrued annual leave, long service leave or sick leave entitlement paid during the term of this Agreement is to be at the appropriate rate the employee is entitled to under this Agreement.

29.—ANNUAL RECREATION LEAVE

29.1 Employees will be entitled to 20 days annual recreational leave for each year of service. Annual recreational leave is calculated on a calendar year basis commencing on 1 January of each year.

29.2 If the employee's services are terminated, unused accrued or pro rata annual leave will be paid out to the employee.

29.3 By agreement in writing by the parties, an equivalent benefit in payment may be accepted by the employee instead of taking annual leave.

29.4 By agreement in writing by the parties and subject to the PSMO's operational requirements, annual recreational leave may be taken at half the normal rate of pay and hence for double the period of time.

29.5 An employee on a Fixed Term Contract of more than 12 months will be credited with the same entitlement as a permanent employee. An employee on a Fixed Term Contract of less than 12 months will be credited with the same entitlement on a pro rata basis for the period of the contract.

29.6 An employee who commences with the PSMO after 1 January is entitled to pro rata annual leave for that year calculated in accordance with the following formula.

Completed Calendar Months of Service	Pro Rata Annual Leave (Working Days)
1	2
2	3
3	5
4	7
5	8
6	10
7	12
8	13
9	15
10	17
11	18

Provided that in the first and last months of an officers service the officer is entitled to pro rata annual leave of one working day for each two completed weeks of service.

29.7 An employee should normally take annual leave during the calendar year in which it accrues but the time during which the leave is taken is subject to the approval of the Chief Executive.

29.8 The Chief Executive may direct an employee who has accumulated more than 60 days leave to take this leave and may determine the date of the leave provided 4 weeks notice in writing is given.

29.9 If an employee ceases duty and has taken leave before completing the continuous service to accrue the leave, the employee must refund the value of the unearned pro rata portion, calculated at the rate of salary as at the date the leave was taken, but no refund is required in the event of the death of an employee.

30.—ANNUAL LEAVE LOADING

A leave loading equivalent to 17.5% of normal salary to a maximum of \$677.00 per four weeks leave is payable to employees proceeding on annual leave, including accumulated annual leave.

31.—LONG SERVICE LEAVE

31.1 An employee is entitled to 13 weeks long service leave after a period of seven years continuous employment.

31.2 After the first accrual of 13 weeks long service leave, long service leave will be accrued at the rate of 13 calendar days per year. Subject to the operational requirements of the PSMO this leave may be taken as it accrues.

31.3 By agreement in writing by the parties an equivalent benefit, in payment, can be accepted by the employee instead of taking long service leave.

31.4 By agreement in writing by the parties and subject to the PSMO's operational requirements, long service leave may be taken at half the normal rate of pay and hence for double the period of time.

31.5 For the purposes of determining an employee's long service leave entitlement, continuous employment:

- (i) Includes:
 - (a) any period during which the employee is absent on approved paid leave;
- (ii) Does Not Include:
 - (a) any period during which the employee is on leave without pay or parental leave;
 - (b) an equivalent period of time to be treated as unpaid leave if half pay is taken under Clause 31.4; and
 - (c) any period during which an employee is taking long service leave entitlement or part thereof.

31.6 Any public holiday occurring during any employee's long service leave is considered to be a portion of the long service leave and extra days in lieu therefore will not be granted.

31.7 The minimum period of long service leave that can be taken is 5 working days or its equivalent.

32.—SICK LEAVE

32.1 Entitlement

- (a) The PSMO will credit each full time employee with the following sick leave credits, which are cumulative:

Details	Sick Leave on Full Pay	Sick Leave on Half
on the day of initial appointment	40 hours	16 hours
on the completion of 6 months continuous service	40 hours	24 hours
on the completion of 12 months continuous service	80 hours	40 hours
on the completion of each further period of 12 months continuous service	80 hours	40 hours

- (b) An employee employed on a Fixed Term Contract for a period greater than 12 months, shall be credited with the same entitlement as a permanent employee. An employee employed on a Fixed Term Contract for a period less than 12 months shall be credited with the same entitlement on a pro rata basis for the period of the contract.
- (c) A part-time employee shall be entitled to the same sick leave credits, on a pro rata basis according to the number of hours worked each fortnight. Payment of sick leave shall only be made for those hours that would normally have been worked had the employee not been on sick leave.
- (d) Any leave without pay, including the proportion of annual recreational leave and long service leave on half pay which is not paid, will proportional impact the accreditation of sick leave to the effect of the date of accrual of leave in this clause.

32.2 Medical Certificate

- (a) An application for sick leave exceeding three consecutive working days shall be supported by the certificate of a registered medical practitioner. If the absence is due to a dental condition, the sick leave application must be supported by a certificate of a registered dentist.
- (b) The amount of sick leave granted without the production of the certificate required in subclause 32.2(a) shall not exceed, in the aggregate, 10 working days in any one credit year. (This includes 5 days for care of family member (subclause 32(11)).

32.3 Where the Chief Executive has doubts about the cause of the illness or the reason for the absence, the Chief Executive may arrange for a registered medical practitioner to visit and examine the employee, or may direct the employee to attend the medical practitioner for examination. Costs associated with such an examination will be met by the PSMO.

32.4 No sick leave will be granted with pay if the illness has been caused by misconduct of the employee or if the employee is absent from work without sufficient cause.

32.5 If the Chief Executive believes an employee is in a state of health which makes him/her a danger to fellow employees, the employee may be required to produce a report from a registered medical practitioner or be examined by a registered medical practitioner nominated by the Chief Executive. The fee for any such examination will be paid by the Chief Executive.

32.6 Where an employee is ill during the period of annual leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Chief Executive that as a result of illness the employee was confined to his/her place of residence or a hospital for a period of at least seven consecutive days, the Chief Executive may grant sick leave for the period during which the employee was confined and reinstate annual leave credits equivalent to the period of confinement.

32.7 Where an employee is ill during the period of long service leave and produces at the time, or as soon as practicable thereafter, medical evidence to the satisfaction of the Chief Executive that as a result of illness the employee was confined to his/her place of residence or a hospital for a period of at least 14 consecutive days, the Chief Executive may grant sick leave for the period during which the employee was confined and reinstate long service leave credits equivalent to the period of confinement.

32.8 An officer on leave without pay is not eligible for sick leave during the period of leave without pay.

32.9 Workers' Compensation

If an employee suffers a disability within the meaning of the *Workers' Compensation and Rehabilitation Act (1981)*, which necessitates that the employee is absent from duty, sick leave with pay will be granted to the extent of sick leave credits. In accordance with the *Workers' Compensation and Rehabilitation Act 1981*, where the claim is for workers' compensation is decided in favour of the employee, sick leave credit will be reinstated and the period of absence will be granted as leave without pay.

32.10 War Caused Illness

- (a) If an employee who produces a certificate from the Department of Veteran's Affairs stating that the employee suffers from a war caused illness, may be granted special sick leave credits of 120 hours per annum on full pay in respect to the war caused illness. These credits may accumulate up to a maximum of 360 hours and will be recorded separately to the employee's normal sick leave credit.
- (b) Every application for sick leave for war caused illness will be supported by a certificate from a registered medical practitioner as to the nature of the illness.

32.11 Care of Family Member

- (a) The employee is entitled to use a total of 5 days of his/her personal accrued sick leave to care for an ill family member.
- (b) An application for sick leave under this clause exceeding three consecutive working days shall be supported by a certificate of a registered medical practitioner.

32.12 Portability

The Chief Executive shall credit an employee additional sick leave credits up to those held at the date the employee ceased previous employment provided:

- (a) immediately prior to commencing employment with the PSMO the employee was employed in the services of:
- the Commonwealth Government of Australia; or
 - any other State of Australia; or
 - another public sector agency covered by the Public Sector Management Act 1994; or
 - a State body or authority considered eligible by the Chief Executive; and
- (b) the employee's employment with the PSMO commenced no later than one week after ceasing previous employment.

33.—PARENTAL LEAVE

33.1 Subject to subclause 33.2, an employee is entitled to take up to 52 consecutive weeks of unpaid leave for:

- (a) the birth of a child to the employee or the employee's spouse; or
- (b) the placement of a child with the employee for adoption.

33.2 To be entitled to parental leave, the employee must give the employer at least 10 weeks written notice of the employee's intention to take leave.

33.3 Absence on Parental Leave

- (a) Does not break continuity of employment of the employee.
- (b) Is not to be taken into account when calculating the period of employment for the purpose of this Agreement.

33.4 A part-time employee has the same entitlement to parental leave as a full time employee.

33.5 An employee employed on a Fixed Term Contract has the same entitlement to parental leave however the period of leave granted will not extend beyond the term of that contract.

33.6 The 52 weeks unpaid parental leave can be shared between both parents, but not taken at the same time, other than following the birth or placement of a child when the father is entitled to a minimum of one week's unpaid parental leave at the same time as his spouse.

33.7 A female employee is required to begin parental leave six weeks prior to the expected child's date of birth unless she has a medical certificate from her doctor saying she is fit to continue work.

33.8 A female employee may convert 4 weeks of accrued sick leave to paid maternity leave on the approval of the Chief Executive.

33.9 With the prior approval of the employer, an employee may accept full-time or part-time contracts of or for service for a period not exceeding the parental leave.

33.10 With the prior agreement of the employee and the employer, a portion or portions only of unused parental leave may be resumed at the employee's discretion within a 12 month period of having become entitled to that parental leave.

33.11 When returning to work, an employee must be given his/her previous position, or, if this is not available, a comparable position.

34.—BEREAVEMENT LEAVE

34.1 (a) The employee is entitled to paid leave for up to 2 days on the death of a family member.

(b) The 2 days need not be consecutive and are not to be taken during a period of any other kind of leave.

34.2 A request for such leave must be made as soon as possible and include the expected time away from work.

34.3 If requested, reasonable proof must be provided by the employee of the death and the relationship between the employee and the deceased.

34.4 Bereavement leave is not cumulative from year to year.

35.—SPECIAL PURPOSE LEAVE

35.1 The employee may be granted leave for the following:

- International and State Sports Events Leave;
- Defence Force Reserves Leave;
- State Emergency Service Volunteers Leave;
- Cultural Requirements Leave;
- Association/Union Business Leave;
- Council Leave.

35.2 The employee must submit a request for the entitlements stipulated in subclause 35.1 and the Chief Executive will consider the request having regard to the operations of the PSMO and the employee's personal circumstances.

36.—WITNESS OR JURY DUTY LEAVE

36.1 If the employee is subpoenaed or called upon as a witness to give evidence in an official capacity or as a witness on behalf of the Crown, the employee will be granted leave of absence for such period as is required to enable the employee to carry out the duties related to being a witness.

36.2 If the employee is required to serve on a jury he/she shall be granted leave of absence for the time(s) necessary to fulfil his/her duty as a juror.

36.3 Should the employee be required to serve on a jury or is subpoenaed or called upon as a witness, as outlined in subclause 36.1, he/she is not to be financially disadvantaged, and:

- (i) if fees are paid to the employee, the Chief Executive will, upon production of proof of payment of fees, pay to the employee the difference between the employee's base rate of pay and the fees paid; or
- (ii) if fees are not paid to the employee, the Chief Executive will, upon production of proof of non-payment of fees, pay to the employee the amount he/she would have received had he/she worked.

37.—SKILLS DEVELOPMENT LEAVE

37.1 The Chief Executive may grant the employee paid skills development leave for accredited and non accredited courses of study and TEE study.

37.2 In the case of accredited courses of study at Public Institutions the Chief Executive may agree to pay the required HECs fees through more flexible use of the training budget. However, if the employee does not attain satisfactory results from the study, the Chief Executive is entitled to seek reimbursement of these fees from the employee.

37.3 Paid development leave will normally be granted where the activity being undertaken:

- (a) is directly relevant to the duties being undertaken by the employee; or
- (b) is directly relevant to the business needs of the PSMO; and
- (c) enhances the career development opportunities of the employee; and
- (d) does not unduly affect or inconvenience the operations of the PSMO.

37.4 To obtain skills development leave for accredited courses and TEE study, the employee must demonstrate his/her personal commitment to learning and studying by undertaking an acceptable formal study load in his/her own time.

37.5 The Chief Executive may grant the employee leave without pay to undertake full time study for a period of up to 12 months and subject to the conditions specified in subclause 37.3

38.—LEAVE WITHOUT PAY

38.1 The employer may grant the employee leave without pay provided that:

- (a) the leave does not conflict with operational requirements; and
- (b) all time in lieu, and annual recreational leave and long service leave credits are exhausted.

38.2 Annual recreational leave and long service leave taken at half pay is considered leave without pay for the proportion of time not paid but is exempted from 38.1(b).

39.—MOTOR VEHICLES

The PSMO will support the principle of employee gaining access, during the time of this Agreement, to Government motor vehicles for private use subject to Government policy.

40.—PERFORMANCE MANAGEMENT

40.1 The Chief Executive and employee shall enter into a Performance Agreement which outlines the major functions of the employee's positions, the goals to be achieved by the employee, and assistance the employee will provide to ensure the goals are achieved. The Performance Agreement will be for a set period of time, with reasonable review dates, as negotiated by the employer and employee.

40.2 A relevant Performance Management System will be negotiated and subclause 40.1 will be achieved as soon as practicable after the signing of this Agreement.

41.—BURSARIES

41.1 The Chief Executive may grant up to five Bursaries per year, through more flexible use of the training budget on the following basis:

- (i) the proposed course of study or study tour is relevant to the operations of the PSMO;
- (ii) the proposed course of study or study tour is considered to be of benefit to the Public Sector; and
- (iii) the beneficiary will have contributed significantly to the outcomes of the PSMO

41.2 Applications for Bursaries may be called annually and selection of the beneficiaries will be made by the Chief Executive. Approvals will be in full accord with Government policy relating to interstate and overseas travel arrangements.

42.—NOTIFICATION OF SIGNIFICANT CHANGE

In cases where significant change in the workplace causes reduced job opportunities, less chance for promotion, less job security, more or fewer hours of work, a need for retraining or transfer, or a need for restructuring of jobs, the Chief Executive is obliged to tell the employee as soon as is reasonably practical after the decision has been made.

43.—REDUNDANCY

The redeployment and redundancy conditions and entitlements as they apply in the *Public Sector Management Act* and Regulations 1994 will apply to employees under the Agreement.

44.—DISPUTE SETTLEMENT PROCEDURE

44.1 In the event of any question, dispute or difficulty between the parties as to the interpretation and implementation of this Agreement the following procedures shall apply:

- (a) The CSA representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a CSA Representative.
- (b) If the matter is not resolved within 5 working days following the discussion in accordance with subclause (a) hereof the matter shall be referred by the CSA Representative to the employer or his/her nominee for resolution.

- (c) If the matter is not resolved within 5 working days of the CSA Representative's notification of the dispute to the employer it may be referred by either party to the Western Australian Industrial Relations Commission.

45.—UNION FACILITIES—ACCESS

45.1 The PSMO recognises and supports the rights of unions to organise and represent employees. Constructive and consultative labour relations are important for economic development and increased organisational productivity and rely on co-operation between the industrial partners based on mutual recognition and respect.

45.2 *Role and Responsibilities of Workplace Delegates*

As representatives of the union, workplace delegates have a legitimate role and function in assisting the union in the tasks of recruiting members, communicating with those members providing them with relevant union information and services.

Furthermore, there may be issues within the agency that relate to employee grievances. Such issues may also relate directly to the employee/employer relationship and the appropriate involvement of a workplace delegate will generally assist in resolving the grievance and thereby contributing to harmonious labour relations with the agency.

A workplace delegate also needs to be aware that the primary role of an employee is to fulfil the contract of employment and that union activities undertaken will not unreasonably interfere with work duties.

45.3 *Workplace Delegates—Role in respect to other Authorised Employee Representatives*

Where there are agreed procedures designed to deal with specific issues such as Equal Employment Opportunity and Occupational Health Safety and Welfare, for which legitimate authorised and trained representatives have been appointed to workplace, delegate will refer any such issues arising to the appropriate representative.

45.4 *The Agencies role and responsibilities*

The PSMO recognises appointed/elected workplace delegates and will provide co-operation and support, so that they are able to carry out their role and functions effectively. These functions should relate to the rights and interests of the employees in the workplace.

45.5 The parties agree to adopt the definition of a workplace as defined in the *Occupational Health, Safety & Welfare Act 1984* as a place, whether or not in an aircraft, ship, vehicle, building or other structure, where employees work or are likely to be in the course of their work.

45.6 Following the election or appointment of a workplace delegate the union will advise the PSMO in writing, of such election or appointment. The workplace delegate will be issued with written credentials by the union authorising them to act as a workplace delegate in accordance with the provisions of this clause.

45.7 The PSMO shall also recognise the authorisation of each person so elected/appointed to act in accordance with the duties of a workplace delegate. In recognising workplace delegates, the PSMO acknowledges that they have a significant role to play in the workplace. Such a role includes both rights and responsibilities.

45.8 The PSMO and workplace delegates are committed to effective consultation in the workplace, which can improve the working lives of employees and productivity of the PSMO.

45.9 Workplace delegates shall be protected from any victimisation which may arise out of their need to carry out their duties as a delegate. The PSMO recognises that workplace delegates will not be threatened or disadvantaged in any way as a result of their role as workplace delegates.

45.10 Workplace delegates shall be granted reasonable access to facilities required for the purpose of carrying out their duties. Facilities may include but not be limited to, access to relevant documents, the reasonable use of photocopiers, filing cabinets, meeting room, telephones and typing facilities. Such access to facilities shall be negotiated within the branch and shall not unreasonably be withheld or affected the operation of the PSMO.

45.11 Workplace delegates shall have the right to display union material at the workplace on a notice board provided by the PSMO.

45.12 On request, delegates shall be provided with the names and locations of new employees who are not signatories to the PSMO Workplace Agreement. It is recognised that such information is necessary to permit execution of the duties of workplace delegate.

45.13 Any dispute concerning the interpretation of this clause should be resolved within the PSMO where possible, however this does not preclude either party from seeking advice in order to resolve the dispute at any stage in the process.

45.14 The duly authorised official of the union shall on notification to the PSMO have the right to enter the agency's premises during working hours, including meal breaks, for the purpose of discussing with employees covered by this Agreement, the legitimate business of the union or for the purpose of investigating complaints concerning the application of this agreement, but shall in no way interfere with the work of employees.

46.—RE-OPEN NEGOTIATIONS

The parties undertake to re-open negotiations at least three (3) months prior to the expiry of the period of this Agreement with a view to negotiating and settling any replacement Agreement.

47.—SIGNATORIES TO AGREEMENT

Dated: _____

Signed on behalf of
CIVIL SERVICE ASSOCIATION OF
WESTERN AUSTRALIA (INC)

(Secretary)

Signed on behalf of
MINISTRY OF THE PREMIER & CABINET,
PUBLIC SECTOR MANAGEMENT OFFICE

(Chief Executive)

APPENDIX 1—SALARY SCHEDULE.

Level	Description	Current Annual	12.5% * Adjustment
Level 1	U/17 years	10,873	12,250
	17 years	12,707	14,316
	18 years	14,822	16,699
	19 years	17,157	19,330
	20 years	19,267	21,707
	1st year	21,165	23,846
	2nd year	21,817	24,580
	3rd year	22,468	25,314
	4th year	23,115	26,043
	5th year	23,766	26,776
Level 2	6th year	24,417	27,509
	7th year	25,166	28,353
	8th year	25,684	28,937
	9th year	26,450	29,800
	1st year	27,367	30,833
	2nd year	28,070	31,625
	3rd year	28,809	32,458
	4th year	29,590	33,338
	5th year	30,407	34,258
	Level 3	1st year	31,530	35,523
2nd year		32,405	36,509
3rd year		33,307	37,525
4th year		34,233	38,569
Level 4	1st year	35,503	39,999
	2nd year	36,498	41,120
	3rd year	37,522	42,274
Level 5	1st year	39,494	44,496
	2nd year	40,827	45,998
	3rd year	42,212	47,558
	4th year	43,649	49,177
Level 6	1st year	45,960	51,781
	2nd year	47,531	53,551
	3rd year	49,157	55,383
	4th year	50,893	57,339
Level 7	1st year	53,555	60,338
	2nd year	55,397	62,413
	3rd year	57,401	64,671
Level 8	1st year	60,658	68,340
	2nd year	62,991	70,969
	3rd year	65,884	74,228

Level	Description	Current Annual	12.5% * Adjustment
Level 9	1st year	69,497	78,299
	2nd year	71,938	81,049
	3rd year	74,722	84,186
Class 1		78,932	88,929
Class 2		83,142	93,672
Class 3		87,350	98,413
Class 4		91,560	103,156

* Adjustment payable in two instalments

			%
1st April 1996	Salary Repackaging	9	
	Past Productivity	2	11
1st July 1996	Endorsed Productivity Guidelines		1.5

OSBORNE CERAMIC CENTRE INDUSTRIAL AGREEMENT
No. AG 226 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Carmelo and Veronica Giuffre Trading as Osborne Ceramic
Centre.

No. AG 226 of 1996.

Osborne Ceramic Centre Industrial Agreement.

COMMISSIONER P E SCOTT.

21 October 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Osborne Ceramic Centre Industrial Agreement in the terms of the following schedule be registered on the 20th day of September 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the Osborne Ceramic Centre Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. All-In Payments

17. Pyramid Sub-Contracting
 18. Drug and Alcohol, Safety and Rehabilitation Program
- Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Osborne Ceramic Centre (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 3 employees covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.
 - (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
 - (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
 - (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).
2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of \$11.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employers approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and material
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreed classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of signing this Agreement the following will apply:

- (a) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (b) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—ALL-IN PAYMENTS

1. All-In methods of payments shall be prohibited.

2. "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or Agreement.

3. If an employer has been paying an employee an all in-rate he/she shall be required to pay to the employee the difference

(if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his period of employment.

In addition to making the appropriated taxation deductions from the employee's wages, the employer shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

4. If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

5. Any industrial action that may arise, shall be confined to the employer in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

Common Seal

Signed for and on behalf of:

The Union: _____ (signed)
Date: 26/8/96

The Company: _____ (signed)
Date: 23/8/96
Michael Giuffre
(Print Name)

APPENDIX A—WAGE RATES

	Date of Signing	1 August 1996	1 February 1997
	HOURLY RATE	HOURLY RATE	HOURLY RATE
Labourer Group 1	14.21	14.66	15.11
Labourer Group 2	13.71	14.15	14.59
Labourer Group 3	13.35	13.77	14.20
Plasterer, Fixer	14.76	15.23	15.70
Painter, Glazier	14.43	14.89	15.35
Signwriter	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

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

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

- a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

**PERTH COLLEGE (ENTERPRISE BARGAINING)
AGREEMENT 1996
No. AG 250 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Independent Schools Salaried Officers' Association of
Western Australia, Industrial Union of Workers and Perth
College Incorporated.

No. AG 250 of 1996.

Perth College (Enterprise Bargaining) Agreement 1996.

COMMISSIONER A.R. BEECH.

16 October 1996.

Order.

HAVING heard Ms T. Howe and Ms L Papaelias on behalf of the Applicants and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Perth College (Enterprise Bargaining) Agreement 1996 be registered in accordance with the

following Schedule commencing on and from the 14th day of October 1996.

[L.S]

(Sgd.) A.R. BEECH,
Commissioner.

Schedule.

1.—TITLE

This agreement shall be known as the Perth College (Enterprise Bargaining) Agreement 1996, and shall replace the Perth College (Enterprise Bargaining) Agreement 1994.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Parties to the Agreement
4. Scope of Agreement
5. Date and Duration of Agreement
6. Expiration of Agreement
7. Relationship to Parent Award
8. Single Bargaining Unit
9. Objectives
10. Salary Rates
11. Agreed Efficiency Improvements
12. Dispute Resolution Procedure
13. Other Matters
14. No Further Claims
15. No Precedent
16. Signatories

Appendix—Salary Rates

3.—PARTIES TO THE AGREEMENT

This Agreement is made between Perth College Incorporated (the College) and the Independent Schools Salaried Officers' Association of Western Australia, Industrial Union of Workers (the ISSOA), a registered organisation of employees.

4.—SCOPE OF AGREEMENT

(1) This Agreement shall apply to teachers who are employed within the scope of the Independent Schools' Teachers' Award 1976 (the Award) by the College.

(2) The number of employees covered by this Agreement is 102.

5.—DATE AND DURATION OF AGREEMENT

(1) This Agreement shall come into effect on 14th October 1996 and shall apply until 31 December, 1996.

(2) The parties agree to meet no later than six months prior to the expiration of this Agreement to review the Agreement.

6.—EXPIRATION OF AGREEMENT

On expiration of this Agreement and in the absence of the registration of a subsequent Enterprise Agreement the provisions of this Agreement shall apply until such time as a new Agreement is registered and takes effect.

7.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted in conjunction with the Award.

Where there is any inconsistency between this Agreement and the Award, this Agreement will prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

The bodies party to this Agreement have formed a single bargaining unit.

The single bargaining unit has conducted negotiations with the College and reached full agreement with the College represented by this Agreement.

9.—OBJECTIVES

The nature and purposes of this Agreement are to:

- (1) Consolidate and develop further, initiatives arising out of the Award restructuring process.
- (2) Accept a mutual responsibility to maintain a working environment which will ensure that the College

and its staff become genuine participants and contributors to the College's aims, objectives and philosophy.

- (3) Safeguard and improve the quality of teaching and learning by emphasising the upgrading of professional skills and knowledge. The College and the teaching staff acknowledge that this upgrading of skills and experience can best occur when both the College and staff share responsibility for professional development by undertaking both in-service and external courses and training partly during College time and partly during the teachers' time.

10.—SALARY RATES

(1) The salary rates prescribed in the Award, plus the 4.9% increase prescribed in the Perth College (Enterprise Bargaining) Agreement 1994 are to be increased by a minimum of 10%, as per the Appendix.

(2) This increase is to be paid in two instalments; 6% will be paid with effect from 1 February, 1996 and 4% will be paid from 1 July, 1996.

(3) In the event of any safety net adjustment being applied to the Award such adjustment shall be absorbed into the increase.

11.—AGREED EFFICIENCY IMPROVEMENTS

(1) Payment for Relief Teachers

Notwithstanding the provisions of subclause (5) of Clause 11.—Salaries of the Award, relief teachers employed for five (5) days or less may be engaged by the day or half day and paid a daily rate or a pro-rata rate on the basis of the periods worked in relation to the number of periods in the particular school day.

(2) First Teaching Appointment

A teacher, who at the end of the initial twelve months of service, is deemed by the College not to have developed adequate teaching skills, may be appointed as a temporary teacher and subject to Clause 2—Induction of Appendix 1 of the Award.

(3) Long Service Leave

As per the provisions of subclause (1) of Clause 10—Long Service Leave, of the Award, a teacher who has completed ten years' continuous service with the College shall be entitled to thirteen weeks' long service leave on full pay. From 1 January 1995, a teacher who has completed eight (8) years' continuous service with the College shall be entitled to take pro-rata long service leave on full pay, corresponding with a completed term.

(4) Promotion Positions

While maintaining the promotion structure described in the Award, the College shall have the discretion to adapt this structure to meet its educational needs. The normal process of appointment to promotion positions will be followed.

(5) Professional Development

The College is committed to an extensive programme of development in respect to Information Technology. Teaching staff are expected to support this commitment by undertaking continuing professional development outside of normal school hours with the aim of increasing individual computer literacy.

12.—DISPUTE RESOLUTION PROCEDURE

(1) A dispute is defined as any question, dispute or difficulty arising out of this Agreement:

(2) The following procedure shall apply to the resolution of any dispute:

- (a) The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.
- (b) If the parties are unable to resolve the dispute, the matter, at the request of either party, shall be referred to a meeting between the parties to the Agreement together with any additional representative as may be agreed by the parties.
- (c) If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

13.—OTHER MATTERS

The parties agree to discuss such matter that are of relevance to either the College or the staff.

14.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims, with respect to salaries or conditions, unless they are consistent with the State Wage Case Principles.

15.—NO PRECEDENT

It is a condition of this Agreement that the parties will not seek to use the terms contained herein as a precedent for other enterprise agreements, whether they involve the school or not.

16.—SIGNATORIES

Alan Good
Judith Cottier
Perth College Inc.

T.I. Howe
The Independent Schools Salaried Officers
Association, Industrial Union of Workers

APPENDIX—SALARY RATES

Step	1994 Agreement	1.2.96 + 6%	1.7.96 + 10%
1	23010	24391	25311
2	24409	25874	26850
3	25806	27355	28387
4	27419	29065	30161
5	28925	30661	31818
6	30215	32028	33237
7	31505	33396	34656
8	33117	35105	36429
9	34891	36985	38381
10	36343	38524	39978
11	37633	39891	41397
12	39247	41602	43172
13	40859	43311	44945

PETERS POULTRY SUPPLIERS ENTERPRISE AGREEMENT 1996 No. AG 254 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Food Preservers Union of Western Australia Union of
Workers

and

Inghams Enterprises Pty Ltd.

No. AG 254 of 1996.

Peters Poultry Suppliers Enterprise Agreement 1996.

COMMISSIONER A.R. BEECH.

22 October 1996.

Order:

HAVING heard Ms K. Cameron on behalf of the Applicant and Mr R. Bragg on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Peters Poultry Suppliers Enterprise Agreement 1996 be registered as an industrial agreement in accordance with the following Schedule on and from the 21st day of October 1996.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S.]

Schedule.

1.—TITLE

This Agreement shall be known as the Peters Poultry Suppliers Enterprise Agreement 1996 and shall replace the Peters Poultry Suppliers Agreement 1994 except for Clause 8.—Efficiency and Flexibility.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Incidence and Parties Bound
5. Term of Agreement
6. Relationship to Award
7. Statement of Intent
8. Terms of Wage Increase
9. Wages
10. Public Holiday Work
11. Grievance Procedure
12. Signatories

3.—AREA AND SCOPE

The Area and Scope of this Agreement shall be that prescribed in the Food Industry (Food Manufacturing or Processing) Award (No. A 20 of 1990) ("the Award"), as amended from time to time, insofar as it applies to employees of Peters Poultry Suppliers employed at the processing plant in Thornlie, Western Australia.

4.—INCIDENCE AND PARTIES BOUND

(1) This Agreement shall apply to and be binding on Peters Poultry Suppliers, a division of Inghams Enterprises Pty Limited ("the Company") and The Food Preservers' Union of Western Australia, Union of Workers ("the union") and shall apply to all employees employed at the Company's processing plant in Thornlie, who are members or are eligible to be members of the union and who are covered by the Award or any successor thereto.

(2) There are approximately 20 employees whose conditions of employment will be regulated by the terms of this Agreement.

5.—TERM OF AGREEMENT

(1) This Agreement shall operate from 12th August 1996 and shall expire on 11th August 1998.

(2) The parties to this Agreement shall begin negotiations for a new Agreement at least three months prior to the expiration of this Agreement.

(3) Following its expiry, the Agreement shall continue to operate until varied by the parties or replaced by another Agreement.

6.—RELATIONSHIP TO AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Award identified in Clause 3.—Area and Scope of this Agreement, as varied from time to time.

(2) Where there is any inconsistency between this Agreement and the Award, this Agreement shall prevail to the extent of that inconsistency. Where this Agreement is silent, Award provision shall apply.

7.—STATEMENT OF INTENT

There are three principal objectives of this Agreement. These are:

- (1) The delivery of a wage increase as prescribed by Clause 9.—Wages of this Agreement, in recognition of past co-operation of employees in achieving the present good standard of production and in recognition of subclause (2) below.
- (2) The continuation of plant efficiencies and flexibilities needed to handle fluctuating volumes of production to enable the Company to maintain its competitiveness, including the matters agreed in the Enterprise Agreement of 1994.
- (3) The need to have a flexible attitude to any task assigned and to perform a variety of functions when required, provided such functions are within an employee's level of skills and competencies.

8.—TERMS OF WAGE INCREASE

(1) The Company agrees to a wage increase of 5% effective from 12th August 1996 and a further 5% effective from first pay period on or after 1st August 1997.

(2) The parties agree that during the life of this Agreement there may be a further increase of up to 3% based on productivity outcomes agreed upon by both parties. Any dispute regarding this matter shall be dealt with in accordance with Clause 11.—Grievance Procedure of this Agreement.

(3) Except as provided in subclause (2) hereof, the union and employees of the Company undertake that no further claims will be made upon the Company in respect of any industrial matter that will increase employment costs, for the term of this Agreement.

(4) In the event that the Award is varied to include any future "Safety Net Adjustments" awarded by the Western Australian Industrial Relations Commission then such increases shall be offset against the increases in this Agreement.

9.—WAGES

(1) Full Time Employees

(a) The following wage rates are for 38 ordinary hours per week and shall come into effect on the first full pay period on or after the dates listed below:

CLASSIFICATION	12 AUGUST 1996	1 AUGUST 1997
	\$	\$
Level 1	378.94	397.89
Level 1A	388.73	408.17
Level 2	398.38	418.30
Level 3	424.56	445.78
Level 4	448.92	471.36
Level 5	485.84	510.13

(b) A Supplementary Industry Allowance based on days or hours worked will continue to be paid in addition to and separate from the base rate upon the completion of a three month probationary period. This Supplementary Industry Allowance will be included for the purpose of annual leave, sick leave, public holidays, workers compensation, etc.

(i) As at 12th August 1996:

Level 2	Base Rate	Supp. Ind. Allow.	Total
Hanging	\$398.38	\$18.38	\$416.76
Evisceration	\$398.38	\$13.65	\$412.03
Packing	\$398.38	\$8.93	\$407.31
Level 3			
Filleting/Saws	\$424.56		\$424.56

(ii) As at 1st August 1997

Level 2	Base Rate	Supp. Ind. Allow.	Total
Hanging	\$418.30	\$19.30	\$427.60
Evisceration	\$418.30	\$14.33	\$432.63
Packing	\$418.30	\$9.38	\$427.68
Level 3	Base Rate	Supp. Ind. Allow.	Total
Filleting/Saws	\$445.78		\$445.78

(2) Part Time Employees

Part time employees shall receive payment for ordinary hours of work at an hourly rate of one thirty eighth of the appropriate base rate prescribed by subclause (1) hereof. The Supplementary Industry Allowance for the appropriate level will be paid separately.

(3) Casual Employees

A casual employee shall be paid one thirty eighth of the appropriate base rate prescribed in subclause (1) hereof and in addition a loading of 20% on said base rate for all ordinary hours of work. Where applicable, the separate Supplementary Industry Allowance will be made payable (without 20% loading).

(4) Over award payments in existence as at 12th August 1996 shall be retained in full for the term of this Agreement.

10.—PUBLIC HOLIDAY WORK

(1) Employees understand that the nature of the business is such that they may be required to work overtime when the need arises. The Company may deem it necessary to work during any gazetted four day break (eg. Easter or Christmas). Employees agree to make themselves available to work one day during the break on the following basis:

- (a) Employees will not be required to work on Good Friday, Easter Sunday, Anzac Day or Christmas Day.

- (b) Award penalty rates will apply to work performed on Public Holidays.
- (c) Employees will be given 14 days' notice of any requirement to work overtime on a Public Holiday.

11.—GRIEVANCE PROCEDURE

(1) Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure.

- (a) The matter shall first be discussed between the employee affected and the appropriate supervisor. The employee may choose to be represented by the union delegate.
- (b) If not settled the matter shall be discussed between the employee, an accredited representative of the union and the appropriate representative of the Company.
- (c) If not settled the matter shall be discussed between the official of the union and an appropriate representative of the Company.

(2) A reasonable time frame shall apply to each step of the procedure as prescribed in subclause (1) hereof.

(3) While the matter in dispute is being discussed in accordance with the procedure, as prescribed in subclause (1) hereof, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

(4) It will be open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any disputes.

12.—SIGNATORIES

For and on behalf of the
Food Preservers' Union of Western Australia
Union of Workers

Joseph Bullock
Signature Date 17th September 1996
Secretary
Position of Signatory

For and on behalf of
Inghams Enterprises Pty Limited,
trading as Peters Poultry Suppliers:

P.J. Manning
Signature Date 11th September 1996
General Manager
Position of Signatory

R.M. HARMAN INDUSTRIAL AGREEMENT No. AG 94 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

R.M. Harman.

No. AG 94 of 1996.

R.M. Harman Industrial Agreement.

COMMISSIONER A.R. BEECH.

1 November 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the

Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the R.M. Harman Industrial Agreement be registered in accordance with the following Schedule commencing on and from the 1st day of November 1996.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement will be known as the R.M. Harman Industrial Agreement.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Area and Parties Bound
 4. Application
 5. Duration
 6. Dispute Settlement Procedure
 7. Single Enterprise
 8. Relationship With Awards
 9. Enterprise Agreement
 10. Wage Increase
 11. Industry Standards
 12. Clothing and Footwear
 13. Training Allowance, Training Leave, Recognition of Prior Learning
 14. Seniority
 15. Sick Leave
 16. Pyramid Sub-Contracting
 17. All-In Payments
 18. Drug and Alcohol, Safety and Rehabilitation Programme
 19. Signatories
- Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and R.M. Harman (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

(1) This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. R 14 of 1978 (the "Award").

(2) There is approximately 1 employee covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46.—Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award, the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in Appendix A—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

(1) The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year.)

(2) The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

(1) A training allowance of \$11.00 per week per employee shall be paid by the employer to the Union Education and Training Fund.

(2) Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC. The employer's approval shall not be unreasonably withheld.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled.

An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate.

Leave of absence granted pursuant to this clause shall count as service for all purposes of this Agreement.

(3) The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per subclause (2) of this clause for such purposes including, but not limited to, securing Tradesmen's Rights Certificates.

14.—SENIORITY

(1) The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

(2) When applying the "first on last off" principle it is agreed, subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

(3) It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure.

(4) An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the 4th April 1996 the following will apply:

- (1) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (2) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—PYRAMID SUB-CONTRACTING

(1) "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

(2) Provided that, where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

(3) Further provided that, when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

(4) A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

(5) Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

17.—ALL-IN PAYMENTS

(1) All-In methods of payments shall be prohibited.

(2) "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or agreement.

(3) If the company has been paying an employee an All-In rate the company shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his/her period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the company shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

(4) If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

(5) Any industrial action that may arise shall be confined to the company in breach of this clause.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation Programme as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Programme.

19.—SIGNATORIES

K. Reynolds

On behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers.

R.A. Harman

On behalf of R.M. Harman.

Dated this 4th day of April 1996.

(4) IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

- (a) Clearly state its endorsement of the BTG Drug and Alcohol Programme and comply with it.
- (b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Programme to address a meeting of employees to discuss and endorse the programme.
- (c) Authorise the attendance of appropriate company personnel eg. safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

APPENDIX A—WAGE RATES

	1 August 1995	1 February 1996	1 August 1996	1 February 1997
	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$	Hourly Rate \$
Labourer Group 1	13.75	14.21	14.66	15.11
Labourer Group 2	13.27	13.71	14.15	14.59
Labourer Group 3	12.92	13.35	13.77	14.20
Plasterer, Fixer	14.29	14.76	15.23	15.70
Painter, Glazier	13.97	14.43	14.89	15.35
Signwriter	14.26	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

(1) PRINCIPLE

Employees dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

(2) FOCUS

- Site safety and the involvement of the site safety committee.
- Peer intervention and support.
- Rehabilitation.

(3) WORKPLACE POLICY

- (a) An employee who is dangerously affected by drugs or alcohol will not be allowed to work until that employee can work in a safe manner.
- (b) The decision on an employee's ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/company representatives.
- (c) There will be no payment of lost time to an employee unable to work in a safe manner.
- (d) If this happens three times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.
- (e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- (f) An employee having problems with alcohol and/or other drugs:
 - Will not be sacked if he/she is willing to get help.
 - Must undertake, and continue with, the recommended treatment to maintain the protection of this programme.
 - Will be entitled to sick leave or leave without pay while attending treatment.

THE SHERN-DECA INDUSTRIES INDUSTRIAL AGREEMENT.

No. AG 93 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers

and

Omega Pty Ltd and Randwick Pty Ltd T/A Shern Deca Industries.

No. AG 93 of 1996.

COMMISSIONER A.R. BEECH.

1 November 1996.

Order.

WHEREAS an application for the registration of The Shern-Deca Industries Industrial Agreement was lodged in the Commission;

AND WHEREAS this matter was brought on for hearing and the applicant requested that this matter be withdrawn;

AND HAVING heard Mr G. Giffard on behalf of the applicant and there being no appearance on behalf of the respondent;

NOW THEREFORE, I the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT the application with withdrawn by leave.

[L.S.] (Sgd.) A. R. BEECH,
Commissioner.

**THE SHOP, DISTRIBUTIVE AND ALLIED
EMPLOYEES' ASSOCIATION OF WESTERN
AUSTRALIA AND PVS JOBSKILLS No. 2 RETAIL
AGREEMENT**

No. AG 258 of 1995.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia

and

Just Music Cottesloe and Others.

No. AG 258 of 1995.

COMMISSIONER R. H. GIFFORD.

30 October 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 258 of 1995.

HAVING heard Mr W. Johnston on behalf of the Applicant and Mr P. Healy on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT The Shop, Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No. 2 Retail Employees' Agreement, No. AG 258 of 1995, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement shall be known as the "The Shop, Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No.2 Retail Employees' Agreement", No. AG 258 of 1995.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Object
4. Area and Scope
5. Definitions
6. Terms of Agreement
7. Jobskills Trainee
8. Reservation
9. Signatures Clause

Schedule A — Respondents

3.—OBJECT

The object of this Agreement is to provide the form and substance of the conditions of employment, including rates of pay, applicable to adult retail trainees employed by the Company in Western Australia employed through PVS under the Commonwealth Government Jobskills program and who but for this Agreement would be covered by the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 hereinafter referred to as "the Award".

4.—AREA AND SCOPE

(1) This Agreement applies to employees engaged under the Jobskills program by the employers named in Schedule A—Respondents to this Agreement through PVS in the state of Western Australia. In so far as the terms of this Agreement vary from the terms of the Award this Agreement shall prevail. In all other respects the terms of the Award shall continue to operate.

(2) This agreement will cover approximately 10 Jobskills trainees employed through the PVS Retail Jobskills Program.

5.—DEFINITIONS

(1) "PVS" shall mean "Professional Vocational Services" of 17 Southport Street, Leederville WA 6007, who are responsible for the management of this Program.

(2) "The Company" shall mean any of the employers named in Schedule A—Respondents to this Agreement.

(3) "Jobskills Program" shall mean the trial of the Commonwealth Government's Jobskills program in the retail industry. The objective of Jobskills is to improve the long term employment prospects of people who have been unemployed for 12 months or more by equipping them with new skills, work experience and training.

(4) "Jobskills trainee" is an employee who is employed under the conditions applying in the Commonwealth Government Jobskills program guidelines.

(5) "SDA" shall mean The Shop, Distributive and Allied Employees' Association of Western Australia.

(6) "The Award" shall mean The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, No. R 32 of 1976.

6.—TERMS OF AGREEMENT

(1) The Agreement shall operate from 16 October 1995, for a period of eighteen months.

(2) The Agreement may be extended by agreement in writing between the parties for up to two further periods of six months.

(3) If not renewed, or after having been renewed twice, the Agreement shall cease.

(4) This Agreement shall not be used in the arbitration of any other matter and shall not be seen as a precedent for any other matter.

7.—JOBSKILLS TRAINEE

(1) Training Conditions

- (a) A Jobskills trainee shall attend approved on and off-the-job training prescribed in the relevant training agreement, or as notified to the Jobskills trainee by the employer or agent.
- (b) Jobskills trainees will receive over a period of up to 26 weeks a mix of supervised work experience, structured training on-the-job and off-the-job and the opportunity to practice new skills in a work environment.
- (c) Jobskills trainees may only be engaged by employers to undertake activities under the Jobskills program guidelines. The employer shall ensure that the Jobskills trainee is permitted to attend the prescribed off-the-job training and is provided appropriate on-the-job training.
- (d) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

(2) Employment Conditions

- (a)
 - (i) Jobskills trainees shall be engaged in addition to existing staff levels.
 - (ii) No existing casual or part-time employee shall have hours reduced by the employment of a Jobskills trainee.
 - (iii) Jobskills trainees shall not fill permanent positions within any retail establishment.
- (b)
 - (i) Jobskills trainees shall be engaged for a period of 26 weeks as full-time employees.
 - (ii) Notwithstanding placitum (i) above, the union and the employer may agree in writing for a period of engagement of less than 26 weeks.
- (c) Jobskills trainees shall be permitted to be absent without loss of continuity of employment to attend the off-the-job training in accordance with the training plan. However, except for absences provided under the Award, failure to attend for work or training without an acceptable cause will result in loss of pay for the period of absence.
- (d) Ordinary hours for a Jobskills trainee shall be 7.00 am to 6.00 pm Monday to Friday only. Ordinary

hours shall be 38 per week with 4 days on the job and one day of formal training off the job each week.

- (e) Overtime shall not be worked by a Jobskills trainee.
- (f) The Shop, Distributive and Allied Employees' Association of Western Australia shall be afforded reasonable access to Jobskills trainees for the purposes of explaining the role and function of the Union and enrolment of the trainee as a member.

(3) Wages

The weekly wage payable to Jobskills trainees shall be \$300.00 which rate shall be for all purposes of this Agreement and shall take account of the range and extent of training provided.

(4) Grievance Procedure

- (a) Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure:
 - (i) The matter shall first be discussed between the employee affected and the appropriate supervisor. The employee may choose to be represented by the union delegate.
 - (ii) If not settled the matter shall be discussed between the employee, an accredited representative of the union and the appropriate representative of the Company.
 - (iii) If not settled the matter shall be discussed between an official of the union and an appropriate representative of the company.
- (b) While the matter in dispute is being discussed in accordance with the procedure, as prescribed in paragraph (a) hereof, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.
- (c) It is open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute.

8.—RESERVATION

The parties to this Agreement reserve the right to seek its variation or revocation if circumstances develop in the operation of the Jobskills program which adversely affect their interests or the interests of their members to the extent that the variation or revocation is warranted.

9.—SIGNATURES CLAUSE

Name: Lia BlomSignature.....
for and on behalf of **Just Music Cottesloe**

Name: Joe CottelessaSignature.....
for and on behalf of **A J Nominees Pty Ltd T/A Cards N' Things Mirrabooka**

Name: Jeanette HollisSignature.....
for and on behalf of **Tramloop Pty Ltd T/A Softubs Australia (WA)**

Name: Ron DemarteauSignature..... 29/9/95
for and on behalf of **Community Aid Abroad Retail Pty Ltd**

Name: Stephanie KellySignature.....
for and on behalf of **Two by One Resale Boutique**

Name: Morris SavobergSignature.....
for and on behalf of **Moric Nominees Pty Ltd T/A "House" in Subiaco**

Name: Dianne SmithSignature..... 6/9/95
for and on behalf of **DMW Nominees Pty Ltd for the Lazith Unit Trust T/A Poolmart Wembley**

Name: Mark BishopSignature and Common Seal.....
for and on behalf of **The Shop, Distributive and Allied Employees' Association of Western Australia**

SCHEDULE A — RESPONDENTS

Just Music Cottesloe, 552 Stirling Highway, Cottesloe WA 6011.
Tramloop Pty Ltd T/A Softub Australia (WA), 1/37 Hutton Street, Osborne Park WA 6017.
A J Nominees Pty Ltd T/A Cards N' Things, 76 Mirrabooka Square, Yirrigan Drive, Mirrabooka, WA 6061

Community Aid Abroad Retail Pty Ltd, 328 Murray Street, Perth WA 6000

Two by One Resale Boutique, 41 Ardross Street, Ardross WA 6153

Moric Nominees Pty Ltd, T/A House in Subiaco, 177 Rokeby Road, Subiaco WA 6008

DMW Nominees Pty Ltd for the Lazith Unit Trust T/A Poolmart Wembley, Cnr. Nanson and Grantham Street, Wembley WA 6014

THE SHOP, DISTRIBUTIVE AND ALLIED EMPLOYEES' ASSOCIATION OF WESTERN AUSTRALIA AND PVS JOBSKILLS No. 3 RETAIL EMPLOYEES' AGREEMENT
No. AG 11 of 1996.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association of Western Australia

and

Bates Horseland and Others.

No. AG 11 of 1996.

COMMISSIONER R. H. GIFFORD.

30 October 1996.

Order.

REGISTRATION OF AN INDUSTRIAL AGREEMENT
No. AG 11 of 1996.

HAVING heard Mr W. Johnston on behalf of the Applicant and Mr P. Healy on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT The Shop, Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No. 3 Retail Employees' Agreement, No. AG 11 of 1996, as specified by the following schedule, be registered as an Industrial Agreement.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S]

Schedule.

1.—TITLE

This Agreement shall be known as the "The Shop, Distributive and Allied Employees' Association of Western Australia and PVS Jobskills No. 3 Retail Employees' Agreement", No. AG 11 of 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Object
4. Area and Scope
5. Definitions
6. Terms of Agreement
7. Jobskills Trainee
8. Reservation
9. Signatures Clause

Schedule A—Respondents

3.—OBJECT

The object of this Agreement is to provide the form and substance of the conditions of employment, including rates of pay, applicable to adult retail trainees employed by the Company in Western Australia employed through PVS under the Commonwealth Government Jobskills program and who but

for this Agreement would be covered by The Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977 (No. R 32 of 1976) hereinafter referred to as "the Award".

4.—AREA AND SCOPE

(1) This agreement applies to employees engaged under the Jobskills program by the employers named in Clause 9.—Signatures Clause of the Agreement through PVS in the state of Western Australia. In so far as the terms of this agreement vary from the terms of the Award, this agreement shall prevail. In all other respects, the terms of the Award shall continue to operate.

(2) This agreement will cover approximately 10 Jobskills trainees employed through the PVS Retail Jobskills Program.

5.—DEFINITIONS

(1) "PVS" shall mean "Professional Vocational Services" of 17 Southport Street, Leederville, Western Australia, 6007, who are responsible for the management of this program.

(2) "The Company" shall mean any of the employers named in Clause 9.—Signatures Clause of this Agreement.

(3) "Jobskills Program" shall mean the trial of the Commonwealth Government's Jobskills program in the retail industry. The objective of Jobskills is to improve the long term employment prospects of people who have been unemployed for 12 months or more by equipping them with new skills, work experience and training.

(4) "Jobskills trainee" is an employee who is employed under the conditions applying in the Commonwealth Government Jobskills program guidelines.

(5) "SDA" shall mean The Shop, Distributive and Allied Employees' Association of Western Australia.

(6) "The Award" shall mean The Shop Warehouse (Wholesale and Retail Establishments) State Award 1977 (No. R 32 of 1976).

6.—TERMS OF AGREEMENT

(1) The Agreement shall operate from 16 October 1995, for a period of eighteen months.

(2) The Agreement may be extended by agreement in writing between the parties for up to two further periods of six months.

(3) If not renewed, or after having been renewed twice, the Agreement shall cease.

(4) This Agreement shall not be used in the arbitration of any other matter and shall not be seen as a precedent for any other matter.

7.—JOBSKILLS TRAINEE

(1) Training Conditions

(a) A Jobskills trainee shall attend approved on and off-the-job training prescribed in the relevant training agreement, or as notified to the Jobskills trainee by the company or agent.

(b) Jobskills trainees will receive, over a period of up to 26 weeks a mix of supervised work experience, structured training on-the-job and off-the-job and the opportunity to practice new skills in a work environment.

(c) Jobskills trainees may only be engaged by employers to undertake activities under the Jobskills program guidelines. The employer shall ensure that the Jobskills trainee is permitted to attend the prescribed off-the-job training and is provided with the appropriate on-the-job training.

(d) The employer shall provide an appropriate level of supervision in accordance with the approved training plan.

(2) Employment Conditions

(a) (i) Jobskills trainees shall be engaged in addition to existing staff levels.

(ii) No existing casual or part-time employee shall have hours reduced by the employment of a Jobskills trainee.

(iii) Jobskills trainees shall not fill permanent positions within any retail establishment.

(b) (i) Jobskills trainees shall be engaged for a period of 26 weeks as full-time employees.

(ii) Notwithstanding subparagraph (i) of paragraph (a) hereof, the union and the company may agree in writing for a period of engagement of less than 26 weeks.

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

(d) Ordinary hours for a Jobskills trainee shall be 7.00 am to 6.00 pm Monday to Friday only. Ordinary hours shall be 38 per week with 4 days on-the-job and one day of formal training off-the-job each week.

(e) Overtime shall not be worked by a Jobskills trainee.

(f) The Shop, Distributive and Allied Employees' Association of Western Australia shall be afforded reasonable access to Jobskills trainees for the purposes of explaining the role and function of the Union and enrolment of the trainee as a member.

(3) Wages

The weekly wage payable to Jobskills trainees shall be \$300.00 which rate shall be for all purposes of this Agreement and shall take account of the range and extent of training provided.

(4) Grievance Procedure

(a) Any question, dispute or difficulty arising from this Agreement shall be dealt with in accordance with the following procedure:

(i) The matter shall first be discussed between the employee affected and the appropriate supervisor. The employee may choose to be represented by the union delegate.

(ii) If not settled the matter shall be discussed between the employee, an accredited representative of the union and the appropriate representative of the Company.

(iii) If not settled the matter shall be discussed between an official of the union and an appropriate representative of the company.

(b) While the matter in dispute is being discussed in accordance with the procedure, as prescribed in paragraph (a) hereof, work shall continue and the status quo as applying before the dispute shall be maintained. No party shall be prejudiced in relation to the final settlement by the continuance of work in accordance with this clause.

(c) It is open to either party at any time to seek the assistance of the Western Australian Industrial Relations Commission in resolving any dispute.

8.—RESERVATION

The parties to this Agreement reserve the right to seek its variation or revocation if circumstances develop in the operation of the Jobskills program which adversely affect their interests or the interests of their members to the extent that the variation or revocation is warranted.

9.—SIGNATURES CLAUSE

Name: Kate Gillespie Signature:Signed.....
for and on behalf of **Bates Horseland Perth**.

Name: Greg Garbellini Signature:Signed.....
for and on behalf of **Kosmic Sound and Lighting, Osborne Park**.

Name: Glenda Warburton Signature:Signed.....
for and on behalf of **Rockingham Gifts, Shop 17b Rockingham Beach**.

Name: David Skipper Signature:Signed.....
for and on behalf of **Bates Pets Paradise—Rockingham City Shopping Centre**.

Name: Mark Bishop Signature:Signed and Common Seal.....
for and on behalf of **The Shop, Distributive and Allied Employees' Association of Western Australia**.

Name: Russell Smith Signature:Signed.....
for and on behalf of **Simply Healthy, Centrepoint Shopping Centre, Bunbury.**

Name: Graeme Faulkner Signature:Signed.....
for and on behalf of **Perth Aquarium and Display Centre, Unit 4/1234 Albany Hwy, Cannington WA 6107.**

Name: Anthea Somas Signature:Signed.....
for and on behalf of **Evangelous Litis Nominees Pty Ltd T/A Park Discount Retrivation.**

Name: Lisa Ma Signature:Signed.....
for and on behalf of **Florentino Boutique Pty Ltd, Shop 4/420 Hay Street, Subiaco WA 6008.**

SCHEDULE A — RESPONDENTS

Bates Horseland, 430 Newcastle Street, Perth WA 6000.
Kosmic Sound and Lighting, 7/44 Hutton Street, Osborne Park WA 6017.

Simply Healthy, Centrepoint Shopping Centre, Bunbury WA 6230.

Rockingham Gifts, Shop 17b Rockingham Beach, Rockingham WA 6168.

Westgem Pty Ltd T/A Bates Pets Paradise, Rockingham City Shopping Centre, Rockingham WA 6168.

Perth Aquarium and Display Centre, Unit 4/1234 Albany Highway, Cannington WA 6107.

Evangelous Litis Nominees Pty Ltd T/A Park Discount Retrivation, 1013-1015 Albany Highway, East Victoria Park WA 6101.

Florentino Boutique Pty Ltd, Shop 4/420 Hay Street, Subiaco WA 6008.

—————

VINIDEX TUBEMAKERS PTY LTD (MAINTENANCE SECTION) ENTERPRISE BARGAINING AGREEMENT 1996 No. AG 280 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch

and

Vinidex Tubemakers Pty Ltd.

No. AG 280 of 1996.

Vinidex Tubemakers Pty Ltd (Maintenance Section)
Enterprise Bargaining Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

29 October 1996.

Order.

THERE being no appearance on behalf of the Applicant and Mr G.C. Cross on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 15th day of October, 1996 entitled Vinidex Tubemakers Pty Ltd (Maintenance Section) Enterprise Bargaining Agreement 1996 be registered as an industrial agreement and replaces Vinidex Tubemakers Pty Ltd (Maintenance Section) Enterprise Bargaining Agreement 1994, No. AG 84 of 1994.

[L.S] (Sgd.) G.L. FIELDING,
Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Vinidex Tubemakers Pty Ltd (Maintenance Section) Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Scope
4. Incidence and Parties Bound
5. Date and Period of Operation
6. Relationship to Parent Award
7. Single Bargaining Unit
8. Training
9. Productivity Improvement Programme
10. Wages
11. Commitments
12. Disputes Resolution Procedure

3.—AREA AND SCOPE

This Agreement shall apply to the Maintenance Section of Vinidex Tubemakers with respect to employees engaged in classifications specified in Clause 11.—Wages hereof of the Metal Trades (General) Award 1966.

4.—INCIDENCE AND PARTIES BOUND

This Agreement shall apply to and be binding upon Vinidex Tubemakers and an estimated seven (7) employees employed in the classifications set out in Clause 11.—Wages at its Perth Division, and the Automotive Food Metals Engineering Printing and Kindred Industries Union of Workers Western Australian branch.

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from 5th August, 1996 and remain in operation until 31st July, 1998 and will not continue in force after this date unless reviewed. All parties are committed to re-negotiating this Agreement and applying for its continuation, replacement, or cancellation before the expiry date.

6.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966.

(2) Where there is any inconsistency between this Agreement and the Awards stipulated, this Agreement shall prevail to the extent of the inconsistency.

7.—SINGLE BARGAINING UNIT

(1) For the purposes of this Agreement and in accordance with the decision in the January 1992 Western Australian State Wage case, a single bargaining unit has been established by way of a Consultative Works Committee. This Committee shall be comprised of the following members—

the Personnel Manager; and

two representative of the Maintenance Section Workforce.

(2) The single bargaining unit shall be given all relevant information to enable effective monitoring of the implementation of the continuous improvement programme.

8.—TRAINING

(1) The Consultative Works Committee will also act as a Training Committee to establish, implement and monitor a training programme applicable to the maintenance staff of Vinidex Tubemakers at Perth. It is the intention of the Committee that opportunities will be made available for further enhancement of both administrative and technical skills. Training may be on or off-the-job but will be accredited and linked to a competency-based career path.

(2) Areas of training identified by the representative of the Maintenance Section for inclusion in the programme are—

- Customer Service
- Total Quality Control and Management
- Restricted Electrical Licences
- Pneumatics
- Hydraulics

9.—PRODUCTIVITY IMPROVEMENT PROGRAMME

In accordance with the enterprise agreement reached in February 1994 the Productivity Improvement Programme will continue. Meetings will be held for the duration of the new agreement and will be held for the first 12 months on the following dates.

- 20th September, 1996
- 6th December, 1996
- 7th March, 1997
- 20th June, 1997

Minutes will be kept of each meeting, action plans formulated and agreed on and factual data will be used when making decisions.

Following is a list of those items that will continue to be discussed with a view to resolution.

(1) Consultation and Communication:

Two way communication between maintenance and manufacturing, management and employees and between the members of the maintenance section via the consultative meetings and weekly "tool box" meetings.

(2) Employees are to continue involvement in—

- (a) Customer Service, both internal and external.
- (b) Reducing down time, waste and replacement parts wherever possible.
- (c) Projects to improve quality and output without increasing maintenance costs.
- (d) Raising the housekeeping standards of the maintenance work areas.
- (e) Control of consumables.
- (f) Plant design and modifications.
- (g) Minimise the use of sick leave.
- (h) Minimise overtime.
- (i) Raising the priority of solving safety problems.
- (j) Reducing the machine down time.
- (k) Labour flexibility.

The review of these items will be carried out by management in February 1997.

(3) Commitment to engage in—

- (a) Support of the "non smoking site" policy.
- (b) Undertake a two day forklift training course to be completed by all members to this agreement by 6 months of signing of this agreement.
- (c) Activities that will significantly improve the productivity of the maintenance and workshop area in the next two years. Progressive improvements are to be tabled and are to be factual and documented prior to the payment of the second agreed payment. Full improvements must be in place before the renewal of the agreement on 31st July, 1998.

10.—WAGES

- (1) Wages increases are payable as per Appendix 'A'
- (2) The percentage increase and total rate shall be payable on and from the date agreed between parties.
- (3) The wage rates specified in subclause (1) hereof shall be payable for all purposes.

11.—COMMITMENTS

(1) The parties undertake that the terms of this Agreement will not be used to progress or obtain similar arrangements or benefits in any other enterprise.

(2) This Agreement shall not operate to cause any employee to suffer a reduction in ordinary-time earnings, or to depart from the standards of the Western Australian Industrial Relations Commission in regard to hours of work, annual leave with pay or long service leave with pay.

(3) There shall not be any further wage increase for the life of this Agreement, except where consistent with a State Wage Case Decision.

12.—DISPUTES RESOLUTION PROCEDURE

(1) Any question difficulty or dispute shall be dealt with pursuant to Clause 34 of the Metal Trades (General Award) 1996 No. 13 of 1965

APPENDIX 'A'

Position	Grade	7% 29/07/96			3.5% 03/02/97			3.5% 28/07/97		
		Award	Marg	Paid Rate	Award	Marg	Paid Rate	Award	Marg	Paid Rate
Foreperson	C8	482.90	187.50	687	499.50	211.50	711	499.50	236.50	736
		L/H 16.60								
Leading Hand	C8	482.90	115.50	625	509.50	137.50	647	509.50	159.50	669
		L/H 16.60								
Elect. Fit. (L/Hand)	C7	503.80	104.60	625	520.40	126.60	647	520.40	148.60	669
Elect. Fit.	C10	441.20	140.80	582	441.20	160.80	602	441.20	182.80	624
Fitter	C8	482.90	99.10	582	482.90	119.10	602	482.90	141.10	624
T/Assist	C11	409.50	144.50	554	409.50	163.56	573	409.50	183.50	593

SIGNATORIES

Signed for by the Maintenance staff of Vinidex Tubemakers Pty Limited Perth.

<u>G. Wood (signed)</u> G Wood	<u>Allen J. Bell (signed)</u> A Bell	_____
<u>K. Thickbroom (signed)</u> K Thickbroom	<u>R. Pancini (signed)</u> R Pancini	<u>John W. Wood (signed)</u> J Wood
<u>J. Depane (signed)</u> J Depane	<u>J. Sharp-Collett (signed)</u> J Sharp-Collett State Secretary Metals & Engineering Workers Union	Common Seal _____

Agreed to by Management of Vinidex Tubemakers Pty Limited Perth.

V.J. Middleton (signed)
V J Middleton

D. Mansom (signed)
D A Mansom

Dated 28 / 8 / 1996

VIS FORMWORK INDUSTRIAL AGREEMENT**No. AG 228 of 1996.**WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Vis Formwork Pty Ltd.

No. AG 228 of 1996.

Vis Formwork Industrial Agreement.

COMMISSIONER P E SCOTT.

21 October 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 and by consent, hereby orders—

THAT the Vis Formwork Industrial Agreement in the terms of the following schedule be registered on the 20th day of September 1996.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Vis Formwork Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Industry Standards
12. Clothing and Footwear
13. Training Allowance, Training Leave, Recognition of Prior Learning
14. Seniority
15. Sick Leave
16. All-In Payments
17. Pyramid Sub-Contracting
18. Drug and Alcohol, Safety and Rehabilitation Program

Appendix A—Wage Rates

Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers (hereinafter referred to as the "Union") and Vis Formwork Pty Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work on the Shire of Swan Administration in Midland covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 (the "Award"). There are approximately 6 employees covered by this Agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31 July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Award.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act, 1979 as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Award. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Award shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Award the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates.

11.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

12.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

13.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

Vis Formwork Pty Ltd recognises the need for continuous staff training and a training allowance of \$11.00 per week per employee shall be paid by our company to the Union Education and Training Fund.

1. An employee upon application in writing to John Kuljis may be granted leave with pay each year to attend course conducted or approved by the NBCITC. Approval may not be unreasonably withheld. Any dispute arising will be handled as per clause 6.

2. The scope of work covered by this Agreement applies to Commercial construction work where more than four (4) dwellings are being constructed or on projects where the total value of the contract exceeds \$284,00.

3. Maximum leave granted shall be 2 weeks per year of service with the Company. This condition will not apply to those courses which exceed two weeks duration.

4. Vis Formwork Pty Ltd shall not be liable for any additional expenses incurred in the duration of a course other than

course fees, course books and/or materials and payment of ordinary time earnings.

5. Training will only be authorised for employees who have been with the company for a minimum of six (6) months, unless otherwise agreed between the parties to the Agreement.

14.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6.—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

15.—SICK LEAVE

For sick leave accrued after the date of signing this Agreement the following will apply:

- (a) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (b) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

16.—ALL-IN PAYMENTS

1. All-In methods of payments shall be prohibited.

2. "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or Agreement.

3. If an employer has been paying an employee an all in-rate he/she shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his period of employment.

In addition to making the appropriated taxation deductions from the employee's wages, the employer shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

4. If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

5. Any industrial action that may arise, shall be confined to the employer in breach of this clause.

17.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a sub-contractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by

the sub-contractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide sub-contractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Sub-Contracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

18.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

Common Seal

Signed for and on behalf of:

The Union: _____ (signed)
Date: 26/8/96

The Company: _____ (signed)
Date: 21/8/96
John Kuljis
(Print Name)

APPENDIX A—WAGE RATES

	Date of Signing	1 August 1996	1 February 1997
	HOURLY RATE	HOURLY RATE	HOURLY RATE
Labourer Group 1	14.21	14.66	15.11
Labourer Group 2	13.71	14.15	14.59
Labourer Group 3	13.35	13.77	14.20
Plasterer, Fixer	14.76	15.23	15.70
Painter, Glazier	14.43	14.89	15.35
Signwriter	14.73	15.20	15.68

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAMME

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

- a) A person who is dangerously affected by drugs or alcohol will not be allowed to work until that person can work in a safe manner.
- b) The decision on a persons ability to work in a safe manner will be made by the safety committee, or on projects with no safety committee, by a body of at least equal numbers of employee/employer representatives.
- c) There will be no payment of lost time to a person unable to work in a safe manner.
- d) If this happens 3 times the employee shall be given a written warning and made aware of the availability of treatment/counselling. If the employee refuses help he/she may be transferred/dismissed the next time he/she is dangerously affected.
- e) For the purposes of disciplinary action a warning shall be effective for a period of 12 months from the date of issue.
- f) An employee having problems with alcohol and/or other drugs:
 - Will not be sacked if he/she is willing to get help.

- Must undertake and continue with the recommended treatment to maintain the protection of this program.
- Will be entitled to sick leave or leave without pay while attending treatment.

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will:

- a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee member(s) at the two hour BTG Drug and Safety in the Workplace training course.

WACO KWIKFORM LTD INDUSTRIAL AGREEMENT No. AG 243 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers
and

Waco Kwikform Limited.
No. AG 243 of 1996.

Waco Kwikform Ltd Industrial Agreement.

COMMISSIONER P E SCOTT.

21 October 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and there being no appearance on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Waco Kwikform Ltd Industrial Agreement in the terms of the following schedule be registered on the 1st day of October 1996.

(Sgd.) P.E. SCOTT,
[L.S] Commissioner.

Schedule.

1.—TITLE

This Agreement will be known as the Waco Kwikform Ltd Industrial Agreement.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Area and Parties Bound
4. Application
5. Duration
6. Dispute Settlement Procedure
7. Single Enterprise
8. Relationship with Awards
9. Enterprise Agreement
10. Wage Increase
11. Allowance
12. Industry Standards
13. Clothing and Footwear
14. Training Allowance, Training Leave, Recognition of Prior Learning

15. Seniority
 16. Sick Leave
 17. All-In Payments
 18. Pyramid Sub-Contracting
 19. Drug and Alcohol, Safety and Rehabilitation Program
- Appendix A—Wage Rates
Appendix B—Drug and Alcohol, Safety and Rehabilitation Program

3.—AREA AND PARTIES BOUND

This is an Agreement between The Western Australian Builders' Labourers, Painters & Plasterers Union of Workers (Hereinafter referred to as the "Union") and Waco Kwikform Ltd (hereinafter referred to as the "Company") in the State of Western Australia.

4.—APPLICATION

This Agreement shall be binding upon the Company, the Union, its officers and members, and any person eligible to be a member of the Union employed by the Company on work covered by the terms of the Building Trades (Construction) Award 1987, No. 14 of 1978 and the Building Trades (General) Award No. 31/66 (the "Awards"). There are approximately seven employees covered by this agreement.

5.—DURATION

This Agreement shall commence from the first pay period on or after the date of signing and shall continue in effect until 31st July 1997.

The parties agree to commence discussion on the terms and conditions of any future agreement three calendar months prior to the expiration of this Agreement.

6.—DISPUTE SETTLEMENT PROCEDURE

In relation to any questions, disputes or difficulties arising out of the operation of this Agreement the dispute settlement procedure that shall apply shall be in the same terms as that outlined in Clause 46 Settlement of Disputes of the Building Trades (Construction) Award 1987, No. R 14 of 1978.

7.—SINGLE ENTERPRISE

It is agreed that this Agreement applies in respect of a single enterprise as defined in Clause 41A(2) of the WA Industrial Relations Act 1979, as amended (the "Act").

8.—RELATIONSHIP WITH AWARDS

This Agreement shall be read wholly in conjunction with the Awards. Where this Agreement is silent on rates of pay and other matters pertaining to the employment relationship, the Awards shall apply. Where there is conflict between the rates of pay, conditions, allowances and other matters in this Agreement and the Awards the higher rate shall apply.

9.—ENTERPRISE AGREEMENT

It is agreed that in the event of the Union and the Company agreeing on the terms of a comprehensive enterprise agreement, this Agreement may be terminated in accordance with the requirements of the Act.

10.—WAGE INCREASE

This Agreement provides for increases in the hourly rate resulting in the wage rates in the Appendix A—Wage Rates.

11.—ALLOWANCE

It is agreed that the following allowance shall apply to employees covered by this agreement:

- a \$1.65 per hour all purpose Foreman's allowance to the designated employee/s.

12.—INDUSTRY STANDARDS

It is a term of this Agreement that the Company will continue to meet its current level of payment into the Western Australian Construction Industry Redundancy Fund and will immediately increase its level of payment into the Construction + Building Unions Superannuation Scheme to \$50 per week per employee.

13.—CLOTHING AND FOOTWEAR

1. The following items will be supplied to each employee by the Company, upon the completion of five working days.

- (a) 1 pair safety boots, and will be replaced on a fair wear and tear basis.
- (b) 2 T-shirts with collars, and will be replaced on a fair wear and tear basis.
- (c) 1 bluey jacket for each employee employed during the period 1 April to 31 October. (One issued per year).

2. The Company will also make available to each employee, when requested by them, sun screen lotion and sun brims to fit over safety helmets.

14.—TRAINING ALLOWANCE, TRAINING LEAVE, RECOGNITION OF PRIOR LEARNING

1. A training allowance of \$11.00 per week per worker shall be paid by the employer to the Union Education and Training Fund.

2. Subject to all qualifications in this clause, an employee shall, upon application in writing to and with approval of the employer, be granted leave with pay each calendar year pro-rata to attend courses conducted or approved by the NBCITC.

The employers approval shall not be unreasonably withheld, subject to the course list and course content meeting the specific requirements of the Company's quality system training needs, skills audit and job description for the employee.

The application for leave shall be given to the employer at least two weeks in advance of the date of commencement of the course.

The time of taking leave shall be arranged so as to minimise any adverse effect on the employer's operations. The onus shall rest with the employer to demonstrate an inability to grant leave where an employee is otherwise entitled. An employer shall not be liable for any additional expenses associated with an employee's attendance at a course other than:

- course fees
- course books and materials
- payment of ordinary time earnings for such absence.

For the purpose of this clause ordinary time earnings shall be defined as the agreement classification rate. Leave of absence granted pursuant to this clause shall count as service for all purposes of this agreement.

3. The employer will actively encourage employees to seek formal recognition of their skills (recognition of prior learning), and will allow leave as per (2) above for such purposes including but not limited to securing Tradesmen's Rights Certificates.

15.—SENIORITY

1. The parties agree the continuity of employment is desirable wherever possible, and that where it is not possible, employees will be retrenched in order of seniority.

2. When applying the "first on last off" principle it is agreed subject to the caveat of "all things being equal", it is intended to apply on a state basis rather than a site by site basis.

3. It is recognised that from time to time instances may arise where the employee's individual skills may be subject to this caveat. Where there is any disagreement as to the application of this the matter will be processed in accordance with Clause 6—Dispute Settlement Procedure.

4. An employee who has been retrenched by the Company shall have absolute preference and priority for re-employment/re-engagement by the Company. Where an employee is re-engaged within a period of six months the employee shall maintain continuity of service and all accrued entitlements with the Company.

16.—SICK LEAVE

For sick leave accrued after the date of ratification of this agreement the following will apply:

- (a) The Company's employees shall have the option of converting 100% of accrued sick leave entitlement to a cash payment on termination.
- (b) If an employee who has been terminated by the Company without exercising the above option is re-engaged within a period of six months, the unpaid balance of sick leave shall continue from the date of re-engagement.

17.—ALL-IN PAYMENTS

1. All-In methods of payments shall be prohibited.

2. "All-In Payments" means any system of payment that is hourly, weekly, or daily which is either in lieu of payment for overtime, or in lieu of one or more of the various award conditions such as annual leave, public holiday payments, inclement weather, etc.

Provided that All-In payments do not include casual engagement on terms prescribed by the appropriate Award or Agreement.

3. If an employer has been paying an employee an all in-rate he/she shall be required to pay to the employee the difference (if any) between the employee's actual earnings and what the employee would have earned had he/she been paid award rates and conditions during his period of employment.

In addition to making the appropriate taxation deductions from the employee's wages, the employer shall also be required to make the appropriate contributions to the C+BUSS and Portable Long Service Leave Schemes.

4. If any party is of the view that this principle has been breached or is aware of a contracting arrangement on a site that is let to circumvent the payments prescribed under the award or this clause, the matter may, if not resolved by the head contractor, be negotiated between the parties or referred to the Western Australian Industrial Relations Commission.

5. Any industrial action that may arise, shall be confined to the employer in breach of this clause.

18.—PYRAMID SUB-CONTRACTING

1. "Pyramid Sub-Contracting" is defined as the practice of a sub-contractor, to whom a sub-contract is originally awarded, sub-letting that contract or part thereof to another sub-contractor.

2. Provided that where a subcontractor does not have the technical capacity to handle a specialist section of the contract and intends to engage a specialist sub-contractor to perform that work, that section may be re-let to a specialist sub-contractor.

3. Further provided that when a sub-contract is let for labour and material, a labour-only sub-contract may be let by the subcontractor, but it is unacceptable as a principle for further labour-only sub-contracts to be re-let.

4. A bona fide subcontractor is generally an employer of labour, save for a machine owner-operator.

5. Where a disagreement arises in relation to the definition or application of the term "Pyramid Subcontracting" the parties shall discuss and determine the issue in accordance with the agreement dispute resolution procedure. In any event of a disagreement, the matter shall be negotiated further between the parties or referred to the Western Australian Industrial Relations Commission. Whilst these procedures are undertaken no industrial action shall occur.

19.—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

The parties are committed to the Drug and Alcohol, Safety and Rehabilitation program as outlined in Appendix B—Drug and Alcohol, Safety and Rehabilitation Program.

Signed for and on behalf of—

	Common Seal
The Union:	_____ (signed)
	Date: 4/9/96
The Company:	_____ (signed) (W CROSS) 1/5/96..
	Date: 1/5/96
	<u>WACO KWIKFORM LIMITED</u>
	(Print Name)

APPENDIX A—WAGE RATES

	Date of Signing	1 August 1996	1 February 1997
	HOURLY RATE	HOURLY RATE	HOURLY RATE
Yard—Labourer	\$13.35	\$13.77	\$14.20

APPENDIX B—DRUG AND ALCOHOL, SAFETY AND REHABILITATION PROGRAM

1. PRINCIPLE

People dangerously affected by alcohol, and/or drugs are a safety hazard to themselves and all other persons in the workplace.

2. FOCUS

- Site safety and the involvement of the site safety committee
- Peer intervention and support
- Rehabilitation

3. WORKPLACE POLICY

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

4. IMPLEMENTATION

To assist with the adoption and implementation with this policy the company will—

- a) Clearly state its endorsement of the BTG Drug and Alcohol program and comply with it.
- b) Provide access at an agreed time and venue for a representative of the BTG Drug and Alcohol Program to address a meeting of employees to discuss and endorse the program.
- c) Authorise the attendance of appropriate company personnel eg. Safety delegate/officer, safety committee members, union delegate, consultative committee members(s) at the two hour BTG Drug and Safety in the Workplace training course.

WEBFORGE (WA) ENTERPRISE BARGAINING AGREEMENT 1996
No. AG 253 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Webforge (W.A.).

No. AG 253 of 1996.

Webforge (WA) Enterprise Bargaining Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

3 October 1996.

Order.

HAVING heard Mr G.C. Sturman on behalf of the Applicant and Mr P.E. Reekie on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 19th day of September, 1996 entitled Webforge (WA) Enterprise Bargaining Agreement 1996 be registered as an industrial agreement.

(Sgd.) G.L. FIELDING,

[L.S] Senior Commissioner.

Schedule.

WEBFORGE (WA) ENTERPRISE BARGAINING AGREEMENT 1996

1.—TITLE

This Agreement shall be known as the Webforge (WA) Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

Clause No.	Subject
1	Title
2	Arrangement
3	Application
4	Parties Bound
5	Date and Period of Operation
6	Relationship to Parent Award
7	Objectives of the Agreement
8	Training/Career Path
9	Productivity Bonus
10	Wages
11	No Extra Claims
12	Not to be Used as a Precedent
13	National Standards
14	Continuous Improvement
15	Dispute Resolution Procedure
16	Casual Employees
17	Signatories

3.—APPLICATION

This Agreement shall apply at Webforge (WA), 24 Tennant Street, Welshpool, Western Australian, to approximately 30 employees engaged in the operations of Webforge (WA) with respect to employees engaged in the classifications specified in Clause 10, who are bound by the terms of the Metal Trades (General) Award 1966, insofar as those provisions relate to the parties referred to in Clause 4—PARTIES BOUND—of this Agreement.

4.—PARTIES BOUND

The Parties to this Agreement are:

- A. Webforge (WA)
- B. The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union, Western Australian Branch

5.—DATE AND PERIOD OF OPERATION

This Agreement shall operate from the first pay period from 3 July 1996 and shall remain in force for a period of two years up to 30 June 1998.

6.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Metal Trades (General) Award 1966, No. 13 of 1965 provided that where there is any inconsistency between this Agreement and the Metal Trades (General) Award 1966, this Agreement, shall take precedence to the extent of the inconsistency.

7.—OBJECTIVES OF THE AGREEMENT

a) It is confirmed that all parties to the Agreement are committed to real productivity gains. Further, as part of this Agreement initiatives must flow from employer, employees and Union representatives to identify means by which productivity gains will be identified, measured, achieved and maintained.

(i) Joint Consultative Committee (JCC)

A Joint Consultative Committee shall be established and shall be formed consisting of equal numbers of employer and employee representatives.

(ii) Review of Workplace Organisation

The Joint consultative Committee will conduct a review of workplace Organisation. This review shall consist of but shall not be restricted to the following:

- (a) Identification of inefficient work practices.
- (b) Rework reduction program.
- (c) Improvement in quality of service.
- (d) Reduction in Absenteeism.
- (e) Job Rotation.
- (f) Job Sharing.
- (g) Work Organisation.
- (h) Job Re-design.
- (i) Training Requirements.
- (j) Introduction to Technology.
- (k) Equal Employment Opportunity Program.
- (l) Induction Programs.
- (m) Occupational Health and Safety.
- (n) Consumables Consumption Reduction.

b) It is Agreed that:

In order to simplify the application of the requirement for a Doctors certificate, the counting of sick leave taken shall be administered from 1st January to 31st December.

An employee sent home sick will be considered to have a Doctors certificate subject to the sick leave not exceeding 2 days.

In order that annual leave may be used as a mechanism to provide flexibility, as well as a break for employees, management and individual employees shall endeavour to schedule annual leave at a time mutually suitable to both parties. Where more than four weeks of annual leave have been accumulated, the employer can request that part or all of such excess be taken, provided it is a minimum of one week and as long as prior agreement had not been reached to accumulated leave for special reasons. Where prior agreement has been reached it will be confirmed in writing, with a copy kept by the employee and on his personal file.

The provision of tea, coffee and sugar will be maintained, providing sensible utilisation continues.

Protective clothing will continue to be supplied with employees receiving the following every 12 months or where proved necessary on demand.

	BOOTS	SHIRTS	TROUSERS
Welders	1	3	3
Others	1	2	2

Employees serving less than 3 months will be required to supply suitable attire or reimburse the company for attire supplied.

8.—TRAINING/CAREER PATH

The Consultative Committee will develop a method of defining job classifications so as to enable employees wanting to improve their income by skill competency, interpreting these competency skills require.

9.—PRODUCTIVITY BONUS

The Productivity and Incentive Scheme will continue to 30 November 1998 with the benchmark standard hours calculated as previously from past performance, and the deduction increases by 115 hours saved in 1997, and a further 115 hours for 1998.

10.—WAGES

(1) In specific acknowledgement of productivity and efficiency enhancements targeted by this Agreement, wage rates of employees shall be increased by 9%. Such increases will be granted in 3 instalments on the dates as agreed by the parties as set out hereof in sub-clause (2).

(2) Wage Structure:

Classification Level	Current Rate	3/7/96	1/1/97	1/7/97
		3%	2%	4%
C14	\$375.55	386.80	394.30	409.35
C13	\$412.05	424.40	433.12	449.15
C12 (1)	\$440.70	453.90	462.70	480.35
C12 (2)	\$452.70	466.30	475.30	493.40
C12 (3)	\$457.10	470.80	480.60	498.20
C12 (4)	\$458.70	472.50	481.60	500.00
C12 (5)	\$463.10	477.00	486.25	504.80
C12 (6)	\$475.10	489.35	498.85	517.90

Payable from the first pay period after the above dates.

11.—NO EXTRA CLAIMS

It is a term of this Agreement that the Unions and all employees bound by this Agreement will not pursue any extra claims, Award or over Award for the life of this Agreement including increases arising from Award variations or decisions of the Commission other than increases that are consistent with the terms of the Agreement.

12.—NOT TO BE USED AS A PRECEDENT

This Agreement shall not be used in any manner whatsoever to obtain similar arrangements or benefits in any other plant or enterprise.

13.—NATIONAL STANDARDS

This Agreement shall not operate so as to cause an employee to suffer a reduction in ordinary time earnings or in national standards such as standard hours of work, annual leave or long service leave.

14.—CONTINUOUS IMPROVEMENT

Management, its employees and the Union/s covered by this Agreement are committed to searching for areas where improvements can be made and implementing such improvements as part of this Agreement.

15.—DISPUTE RESOLUTION PROCEDURE

(1) Where a question, dispute or difficulty arises the matter shall be initially discussed and resolved between the immediate supervisor, the employee and if so desired, his/her Union delegate.

(2) If the matter remains unresolved after the process described in subclause (1) hereof has been followed, the Union delegate shall discuss and attempt to resolve the dispute with the Operations Manager.

(3) If still unresolved, the matter shall be referred to a Senior Management representative and the full-time Union official. The parties shall then initiate steps to resolve the grievances as soon as possible.

(4) While the steps outlined in subclauses (1), (2) and (3) hereof are being followed, industrial action shall not be taken. A minimum of seven days is allowed to undertake discussions as outlined in (1)—(3) to solve the dispute.

(5) If, after step (3) the problem is not resolved, either party may refer the matter to the Western Australian Industrial Relations Commission for resolution.

(6) The parties will give each other earliest possible notice of any issue or problem which has the potential of giving rise to a dispute. All relevant facts will be recorded and clearly identified throughout these procedures.

(7) Bans or limitations will not be placed on the performance of work while procedures outlined in this clause are being followed and all actions shall be in accordance with Safe Working Practice and consistent with established custom and practices of the enterprise.

16.—CASUAL EMPLOYEES

(1) From time to time casual employees will be used to alleviate shortfalls in the permanent workforce of the enterprise. As employee engaged as a casual will be notified in writing of his/her casual status at the time of engagement.

(2) For the purposes of this Agreement, an employee shall be deemed to be casual if the expected term of employment is less than three months.

(3) The period of notice for a casual employee shall be one hour.

(4) In all other respects the terms of casual employment shall be in accordance with those prescribed by the Metal Trades (General) Award No 13 of 1965.

(5) After three months of continuous employment at the enterprise, an employee shall be become permanent.

17.—SIGNATORIES

Signed for and on behalf of Webforge (WA)

Peter Reekie

Date

6 / 9 / 96

Signed for and on behalf of
The Automotive, Food, Metals,
Engineering, Printing and
Kindred Industries Union

J. Sharp-Collett (signed)

Common Seal

Date

11 / 9 / 96

**WESTERN AUSTRALIAN DEPARTMENT OF
TRAINING TAFE INTERNATIONAL
PUBLICATIONS (WESTERN AUSTRALIA)
ENTERPRISE AGREEMENT 1996.**

No. AG 276 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Department of Training
and

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch.

No. AG 276 of 1996.

Western Australian Department of Training TAFE
International Publications (Western Australia) Enterprise
Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

4 November 1996.

Order.

HAVING heard Ms J. Ivankovich and Mr J. Kelly on behalf of the Applicant and Mr R. Knox on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 10th day of October, 1996 entitled

Western Australian Department of Training TAFE International Publications (Western Australia) Enterprise Agreement 1996 be registered as an industrial agreement.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

Schedule.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

S. 41 APPLICATION FOR AGREEMENT
BETWEEN

THE WESTERN AUSTRALIAN DEPARTMENT OF
TRAINING, TAFE INTERNATIONAL PUBLICATIONS
(WESTERN AUSTRALIA)

AND

THE AUTOMOTIVE, FOOD, METALS, ENGINEERING,
PRINTING AND KINDRED INDUSTRIES UNION OF
WORKERS (WA BRANCH).

WESTERN AUSTRALIAN DEPARTMENT OF
TRAINING TAFE INTERNATIONAL PUBLICATIONS
(WESTERN AUSTRALIA)

ENTERPRISE BARGAINING AGREEMENT 1996.

1.—TITLE

This Enterprise Agreement shall be called the Western Australian Department of Training TAFE International Publications (Western Australia) Enterprise Agreement 1996.

2.—ARRANGEMENT

Clause

- | No. | Clause |
|-----|---|
| 1. | Title of Agreement |
| 2. | Arrangement |
| 3. | Definitions |
| 4. | Scope |
| 5. | Coverage |
| 6. | Parties Bound |
| 7. | No Further Claims |
| 8. | Past Productivity |
| 9. | Term |
| 10. | Relationship to Award |
| 11. | Single Bargaining Unit |
| 12. | Objectives of Agreement |
| 13. | Productivity Improvement |
| 14. | Education Process |
| 15. | Hours of Work |
| 16. | Consultation |
| 17. | Rates of Pay |
| 18. | Dispute Resolution Procedure |
| | SCHEDULE A—Ongoing Productivity Initiatives |
| | SCHEDULE B—Rates of Pay |

3.—DEFINITIONS

“Agreement”: Shall mean the Western Australian Department of Training TAFE International Publications (Western Australia) Enterprise Agreement 1996.

“Award”: Shall mean the Printing (Government) Award 1990.

“Chief Executive”: Shall mean the person responsible for the general administration of the Department of Training and to the Minister of the Crown administering the Department

“Employee”: Shall for the purposes of this Agreement mean, someone who is referred to at Clause 4-Scope.

“Employer”: Shall mean the Chief Executive of the Western Australian Department of Training.

“TAFE International”: Shall mean the TAFE International College of the Western Australian Department of Training.

“Union”: Shall mean the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of workers(WA Branch).

“WAIRC”: Shall mean the Western Australian Industrial Relations Commission.

4.—SCOPE

This Agreement shall apply to all employees who are engaged in any of the occupations, industries or callings specified in the Printing (Government) Award 1990, and who are employed by TAFE International Western Australia's Publication Division; TAFE Publications.

5.—COVERAGE

It is estimated that, upon its registration, this Agreement shall apply to approximately 10 employees.

6.—PARTIES BOUND

The parties to this Agreement shall be the Western Australian Department of Training TAFE International Publications(Western Australia) and the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (WA Branch).

7.—NO FURTHER CLAIMS

(1) There shall be no extra claims for wage adjustments other than that which is provided by this Agreement for the duration of its term.

(2) There shall be no further claims on matters contained in this Agreement for the duration of its term.

8.—PAST PRODUCTIVITY

This Agreement includes past productivity to the date of registration.

9.—TERM OF AGREEMENT

This Agreement shall operate from the beginning of the first pay period commencing on or after the date of registration and shall remain in operation for a period of 18 months. Discussions between the employer and the employees will commence no later than three (3) month prior to the expiry date of this Agreement to determine an appropriate course of action in respect of this Agreement.

10.—RELATIONSHIP TO THE PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Printing (Government) Award 1990. Where there is an inconsistency between this Agreement and the parent Award, this Agreement shall prevail to the extent of any inconsistency.

11.—SINGLE BARGAINING UNIT

(1) This Agreement has been negotiated through a Single Bargaining Unit (S.B.U)

(2) The SBU comprises of representatives of the Union and the Western Australian Department of Training Western Australia.

12.—OBJECTIVES OF AGREEMENT

(1) It is recognised by the parties that:

- (a) TAFE International is required to operate in a highly competitive and dynamic environment, and must conduct itself as a business in its own right.
- (b) As a consequence of TAFE International's environment it is essential to create flexible, efficient and effective work practices, and the development of ongoing cooperation across the whole organisation.

(2) Consequently, it is the shared objective of both parties to:

- (a) Meet the requirements of clients through the provision of reliable, efficient, effective and competitive services.
- (b) Achieve TAFE International's mission and improve productivity and efficiency through identified improvements.
- (c) Achieve improvement and greater flexibility of working patterns and arrangements
- (d) Promote and facilitate enhanced employee relations and job satisfaction.
- (e) To facilitate a cooperative approach to the introduction of change.

13.—PRODUCTIVITY IMPROVEMENT

(1) This Agreement provides for the implementation of more flexible working arrangements to better meet the needs of TAFE International's clients, and provide employees with increased options in the way they balance their work and personal responsibilities.

(2) The parties are committed to the development and implementation of a broad agenda of initiatives designed to achieve increased efficiency and effectiveness of program and service delivery of TAFE International Western Australia

These initiatives shall include, but are not limited to:

- Customer focus
- Review and modification of work practices
- Commitment to quality improvement and continuous improvement

14.—EDUCATION PROCESS

The parties accept that it is essential for the success of this Agreement for all participants to undertake education in relation to the process of change and enterprise bargaining. The purpose of this education is to achieve broad acceptance of the process of work place reform and as such is an integral part in ensuring the success of this process.

15.—HOURS OF WORK

(1) (a) The ordinary hours of work shall be 76 hours per fortnight to be worked between the hours of 6 am to 6pm Monday to Friday. The spread of ordinary hours shall not exceed 10 hours exclusive of meal breaks.

- (i) Where there is agreement between the employer and an employee, ordinary hours may be worked over an average of 80 hours, or more, per fortnight over a four week cycle, with any agreed additional hours worked in that period accruing as an entitlement to take a mutually agreed day off with pay.
- (ii) Where there is mutual agreement between the employer and an employee accrued days may be banked and taken at any time over a twelve month period.
- (iii) At the end of the 12 month period, unused accrued days that still exist as a result of the employer's direction may be either taken in conjunction with an employees annual leave, or paid out at the ordinary rate of pay.

(b) Where there is mutual agreement between the employer and the majority of employees covered by this Agreement, the starting and finishing times for ordinary hours as stated in clause 15 (1) (a) of this Agreement may be varied.

(c) Where an employer requires an employee to work, and provides an employee/s with at least 72 hours notice, ordinary hours may also be worked between 6am and 12 noon on Saturday.

(d) Where the employer requires an employee to work ordinary hours in accordance with clause 15 (1) (c), the employer shall take into consideration the need for the equitable distribution of all ordinary hours worked on a Saturday between all competent employees in an effort not to disadvantage any employee/s.

(2) Where an employee is required and directed to work beyond the ordinary hours prescribed in this clause between Monday and Friday the payment of time and one half of the ordinary rate of pay for each hour for the first three hours and double the ordinary rate of pay thereafter shall apply.

(3) Where an employee is required and directed to work beyond the ordinary hours prescribed in this Agreement on Saturday and/or Sunday the payment of double the ordinary rate of pay shall apply.

(4) Where there is mutual agreement between the employer and employee time in lieu of overtime may be taken by the employee on the same basis as it was accrued as prescribed in sub-clause/s 13 (2) and/or 13(3) of this Agreement.

(5) A one half hour meal break shall be allowed to employees. The meal break shall be taken after no more than six (6) hours after the commencement of any day.

16.—CONSULTATION

The parties agree that they shall meet at intervals of less

than six (6) months over the term of this agreement for the express purpose of consulting over the application of the terms and conditions of this Agreement.

17.—RATES OF PAY

(1) The rates of pay shall be paid in accordance with Schedule B of this Agreement, which includes the following pay increases:

- (a) From (date of registration) 4%-which includes 1% for ongoing productivity increases in accordance with Schedule A.
- (b) From 1 February 1997 1.5%-for ongoing productivity in accordance with Schedule A.
- (c) From 1 August 1997 1.5% -for ongoing productivity in accordance with Schedule A.

(2) A once off payment of \$200 shall be payable to all full time employees covered by the Agreement who have been employed by the Department from a date prior to the date of registration of this Agreement.

18.—DISPUTE RESOLUTION PROCEDURE

In the event of any question, dispute or difficulty that may arise between the parties with respect to this Agreement, the following procedures shall apply:

- (1) The Union representative and/or the employee/s concerned shall discuss the matters with the immediate supervisor in the first instance. An employee may be accompanied by a Union Representative.
- (2) If the matter is not resolved within 5 working days the employee/s concerned shall seek the assistance from the Union Secretary.
- (3) If the matter is not resolved within a further 5 working days following the discussion in accordance with sub-clause (a) hereof the matter shall be referred by the Union Representative to the Managing Director TAFE International or his/her nominee for resolution.
- (4) If the matter is not resolved within a further 5 working days of the Union Secretary's notification of the dispute to the employer, it may be referred by either party to the Western Australian Industrial Relations Commission.

SCHEDULE A

ONGOING PRODUCTIVITY INITIATIVES

The parties agree to implement the following productivity improvements during the term of this Agreement.

CONTINUOUS IMPROVEMENT

TAFE International staff and management are committed to striving for continuous improvement in all areas of TAFE International's operations.

MULTI SKILLING & WORKPLACE FLEXIBILITY

The parties agree to consolidate the move towards the multi skilling of employees covered by this Agreement, and the development of flexible work practices based upon the skill, ability and training of employees. The activities involved in achieving this may include, but will not be limited to:

- business re-engineering of TAFE International's publications section processes including reviews of current functions and implementation of any required restructuring and/or rationalisation of the printing area, including the associated stores area.

As a consequence of the business re-engineering process, the subsequent multi skilling of all employees shall occur in the following areas of TAFE International's printing unit's operations:

- The Docu Tech printing machine; and
- Platemaking; and
- Control and care of masters; and
- Offset printing; and
- Collating; and
- Packaging; and
- Storage and distribution of stock; and
- Stock control; and

Binding ;and

Administration duties as required.

In addition, multi skilling must also be achieved in the following areas to the stated levels:

- At least 2 employees shall be capable of guillotine operation; and
- At least 2 employees shall be trained and be competent in the use of the forklift.

MILESTONES:

The parties agree that the following productivity improvements shall occur immediately following the registration of this Agreement.

- All breaks shall, where practical, be taken at staggered intervals by employees, and where it is both practical and safe to do so shall not result in the shutting down of production machinery.
- All employees who have been provided with the necessary training shall be performing flexible work tasks as required by the employer within the scope of their skills and abilities
- Subject to written agreement with the Civil Service Association, employees covered by this Agreement shall assume duties in the stores area of TAFE International's printing operations.
- The parties agree to work towards maintaining a minimum rate of faulty products of less than 1%.

MILESTONE:

The parties agree that the following shall be achieved by 1 February 1997:

- Multi skilling of all employees in the stated areas and workplace flexibility targets shall be achieved to at least a level of 50%.

TARGETS:

The parties agree that the following shall be achieved 1 August 1997

- Multi skilling of all employees in the stated areas and workplace flexibility targets shall be completed.

BENEFITS:

- Greater efficiency and effectiveness in printing area as a result of multi skilling.
- Increased productivity as a result of flexible work practices.
- Demonstrated improvement in productivity through the elimination of production equipment down time.

QUALITY SYSTEMS

- The parties agree to the establishment and implementation of quality assurance programmes which meets or exceeds TAFE International's requirement to maintain competitiveness.

MILESTONES:

The parties agree that by 1 February 1997 the following shall be achieved:

- The employer shall have determined what quality assurance program is the most appropriate for TAFE International's printing operations; and
- In conjunction with the employer, the employees shall have identified what work practices may need to be altered, maintained and/or adopted in order facilitate the attainment of the identified quality assurance program; and
- Where changes have been identified by the employees, and agreed to by the employer they have been implemented.

TARGET:

The parties agree that by 1 August 1997 the following shall be achieved:

- TAFE International's printing operation has reached a standard that will result in the attainment of the identified quality assurance program.

CUSTOMER FOCUS

- The parties agree to implement customer focus strategies and programmes to ensure continuous improve-

ment of services which meets the needs of clients and students. It is recognised by the parties that they work in a competitive environment where a high standard of customer service is paramount. Strategies to be implemented may include, but are not limited to:

- surveys of customers (internal or external) as appropriate and implement strategies improving customer service as identified through the surveys.

MILESTONE : Customer/Client focus.

- The parties agree that by the 1 February 1997 the following shall be achieved:
- All staff and teams can clearly identify their key customers and are aware of their importance to the ongoing existence of the organisation.
- There are formal processes in place for staff and managers to liaise with customers on a regular basis for the purpose of assessing levels of satisfaction and identifying areas of improvement for the delivery of services.
- Information obtained through this process is communicated to all staff by the employer.
- Performance targets are in place relating to customer satisfaction and all staff and teams are committed to achieving those targets.

TARGET:

The parties agree that by 1 August 1997 the following shall be achieved:

- As a result of ongoing liaison with customers, new and improved services are provided.

DEVELOPMENT:

The parties agree to implement strategies for the development of TAFE International and staff. These strategies may include, but are not limited to:

- a commitment to and involvement of employees to the strategic planning processes
- a commitment by management to provide employees with opportunities for career development
- the development of a training needs analysis for the requirement of the TAFE International and a training plan for employees
- approved and accredited training packages/courses identified to meet the professional development of employees
- training packages/courses should recognise the professional development of and skill enhancement for employees which link with the career path for employees.
- the use of performance management to identify training needs of employees

MILESTONE:

The parties agree that the following shall be achieved by 1 February 1997

- The employer shall have completed a "skills audit" of all employees covered by this Agreement and shall develop a training program which will facilitate the achievement of multi-skilling and increased workplace flexibility; and
- The employer shall be in the process of providing the identified training to employees.

TARGET:

The parties agree that by 1 August 1997 the following shall be achieved:

- The identified training shall have been completed.

BENEFIT:

- As a result of the development process, workplace flexibility and multi skilling targets will be capable of being attained targets resulting in a more efficient, effective and productive workplace.

PRODUCTIVITY IMPROVEMENT AND RECOGNITION:

In recognition of a commitment of staff at all levels within the Western Australian Department of Training to the process

of ongoing productivity initiatives, a productivity based salary increase will be paid on the following basis:

- a) On registration of Agreement —1%
- b) 1 February 1997—1.5%
- c) 1 August 1997—1.5%

The 1% payable on registration of this Agreement is included in the 4% in column 2 of Schedule B to this Agreement.

The salary increases prescribed in items (b) and (c) will be dependent on :

- (1) the continued commitment of the parties to the objects of the agreement and the implementation of the initiatives and reforms included within it;
- (2) whether the reforms agreed have been implemented or whether they are in the process of being implemented; and
- (3) whether defined milestones/ targets included in this agreement as a measure of increase productivity, efficiency or effectiveness, have been met.

SCHEDULE B

RATES OF PAY

(A) Current rate of pay

(B) 4% wage increase from date of registration

(C) 1.5% wage increase, 1 February 1997, subject to the achievement of ongoing productivity targets as prescribed in Schedule A.

(D) 1.5% wage increase, 1 August 1997, subject to the achievement of ongoing productivity targets as prescribed in Schedule A.

	(A)	(B)	(C)	(D)
PRINTING WORKER				
Level 1	406.30	424.58	430.95	437.41
Level 2	432.90	450.22	456.96	463.82
Level 3A	456.40	474.66	481.78	489.00
Level 3B	478.80	497.92	505.42	513.00
PRINTING TRADESPERSON				
Level 4	492.80	512.51	520.20	528.00
Level 5	516.70	537.37	545.42	553.61
Level 6	540.20	561.81	570.24	578.79
Level 7	564.70	587.29	596.10	605.03
PRINTING OFFICER				
Level 8	588.20	611.73	620.90	630.22
Level 9	611.70	636.17	645.71	655.40
Level 10	635.20	660.61	670.52	680.57
Level 11	693.00	720.72	731.53	742.50

SCHEDULE C

SIGNATORIES TO THE AGREEMENT

The following signatories are authorised to sign this Agreement on behalf of the respective organisations party to this Agreement.

Signed for and on behalf of the *Western Australian Department of Training* by

Ian C. Hill (signed)

name and date

11/9/96

in the presence of

Anne Wright (signed) 11/9/96

name and date

Signed for and on behalf of the *Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers (WA Branch)* by

G. Bucknall (signed)

name and date

11/9/96

in the presence of

J. Sharp-Collett (signed)

name and date

Common Seal

**WESTERN AUSTRALIAN INDUSTRIAL
RELATIONS COMMISSION (ASSOCIATES TO
MEMBERS OF THE COMMISSION) ENTERPRISE
BARGAINING AGREEMENT 1996
No. PSA AG 161 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Civil Service Association of Western Australia
Incorporated

and

Hon Min for Labour Relations.

No. PSA AG 161 of 1996.

Western Australian Industrial Relations Commission
(Associates to Members of the Commission) Enterprise
Bargaining Agreement 1996.

PUBLIC SERVICE ARBITRATOR
COMMISSIONER R.N. GEORGE.

5 November 1996.

Order.

HAVING heard Ms J. Gaines on behalf of the Applicant and Mr R. Cantrell on behalf of the Respondent and by consent, the Public Service Arbitrator, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Agreement known as the Western Australian Industrial Relations Commission (Associates to Members of the Commission) Enterprise Bargaining Agreement 1996 attached hereto be and is hereby registered as an industrial agreement and shall have effect on and from 25 October 1996.

[L.S.] (Sgd.) R.N. GEORGE,
Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Western Australian Industrial Relations Commission (Associates to Members of the Commission) Enterprise Bargaining Agreement 1996.

2.—ARRANGEMENT

1. Title
 2. Arrangement
 3. Definitions
 4. Parties to the Agreement
 5. Scope of Agreement
 6. Date and Duration of Agreement
 7. Relationship to Parent Award
 8. Single Bargaining Unit
 9. Audit of 4% 2nd Tier and 1989 Structural Efficiency Principles
 10. Objectives
 11. Salary Rates
 12. Parental Leave
 13. Family Carer's Leave
 14. Bereavement Leave
 15. Sick Leave
 16. Public Holidays
 17. Family/Ceremonial/Cultural Leave
 18. Annual Leave Loading
 19. Annual Leave
 20. Meal Allowance
 21. Hours of Duty—Associates' Commitment
 22. Notification of Change
 23. Dispute Resolution Procedure
 24. No Further Claims
 25. Potential Number of Associates Under this Agreement
 26. Signatures of Parties to the Agreement
- Appendix A—Strategic/Tactical Objectives for Access to the Pay Rise of 2%

Appendix B—Criteria for Access to the Second Pay Rise of 1%

Appendix C—Corporate Objectives, Strategies and Outcomes

3.—DEFINITIONS

In this Agreement the following expressions shall have the following meaning:

- "Associates" means those Associates appointed and holding office under Section 93 of the Industrial Relations Act 1979.
- "Agreement" means the Western Australian Industrial Relations Commission (Associates to Members of the Commission) Agreement 1996.
- "Union" means the Association listed as a party to this Agreement in Clause 4 of this Agreement.
- "Members of the Commission" has that meaning as defined in Section 7 of the Industrial Relations Act 1979 (hereinafter called the Act).
- "Relevant Commission Member" means the Member of the Commission whose Associate an Associate has been appointed to be.
- "Honourable Minister" means the Minister for Labour Relations.
- "Commission" means the Western Australian Industrial Relations Commission as defined in Section 7 of the Act.

4.—PARTIES TO THE AGREEMENT

This Agreement is made between the Honourable Minister and the Civil Service Association of Western Australia Incorporated, a registered organisation of employees.

5.—SCOPE OF AGREEMENT

This Agreement shall apply to all Associates holding office under Section 93 of the Act.

6.—DATE AND DURATION OF AGREEMENT

(1) This Agreement shall operate on and from 25 October 1996 and shall apply until the 30th June 1997.

(2) The parties to this Agreement agree to re-open negotiations six months prior to the expiry of the period of this agreement with the view to establishing a new Enterprise Agreement.

7.—RELATIONSHIP TO PARENT AWARD

(1) This Agreement shall be read and interpreted in conjunction with the Government Officers Salaries, Allowances and Conditions Award (1989) and subject to the Act.

(2) Where there is any inconsistency between this Agreement and the Award and subject to the Act (as amended), this Agreement will prevail to the extent of the inconsistency.

8.—SINGLE BARGAINING UNIT

(1) The parties to this Agreement have formed a Single Bargaining Unit (SBU).

(2) The SBU which comprises Associates from the Western Australian Industrial Relations Commission and the Civil Service Association of Western Australia (CSA) and officers of the Department of The Registrar representing the Honourable Minister has conducted negotiations and reached full agreement with the employer as represented by this Agreement.

9.—AUDIT OF 4% 2ND TIER AND 1989 STRUCTURAL EFFICIENCY PRINCIPLES

The parties agree that matters arising from previous Industrial Agreements and Award changes emanating from the "Restructuring and Efficiency Principle" of 1987, the Structural Efficiency Principles of the 1988 and 1989 of the National and State Wage Cases shall not be counted when considering the productivity benefits and salary improvements arising from this Agreement.

A complete audit of Structural Efficiency initiatives since the advent of Restructuring and Efficiency Principles of 1987 has been completed and all parties confirm that none of the previous initiatives form part of this Agreement.

10.—OBJECTIVES

The shared objectives of the parties are stated under two categories—core objectives and Commission objectives.

(1) Core Objectives

These are a set of objectives and principles which are shared in common by the parties to this Agreement and the Department of the Registrar Enterprise Bargaining Agreement. The inclusion of these common or core objectives recognises the collective enterprise focus of both Agreements.

- (a) to improve productivity, effectiveness and efficiency;
- (b) to ensure that the gains achieved from improved productivity are shared by the employees, employer, clients and the Government on behalf of the community;
- (c) to develop and pursue change on a co-operative basis;
- (d) to promote increased career and skill development, job satisfaction and to gain employment and promotion opportunities;
- (e) to promote health and safety and equal employment opportunity for all employees;
- (f) to facilitate greater flexibility in the allocation of human and other resources; and
- (g) to promote the development of trust and motivation and to continue to foster enhanced employee relations by treating all employees in a fair and equitable manner.

(2) Commission Objectives

The shared objectives and principles of the parties to this Agreement as they relate to the specific needs of the Commission are as follows:

- (a) Associates are appointed to the relevant Commission member and are accountable/responsible to and subject to direction by the member of the Commission to whom each Associate is appointed.
- (b) The Associate does whatever is necessary and required by the relevant Commission member to enable the efficient and expeditious performance of his/her functions by that Commission member.
- (c) An Associate's duties are those which the relevant Commission member requires that Associate to perform. An Associate's duties shall continue to include assisting in the management of Chambers as directed, including where directed, training other staff in Chambers and liaising with other officers of the Commission to assist them to meet the requirements of the relevant Commission member having regard to Clause 10(2)(a) and (b) hereof.
- (d) Associates may upon the direction of the relevant Commission member train to acquire further skills in management and /technology.

(3) Nothing in this Agreement shall be read as requiring an Associate to act contrary to Clause 10(2) hereof.

11.—SALARY RATES

(1) The salary rates prescribed in the Award are to be increased in the following manner:

- (a) On registration of the Agreement an increase of 6%—2% of this increase is subject to Cabinet approval of the attainment of five of the seven strategic/tactical objectives specified in Appendix A.
- (b) A second increase of 1% from the first pay period on or after 1 January 1997 subject to the attainment of the initiatives specified in Appendix B.
- (c) The objectives and initiatives referred to in paragraphs (a) and (b) of this subclause reflect the core and common objectives set out in Clause 10.—Objectives, of this Agreement. In this context Appendices A, B and C of this Agreement specify the same objectives and initiatives set out in Appendices A and C of the Department of the Registrar, Western Australian Industrial Relations Commission, Enterprise Bargaining Agreement 1996 and the achievement of those objectives and initiatives are to be

measured by aggregating the outcomes under both Agreements.

(2) The salary increases outlined are in addition to the first and second arbitrated safety net adjustments, however, the third arbitrated safety net shall be absorbed into this Agreement.

(3) The salary increases are as follows:

(a)

LEVEL 3 INCREMENT	CURRENT SALARY	SALARY UPON REGISTRATION OF THE AGREEMENT 6% (2% SUBJECT TO ACHIEVEMENT OF STRATEGIC/TACTICAL OBJECTIVES AT APPENDIX A)	SALARY AS AT 1 JANUARY 1997 (SUBJECT TO ATTAINMENT OF INITIATIVES AT APPENDIX B) 1%
1st Year	31,530	33,447	33,781
2nd Year	32,405	34,375	34,719
3rd Year	33,307	35,332	35,685
4th Year	34,233	36,314	36,678

(b) Where an Associate is to be paid at different classification levels, be it on an ongoing or temporary basis, then the salary payable will be the salary available under the Award adjusted to reflect the pay increases available under this Agreement.

(4) Payment of the second salary increase is dependent on specific performance targets being met as outlined in Appendix B of this Agreement.

(5) Subject to sub clause (4) if any of the performance targets outlined in Appendix B as being applicable to the payment of the second pay rise are not met then that pay rise shall be deferred in accordance with the assessment method outlined at Appendix B of this Agreement.

(6) Where a target specified in Appendix B of this Agreement as being applicable to the payment of a salary increase is unable to be met due to management or Government policy beyond the control of the parties it shall not affect the granting of salary increases under this Agreement.

(7) The parties agree that where deferral of a pay increase under this Agreement is contemplated under Sub Clause (8) they will meet to discuss issues which may be preventing Associates from accessing such pay increases.

(8) Payment/Deferral of Second Salary Increase

- (a) Where a deferral of the second pay increase occurs, a re-assessment of the relevant performance target(s) shall be made on April 1, 1997 and if the performance target(s) is/are judged to have been met the deferred pay rise shall be operative from that date.
- (b) Should the reassessment indicate that the performance target(s) have still not been met then the second pay rise shall be dealt with as per Subclause (9) of this Clause.

(9) Incorporation of Deferred Pay Rises Into Subsequent Agreement

Reassessment of the deferred pay rise will be made on June 30, 1997. Should this reassessment indicate that the performance target(s) have been met then the deferred pay rise shall be incorporated into any new Agreement and shall be paid from the operative date of the Agreement. If, however, the performance target(s) for any deferred pay rise is still not being met then the deferral shall continue but be subject to further reassessment each three months thereafter, notwithstanding that this will occur during the term of any new Agreement between the parties.

12.—PARENTAL LEAVE

(1) Definitions

- (a) For the purposes of this clause "Associate" includes full time, part time, permanent and fixed term contract officers appointed and holding office as an Associate.
- (b) "Replacement Associate" is an officer specifically engaged to replace an Associate proceeding on parental leave.

(2) Eligibility for Parental Leave

- (a) An Associate is entitled to a period of up to 52 weeks' unpaid parental leave in respect of the birth of a child to the Associate or the Associate's spouse/partner.
- (b) Where the Associate applying for the leave is the partner of a pregnant spouse, one week's annual leave

may be taken at the birth of the child concurrently with parental leave taken by the pregnant spouse.

- (c) An Associate adopting a child under the age of five years shall be entitled to three weeks' parental leave at the placement of the child and a further period of parental leave up to a maximum of 52 weeks.
- (d) An Associate seeking to adopt a child shall be entitled up to two days' unpaid leave to attend interviews or examination required for the adoption procedure. Associates working or residing outside the Perth metropolitan area are entitled to an additional day's leave. The Associate may take any paid leave entitlement in lieu of this leave.
- (e) Subject to sub-clause (2)(b) of this clause, where both partners are officers of the Commission appointed under the Act the leave shall not be taken concurrently except under special circumstances and with the approval of the relevant Commission Member.

(3) Other Leave Entitlements

- (a) An Associate proceeding on parental leave may elect to utilise any accrued annual leave or accrued long service leave for the whole or part of the period of parental leave.
- (b) An Associate may extend the maximum period of parental leave with a period of accrued annual leave, accrued long service leave or leave without pay subject to the relevant Commission member's approval.
- (c) An Associate on parental leave is not entitled to paid sick leave and other paid award absences.
- (d) Where the pregnancy of an Associate terminates other than by the birth of a living child then the Associate shall be entitled to such period of paid sick leave or unpaid leave for a period certified as necessary by a registered medical practitioner.
- (e) Where a pregnant Associate not on parental leave suffers illness related to the pregnancy or is required to undergo a pregnancy related medical procedure the Associate may take any paid sick leave to which she is entitled or such further unpaid leave for a period certified as necessary by a registered medical practitioner.

(4) Notice and Variation

- (a) An Associate shall give not less than four weeks' written notice to the relevant Commission member of the date the Associate proposes to commence parental leave stating the period of leave to be taken.
- (b) An Associate proceeding on parental leave may elect to take a shorter period of leave and may at any time during that period of leave elect to reduce or extend the period stated in the original application provided four weeks' written notice is provided.

(5) Replacement Employee

Prior to engaging a replacement Associate the Commission shall inform the person of the temporary nature of the appointment and the entitlements relating to return to work of the Associate on parental leave.

(6) Return to Work

- (a) An Associate shall confirm the intention to return to work by notice in writing to the Commission and the Commission member not less than four weeks prior to the expiration of the period of parental leave;
- (b) An Associate on return from parental leave shall be entitled to the position which the Associate occupied immediately prior to proceeding on parental leave. Where an Associate was transferred to a safe job pursuant to sub-clause (5) hereof the Associate is entitled to return to the position occupied immediately prior to the transfer.
- (c) Where the position occupied by the Associate no longer exists the Associate shall be entitled to a position of the same classification level within the Associate's competence and skills.

(7) Effect of Leave on Employment Contract

- (a) Fixed Term Contract
An Associate employed for a fixed term contract shall have the same entitlement to parental leave, however the period of leave granted shall not extend beyond the term of that contract.
- (b) Continuous Service
Absence on parental leave shall not break the continuity of service of an Associate but shall not be taken into account in calculating the period of service for any purpose under the relevant award or this agreement.
- (c) Termination of Employment
An Associate on parental leave may terminate employment at any time during the period of leave by written notice in accordance with the Government Officers Salaries, Allowances and Conditions Award (1989).

13.—FAMILY CARER'S LEAVE

(1) Associates covered by this Agreement may with the approval of the relevant Commission member use up to five days accrued sick leave in any calendar year in accordance with this clause to provide care for another person who is ill, subject to:

- (a) the Associate having available not less than ten days accrued or pro rata sick leave for their own use in that calendar year; and
- (b) the Associate being a person with family responsibility; and
- (c) the person concerned being either:
 - (i) a member of the Associate's immediate family; or
 - (ii) a member of the Associate's household.
- (d) production of evidence satisfactory to the relevant Commission member in proof of the illness of the other person in accordance with Clause 22 Sub-clause 5 of the parent award with the words "sick leave" substituted with the words "family carer's leave".
- (e) the term "immediate family" includes:
 - (i) a partner (including a spouse or de facto spouse) of the Associate. A partner means a person who lives with the first mentioned person on a bona fide domestic basis although not legally married to that person; and
 - (ii) a child or an adult child (including an adopted child, a step child or an ex nuptial child), parent, grandparent, grandchild or sibling of the Associate or partner of the Associate.

(2) the Associate shall, wherever practicable, give the relevant Commission member notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the Associate, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the Associate to give prior notice of absence, the Associate shall notify the relevant Commission member by telephone of such absence.

(3) The relevant Commission member having regard to the need and nature of the care required may approve further periods of family carer's leave, utilising short leave, accrued annual leave or long service leave entitlements, as is necessary in the circumstances.

(4) An Associate may elect with the consent of the relevant Commission member to take unpaid leave, for the purposes of providing care to an immediate family member who is ill.

14.—BEREAVEMENT LEAVE

- (1) On the death of:
 - (a) the spouse or defacto spouse of an Associate;
 - (b) the child or stepchild of an Associate;
 - (c) the parent or step-parent of an Associate;
 - (d) the grandparent or grandchild of an Associate;
 - (e) a sibling of the Associate; or

- (f) any other person who immediately before that person's death lived with the Associate as a member of the Associate's family,

the Associate is entitled to be paid bereavement leave of up to two days.

(2) The two days need not be consecutive.

(3) Bereavement leave is not to be taken during the period of any other kind of leave. Where bereavement leave is taken, the Associate agrees to provide, if requested, proof of the relationship to the deceased.

15.—SICK LEAVE

The conditions contained in Clause 22 "Sick Leave" of the Government Officers Salaries, Allowances and Conditions Award 1989 shall apply to Associates with the exception that sick leave credits will only be on a full pay basis as follows:

	Sick Leave on full pay	
On the day of initial appointment	6 days	(45 hrs)
On completion of 6 months continuous service	6.5 days	(48.5 hrs)
On the completion of 12 months continuous service	12.5 days	(93.75hrs)
On the completion of each further period of 12 months continuous service	12.5 days	(93.75 hrs)

16.—PUBLIC HOLIDAYS

(1) The following days will be paid public holidays:

New Years Day, Australia Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, Anzac Day, The Sovereigns Birthday, Foundation day, Labour Day.

(2) When any of these days mentioned falls on a Saturday or on a Sunday, the holiday will be observed on the next succeeding Monday.

(3) When Boxing Day falls on a Sunday or Monday the holiday will be observed on the next Tuesday. In each case the substituted day will be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

17.—FAMILY/CEREMONIAL/CULTURAL LEAVE

(1) An Associate covered by this Agreement is entitled up to two days leave without loss of pay for family, ceremonial or cultural leave purposes.

(2) Family/Ceremonial/Cultural leave shall be available on an annual basis commencing 1st January each year and shall not accrue year to year.

(3) Such leave shall include leave to meet the Associate's family responsibilities, customs or traditional law and enable the participation in family, ceremonial or cultural activities.

(4) Leave without pay may be granted by agreement between the relevant Commission member and the Associate for ceremonial or cultural leave purposes.

(5) The Associate shall where practicable, give the relevant Commission member notice prior to the absence, of the intention to take leave. If it is not practicable for the Associate to give prior notice of absence, the Associate shall notify the relevant Commission member by telephone of such absence.

18.—ANNUAL LEAVE LOADING

(1) The conditions contained in Clause 19(14)(a) of the Government Officers Salaries, Allowances and Conditions Award (1989) shall apply to Associates, with the following additions:

- that the balance of the four weeks leave loading due to an Associate on the current years leave entitlement will be payable in the first pay period in December of the year in which it becomes due.
- subject to the availability of funds, the relevant Commission member may approve any application for the payout of any leave loading accrued prior to December 1995 to an Associate.
- Any payout of accrued leave loading shall be in writing and sealed by the signatures of the parties.

19.—ANNUAL LEAVE

Associates must take annual leave as directed by the relevant Commission Member. Where Associates' leave is not concurrently taken with the relevant Commission member there will be a limit to the relief provided.

20.—MEAL ALLOWANCE

When an Associate has qualified for the payment of a meal allowance, such allowance may be paid through the normal payroll processing procedures of the Department. Such payments shall be identified through specific tax free processing codes.

21.—HOURS OF DUTY—ASSOCIATES' COMMITMENT

(1) The parties acknowledge that in order to achieve the objects of the Act, the operating environment for the Commission, will require, on occasions, the Associate to be available for work at short notice, including weekends and Public Holidays.

(2) The flexibility accorded to the Commission by this acknowledgment, will allow the starting, finishing and meal break times for the Associates to be responsive to the needs of Chambers as directed by the relevant Commission member. This arrangement shall have due regard to the provisions of Clause 18—Overtime of the parent award. The relevant Commission member shall also have regard to the health and safety and family responsibilities of the Associate, where such directions are required.

(3) The Associate shall, in consultation with the relevant Commission member, agree, having regard to the appropriate clauses of the parent award, as to the process by which any accumulated ordinary hours and or overtime hours shall be cleared. Such arrangements may include such time being cleared with other approved leave or a mix of time off in lieu and payment.

22.—NOTIFICATION OF CHANGE

(1) Where action is taken that is likely to have a significant effect on an Associate or make an Associate's position redundant, the Associate and where appropriate the Union will be informed as soon as is practical after the decision has been made, of the action or the redundancy in order that the appropriate discussions may take place in relation to:

- the likely effect of the action or redundancy in respect of the Associate; and
- the measures that may be taken to avoid or minimise the significant effect.

(2) "Significant effect" means any changes in the composition, operation or size of the workforce or the skills required, changes in job opportunities, promotion opportunities, the need for retraining or transfer of officers.

(3) If desired by any Associate, full consultation will occur through the Civil Service Association of Western Australia (Inc.).

23.—DISPUTE RESOLUTION PROCEDURE

(1) For questions, disputes or difficulties arising out of the intent or implementation of this Agreement the parties agree as to the following dispute resolution procedures:

- The parties to the dispute shall attempt to resolve the matter by mutual discussion and determination.
- If the parties are unable to resolve the dispute, the matter, at the request of the other party, shall be referred to a meeting between the parties to the Agreement together with any additional representative as may be agreed to the parties.
- If the matter is not then resolved it shall be referred to the Western Australian Industrial Relations Commission.

24.—NO FURTHER CLAIMS

It is a condition of this Agreement that the parties will not seek any further claims with respect to salaries or conditions unless they are consistent with State Wage Case Principles.

25.—POTENTIAL NUMBER OF ASSOCIATES UNDER THIS AGREEMENT

The estimated number of employees bound by this Agreement upon its registration is 10.

26.—SIGNATURES OF PARTIES TO THE AGREEMENT

Signatories

Signed by John G. Carrigg,
Chief Executive officer
Department of the Registrar, WAIRC
under the delegated authority of the
Hon G.D. Kierath
Minister for Labour Relations

EMPLOYER

Date: 1/11/96

Signed for and on behalf of the
CIVIL SERVICE ASSOCIATION WESTERN
AUSTRALIA BRANCH by:

Date: 31/10/96

APPENDIX A

STRATEGIC/TACTICAL OBJECTIVES FOR ACCESS TO THE PAY RISE OF 2%

1. Review resources and training to each branch
2. Review, develop and implement appropriate delegations
3. Review and establish consultative mechanisms for staff participation
4. Operationalise customer service standards
5. Implement Disability Service Plan
6. Establish an operational review and accountability advisory group
7. Implement accrual based IT solution for accounting systems

APPENDIX B

CRITERIA FOR ACCESS TO THE 2ND PAY RISE OF 1%

1. PERFORMANCE TARGETS**PAY RISE - 1% FROM 1 JANUARY 1997**

INITIATIVE	BASELINE	TARGET	OUTCOME	TIMELINE
Staff to become self sufficient in keyboarding and applications usage consolidating a reduction of 2 FTE.	70% of staff proficient to 35 wpm with 90% accuracy.	90% of staff to be proficient to 45 wpm with 95% accuracy.	The Department will maintain and improve keyboard output with less FTEs.	Measure at 31 December 1996
Continuous and management improvement resulting in further staff efficiencies.	Budget 1996/97.	\$47,000 productivity improvement/ cost saving in full year	The Department improves its service by delivering a better level of service with less cost.	Measure at 31 December 1996 adjusted for part year.
Improved customer services including access times.	85% of customers satisfied with overall service. (sample est)	88% of customers - surveyed satisfied with overall service.	Customers will be satisfied with the service that they have received.	Measure at 31 December 1996
Staff assist the WAIRC with Section 29 matters under Reg 9.	No Settlement of Issues meetings prior to the agreement.	A minimum of 28 Settlement of issues matters to be dealt with per month on average	Parties have a means of conciliating issues without the need to refer matters to a Commissioner	Measure at 31 December 1996.
The implementation of strategies as per Appendix C		See Appendix C of the Agreement	The department meets its planned objectives.	Measure at 31 December 1996

2. CRITERIA FOR PAYMENT, PARTIAL DEFERMENT OR DEFERMENT OF PAY RISE**PAY RISE 1/1/97 - ASSESSMENT AS AT 31 DECEMBER 1996**

TARGET	MEASUREMENT TECHNIQUE	POINTS FOR MEETING TARGET
90 % of staff to be proficient to 45 w.p.m. typing speed with 95% accuracy.	On line typing tutor and testing.	1
88% of Customers surveyed are satisfied with overall service.	Customer survey using statistical sampling.	1
Continuos improvement results in \$47,000 productivity improvement and cost savings in the full year..	Review of actual expenditures to budget extrapolated from part year data..	1
A minimum of 28 Regulation 9 Settlement of issues matters are being dealt with per month.	Extract from Database.	1
A minimum of five of the seven implementation strategies at Appendix C have been implemented by the due dates	Strategy in place and operating	1

(2.2) CRITERIA FOR PAY RISE

For each 1 point scored then 20% of the pay rise applicable is available. Where 5 points are not scored then the provisions of partial payment and deferment of the remainder is conducted as per the requirements of the agreement.

APPENDIX C

IMPLEMENTATION STRATEGIES		KEY CORPORATE OBJECTIVES		MISSION
STRUCTURE	WORK ORGANISATION	WORK PRACTICES AND PROCEDURES	PRIORITIES	OUTCOMES
			<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Consult with customers to determine their needs <input checked="" type="checkbox"/> Establish standards of service. <input checked="" type="checkbox"/> Ensure full and open information is available on the services we provide <input checked="" type="checkbox"/> Adopt innovation and flexible work practices which add value <input checked="" type="checkbox"/> Review systems and processes to achieve high standards of quality <input checked="" type="checkbox"/> The Department is managed within budget, consistent with Government policies and legislative requirements. <input checked="" type="checkbox"/> Provide the best possible service at the lowest possible cost <input checked="" type="checkbox"/> Provide Human Resource systems which give an opportunity for staff to attain both career and corporate objectives <input checked="" type="checkbox"/> Deployment of Information Services and tools which empower staff with the means to attain departmental objectives and initiatives 	<p>To support the Western Australian Industrial Relations Commission to provide employees and unions with a means of resolving industrial relations matters according to industrial relations legislation.</p>
	<ul style="list-style-type: none"> • Offer products and services on an outcome based model by 31/12/96. • Examine processes & mechanisms which will provide for the maximisation of skills transfer across the organisation, 31/12/96. 	<ul style="list-style-type: none"> • The department to examine Quality accreditation and where appropriate implement by 31/12/96. • Staff to adopt a team based approach to the management and delivery of products and services to the customer, by 31/10/96. 	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> Be sensitive and responsive to the needs of our customers <input type="checkbox"/> Continuously improve practices in all areas <input type="checkbox"/> Provide services on a value for money basis in line with community expectations <input type="checkbox"/> Recognise the contribution of all staff to the achievement of Corporate Objectives 	<ul style="list-style-type: none"> <input type="checkbox"/> Our Customers will be satisfied with our service <input type="checkbox"/> The Department meets best practice standards in all things that we do. <input type="checkbox"/> Effectiveness and efficiency indicators will reflect the better use of resources <input type="checkbox"/> Staff will be satisfied that they have contributed to the achievement of career and corporate objectives.
		<ul style="list-style-type: none"> • Outcome requirements of branches, established in the strategic plan, & implemented by 31/12/96. • Operational plans for branches developed by 31/12/96, in order to achieve the outcomes of the strategic plan 	<ul style="list-style-type: none"> <input type="checkbox"/> Provide systems which give an opportunity for staff to attain both career and corporate objectives <input type="checkbox"/> Deployment of Information Services and tools which empower staff with the means to attain departmental objectives and initiatives 	<ul style="list-style-type: none"> <input type="checkbox"/> Staff will be satisfied that they have contributed to the achievement of career and corporate objectives.

**WUNDOWIE FOUNDRY PTY LTD
ENTERPRISE AGREEMENT 1996
No. AG 256 of 1996.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wundowie Foundry Pty Ltd
and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch
and Another.

No. AG 256 of 1996.

Wundowie Foundry Pty Ltd Enterprise Agreement 1996.

SENIOR COMMISSIONER G.L. FIELDING.

15 October 1996.

Order.

HAVING heard Ms E. Mackey on behalf of the Applicant and Mr J. Fiala on behalf of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch and Mr G.C. Sturman on behalf of the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the agreement made between the parties in the terms of the following schedule and lodged in the Commission on the 25th day of September, 1996 entitled the Wundowie Foundry Pty Ltd Enterprise Agreement 1996 be registered as an industrial agreement, replacing the Wundowie Foundry Pty Ltd Enterprise Agreement 1994, No. AG 189 of 1994.

[L.S.] (Sgd.) G.L. FIELDING,
Senior Commissioner.

Schedule.

1.—TITLE

This Agreement shall be known as the Wundowie Foundry Pty Ltd Enterprise Agreement 1996.

2.—ARRANGEMENT

1. Title
2. Arrangement
3. Incident and Parties Bound
4. Duration of Agreement
5. Relationship to Parent Award
6. Productivity Measures
7. Wages
8. No Extra Claims
9. Resolution of Disputes
10. Redundancies/Retrenchments
11. Signatories
Schedule A Wage Rates

3.—INCIDENT AND PARTIES BOUND

(1) This Agreement shall apply at the Wundowie Foundry, 1 Hawke Avenue, Wundowie, in respect of all employees employed pursuant to the Wundowie Foundry Award, 1986.

(2) The parties to this Agreement shall be—

- (a) Wundowie Foundry Pty Ltd, 1 Hawke Avenue, Wundowie WA 6560.
- (b) The C.E.P.U., 401-403 Oxford Street, MOUNT HAWTHORN WA 6016.
- (c) The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch, 1111 Hay Street, PERTH WA 6000.
- (d) This Agreement shall apply to approximately 50 employees.

4.—DURATION OF AGREEMENT

This Agreement shall apply for a period of two (2) years from the commencement of the first full pay period occurring on or after 29 July 1996.

5.—RELATIONSHIP TO PARENT AWARD

This Agreement shall be read and interpreted wholly in conjunction with the Wundowie Foundry Award, 1986, provided that this Agreement shall take precedence wherever there is any inconsistency with the Award.

6.—PRODUCTIVITY MEASURES

(1) Sick Leave

- (a) Effective from 1 January 1994, the company shall in December of each year pay out to each employee 50% of sick leave not taken for that calendar year.
- (b) The remaining sick leave entitlements shall accrue from year to year. However, these shall be exempt from the provisions of clause 17(5) of the Award.
- (c) Provided that this shall not in any way apply to sick leave already accrued prior to 1 January 1994 in which case the terms of Clause 17, subclause (5) of the Wundowie Foundry Award, 1986 shall apply.

(2) Hours

- (a) The ordinary hours of work shall be an average of 76 hours per fortnight and may be worked on any or all days of the week Monday to Sunday inclusive, and except in the case of shift workers, shall be worked between the hours of 4.00 am and 6.00 pm when the demands of the business so requires.

Provided that—

- (i) In any fortnight ordinary hours shall not span more than 10 days.
- (ii) A minimum of 48 hours notice of changes in starting times or days of work be given to each employee unless a lesser notice period be agreed by an employee.
- (iii) Where the ordinary hours are worked on a Saturday or a Sunday, work performed on a Saturday shall count for a total of 3 ordinary hours for the first two hours worked and a multiple of 2 ordinary hours thereafter for every hour worked and at a multiple of 2 ordinary hours for every hour worked for any such hours worked on a Sunday.
- (iv) No more than two weekends per month shall be worked as ordinary hours unless agreed to between the employee and the employer.

(3) Safety & Housekeeping

- (a) Employees commit to exercise high levels of personal safety awareness and shall wear eye protection at all times in designated areas.
- (b) Employees will be required to maintain a high level of cleanliness in their respective work areas by the end of each shift.

(4) Waste/Scrap/Rejects

- (a) Management and employees will improve and implement practices and procedures to improve methods in assessment and avoidance of losses in these areas.
- (b) Without limiting the scope of this examination such areas will include—
 - (i) Data collection to identify reasons for variation from planned performance.
 - (ii) Methods for reducing/avoiding production of plugs.
 - (iii) Methods for extending the life of furnace linings.
 - (iv) Daily analysis of floor mould performance relative to estimated figures.
 - (v) Improvement in handling of heat treatment loads.
 - (vi) Reduction in the number of movements of castings and raw materials.

- (vii) Accurate recording of all Disa moulding delays by source.

(5) Quality

The Quality Control and Quality Assurance program requires that defective products or workmanship are identified as early as possible in the production process. It is recognised by both parties that quality is an essential ingredient to the ongoing viability of the company.

Employees agree to continue the commitment to quality products and services by—

- (a) Abiding by procedures laid down for quality control.
- (b) Assisting to identify sources of poor quality.
- (c) Recognising that satisfied customers are essential to the business.
- (d) Accepting that the customer includes the next person involved in the process.
- (e) Being prepared to be trained in changing concepts for Quality Control including TQC and SPC concepts.
- (f) Recognising that they have an important role in identifying improvements to processes or equipment used.

(6) Punctuality & Attendance

- (a) Employees acknowledge the disruptive influence on operations if work is not commenced punctually and agree that they shall be at their respective places of work at the start and finish times normally observed. The practice of walking to and from the workplace, washing up and changing outside of work hours will continue.
- (b) If an employee is unable to commence work on any shift for any reason, notification shall be provided to the Company, except in extraordinary circumstances, preferably in advance, but not later than 2 hours after the expected time of shift commencement. Procedures for notification to be developed through the consultative mechanism and communicated to all employees.

(7) Rest and Meal Breaks

- (a) A rest period of 10 minutes from the time of ceasing to the time of resumption of work shall be allowed each shift.
- (b) Where the Company requires plant to be operated continuously it may direct that a 20 minutes paid meal break be taken at a time to suit the operation.
- (c) Where the method of working in (b) is so required, rest breaks and meal breaks will be staggered to best advantage but an employee shall not be compelled to work more than 6 hours without a meal break.

7.—WAGES

(1) Award Rate

As a consequence of this Agreement, the total weekly award wage rates as shown in Schedule A attached hereto shall be increased by 2.5% from the first pay period occurring on or after 29 July, 1996, a further 2.5% after 6 months, and by a further 5% after an additional 6 months, which rate shall prevail until the expiration of this Agreement.

(2) Bonus Payment

- (a) Bonus payments will be made fortnightly.
- (b)
 - (i) The base index of the bonus payment system shall be 300.
 - (ii) The rate of bonus payable is \$10 per week per 100 points or portion thereof over the base index.
- (c)
 - (i) A further 50% increase on the bonus rate to \$15.00 per week per 100 points is to be available if at any bonus review period during the life of this agreement, the bonus matrix index shows that a result at or above 500 points has been achieved on a sustained basis.
 - (ii) Performance is deemed to have been sustained when the normal bonus review period in De-

cember or June has achieved an index of 500 or greater.

- (iii) Benchmark settings of the Performance Matrix shall remain unchanged for a minimum period of 18 months from the commencement of this Agreement.

- (iv) In any review of the benchmarks the rate of bonus payable shall not be less than \$15.00 per 100 points and the revised bonus index shall not be less than 500 at the time of review. The Company shall ensure that an appropriate consultative mechanism is in place at the time of review.

8.—NO EXTRA CLAIMS

There shall be no extra claims for the life of this Agreement.

9.—RESOLUTION OF DISPUTES

In the event of any question, dispute or difficulty arising out of this Agreement, relating to one or more employees covered by this Agreement, the parties commit to utilising the procedures outlined in Clause 30.—Dispute and Grievance Settlement Procedure of the Wundowie Foundry Award, 1986 to resolve all issues at the workplace.

10.—REDUNDANCIES/RETRENCHMENTS

If the situation arises in which employee retrenchments become necessary it is agreed that such retrenchments will be carried out in accordance with the Metal Trades (General) Award.

It is agreed the practice of last on first off ignores ability, skill and productivity. If retrenchments are necessary, the employees to be retained will be selected having regard to all relevant factors including the efficient conduct of the Company's business.

Discussions will take place with the relevant Union to determine the basis of consideration for those employees unable to be retained and such consideration shall include length of service.

11.—SIGNATORIES

"My Company understands its rights and obligations under this Agreement, has freely entered into it and wishes to have this Agreement registered."

W.E. Pearce (signed) W.E. Pearce Date: 1/8/96

Signature on behalf of Name of person
Wundowie Foundry authorised to sign
Pty Ltd (print)
(ACN 009 123 764)

P.O. Box 127, WUNDOWIE, W.A.

Address

6560

Post Code

573 6300

Telephone Number

Company Seal

THE COMMON SEAL of)
Communications, Electrical,)
Electronics, Energy, Information,) Common Seal
Postal, Plumbing and Allied Workers)
Union of Australia, Engineering and)
Electrical Division, W.A. Branch)

(indecipherable) STATE SECRETARY Date: 16/8/96

Signature Title (print)

401 OXFORD STREET, MOUNT HAWTHORN, W.A.

Address

6016

Post Code

242 3999

Telephone Number

J.D. FIALA (signed)

Signature

ORGANISER

Title (print)

Date: 15/8/96

401 OXFORD STREET, MOUNT HAWTHORN, W.A.

Address

6016

Post Code

242 3999

Telephone Number

THE COMMON SEAL of	)		<u>1111 Hay Street, PERTH W.A.</u>			
The Automotive, Food, Metals	)		Address			
Engineering, Printing and Kindred	)	Common Seal	<u>6000</u>			
Industries Union of Workers Union—	)		Post Code	Telephone Number		
Western Australian Branch	)					Date: __/__/19
			Signature	Title (print)		
<u>J. SHARP-COLLETT</u>	<u>JOHN SHARP-COLLETT</u>	Date:	<u>1111 Hay Street, PERTH, W.A.</u>			
(signed)	STATE SECRETARY	14/10/96	Address			
Signature	Title (print)		<u>6000</u>			
			Post Code	Telephone Number		

SCHEDULE A

CLASSIFICATION	TOTAL WAGE \$	ADDITIONAL WEEKLY AND OVER AWARD PAYMENTS \$	EBA TOTAL \$	1ST PAY PERIOD ON OR AFTER 29 JULY 1996	1ST PAY PERIOD ON OR AFTER 29 JAN. 1997	1ST PAY PERIOD ON OR AFTER 29 JULY 1997
UNCERTIFICATED						
C10A	425.20	40.75	465.95	477.60	489.54	514.02
C10B	425.20	32.00	457.20	468.63	480.35	504.36
C10C	425.20	23.15	448.35	459.56	471.05	494.60
C11A	393.50	37.70	431.20	441.98	453.03	475.68
C11B	393.50	29.55	423.05	433.63	444.47	466.69
C11C	393.50	21.45	414.95	425.32	435.96	457.75
C12A	371.80	35.65	407.45	417.64	428.08	449.48
C12B	371.80	28.05	399.85	409.85	420.09	441.10
C12C	371.80	20.25	392.05	401.85	411.90	432.49
C13A	350.00	33.60	383.60	393.19	403.02	423.17
C13B	350.00	26.45	376.45	385.86	395.51	415.28
C13C	350.00	19.15	369.15	378.38	387.84	407.23
C14C	333.40	18.15	351.55	360.34	369.35	387.81
C7A	487.80	67.90	555.70	569.59	583.83	613.02
C7B	487.80	57.85	545.65	559.29	573.27	601.94
C7C	487.80	47.70	535.50	548.89	562.61	590.74
C8A	466.90	64.65	531.55	544.84	558.46	586.38
C8B	466.90	55.05	521.95	535.00	548.37	575.79
C8C	466.90	45.30	512.20	525.00	538.13	565.04
C9A	446.10	61.35	507.40	520.09	533.09	559.74
C9B	446.10	52.10	498.20	510.66	523.42	549.59
C9C	446.10	42.80	488.90	501.12	513.65	539.33
CERTIFICATED						
C10A	425.20	58.05	483.25	495.33	507.71	533.10
C10B	425.20	49.30	474.50	486.36	498.52	523.45
C10C	425.20	40.45	465.65	477.29	489.22	513.68

**PUBLIC SERVICE
ARBITRATOR—
Awards/Agreements—
Variation of—**

**THE ABORIGINAL POLICE AIDES AWARD
No. R 31 of 1979.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Police Union of Workers
and

Hon. Minister for Police.

No. 1046 of 1996.

The Aboriginal Police Aides Award.

COMMISSIONER R.N. GEORGE.

16 October 1996.

Order.

HAVING heard Mr S. Smith on behalf of the Applicant and Mr M. Bowler on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT The Aboriginal Police Aides Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of July 1996.

(Sgd.) R.N. GEORGE,
Commissioner.

[L.S.]

Schedule.

1. Clause 9.—Travelling Allowances—Schedule of Travelling Allowances: Delete this schedule of this clause and insert in lieu thereof—

SCHEDULE OF TRAVELLING ALLOWANCES

ITEM	DAILY RATE
	\$
ALLOWANCE TO MEET INCIDENTAL EXPENSES	
1 WA—South of 26 degrees South Latitude	8.40
2 WA—North of 26 degrees South Latitude	9.55
3 Interstate	9.55
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT A HOTEL, MOTEL OR ROADHOUSE	
4 WA—Metropolitan	149.55
5 Locality South of 26 degrees South Latitude	120.65
6 Locality North of 26 degrees South Latitude	
Broome	191.30
Carnarvon	120.60
Dampier	138.55
Derby	132.55
Eucla	125.50
Exmouth	142.55
Fitzroy Crossing	158.80
Gascoyne Junction	94.55
Halls Creek	163.55
Karratha	180.00
Kununurra	157.55
Marble Bar	119.55
Newman	184.55
Nullagine	106.50
Onslow	95.55
Pannawonica	120.55
Paraburdo	197.55
Port Hedland	188.90
Roebourne	86.55
Sandfire	88.55
Shark Bay	122.75
South Hedland	188.90
Tom Price	152.55

ITEM	DAILY RATE		
	\$		
Turkey Creek	93.55		
Wickham	129.55		
Wyndham	111.55		
7 Interstate—Capital Cities			
- Sydney	170.25		
- Melbourne	160.25		
- Others	151.40		
8 Interstate—Other than Capital Cities	120.65		
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL, MOTEL OR ROADHOUSE			
9 WA—South of 26 degrees South Latitude	53.10		
10 WA—North of 26 degrees South Latitude	60.30		
11 Interstate	60.30		
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED			
12 WA—South of 26 degrees South Latitude			
Breakfast	10.15		
Lunch	10.15		
Dinner	24.40		
Supper	14.90		
13 WA—North of 26 degrees South Latitude			
Breakfast	11.50		
Lunch	14.40		
Dinner	24.90		
Supper	16.95		
14 Interstate			
Breakfast	11.50		
Lunch	14.40		
Dinner	24.90		
MIDDAY MEAL			
15 Rate per meal	4.40		
16 Maximum reimbursement per pay period	22.00		
DEDUCTION FOR NORMAL LIVING EXPENSES			
17 Each Adult	18.25		
18 Each Child	3.15		
ACCELERATED DEPRECIATION AND EXTRA WEAR AND TEAR ON FURNITURE AND EFFECTS			
19 Accelerated Depreciation	477.00		
20 Value of Goods	2,854.00		
2. Clause 10.—Relieving Allowances—Schedule of Relieving Allowances: Delete this schedule of this clause and insert in lieu thereof—			
SCHEDULE OF RELIEVING ALLOWANCES			
(a) HOTEL/MOTEL/ROADHOUSE			
	RATE PER DAY		ITEM
	(i) WA Metropolitan	(ii) Locality South of 26 degrees South Latitude	
	\$	\$	
First forty-nine days after arrival at new locality:	149.55	126.05	1
Period of relief in excess of forty-nine days:			
(a) Employee with dependants	74.75	60.35	2
(b) Employee without dependants	49.80	40.20	3
(iii) Locality north of 26 degrees south latitude including Shark Bay:			
TOWN	ITEM 4 First 49 days after arrival at new locality	ITEM 5 Period of Relief in excess of 49 days	ITEM 6
		Employee with Dependants	Employee without Dependants
	\$	\$	\$
Broome	191.30	95.65	63.70
Carnarvon	120.60	60.30	40.15
Dampier	138.55	69.25	46.15
Derby	132.55	66.25	44.15
Eucla	125.50	62.75	41.80
Exmouth	142.55	71.25	47.45
Fitzroy Crossing	158.80	79.40	52.90

TOWN	ITEM 4 First 49 days after arrival at new locality	ITEM 5 Period of Relief in excess of 49 days	ITEM 6
	\$	Employee with Dependants \$	Employee without Dependants \$
Gascoyne Junction	94.55	47.25	31.50
Halls Creek	163.55	81.75	54.45
Karratha	180.00	90.00	59.95
Kununurra	157.55	78.75	52.45
Marble Bar	119.55	59.75	39.80
Newman	184.55	92.25	61.45
Nullagine	106.50	53.25	35.45
Onslow	95.55	47.75	31.80
Pannawonica	120.55	60.25	40.15
Paraburdoo	197.55	98.75	65.80
Port Hedland	188.90	94.45	62.90
Roebourne	86.55	43.25	28.80
Sandfire	88.55	44.25	29.50
Shark Bay	122.75	61.35	40.85
South Hedland	188.90	94.45	62.90
Tom Price	152.55	76.25	50.80
Turkey Creek	93.55	46.75	31.15
Wickham	129.55	64.75	43.15
Wyndham	111.55	55.75	37.15
(iv) INTERSTATE			
Capital Cities -			
-Sydney	170.25	85.15	56.70
-Melbourne	160.25	80.15	53.35
-Others	151.40	75.70	50.40
(v) INTERSTATE			
Other Than Capital Cities -	120.65	60.35	40.20
Rate Per Day \$			
(b) Incidental expenses: 7			
South of 26 degrees South Latitude		8.40	
North of 26 degrees South Latitude		9.55	
Interstate		9.55	
(c) Other Than Hotel or Motel: 8			
South of 26 degrees South Latitude		53.10	
North of 26 degrees South Latitude		60.30	
Interstate		60.30	
(d) TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED			
Rate Per Day \$			
Item			
South of 26 degrees South Latitude 9			
Breakfast		10.15	
Lunch		10.15	
Dinner		24.40	
North of 26 degrees South Latitude 10			
Breakfast		11.50	
Lunch		14.40	
Dinner		24.90	
Interstate 11			
Breakfast		11.50	
Lunch		14.40	
Dinner		24.90	

3. Clause 20.—Camping Allowance—Schedule of Camping Allowance: Delete this schedule of this clause and insert in lieu thereof—

SCHEDULE OF CAMPING ALLOWANCES

South of 26 degrees South Latitude:	Rate Per Day \$	Item
Permanent Camp—Cook provided by the Department	34.05	1
Permanent Camp—No Cook provided by the Department	41.75	2
Other Camping—Cook provided by the Department	49.45	3
Other Camping—No Cook provided by the Department	57.15	4
Camping beside or inside vehicle	75.20	5

North of 26 degrees South Latitude:

	Rate Per Day \$	Item
Permanent Camp—Cook provided by the Department	37.70	1
Permanent Camp—No Cook provided by the Department	45.35	2
Other Camping—Cook provided by the Department	53.05	3
Other Camping—No Cook provided by the Department	60.75	4
Camping beside or inside vehicle	104.85	5

CLERKS' (PUBLIC AUTHORITIES) AWARD 1987.
No. PSA A7A of 1987.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch

and

Fremantle Port Authority and Others.

No. P 2 of 1996.

Clerks' (Public Authorities) Award 1987.

COMMISSIONER R.N. GEORGE.

24 October 1996.

Order.

HAVING heard Mr R. Dhue on behalf of the Applicant and Ms L. Halligan on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Clerks' (Public Authorities) Award 1987 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 14th day of October 1996.

(Sgd.) R. N. GEORGE,
Commissioner.

[L.S.]

Schedule.

Schedule A—Salaries and Salary Ranges: Delete this schedule and insert in lieu thereof—

SCHEDULE A—SALARIES AND SALARY RANGES

(1) Annual salaries applicable to officers covered by this Award.

Level	Salary Per Annum \$	Arbitrated Safety Net Adjustment \$	Total Salary Per Annum \$
Level 1			
Under 17 years	10,445	642	11,087
17 years	12,207	750	12,957
18 years	14,238	876	15,114
19 years	16,481	1,014	17,495
20 years	18,507	1,140	19,647
1.1	20,331	1,251	21,582
1.2	20,983	1,251	22,234
1.3	21,634	1,251	22,885
1.4	22,281	1,251	23,532
1.5	22,932	1,251	24,183
1.6	23,583	1,251	24,834
1.7	24,332	1,251	25,583
1.8	24,850	1,251	26,101
1.9	25,616	1,251	26,867

Level	Salary Per Annum \$	Arbitrated Safety Net Adjustment \$	Total Salary Per Annum \$
Level 2			
2.1	26,533	1,251	27,784
2.2	27,236	1,251	28,487
2.3	27,975	1,251	29,226
2.4	28,756	1,251	30,007
2.5	29,573	1,251	30,824
Level 3			
3.1	30,696	1,251	31,947
3.2	31,571	1,251	32,822
3.3	32,473	1,251	33,724
3.4	33,399	1,251	34,650
Level 4			
4.1	34,669	1,251	35,920
4.2	35,664	1,251	36,915
4.3	36,688	1,251	37,939
Level 5			
5.1	38,660	1,251	39,911
5.2	39,993	1,251	41,244
5.3	41,378	1,251	42,629
5.4	42,815	1,251	44,066

(2) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

**HOSPITAL LAUNDRY AND LINEN SERVICE
(SALARIED OFFICERS) AWARD, 1980.
No. R 36 of 1978.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)
and
Board of Management, Lakes Hospital
(No. P 25 of 1996)
Hospital Laundry and Linen Service (Salaried Officers)
Award, 1980.
No. R 36 of 1978.

PUBLIC SERVICE ARBITRATOR
P E SCOTT.

15 October 1996.

Order.

HAVING heard Ms C Drew on behalf of the Applicant and Mr D Pretsel on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Hospital Laundry and Linen Service (Salaried Officers) Award, 1980 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 23rd day of August 1996.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1. Schedule B Minimum Salaries: Delete this Schedule and insert the following in lieu thereof:

SCHEDULE B

MINIMUM SALARIES

(1) Subject to the provision of Clause 8.—Salaries and to the provisions of this Schedule the minimum annual salaries for employers bound by the award are set out hereinafter.

(2) Minimum Salaries:

Levels	Salary P/Annum \$	Arbitrated Safety Net Adjustments Per Annum \$	Salary P/Annum Total Min Rate \$
Level 1 under 17 years			
of age	10,452	643	11,095
17 years of age	12,206	751	12,957
18 years of age	14,248	877	15,125
19 years of age	16,491	1015	17,506
20 years of age	18,520	1141	19,661
21 years of age			
1st year of service	20,343	1252	21,595
22 years of age			
2nd year of service	20,997	1252	22,249
23 years of age			
3rd year of service	21,647	1252	22,899
24 years of age			
4th year of service	22,295	1252	23,547
Level 2			
	22,946	1252	24,198
	23,597	1252	24,849
	24,346	1252	25,598
	24,864	1252	26,116
	25,629	1252	26,881
Level 3			
	26,533	1252	27,785
	27,236	1252	28,488
	27,975	1252	29,227
	29,154	1252	30,406
Level 4			
	29,771	1252	31,023
	30,696	1252	31,948
	31,647	1252	32,899
	32,998	1252	34,250
Level 5			
	33,702	1252	34,954
	34,669	1252	35,921
	35,664	1252	36,916
	36,688	1252	37,940
Level 6			
	38,660	1252	39,912
	40,124	1252	41,376
	42,204	1252	43,456
Level 7			
	43,317	1252	44,569
	44,727	1252	45,979
	46,188	1252	47,440
Level 8			
	48,323	1252	49,575
	50,073	1252	51,325
Level 9			
	52,721	1252	53,973
	54,563	1252	55,815
Level 10			
	56,580	1252	57,832
	59,824	1252	61,076
Level 11			
	62,415	1252	63,667
	65,050	1252	66,302
Level 12			
	68,663	1252	69,915
	71,104	1252	72,356
	73,888	1252	75,140

(3) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current

Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

HOSPITAL SALARIED OFFICERS' AWARD 1968.

No. 39 of 1968.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia (Union of Workers)

and

Board of Management, Royal Perth Hospital and Others.

No. P 26 of 1996.

Hospital Salaried Officers' Award 1968.

No. 39 of 1968.

PUBLIC SERVICE ARBITRATOR
P E SCOTT.

15 October 1996.

Order.

HAVING heard Ms C Drew on behalf of the Applicant and Mr D Pretsel on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Hospital Salaried Officers' Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 23rd day of August 1996.

(Sgd.) P. E. SCOTT,
Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement: Following “1A.—Statement of Principles—August 1996 insert the following:

1B. Award Modernisation Commitment

2. Clause 1A.—Statement of Principles—August 1996: Immediately following this clause insert new clause 1B.—Award Modernisation Commitment:

1B.—AWARD MODERNISATION COMMITMENT

The parties to this Award commit to review the Hospital Salaried Officers' Award No. 39 of 1968 and complete its modernisation; implementation of consistent award formatting; the addressing of any discriminatory award provisions; the removal of obsolete provisions from the award; and the award's expression on plain English required under the Structural Efficiency Principle and the State Wage Case Decision March, 1996, by 31 December 1996.

3. Schedule A—Minimum Salaries: Delete this Schedule and insert the following in lieu thereof:

SCHEDULE A

MINIMUM SALARIES

(1) Subject to the provision of Clause 9.—Salaries and to the provisions of this Schedule the minimum annual salaries for employers bound by the award are set out hereinafter.

(2) Minimum Salaries:

Levels	Salary P/Annum \$	Arbitrated Safety Net Adjustments Per Annum \$	Salary P/Annum Total Min Rate \$
Level 1 under 17 years of age	10,452	643	11,095
17 years of age	12,206	751	12,957
18 years of age	14,248	877	15,125

Levels	Salary P/Annum \$	Arbitrated Safety Net Adjustments Per Annum \$	Salary P/Annum Total Min Rate \$
19 years of age	16,491	1015	17,506
20 years of age	18,520	1141	19,661
21 years of age			
1st year of service	20,343	1252	21,595
22 years of age			
2nd year of service	20,997	1252	22,249
23 years of age			
3rd year of service	21,647	1252	22,899
24 years of age			
4th year of service	22,295	1252	23,547
Level 2	22,946	1252	24,198
	23,597	1252	24,849
	24,346	1252	25,598
	24,864	1252	26,116
	25,629	1252	26,881
Level 3	26,533	1252	27,785
	27,236	1252	28,488
	27,975	1252	29,227
	29,154	1252	30,406
Level 4	29,771	1252	31,023
	30,696	1252	31,948
	31,647	1252	32,899
	32,998	1252	34,250
Level 5	33,702	1252	34,954
	34,669	1252	35,921
	35,664	1252	36,916
	36,688	1252	37,940
Level 6	38,660	1252	39,912
	40,124	1252	41,376
	42,204	1252	43,456
Level 7	43,317	1252	44,569
	44,727	1252	45,979
	46,188	1252	47,440
Level 8	48,323	1252	49,575
	50,073	1252	51,325
Level 9	52,721	1252	53,973
	54,563	1252	55,815
Level 10	56,580	1252	57,832
	59,824	1252	61,076
Level 11	62,415	1252	63,667
	65,050	1252	66,302
Level 12	68,663	1252	69,915
	71,104	1252	72,356
	73,888	1252	75,140

(a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.

(b) A Medical Typist or Medical Secretary shall be paid a medical terminology allowance of \$1000 per annum.

For the purposes of this subclause “Medical Typist” and “Medical Secretary” shall mean those workers classified on a classification equivalent to Level 1, 2, or 3 who spend at least 50% of their time typing from tapes, shorthand, and/or Doctor's notes of case histories, summaries, reports or similar material involving a broad range of medical terminology.

(3) Salaries.—Specified Callings and Other Professionals

(a) Employees, who possess a relevant tertiary level qualification, or equivalent as agreed between the Union and the employers, and who are employed in the callings of Architect, Audiologist, Bio Engineer, Chemist, Dietitian, Engineer, Medical Scientist, Librarian, Occupational Therapist, Physiotherapist, Physicist, Pharmacist, Clinical Psychologist, Psychologist, Research Officer, Scientific Officer, Social Worker, Speech Pathologist, Podiatrist, Medical Imaging Technologist, Nuclear Medicine Technologist, Radiation Therapist, or any other professional calling as

agreed between the Union and employers, shall be entitled to Annual Salaries as follows:

	Salary P/Annum \$	Arbitrated Safety Net Adjustment \$	Salary P/Annum Total Min Rate \$
Level 3/5	26,533	1252	27,785
	27,975	1252	29,227
	29,771	1252	31,023
	31,647	1252	32,899
	34,669	1252	35,921
	36,688	1252	37,940
Level 6	38,660	1252	39,912
	40,124	1252	41,376
	42,204	1252	43,456
Level 7	43,317	1252	44,569
	44,727	1252	45,979
	46,188	1252	47,440
Level 8	48,323	1252	49,575
	50,073	1252	51,325
Level 9	52,721	1252	53,973
	54,563	1252	55,815
Level 10	56,580	1252	57,832
	59,824	1252	61,076
Level 11	62,415	1252	63,667
	65,050	1252	66,302
Level 12	68,663	1252	69,915
	71,104	1252	72,356
	73,888	1252	75,140

(b) Subject to paragraph (d) of this subclause, on appointment or promotion to the Level 3/5 under this subclause:

- (i) Employees, who have completed an approved three academic year tertiary qualification, relevant to their calling, shall commence at the first year increment;
- (ii) Employees, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment;
- (iii) Employees, who have completed an approved Masters or PhD degree relevant to their calling shall commence on the third year increment;

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

- (c) The employer and Union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this subclause and shall maintain a manual setting out such qualifications.
- (d) The employer in allocating levels pursuant to paragraph (b) of this subclause may determine a commencing salary above Level 3/5 for a particular calling/s.

(4) The following conditions shall apply to employees in the callings detailed below:

Engineers—

Employees employed in the calling of Engineer and who are classified Level 3/5 under this Agreement shall be paid a minimum salary at the rate prescribed for the maximum of Level 3/5 where the employee is an "experienced engineer" as defined.

For the purposes of this paragraph "experienced engineer" shall mean:

- (a) An engineer appointed to perform professional engineering duties and who is a Corporate Member of the Institution of Engineers, Australia or who attains that status during service.
- (b) An engineer appointed to perform professional duties who is not a Corporate Member of the

Institution of Engineers, Australia but who possesses a degree or diploma from a University, College or Institution acceptable to the employer on the recommendation of the Institution of Engineers, Australia, and who—

- (i) having graduated in a four of five academic year course at a University or Institution recognised by the employer, has had four years' experience on professional engineering duties acceptable to the employer since becoming a qualified engineer, or
- (ii) not having a University degree but possessing a diploma recognised by the employer, has had five years' experience on professional engineering duties, recognised by the employer since becoming a qualified engineer.

(5) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

THE POLICE AWARD 1965 No. 2 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Australian Police Union of Workers
and

Hon. Minister for Police.

No. 1047 of 1996.

The Police Award 1965.

COMMISSIONER R.N. GEORGE.

16 October 1996.

Order:

HAVING heard Mr S. Smith on behalf of the Applicant and Mr M. Bowler on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT The Police Award 1965 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 1st day of July 1996.

(Sgd.) R.N. GEORGE,
Commissioner.

[L.S.]

Schedule.

1. Clause 10.—Travelling Allowances—Schedule of Travelling Allowances: Delete this schedule of this clause and insert in lieu thereof—

SCHEDULE OF TRAVELLING ALLOWANCES

ITEM	DAILY RATE	\$
ALLOWANCE TO MEET INCIDENTAL EXPENSES		
1	WA—South of 26 degrees South Latitude	8.40
2	WA—North of 26 degrees South Latitude	9.55
3	Interstate	9.55
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT A HOTEL, MOTEL OR ROADHOUSE		
4	WA—Metropolitan	149.55
5	Locality South of 26 degrees South Latitude	120.65
6	Locality North of 26 degrees South Latitude	
	Broome	191.30
	Carnarvon	120.60
	Dampier	138.55
	Derby	132.55
	Eucla	125.50
	Exmouth	142.55
	Fitzroy Crossing	158.80
	Gascoyne Junction	94.55
	Halls Creek	163.55
	Karratha	180.00
	Kununurra	157.55
	Marble Bar	119.55
	Newman	184.55
	Nullagine	106.50
	Onslow	95.55
	Pannawonica	120.55
	Paraburdoo	197.55
	Port Hedland	188.90
	Roebourne	86.55
	Sandfire	88.55
	Shark Bay	122.75
	South Hedland	188.90
	Tom Price	152.55
	Turkey Creek	93.55
	Wickham	129.55
	Wyndham	111.55
7	Interstate—Capital Cities	
	- Sydney	170.25
	- Melbourne	160.25
	- Others	151.40
8	Interstate—Other than Capital Cities	120.65
ACCOMMODATION INVOLVING AN OVERNIGHT STAY AT OTHER THAN A HOTEL, MOTEL OR ROADHOUSE		
9	WA—South of 26 degrees South Latitude	53.10
10	WA—North of 26 degrees South Latitude	60.30
11	Interstate	60.30
TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED		
12	WA—South of 26 degrees South Latitude	
	Breakfast	10.15
	Lunch	10.15
	Dinner	24.40
	Supper	14.90
13	WA—North of 26 degrees South Latitude	
	Breakfast	11.50
	Lunch	14.40
	Dinner	24.90
	Supper	16.95
14	Interstate	
	Breakfast	11.50
	Lunch	14.40
	Dinner	24.90
MIDDAY MEAL		
15	Rate per meal	4.40
16	Maximum reimbursement per pay period	22.00
DEDUCTION FOR NORMAL LIVING EXPENSES		
17	Each Adult	18.25
18	Each Child	3.15

ACCELERATED DEPRECIATION AND EXTRA WEAR AND TEAR ON FURNITURE AND EFFECTS

19	Accelerated Depreciation	477.00
20	Value of Goods	2,854.00

2. Clause 11.—Relieving Allowances, Schedule of Relieving Allowances: Delete this schedule of this clause and insert in lieu thereof—

SCHEDULE OF RELIEVING ALLOWANCES

(a) HOTEL/MOTEL/ROADHOUSE

	RATE PER DAY		ITEM
	(i) WA Metropolitan	(ii) Locality South of 26 degrees South Latitude	
	\$	\$	
First forty-nine days after arrival at new locality:	149.55	120.65	1
Period of relief in excess of forty-nine days:			
(a) Employee with dependants	74.75	60.35	2
(b) Employee without dependants	49.80	40.20	3
(iii) Locality north of 26 degrees south latitude including Shark Bay:			
TOWN	ITEM 4 First 49 days after arrival at new locality	ITEM 5 Employee with Dependants	ITEM 6 Employee without Dependants
	\$	\$	\$
Broome	191.30	95.65	63.70
Carnarvon	120.60	60.30	40.15
Dampier	138.55	69.25	46.15
Derby	132.55	66.25	44.15
Eucla	125.50	62.75	41.80
Exmouth	142.55	71.25	47.45
Fitzroy Crossing	158.80	79.40	52.90
Gascoyne Junction	94.55	47.25	31.50
Halls Creek	163.55	81.75	54.45
Karratha	180.00	90.00	59.95
Kununurra	157.55	78.75	52.45
Marble Bar	119.55	59.75	39.80
Newman	184.55	92.25	61.45
Nullagine	106.50	53.25	35.45
Onslow	95.55	47.75	31.80
Pannawonica	120.55	60.25	40.15
Paraburdoo	197.55	98.75	65.80
Port Hedland	188.90	94.45	62.90
Roebourne	86.55	43.25	28.80
Sandfire	88.55	44.25	29.50
Shark Bay	122.75	61.35	40.85
South Hedland	188.90	94.45	62.90
Tom Price	152.55	76.25	50.80
Turkey Creek	93.55	46.75	31.15
Wickham	129.55	64.75	43.15
Wyndham	111.55	55.75	37.15

(iv) INTERSTATE

Capital Cities -			
-Sydney	170.25	85.15	56.70
-Melbourne	160.25	80.15	53.35
-Others	151.40	75.70	50.40

(v) INTERSTATE

Other Than Capital Cities -	120.65	60.35	40.20
		Rate Per Day	Item
		\$	

(b) Incidental expenses:

South of 26 degrees South Latitude	8.40
North of 26 degrees South Latitude	9.55
Interstate	9.55

(c) Other Than Hotel or Motel:

South of 26 degrees South Latitude	53.10
North of 26 degrees South Latitude	60.30
Interstate	60.30

(d) TRAVEL NOT INVOLVING AN OVERNIGHT STAY OR TRAVEL INVOLVING AN OVERNIGHT STAY WHERE ACCOMMODATION ONLY IS PROVIDED

	Rate Per Day	Item
	\$	
South of 26 degrees South Latitude		9
Breakfast	10.15	
Lunch	10.15	
Dinner	24.40	

	Rate Per Day \$	Item
North of 26 degrees South Latitude		10
Breakfast	11.50	
Lunch	14.40	
Dinner	24.90	
Interstate		11
Breakfast	11.50	
Lunch	14.40	
Dinner	24.90	

3. Clause 34.—Camping Allowance—Schedule of Camping Allowance: Delete this schedule of this clause and insert in lieu thereof—

SCHEDULE OF CAMPING ALLOWANCES

South of 26 degrees South Latitude:

	Rate Per Day \$	Item
Permanent Camp—Cook provided by the Department	34.05	1
Permanent Camp—No Cook provided by the Department	41.75	2
Other Camping—Cook provided by the Department	49.45	3
Other Camping—No Cook provided by the Department	57.15	4
Camping beside or inside vehicle	75.20	5

North of 26 degrees South Latitude:

	Rate Per Day \$	Item
Permanent Camp—Cook provided by the Department	37.70	1
Permanent Camp—No Cook provided by the Department	45.35	2
Other Camping—Cook provided by the Department	53.05	3
Other Camping—No Cook provided by the Department	60.75	4
Camping beside or inside vehicle	104.85	5

PUBLIC SERVICE AWARD 1992 No. PSA A4 of 1989.
WESTERN AUSTRALIAN POLICE SERVICE
ENTERPRISE AGREEMENT FOR PUBLIC
SERVICE OFFICERS 1996 No. PSA AG 119 of 1996.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Commissioner of Police

and

The Civil Service Association of Western Australia
Incorporated.

No. P 35 of 1996.

PUBLIC SERVICE ARBITRATOR

R.N. GEORGE.

24 October 1996.

Order.

HAVING heard Ms M. Fransen on behalf of the Applicant and Mr K. Ross on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders that:

- (1) Notwithstanding the provisions contained in Public Service Award 1992 and the Western Australian Police Service Enterprise Agreement for Public Service Officers 1996, No. PSAAG 119 of 1996 the

following arrangements shall apply to employees employed as shift workers in the Police Computing and Information Management Branch—Operations Section. Where the award or agreement is inconsistent with this Order the provisions in the Order shall apply to the extent of any inconsistency.

- (2) (a) Shifts of twelve (12) hours and in excess of forty (40) hours per week will be rostered and worked in a manner agreed by management and the majority of shift work employees employed in the Police Computing and Information Management Branch—Operations Section.
- (b) Shift allowance for afternoon, night, Saturday, Sunday and public holiday shifts shall not be paid and in lieu a commuted allowance shall be paid on a pro rata basis fortnightly with salary.
- (c) The quantum of commuted allowance shall be:
- (i) \$7,650 per annum at Level 1, \$8,610 per annum at Level 2 and \$9,560 per annum at Level 3 with effect on and from the beginning of the first pay period commencing on or after the date of this Order; increasing to
- (ii) \$7,940 per annum at Level 1, \$8,940 per annum at Level 2 and \$9,940 per annum at Level 3 with effect on and from April 30, 1997.
- (d) The commuted allowance shall be paid during periods of annual leave in lieu of the leave loading prescribed in the award/agreement and during any period of paid sick leave but will not be paid during any periods of long service leave.
- (e) Where an employee is acting in a position at a level higher than his or her substantive position such employee shall be paid the commuted allowance provided in (c) of this clause for the level at which the employee is acting.
- (3) The terms and conditions of this arrangement as agreed by management and the majority of employees in the Police Computing and Information Management Branch—Operations Section shall have a term of twelve (12) months from the date of operation of this Order, subject to a review of this Order by the parties following a period of six (6) months operation.
- (4) In the case of changed circumstances during the term of this Order either party may make application to vary or cancel the terms.

[L.S.]

(Sgd.) R.N. GEORGE,
Commissioner.

AWARDS/AGREEMENTS— Variation of—

BUILDING TRADES AWARD 1968 No. 31 of 1966.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers and Others

and

Coca Cola Bottlers (Perth) and Others.

No. 943 of 1996.

Building Trades Award 1968
No. 31 of 1966.

COMMISSIONER P E SCOTT.

14 October 1996.

Reasons for Decision.

THE COMMISSIONER: This is an application to increase rates of pay and allowances in the Building Trades Award 1968 ("the Award") in respect of the third arbitrated safety net adjustment. The parties are agreed as to the increase in the base rate for that purpose and there was no dispute as to that matter when it came before the Commission on 23 August 1996. At that time there was some uncertainty between the parties as to the calculation of increased allowances and they indicated that they wished to have time to confirm that the allowances discussed between them were correct. The Commission indicated at that time that the Award would be amended from 23 August 1996 subject to the parties confirming, within a week, the calculations. Such agreement has not been reached and the parties came before the Commission again on 1 October 1996 on the basis that they disagree as to the method of calculation of allowances and the application of a formula for the increasing of work and conditions related allowances.

The formula to be applied is set out in a decision of the Full Bench of the Australian Industrial Relations Commission dated 21 March 1996 (Print M9675). This relates to various glass merchants awards and at page 9 sets out the basis upon which work and conditions related allowances are to be increased to take account of safety net adjustments. The formula is set out as follows:

"The increases in work or condition related allowances from the first, second and third safety net adjustments should be aggregated, where possible, using the following formula:

$$\text{1st, 2nd \& 3rd adjustments} \quad \frac{\$24}{A} \quad \times \quad \frac{100}{1}$$

Where 'A' refers to the relevant key classification rate in the award in question after that rate has been increased for the first safety net adjustment but before it has been increased for the second safety net adjustment.

In this case it is agreed that the key classification rate is the tradespersons rate and therefore the relevant percentage increase would be:

$$\frac{\$24}{\$425.20} \quad \times \quad \frac{100}{1} \quad = \quad 5.6\%$$

Where, as in this case, the relevant allowances have already been increased for the second safety net adjustment, the increase obtained using the above formula will need to be reduced by the amount of the increase already awarded."

The Union says that a similar calculation in the award would involve the key classification rate of \$376.20, plus the first arbitrated safety net adjustment amount of \$8.00 bringing the amount to \$384.20. With the application of the formula provided for in the Full Bench decision (supra), this would result in a 6.2 per cent increase to the allowances concerned. It says that the special payment of \$38.40 contained within Subclause (2). Special Payment of Clause 10.—Wages is not to be included as this would not be consistent with the formula set out in the Full Bench decision (supra) as there is a similar

payment set out within the Award the subject of that decision termed Excess Payments which is not included in the formula.

The Glass Merchant and Glazing Contractors (Tasmania) Award 1976 contains Clause 12C—Excess Payments:

- 12C—EXCESS PAYMENTS
- (a) Employees shall receive excess payments in accordance with the table set out in subclause (c) hereof. These excess payments shall be added to the base wage and the supplementary payments provided in clauses 12A and 12B respectively to provide the total wage for all purposes of the award.
- (b) The excess payments prescribed by this clause shall not be subject to adjustment."

The Special Payments in the Award is of a similar nature and it states:

"(2) Special Payment:

- (a) A special payment of \$38.40 per week shall be paid to all employees covered by this award and shall be regarded as part of the "total rate" for all purposes."

The employer says that the Special Payment is appropriate for inclusion because it forms part of the total rate for all purposes.

Whilst I accept that the Special Payment forms part of the total rate for all purposes, if the formula as set out in the Full Bench Decision (supra) is to be applied then this payment ought not be included. If such a payment were to be included then the payments set out in Clause 12C—Excess Payments as set out above would also have been included and clearly it was not.

On this basis the percentage increase to be applied to work and conditions related allowances is 6.2 per cent. This is to be 6.2 per cent added to the allowances prior to any increases as a result of safety net adjustments.

In respect to the operative date, it was clear on 23 August 1996, when this matter first came before the Commission that amendment to the Award was subject to the parties advising of their agreement to the calculation of increases to allowances within one week. This has not occurred. The issue could then only have been resolved as early as the date of hearing for the issue of the formula to be applied which was 1 October 1996. On this basis the award will be amended from the beginning of the first pay period on or after 1 October 1996.

Order accordingly.

APPEARANCES: Ms J Harrison and later Mr G Giffard on behalf of the Applicant

Ms S Laferla and later Mr D R Sproule on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers and Others

and

Coca-Cola Bottlers Perth and Others.

No. 943 of 1996.

Building Trades Award 1968
No. 31 of 1966.

COMMISSIONER P E SCOTT.

25 October 1996.

Order.

HAVING heard Ms J Harrison and later Mr G Giffard on behalf of the Applicant and Ms S Laferla and later Mr D R Sproule on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Building Trades Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first

pay period commencing on or after the 1st day of October 1996.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1. Clause 10.—Wages:

A. Delete subclause (1) of this clause and insert the following in lieu thereof:

(1) Base Rate and Supplementary Payment (per week)

	Base Rate Per Week \$	Safety Net Adjustment \$
(a) (i) Bricklayers, stoneworkers, carpenters, joiners, painters, songwriters, glaziers, plasterers and plumbers as defined in Clause 6 of this award	376.20	24.00
(ii) Plumber holding registration in accordance with the Metropolitan Water Supply, Sewerage and Drainage Act	385.40	24.00
(iii) Joiner—Assembler A (as defined in Clause 6 of this award)	344.60	24.00
(iv) Joiner—Assembler B (as defined in Clause 6 of this award)	330.70	24.00
(b) Builders Labourers—		
(i) Rigger	360.30	24.00
(ii) Drainer	360.30	24.00
(iii) Dogman	360.30	24.00
(iv) Scaffolder	345.00	24.00
(v) Powder Monkey	345.00	24.00
(vi) Hoist or Winch Driver	345.00	24.00
(vi) Concrete Finisher	345.00	24.00
(vi) Steel Fixer including tack welder	345.00	24.00
(xi) Operator Concrete Pump	345.00	24.00
(x) Bricklayer's Labourer	333.60	24.00
Plasterer's Labourer	333.60	24.00
Assistant Powder Monkey	333.60	24.00
Assistant Rigger	333.60	24.00
Demolition Worker (after three months' experience)	333.60	24.00
Gear Hand	333.60	24.00
Pile Driver	333.60	24.00
Tackle Hand	333.60	24.00
Jackhammer Hand	333.60	24.00
Mixer Driver (concrete)	333.60	24.00
Steel Erector	333.60	24.00
Aluminium Alloy Structural Erector	333.60	24.00
Gantry Hand or Crane Hand	333.60	24.00
Crane Chaser	333.60	24.00
Concrete Gang including Concrete Floater	333.60	24.00
Steel or Bar Bender to pattern or plan	333.60	24.00
Concrete Formwork Stripper	333.60	24.00
Concrete Pump Hose Hand	333.60	24.00
(xi) Builder's Labourers employed on work other than specified in classifications (i) to (x)	307.70	24.00

B. Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) Special Payment:

- A special payment of \$40.78 per week shall be paid to all employees covered by this award and shall be regarded as part of the "total rate" for all purposes.
- For the purpose of calculating the rate of wage payable to an apprentice the special payment prescribed in paragraph (a) hereof shall be deemed to be part of the tradesman's total rate.

C. Delete subclause (3) of this clause and insert the following in lieu thereof:

- The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable

since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, in so far as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements are not to be used to offset arbitrated safety net adjustments.

D. Delete subclause (5) of this clause and insert the following in lieu thereof:

- Construction Allowance: (per week) \$16.60. An employee shall not be entitled to this construction allowance except when required to work "on site" on any work in connection with the erection or demolition of a building or to carry out work which the employer and the union agree is construction work or in default of agreement, that is so declared by the Board of Reference.

2. Clause 12.—Leading Hands: Delete subclause (1) of this clause and insert the following in lieu thereof:

(1) An employee specifically appointed to be a leading hand who is placed in charge of—

	Per Week \$
(a) not more than one employee, other than an apprentice, shall be paid	10.62
(b) more than one and not more than five other employees shall be paid	23.68
(c) more than five and not more than ten other employees shall be paid	30.05
(d) more than ten other employees shall be paid	40.03

In each case, in addition to the rate prescribed for the highest classification or employee supervised, or his/her own rate, whichever is the highest.

3. Clause 13.—Special Rates and Provisions: Delete this clause and insert the following in lieu thereof:

(1) General conditions under which special rate is payable:

- The special rates prescribed in this clause shall be paid irrespective of the times at which work is performed and shall not be subject to any premium or penalty condition.
- Where more than one of the following rates provide a payment for disabilities of substantially the same nature then only the highest of such rates shall be payable.

(2) Insulation: An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool or other recognised insulating material of a like nature or working in the immediate vicinity so as to be affected by the use thereof shall be paid 47 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.

(3) Hot Work:

- An employee required to work in a place where the temperature has been raised by artificial means to between 46 degrees and 54 degrees Celsius shall be paid 37 cents per hour or part thereof in addition to the rates otherwise prescribed in this Award or in excess of 54 degrees Celsius shall be paid 47 cents per hour or part thereof in addition to the said rates.
- Where such work continues for more than two hours the employee shall be entitled to a rest period of 20 minutes after every two hours work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.

- (4) Cold Work:
- (a) An employee required to work in a place where the temperature is lowered by artificial means to less than zero degrees Celsius shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
 - (b) Where such work continues for more than two hours the employee shall be entitled to a rest period of 20 minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.
- (5) Confined Space: An employee required to work in a confined space, being a place the dimensions or nature of which necessitates working in a cramped position or without sufficient ventilation shall be paid 47 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (6) Toxic Substances:
- (a) An employee required to use toxic substances or materials of a like nature shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.
 - (b) An employee using such materials will be provided with and shall use all safeguards as are required by the appropriate Government Authority or in the absence of such requirement such safeguards as are determined by a competent authority or person chosen by the Union and the employer.
 - (c) An employee using toxic substances or materials of a like nature shall be paid 47 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 38 cents per hour extra.
 - (d) For the purpose of this subclause all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.
- (7) Asbestos: Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (i.e. combination overalls and breathing equipment or similar apparatus) such employees shall be paid 47 cents per hour extra whilst so engaged.
- (8) Dry Polishing or Cutting of Tiles: An employee required to dry polish tiles with a machine or to cut tiles with an electric saw shall be paid 47 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (9) Bitumen Work: An employee handling hot bitumen or asphalt or dipping materials in creosote shall be paid 47 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (10) Roof Repairs: An employee engaged on repairs to roofs shall be paid 47 cents per hour or part thereof in addition to the rates otherwise provided in this award.
- (11) Wet Work: An employee required to work in a place where water is continually dripping on him/her so that his/her clothing and boots become wet or where there is water underfoot shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (12) Dirty Work: An employee engaged on dirty work shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (13) An employee engaged in repairs to sewers shall be paid at the rate of 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (14) An employee working in a dust-laden atmosphere in a joiners' shop where dust extractors are not provided or in such atmosphere caused by the use of materials for insulating, deafening or pugging work (as, for instance, pumice, charcoal, silicate of cotton or any other substitute), shall be paid at the rate of 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (15) Scaffolding Certificate Allowance: A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Occupational Health, Safety and Welfare and is required to act on that certificate whilst engaged on work requiring a certificated person shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award but this allowance shall not be payable cumulative on the allowance for swing scaffolds.
- (16) Spray Application—Painters: A painter engaged on all spray applications carried out in other than a properly constructed booth, approved by the Department of Occupational Health, Safety and Welfare, shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (17) Cleaning Down Brickwork: An employee required to clean down bricks using acids or other corrosive substances shall be supplied with gloves and be paid 35 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (18) Bagging: An employee engaged upon bagging brick or concrete structures shall be paid 35 cents per hour thereof in addition to the rates otherwise prescribed in this award.
- (19) Furnace Work: An employee engaged in the construction or alternation or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work shall be paid \$1.01 per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (20) Acid Work: An employee required to work on acid furnaces, acid stills, acid towers and all other acid resisting brickwork shall be paid \$1.01 per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (21) Plasterers using flintcote shall be paid 25 cents per hour extra except where flintcote is applied by hawk and trowel to walls and ceilings when the rate shall be 47 cents per hour extra.
- (22) Chemical and Manure Works and Oil Refineries: Journeymen and builders' labourers working on chemical and manure works or oil refineries shall receive 16 cents per hour in addition to the prescribed rate.
- (23) Height Money: An employee required to work on a chimney stack, spire, tower, radio or television mast or tower, air shaft, cooling tower, water tower or silo, where the construction exceeds 15 metres in height shall be paid for all work above 15 metres, 38 cents per hour or part thereof, with an additional 38 cents per hour or part thereof for work above each further 15 metres in addition to the rates otherwise prescribed in this award.
- (24) Swing Scaffold:
- (a) An employee employed—
 - (i) on any type of swing scaffold or any scaffold suspended by rope or cable, or bosun's chair cantilever scaffold; or
 - (ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height of 20 feet or more above the nearest horizontal plane.
 shall be paid \$2.74 for the first four hours or part thereof and 56 cents for each hour thereafter on any day in addition to the rates otherwise prescribed in this award.

- (b) A solid plasterer when working off a swing scaffold shall be paid an additional 10 cents per hour.
- (c) No apprentice with less than two years' experience shall use a swing scaffold or bosun's chair.
- (25) Plumbing:
- (a) A plumber doing sanitary plumbing work on repairs to sewer drainage or wastepipe services in any of the following places—
- (i) Infectious and contagious diseases hospitals or any block or portion of a hospital used for the care of or treatment of patients suffering from any infectious or contagious disease.
 - (ii) Morgues, shall be paid 38 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (b) A plumber doing work on a ship of any class—
- (i) whilst under way; or
 - (ii) in a wet place, being one in which the clothing of an employee necessarily becomes wet to an uncomfortable degree or one in which water accumulates underfoot; or
 - (iii) in a confined space; or
 - (iv) in a ship which has done one trip or more in a fume or dust-laden atmosphere, in bilges, or when cleaning blockages in soil pipes or waste pipes or repairing brine pipes; shall be paid 47 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (c) A plumber carrying out pipework in a ship of any class under the plates in the engine and boiler rooms and oil fuel tanks shall be paid 99 cents per hour or part thereof in addition to the rates otherwise prescribed in this award.
- (d) A plumber required to enter a well nine metres or more in depth for the purpose in the first place of examining the pump, pipe or any other work connected therewith, shall be paid \$1.95 for such examination and 70 cents per hour thereafter for fixing renewing or repairing such work.
- (e) Permit Work: Any licenced plumber called upon by his/her employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid \$25.80 for that week, in addition to the rates otherwise prescribed in this award.
- (f) Plumbers on Sewerage Work: Plumbers or apprentices in their third, fourth or fifth year, on work involving the opening up on house drains or wastepipes for the purpose of clearing blockages or for any other purpose, or work involving the cleaning out of septic tanks or dry wells, shall be paid a minimum of \$2.03 per day in addition to the prescribed rate whilst so employed.
- (26) Explosive Powered Tools: An operator of explosive powered tools, being an employee qualified in accord with the laws and regulations of the State of Western Australia to operate explosive powered tools is required to use an explosive powered tool shall be paid 89 cents for each day on which he uses such tool in addition to the rates otherwise prescribed in this award.
- (27) Secondhand Timber: Where whilst working with secondhand timber, an employee's tools are damaged by nails, dumps or other foreign matter on the timber, shall be entitled to an allowance of \$1.48 per day on each day upon which his tools are so damaged provided that no allowance shall be payable under this clause unless it is reported immediately to the employer's representative on the job in order that the claim may be proved.
- (28) Computing Quantities: An employee, other than a leading hand, who is regularly required to compute or estimate quantities of materials in respect of the work performed by others shall be paid \$2.74 per day or part thereof in addition to the rates otherwise prescribed in this award.
- (29) Setter Out: A setter out in a joiner's shop shall be paid \$4.04 per day in addition to the rates otherwise prescribed by this award but where an employee qualifies for this allowance and is appointed leading hand he/she shall be paid whichever amount is the higher but not both.
- (30) Detail Worker: A detail worker shall be paid \$4.04 per day in addition to the rates otherwise prescribed in this award but where an employee qualifies for this allowance and is appointed leading hand he/she shall be paid whichever amount is the higher but not both.
- (31) Spray Painting—Painters:
- (a) Lead paint shall not be applied by a spray to the interior of any building.
 - (b) All employees (including apprentices) applying paint by spraying shall be provided with full overalls and head covering and respirators by the employer.
 - (c) Where from the nature of the paint or substance used in spraying a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substances used by an employee in spray painting, the employee shall be paid a special allowance of \$1.12 per day.
- (32) Brewery Cylinders—Painters:
- (a) A painter required to work in brewery cylinders or stout tuns shall be allowed 15 minutes spell in the fresh air at the end of each hour worked by him. Such fifteen minutes shall be counted as working time and paid for accordingly.
 - (b) A painter working in a brewery cylinder or a stout tun shall be paid at the rate of time and one half. When working overtime on such work a painter shall, in addition to the overtime rate payable, be paid one half of his ordinary rate.
- (33) Fumes: An employee required to work in a place where fumes of sulphur or other acid or other offensive fumes are present shall be paid such rates as are agreed upon between him/her and the employer.
- (34) (a) Lead Paint Surfaces: No surface painted with lead paint shall be rubbed down or scraped by a dry process.
- (b) Width of Brushes: All paint brushes shall not exceed 125mm in width and no kalsomine brush shall be more than 175mm in width.
- (c) Meals not to be taken in paint shop. No employee shall be permitted to have a meal in any paint shop or place where paint is stored or used.
- (35) Loads: Where bricks are being used the employee shall not be required to carry—
- (a) more than 40 bricks each load in a wheelbarrow (on a scaffold) to a height of 4.5 metres from the ground;
 - (b) more than 36 bricks each load in a wheelbarrow over and above a height of 4.5 metres on a scaffold.
- The type of wheelbarrow shall be agreed upon with the Union.

- (36) Grinding Facilities:
The employer shall provide adequate facilities for the employees to grind tools and employees shall be allowed time to use the same whenever reasonably necessary.
- (37) First Aid Outfit:
The employer shall provide a sufficient supply of bandages and antiseptic dressings for use in cases of accident.
- (38) Water and Soap:
Water and soap shall be provided at each shop or on each job by the employer for use by the employees.
- (39) Provision of Boiling Water:
The employer shall provide boiling water at each shop for the use of his/her employees at lunch time.
- (40) (a) The employer shall supply a safety helmet for each of his/her employees requesting one on any job where, pursuant to the regulations made under the Occupational Health, Safety and Welfare Act 1984, a employee is required to wear such helmet.
(b) Any helmet so supplied shall remain the property of the employer and during the time it is on issue, the employee shall be responsible for any loss or damage thereto, fair wear and tear attributable to ordinary use excepted.
- (41) Electrical Sanding Machines:
The use of electrical sanding machines for sanding down paint work shall be governed by the following provisions:
 - (a) The weight of each such machine shall not exceed 5.9 kilograms.
 - (b) Every employer operating any such machine shall endeavour to ensure that each such machine, together with all electrical leads and associated equipment, is kept in a safe condition and shall if requested so to do by any employee but not more often than once in any four weeks cause the same to be inspected under the provisions of the Electricity Act and the regulations made thereunder.
 - (c) Employers shall provide and supply respirators of a suitable type, to each employee and shall maintain same in an effective and clean state at all times. Where respirators are used by more than one employee, each such respirator shall be sterilised or a new pad inserted after use by each such employee.
 - (d) Employers shall also provide and supply goggles of suitable type provided that the goggles with celluloid lenses shall not be regarded as suitable.
 - (e) All employees shall use the protective equipment supplied when using electrical sanding machines of any type.
- (42) Protective clothing for bricklayers and bricklayers' labourers engaged on construction or repair of refractory brickwork:
 - (a) Gloves shall be supplied when employees are engaged on repair work and shall be replaced as required, subject to employees handing in the used gloves.
 - (b) Boots shall be supplied upon request of the employees after six weeks' employment, the cost of such boots to be assessed at \$20.00 and employees to accrue credit at the rate of \$1.00 per week.

Employees leaving or being dismissed before 20 weeks' employment shall pay the difference between the credit accrued and the \$20.00. The right to accrue credit shall commence from the date of request for the boots.

In the event of boots being supplied and the employee not wearing them whilst at work, the employer shall be entitled to deduct the cost of the boots if the

failure to wear them continues after one warning by the employer.

Upon issue of the boots, employees may be required to sign the authority form in or to the effect of the Annexure to the clause. Boots shall be replaced each six months, dating from the first issue.

- (c) Where necessary when bricklayers are engaged on work covered by subclauses (19) and (20) of this clause, overalls will be supplied upon the request of the employee and on the condition that they are worn while performing the work.

ANNEXURE

The employee claiming the supply of boots in accordance with paragraph (b) hereof may be required to sign a form giving an authority to the employer in accordance with the following—

Deduction Form

..... acknowledge receipt of one (1) pair of boots provided in accordance with the provisions of subclause (42) of Clause 13.—Special Rates and Provisions of the Building Trades Award No. 31 of 1966. Should the full cost of the boots (\$20.00) not be met by accumulation of credit (at the rate of \$1.00 per week) from I authorise deduction from any moneys due to me by my employer of an amount necessary to meet the difference between the credit accrued and \$20.00.

Signed

Dated

- (43) An employee, holding a Third Year First Aid Medallion of the St. John Ambulance Association, appointed by the employer to perform first aid duties, shall be paid at the rate of \$6.72 per week in addition to the prescribed rate.
- (44) Attendants on Ladders:
No employees shall work on a ladder at a height of over 6.1 metres from the ground when such ladder is standing in any street, way or lane where traffic is passing to and fro, without an assistant on the ground.
- (45) Where the employer provides transport to and from the job the conveyance used for such transport shall be provided with suitable seating and weatherproof covering.
- (46) Sanitary Arrangements:
The employer shall comply with the provisions of section of the Occupational Health, Safety and Welfare Act, 1984-1987.
- (47) The Secretary or any authorised officer of the Union shall have the right to visit any job for the purpose of ascertaining whether work is being performed in accordance with the provisions of the Occupational Health, Safety and Welfare Act, and any regulations made thereunder. Should he be of the opinion that the work being carried out is not in accordance with those provisions the Secretary or any authorised officer of the Union shall inform the employer and the workers concerned accordingly and may report any alleged breach of Act or the regulations to the Chief Inspector of the Department of Occupational Health, Safety and Welfare of Western Australia.

**BUILDING TRADES (CONSTRUCTION)
AWARD 1987
No. R 14 of 1978.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Adsigns Pty Ltd and Others.

No. 1060 of 1996.

Building Trades (Construction) Award 1987
No. R 14 of 1978.

COMMISSIONER P E SCOTT.

4 October 1996.

Reasons for Decision.

THE COMMISSIONER: This is an application to amend the Building Trades (Construction) Award 1987, No. R 14 of 1978 ("the Award") to vary expense related allowances to reflect the changes in costs, as provided for in the Statement of Principles arising from the State Wage Case Decision (76 WAIG 3365).

The Respondents for whom appearances were made on 1 October 1996 agreed that amendments sought are in accordance with that Statement of Principles, however, Mr Dwyer for certain respondents submitted that it was inappropriate to progress the matter due to what he said was an industrial campaign being conducted by a number of unions including some party to the Award. This campaign is aimed at achieving increased travelling allowances as a result of the application of changed taxation rulings to travelling allowances.

The Commission was advised that this action had focused on the engineering sector and that nearly all major projects had been the subject of some type of industrial action, from overtime bans to strike action, for various periods over recent weeks.

A copy of Order C 259 of 1996 by Fielding SC dated 2 September 1996, that industrial action at the SR 2 Construction Project at Capel cease, was tendered. It was said that this Order had been breached and that there were further proceedings in respect of that breach. The Commission was also told of mass meetings having occurred between 30 August and 25 September 1996, and that the dispute is before the Chief Commissioner including a further conference to be convened on 3 October 1996. On the basis of these submissions, these respondents sought to adjourn the matter until this dispute is resolved.

Mr Richardson for the Master Builders Association of Western Australia ("MBAWA") referred the Commission to various decisions of the Australian Industrial Relations Commission dealing with the dispute resulting from the taxation of travelling allowances. These were decisions by:

1. Jones C of 23 August 1996, in which the Commission declined to issue any decision to amend awards in similar circumstances until certain detail was provided. (Print N4363)
2. McIntyre DP of 10 September 1996 ordering the insertion of a bans clause into a number of awards including the National Building and Construction Industry Award, in the circumstances of the action "in support of a wage increase related to the taxation of travelling allowances". Such bans clauses operate from 12 September 1996 for a period of one month. (Print N4862)
3. Jones C of 26 September 1996 that as a result of what the Commissioner referred to as "the moratorium" (which I assume is the decision of McIntyre DP for the insertion of bans clauses) the Commissioner decided to order the increases in allowances, to be effective from Monday 23 September 1996. (Print N5304).

Mr Richardson advised that agreement has been reached between The Western Australian Builders' Labourers, Paint-

ers and Plasterers Union of Workers ("WABLPPU") and the MBAWA on behalf of six to seven principal contractors. He says that he now understands that as of last week the WABLPPU "is now in the field, campaigning to have the agreement signed or entered into, by principal contractors and sub contractors".

The Commission was provided with a copy of a letter on the letterhead of the WABLPPU, under the signature of the Secretary which states:

"21 September, 1996

Dear Sir

Re: Award Transport Payments

We have now concluded an Agreement with the MBA and the CCA on behalf of a number of there (sic) members. The terms of the agreement are spelt out in the enclosed draft agreement. We are now seeking agreement from the sub-contractor in the Construction Industry to this proposal.

Therefore we request that the agreement be signed by you and returned to us as soon as possible.

If you wish to discuss this matter please do not hesitate to contact an officer of the Union."

Attached to this is a document on the letterhead of the Construction, Forestry, Mining and Energy Union which is a document which an employer is invited to sign indicating agreement to make additional payments to employees on account of the Australian Taxation Office rulings.

There was no elaboration by Mr Richardson of what was meant by the WABLPPU "being in the field" or "campaigning".

The MBAWA is of the view that in seeking on one hand to amend the Award, and on the other making direct approaches to employers to make an additional payments "on top of that is not a proper exercise by the union". Alternatively, the MBAWA says that this may be viewed as consistent with the thrust of enterprise bargaining, with the Award providing a safety net.

In response, the Applicant says that there is not sufficient evidence before the Commission to demonstrate that industrial action is proceeding as stated and referring to circumstances in the Australian Industrial Relations Commission where Commissioner Tolley said that he had insufficient evidence before him to indicate that the unions involved with the plumbing industry awards were involved in similar action and accordingly decided to grant the application to increase the allowances.

On 1 October 1996, at the conclusion of the hearing, the Commission decided to amend the Award in respect of the allowances other than travelling allowances and reserved its decision regarding those allowances.

The Commission is required to keep itself informed of industrial relations matters according to Section 19 of the Industrial Relations Act, 1979. It is well known that a campaign in pursuit of the claim in respect of the Australian Taxation Office ruling regarding travelling allowances has been in effect on a number of sites in this State. It is clear too that agreement has been reached in some areas, involving the WABLPPU. The Commission has before it information which would indicate that the claim is not finalised. There are bans clauses operating in a number of federal awards including that with which this Award has an nexus, being a National Building and Construction Industry Award, such bans clauses are due to expire in a week and matters involving the construction industry are proceeding before this Commission under the auspices of the Chief Commissioner.

It should be noted that this Award also has as parties to it, a number of Unions in addition to the WABLPPU. The following organisations are parties to this award:

The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers.

Building Trades Association of Unions of Western Australia (Association of Workers).

The Plumbers and Gasfitters Employees' Union of Australia, West Australian Branch, Industrial Union of Workers.

It is however clear from Exhibit 2 that the WABLPPU has negotiated and reached agreement with a number of MBAWA members, and is now seeking to flow on that agreement.

Whilst it is obvious that there has been industrial action associated with the claim for increases in travelling allowances due to changed taxation arrangements, there is no evidence before the Commission to indicate that industrial action is currently taking place or will take place in the future. On that basis, there is no good reason to refuse to amend the Award in respect of fares and travelling allowances in the manner claimed and, apart from the issue of industrial action, agreed to by the Respondents. In the circumstances these allowances will be amended from the same date as other allowances the subject of this application.

In respect of the submission urging the Commission to prevent double payment by employers who have arrangements with the unions regarding the additional amounts due to the taxation claim, the Commission notes that it is dealing with the award provision. Should arrangements have been made or are to be made between employers and unions for amounts additional to those prescribed by the Award, then those parties will need to make appropriate adjustments for themselves. One would have assumed that agreements of this nature would take account of the real likelihood of the award being amended in this way at some time, and on an on going basis.

APPEARANCES: Mr G Giffard appeared on behalf of the Applicant

Mr K J Dwyer appeared on behalf of the Respondent

Mr K Richardson appeared on behalf of the Master Builders Association of Western Australia

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers and Others

and

Adsigns Pty Ltd and Others.

No. 1060 of 1996.

Building Trades (Construction) Award 1987
No. R 14 of 1978.

COMMISSIONER P E SCOTT.

15 October 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant, Mr K Dwyer on behalf of Austral Insulation (WA) Pty Ltd and Others and Mr K Richardson on behalf of the Master Builders Association of Western Australia the Commission, pursuant to the powers conferred on it by the Industrial Relations Act, 1979 hereby orders—

THAT the Building Trades (Construction) Award 1987 as amended be further varied in the terms of the following Schedule with effect from the beginning of the first pay period commencing on or after the 1st day of October 1996.

[L.S]

(Sgd.) P.E. SCOTT,
Commissioner.

Schedule.

1. Clause 8.—Rates of Pay: Delete subclause (6) of this clause and insert the following in lieu thereof:

(6) Tool Allowance
Tool allowances shall be paid to tradesmen as prescribed hereunder—

	Per Week \$
Carpenters, Joiners, Plumbers, Stonemasons, Stoneworkers	18.70
Plasterers, Fixers	15.40
Bricklayers	13.40
Roof Tile Fixers	9.80
Signwriters, Painters, Glaziers	4.60

2. Clause 12A.—Fares and Travelling (Except Plumbers):

A. Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) Perth Metropolitan Radial Area

When employed on work located within a radius of 50 kilometres from the G.P.O. Perth—
\$11.80 per day.

B. Delete subclause (5) paragraph (b) placitum (ii) of this clause and insert the following in lieu thereof:

(ii) any expenses necessarily incurred in such travel, which shall be 35 cents per kilometre where the employee uses his/her own vehicle.

C. Delete subclause (11) of this clause and insert the following in lieu thereof:

(11) Transfer During Working Hours

An employee transferred from one site to another during working hours shall be paid for the time occupied in travelling and, unless transported by the employer, shall be paid reasonable cost of fares by most convenient public transport between such sites.

Where an employer requests an employee to use his/her own vehicle to effect such a transfer and the employee agrees to do so the employee shall be paid an allowance at the rate of 65 cents per kilometre.

3. Clause 12B.—Fares and Travelling—Plumbers Only:

A. Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) Travel beyond defined radius

When working on jobs beyond the defined radius from the centre (as defined) the fares as defined and one quarter of an hour travelling time plus an allowance for travelling time calculated at the ordinary time rate of pay for the time required to travel to the job site and back from and to the defined radius and calculated at a speed not exceeding the legal speed limit and with a minimum payment of a quarter of an hour for each such journey.

Where an employee provides his/her own transport, an additional allowance of 35 cents per kilometre shall be payable for the distance involved in travelling beyond the defined radius and return thereto, which shall compensate for any fares incurred by public transport.

B. Delete subclause (3) of this clause and insert the following in lieu thereof:

(3) Transport During Working Hours

Where an employee is required by an employer to travel to any other job site during the course of his/her daily engagement he/she shall be paid all fares necessarily incurred except where transport is provided by the employer to and from such site, and all time spent in such travel shall be regarded as time worked.

Provided that where an employer requests an employee to use his/her own car to effect such

a transfer and such employee agrees to do so the employee shall be paid an allowance at the rate of 65 cents per kilometre.

- C. Delete subclause (5) paragraph (a) of this clause and insert the following in lieu thereof:

- (a) Radius and Fares—

The radius shall be 50 kilometres and the fares shall be \$7.70 per day.

4. Clause 20.—Meal Allowance : Delete this clause and insert the following in lieu thereof:

20.—MEAL ALLOWANCE

An employee required to work overtime for at least one and a half hours after working ordinary hours inclusive of any time worked for accrual purposes as prescribed in clauses 13(1) or 18(4) shall be paid by his/her employer an amount of \$7.50 to meet the cost of a meal.

Provided that this clause shall not apply to an employee who is provided with reasonable board and lodging or who is receiving a distant work allowance in lieu thereof as provided for in subclause (3) of Clause 21.—Living Away From Home—Distant Work and is provided with a suitable meal.

5. Clause 21.—Living Away From Home—Distant Work

- A. Delete subclause (3) paragraph (b) of this clause and insert the following in lieu thereof:

- (b) Pay an allowance of \$266.50 per week of seven days but such allowance shall not be wages. In the case of broken parts of the week occurring at the beginning or ending of employment on a distant job the allowance shall be \$38.10 per day.

Provided that the foregoing allowances shall be increased if the employee satisfies the employer that he/she reasonably incurred a greater outlay than that prescribed. In the event of disagreement the matter may be referred to a Board of Reference for determination; or

- B. Delete subclause (4) paragraphs (a) and (b) of this clause and insert the following in lieu thereof:

- (a) Forward Journey—

- (i) For the time spent in so travelling, at ordinary rates up to a maximum of eight hours per day for each day of travel (to be calculated as the time taken by rail or the usual travelling facilities).

- (ii) For the amount of a fare on the most common method of public transport to the job (bus, economy air, second class rail with sleeping berths if necessary, which may require a first class rail fare), and any excess payment due to transporting his/her tools if such is incurred.

- (iii) For any meals incurred while travelling at \$7.50 per meal.

Provided that the employer may deduct the cost of the forward journey fare from an employee who terminates or discontinues his/her employment within two weeks of commencing on the job and who does not forthwith return to his/her place of engagement.

- (b) Return Journey: An employee shall, for the return journey receive the same time, fare and meal payments as provided in paragraph (a) of this subclause together with an amount of \$14.30 to cover the cost of transporting himself/herself and his/her tools from the main public transport terminal to his/her usual place of residence.

Provided that the above return journey payments shall not be paid if the employee terminates or discontinues his/her employment within two months of commencing on the job, or if he/she is dismissed for incompetence

within one working week of commencing on the job, or is dismissed for misconduct.

- C. Delete subclause (6) paragraph (a) of this clause and insert the following in lieu thereof:

- (6) (a) Weekend Return Home: An employee who works as required during the ordinary hours of work on the working day before and the working day after a weekend and who notifies the employer or his/her representative, no later than Tuesday of each week, of his/her intention to return to his/her usual place of residence at the weekend and who returns to his/her usual place of residence for the weekend, shall be paid an allowance of \$24.10 for each occasion.

- D. Delete subclause (7) paragraph (b) of this clause and insert the following in lieu thereof:

- (b) Camping Allowance: An employee living in a construction camp where free messing is not provided shall receive a camping allowance of \$115.90 for every complete week he/she is available for work. If required to be in camp for less than a complete week he/she shall be paid \$16.70 per day including any Saturday or Sunday if he/she is in camp and available for work on the working days immediately preceding and succeeding each Saturday and Sunday. If an employee is absent without the employer's approval on any day, the allowance shall not be payable for that day and if such unauthorised absence occurs on the working day immediately preceding or succeeding a Saturday or Sunday, the allowance shall not be payable for the Saturday or Sunday.

6. Clause 32.—Special Tools and Protective Clothing: Delete subclause (5) paragraph (b) of this clause and insert the following in lieu thereof:

- (b) The employer shall make available, during working hours, a suitable grindstone or wheel together with power (hand or mechanically driven) for turning it. If a grindstone or wheel is not made available the employer shall pay to each carpenter or joiner \$4.13 per week in lieu of same.

7. Clause 33.—Compensation for Clothes and Tools: Delete subclause (2) paragraph (a) of this clause and insert the following in lieu thereof:

- (2) (a) An employee shall be reimbursed by his/her employer to a maximum of \$1087.00 for loss of tools or clothes by fire or breaking and entering whilst securely stored at the employer's direction in a room or building on the employer's premises, job or workshop or in a lock-up as provided in this award or if the tools are lost or stolen whilst being transported by the employee at the employer's direction, or if the tools are accidentally lost over water or if tools are lost or stolen during an employee's absence after leaving the job because of injury or illness.

Provided that an employee transporting his/her own tools shall take all reasonable care to protect those tools and prevent theft or loss.

8. Appendix B.—Wagerup Alumina Refinery Construction Site: Delete clause 3.—Travelling Allowance of this Appendix and insert the following in lieu thereof:

3.—TRAVELLING ALLOWANCE

In lieu of the provisions of Clauses 12A and 12B of this award the following travelling allowances shall be paid—

	Per day \$
(a) For those employees residing in the Waroona township (including a caravan park) or the construction camp	11.80

- | | |
|---|---------------|
| | Per day
\$ |
| (b) Employees other than provided for in subclause (a) and who travel from a point— | |
| (i) Up to 32km radius from the job site | 23.20 |
| (ii) 32km—50km radius from the job site | 31.10 |
| (iii) 50km—68km radius from the job site | 38.20 |
| (iv) Over 68km radius from the job site | 53.90 |
| (c) Notwithstanding the foregoing, an employee who is not provided with transport by his/her employer to travel to and from the job and who is required to travel by the shortest possible route a distance of more than 60 kilometres from his/her home to the job shall be paid an allowance of \$38.20 per day and such an employee who is required to travel by the shortest possible route a distance of more than 80 kilometres from his/her home to the job shall be paid an allowance of \$53.90 per day. | |
| (d) (i) An employee shall not be entitled to the allowance prescribed in subclause (c) hereof unless and until he/she submits a written statement to his/her employer setting out his place of residence and the number of kilometres he/she is required to travel from his/her home to the job by the shortest possible route. | |
| (ii) An employee who wilfully sets out an incorrect distance in his written statement shall be deemed guilty of wilful misconduct. | |

9. Appendix C.—Pinjarra and Kwinana Alumina Refineries: Delete clause 3.—Travelling Allowance of this Appendix and insert the following in lieu thereof:

3.—TRAVELLING ALLOWANCE

In lieu of the provisions of Clauses 12A and 12B of this award the following allowances shall be paid to employees at the Pinjarra Alumina Refinery—

- | | |
|---|---------------|
| | Per day
\$ |
| (a) For those employees residing in the Pinjarra township | 11.80 |
| (b) Employees other than provided for in subclause (a) and who travel from a point— | |
| (i) Up to 32km radius from the job site | 23.20 |
| (ii) 32km—50km radius from the job site | 31.10 |
| (iii) Over 50km radius from the job site | 38.20 |
| (c) Notwithstanding the foregoing, an employee who is not provided with transport by his/her employer to travel to and from the job and who is required to travel, by the shortest possible route, a distance of more than 60 kilometres from his/her home to the job, shall be paid an allowance of \$38.20 per day and such an employee who is required to travel by the shortest possible route, a distance of more than 80 kilometres from his/her home to the job shall be paid an allowance of \$53.90 per day. | |
| (d) (i) An employee shall not be entitled to the allowance prescribed in subclause (c) hereof unless and until he/she submits a written statement to his/her employer setting out his place of residence and the number of kilometres he/she is required to travel from his/her home to the job by the shortest possible route. | |
| (ii) An employee who wilfully sets out an incorrect distance in his/her written statement shall be deemed guilty of wilful misconduct. | |

**BUILDING TRADES (GOVERNMENT) AWARD 1968
No. 31 A of 1966.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Others

and

Hon. Minister for Works and Others.

No. 934 of 1996.

Building Trades (Government) Award 1968
No. 31 A of 1996.

COMMISSIONER P.E. SCOTT.

21 October 1996.

Order:

HAVING heard Ms J. Harrison on behalf of the Applicants and Mr B. Appleby on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Building Trades (Government) Award 1968 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 23rd day of August 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1. Clause 9.—Wages:

A. Subclause (2): Delete paragraph (g) of this subclause and insert the following in lieu thereof:

(g) Stonemasons: The employer shall supply all necessary tools for the use of stonemasons, except when engaged on building construction, when the worker, if required to supply his/her own tools, shall receive a tool allowance at the rate of \$1.48 per week.

B. Subclause (3): Delete paragraphs (a), (b),(c) and (d) of this subclause and insert the following in lieu thereof:

	\$
(a) Bricklayers, stoneworkers, carpenters, joiners, painters, glaziers, signwriters, plasterers, plumbers and stonemasons	37.87
(b) Special Class Tradesperson (as defined)	39.77
(c) Registered Plumbers	39.35
(d) Builders Labourers	
(i) Classifications (i) to (iii) inclusive	37.14
(ii) Classifications (iv) to (ix)	34.92
(iii) Classification (x)	33.76
(iv) Classification (xi)	31.44

C. Subclause (4): Delete this subclause and insert the following in lieu thereof:

(4) Disabilities Allowance (Per Week): \$16.56

(a) Subject to the provisions of paragraph (b), of this subclause an allowance of \$16.56 shall be paid to all employees excepting employees who are employed for the major portion of any week in or about a permanent maintenance depot or who are usually employed in or about the employer's business when an employee coming

- within the exception is engaged on the erection or demolition of a building exceeding 250 square feet in floor area.
- (b) Employees who are directed to work temporarily in or about a permanent maintenance depot and who immediately prior to being so directed were in receipt of the allowance for a period of not less than three months shall be paid two-thirds of the allowance prescribed herein.
- D. Subclause (7): Delete the heading and preamble to this subclause and insert the following in lieu thereof:
- (7) Plumbing Trade Allowance
Plumbers shall be paid an allowance at the rate of \$12.77 per week to compensate for the following classes of work and in lieu of the relevant amounts in Clause 13.—Special Rates and Provisions of this award whether or not such work is performed in any one week. When working outside the categories listed hereunder, a plumber shall receive the appropriate rates provided for in the said Clause 13.—Special Rates and Provisions.
2. Clause 11.—Leading Hands: Delete subclause (1) of this clause and insert the following in lieu thereof:
- (1) Any employee referred to in Clause 9.—Wages of this award or a leading hand defined in paragraph (h) of subclause (3) of Clause 6.—Definitions of this award, who is placed in charge for not less than one day of—
- (a) not less than three and not more than ten other employees referred to in Clause 9.—Wages shall be paid at the rate of \$26.90 per week extra;
- (b) more than ten and not more than twenty other employees referred to in Clause 9.—Wages shall be paid at the rate of \$35.98 per week extra;
- (c) more than twenty other employees referred to in Clause 9.—Wages shall be paid at the rate of \$45.05 per week extra.
3. Clause 13.—Special Rates and Provisions:
- A. Subclause (2): Delete this subclause and insert the following in lieu thereof:
- (2) Swing Scaffold:
- (a) An employee employed—
- (i) on any type of swing scaffold or any scaffold suspended by rope or cable or bosun's chair or cantilever scaffold, or
- (ii) on a suspended scaffold requiring the use of steel or iron hooks or angle irons at a height 6.1 metres or more above the nearest horizontal plane,
- shall be paid \$2.63 for the first four hours or part thereof; and 53 cents for each hour thereafter on any day in addition to the rates otherwise prescribed.
- (b) A solid plasterer when working on a swing scaffold shall be paid an additional 11 cents per hour.
- (c) No apprentice with less than two years' experience shall use a swing scaffold or bosun's chair.
- (d) Provided that no allowance shall be payable for working on such scaffolds when used under bridges or jetties unless the height of the scaffold above the water exceeds 0.9 metres.
- B. Subclause (3): Delete this subclause and insert the following in lieu thereof:
- (3) Insulation:
An employee handling charcoal, pumice, granulated cork, silicate of cotton, insulwool, slag wool or other recognised insulation
- material of a like nature or working in the immediate vicinity so as to be affected by the use thereof: shall be paid 44 cents per hour part thereof: in addition to the rates otherwise prescribed.
- C. Subclause (4): Delete this subclause and insert the following in lieu thereof:
- (4) Working in a dust laden atmosphere in a joiner's shop where dust extractors are not provided in or such atmosphere caused by the use of materials for insulating, deafening or plugging work (as, for instance, pumice, charcoal, silicate of cotton, or any other substitute) or from earthworks, 44 cents per hour extra.
- D. Subclause (5): Delete this subclause and insert the following in lieu thereof:
- (5) Confined Space:
An employee required to work in a confined space, being a place the dimension or nature of which necessitates working in a cramped position or without sufficient ventilation, shall be paid 44 cents per hour or part thereof: in addition to the rate otherwise prescribed.
- E. Subclause (6): Delete this subclause and insert the following in lieu thereof:
- (6) Sewer Work:
An employee engaged in repairs to sewers shall be paid 34 cents per hour or part thereof: in addition to the rates otherwise prescribed.
- F. Subclause (7): Delete this subclause and insert the following in lieu thereof:
- (7) Sanitary Plumbing Work:
A plumber doing sanitary plumbing work on repairs to sewer drainage or waste pipe services in any of the following places—
- (a) Infectious and contagious disease hospitals or any block or portion of a hospital used for the care or treatment of patients suffering from any infectious or contagious disease.
- (b) Morgues:
shall be paid 37 cents per hour or part thereof: in addition to the rates otherwise prescribed.
- G. Subclause (8): Delete this subclause and insert the following in lieu thereof:
- (8) Ship Plumbing:
A plumber doing work on a ship of any class—
- (a) Whilst under way; or
- (b) In a wet place being one in which the clothing of an employee necessarily becomes wet to an uncomfortable degree or one in which water accumulates underfoot; or
- (c) In a confined space; or
- (d) In a ship which has done one trip or more in a fume or dust laden atmosphere, in bilges, or when cleaning blockages in soil pipe or waste pipes or repairing brine pipes, shall be paid 52 cents per hour or part thereof: in addition to the rate otherwise prescribed.
- (e) A plumber carrying out pipe work in a ship of any class under the plates in the engine and boiler rooms and oil fuel tanks shall be paid \$1.07 per hour or part thereof: in addition to the rates otherwise prescribed.
- H. Subclause (9): Delete this subclause and insert the following in lieu thereof:
- (9) Well Work:
A plumber or labourer required to enter a well nine metres or more in depth for the purpose

- in the first place of examining the pump, pipe or any other work connected therewith, shall be paid \$1.87 for such examination and 68 cents per hour extra thereafter for fixing, renewing or repairing such work.
- I. Subclause (10): Delete this subclause and insert the following in lieu thereof:
- (10) Permit Work:
Any licensed plumber called upon by his/her employer to use the licence issued to him/her by the Metropolitan Water Supply, Sewerage and Drainage Board for a period in any one week shall be paid \$11.25 for that week in addition to the rates otherwise prescribed.
- J. Subclause (11): Delete this subclause and insert the following in lieu thereof:
- (11) Plumbers on Sewerage Work:
Plumbers or apprentices in their third, fourth or fifth year, on work involving the opening up of house drains or waste pipes for the purpose of clearing blockages or for any other purpose, or work involving the cleaning out of septic tanks or dry wells, shall be paid a minimum of \$1.86 per day or part thereof: in addition to the prescribed rate.
- K. Subclause (12): Delete this subclause and insert the following in lieu thereof:
- (12) Height Money:
An employee required to work on a chimney stack, spire, tower, air shaft, cooling tower, water tower exceeding fifteen metres in height shall be paid for all work above fifteen metres, 37 cents per hour thereof: with an additional 37 cents per hour or part thereof: for work above each further fifteen metres in addition to the rates otherwise prescribed.
- L. Subclause (13): Delete this subclause and insert the following in lieu thereof:
- (13) Furnace Work:
An employee engaged in the construction or alteration or repairs to boilers, flues, furnaces, retorts, kilns, ovens, ladles and similar refractory work or on underpinning shall be paid 95 cents per hour or part thereof: in addition to the rates otherwise prescribed.
- M. Subclause (14): Delete this subclause and insert the following in lieu thereof:
- (14) Hot Work:
- (a) An employee required to work in a place where the temperature has been raised by artificial means to between 46° Celsius and 54° Celsius shall be paid 37 cents per hour or part thereof: in addition to the rates otherwise prescribed, or in excess of 54° Celsius shall be paid 44 cents per hour or part thereof: in addition to the said rates.
- (b) Where such work continues for more than two hours the employee shall be entitled to a rest period of twenty minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.
- N. Subclause (15): Delete this subclause and insert the following in lieu thereof:
- (15) Cold Work:
- (a) An employee required to work in a place where the temperature is lowered by artificial means to less than 0° Celsius shall be paid 37 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.
- (b) Where such work continues for more than two hours the employee shall be entitled to a rest period of twenty minutes after every two hours' work without loss of pay, not including the special rate prescribed in paragraph (a) hereof.
- O. Subclause (16): Delete this subclause and insert the following in lieu thereof:
- (16) Swanbourne and Graylands: Employees required to work at the Swanbourne and Graylands Hospitals controlled by the Mental Health Service shall be paid at the rate of 37 cents per hour in addition to the prescribed rate.
- P. Subclause (17): Delete this subclause and insert the following in lieu thereof:
- (17) Flintcote: Plasterers using flintcote shall be paid 37 cents per hour or part thereof: except when flintcote is applied by hawk and trowel to walls and ceilings when the rate shall be 63 cents per hour extra in addition to the prescribed rate.
- Q. Subclause (18): Delete this subclause and insert the following in lieu thereof:
- (18) Dirty Work:
- (a) An employee employed on excessively dirty work which is more likely to render the employee or his/her clothes dirtier than the normal run of work, shall be paid 37 cents per hour extra in addition to the prescribed rate (with a minimum payment of four hours when employed on such work).
- (b) This shall not apply to an employee in receipt of the allowance prescribed in subclause (4) of Clause 9.—Wages of this award nor to a worker in receipt of the allowance prescribed in subclause (27) hereof.
- R. Subclause (19): Delete this subclause and insert the following in lieu thereof:
- (19) Stonemason on Wall:
A stonemason working on the wall (cottage work and foundation work in coastal stone excepted) shall be paid 37 cents per hour thereof: in addition to the rates otherwise prescribed.
- S. Subclause (20): Delete this subclause and insert the following in lieu thereof:
- (20) Setter Out:
A setter out (other than a leading hand) in a joiner's shop shall be paid \$3.51 per day in addition to the rates otherwise prescribed.
- T. Subclause (21): Delete this subclause and insert the following in lieu thereof:
- (21) Detail Employee:
A detail employee (other than a leading hand) shall be paid \$3.51 in addition to the rates otherwise prescribed.
- U. Subclause (22): Delete this subclause and insert the following in lieu thereof:
- (22) Spray Painting—Painter:
- (a) Lead paint shall not be applied by a spray to the interior of any building.
- (b) All employees (including apprentices) applying paint by spraying, shall be provided with full overalls and head covering and respirators by the employer.
- (c) Where from the nature of the paint or substance used in spraying, a respirator would be of little or no practical use in preventing the absorption of fumes or materials from substance used by an employee in spray painting, the employee shall be paid a special allowance of 95 cents per day.

- V. Subclause (24): Delete this subclause and insert the following in lieu thereof:
- (24) Spray Application—Painters:
A painter engaged on all applications carried out in other than a properly constructed booth approved by the Department of Labour and Industry shall be paid 37 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.
- W. Subclause (25): Delete this subclause and insert the following in lieu thereof:
- (25) An employee who is a qualified first aid person and is appointed by his/her employer to carry out first aid duties in addition to his/her usual duties shall be paid an additional rate of \$1.24 per day.
- X. Subclause (26): Delete this subclause and insert the following in lieu thereof:
- (26) Toxic Substances:
- (a) An employee required to use toxic substances or materials of a like nature shall be informed by the employer of the health hazards involved and instructed in the correct and necessary safeguards which must be observed in the use of such materials.
- (b) An employee using such materials will be provided with and shall use all safeguards as are required by the appropriate Government Authority in the absence of such requirement such safeguards as are determined by a competent authority or person chosen by the union and the employer.
- (c) An employee using toxic substances or materials of a like nature shall be paid 44 cents per hour extra. Employees working in close proximity to employees so engaged shall be paid 34 cents per hour extra.
- (d) For the purposes of this subclause all materials which include or require the addition of a catalyst hardener and reactive additives or two pack catalyst system shall be deemed to be materials of a like nature.
- Y. Subclause (29): Delete this subclause and insert the following in lieu thereof:
- (29) Asbestos:
Employees required to use materials containing asbestos or to work in close proximity to employees using such materials shall be provided with and shall use all necessary safeguards as required by the appropriate occupational health authority and where such safeguards include the mandatory wearing of protective equipment (ie. combination overalls and breathing equipment or similar apparatus) such employees shall be paid 44 cents per hour whilst so engaged.
- Z. Subclause (30): Delete this subclause and insert the following in lieu thereof:
- (30) Explosive Powered Tools:
An operator of explosive powered tools, being an employee qualified in accord with the laws and regulations of the State of Western Australia to operate explosive powered tools, who is required to use an explosive powered tool shall be paid 85 cents for each day on which he/she used a tool in addition to the rates otherwise prescribed.
- AA. Subclause (31): Delete this subclause and insert the following in lieu thereof:
- (31) Wet Work:
An employee required to work in a place where water is continually dripping on him/her so that his/her clothing and boots become wet or where there is water underfoot shall be paid 37 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.
- BB. Subclause (32): Delete this subclause and insert the following in lieu thereof:
- (32) Cleaning Down Brickwork:
An employee required to clean down bricks using acids or other corrosive substances shall be supplied with gloves and be paid 34 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.
- CC. Subclause (33): Delete this subclause and insert the following in lieu thereof:
- (33) Bagging:
An employee engaged upon bagging brick or concrete structures shall be paid 34 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.
- DD. Subclause (34): Delete this subclause and insert the following in lieu thereof:
- (34) Bitumen Work:
An employee handling hot bitumen or asphalt or dripping materials in creosote shall be paid 44 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.
- EE. Subclause (35): Delete this subclause and insert the following in lieu thereof:
- (35) Scaffolding Certificate Allowance:
A tradesperson who is the holder of a scaffolding certificate or rigging certificate issued by the Department of Labour and Industry and is required to act on that certificate whilst engaged on work requiring a certified person shall be paid 37 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award but this allowance shall not be payable cumulative on the allowance for swing scaffolds.
- FF. Subclause (36): Delete this subclause and insert the following in lieu thereof:
- (36) Dry Polishing or Cutting of Tiles:
An employee required to dry polish tiles with a machine or to cut tiles with an electric saw shall be paid 44 cents per hour or part thereof: in addition to the rates otherwise prescribed in this award.
- GG. Subclause (37): Delete this subclause and insert the following in lieu thereof:
- (37) Secondhand Timber:
Where, whilst working with second-hand timber, an employee's tools are damaged by nails, dumps or other foreign matter on the timber, he/she shall be entitled to an allowance of \$1.24 per day on each day upon which his/her tools are so damaged, provided that no allowance shall be payable under this clause unless it is reported immediately to the employer's representative on the job in order that the claim may be proved.
- HH. Subclause (38): Delete this subclause and insert the following in lieu thereof:
- (38) Roof Repairs:
An employee engaged on repairs to roofs shall be paid 40 cents per hour or part thereof: in addition to the rates otherwise provided in this award.

II. Subclause (39): Delete this subclause and insert the following in lieu thereof:

(39) Computing Quantities:

An employee, other than a leading hand, who is required to compute or estimate quantities of materials in respect of the work performed by others shall be paid \$2.63 per day or part thereof: in addition to the rates otherwise prescribed in this award.

JJ. Subclause (52): Delete this subclause and insert the following in lieu thereof:

(52) An employee engaged on work at Fremantle Prison shall be paid 37 cents per hour extra.

4. Schedule C:

A. Delete the heading of this schedule and insert the following in lieu thereof:

SCHEDULE C—HOSPITAL ENVIRONMENT ALLOWANCE

B. Paragraph (1): Delete subparagraph (a) and (b) and insert the following in lieu thereof:

1. (a) For work performed in a hospital environment—\$9.71 per week.

(b) For disabilities associated with work performed in—

Difficult access areas;
Tunnel complexes;
Areas with great temperature variation:—\$3.38 per week.

Princess Margaret Hospital
King Edward Memorial Hospital
Sir Charles Gairdner Hospital
Royal Perth Hospital
Fremantle Hospital

C. Paragraph (2): Delete this subparagraph and insert the following in lieu thereof:

2. For work performed in a hospital environment—\$6.54 per week.

Kalgoorlie Hospital
Osborne Park Hospital
Albany Hospital
Bunbury Hospital
Geraldton Hospital
Mt Henry Hospital
Northam Hospital
Swan Districts Hospital
Perth Dental Hospital

D. Paragraph (3): Delete this subparagraph and insert the following in lieu thereof:

3. For work performed in a hospital environment—\$4.64 per week.

Bentley Hospital
Derby Hospital
Narrogin Hospital
Port Hedland Hospital
Rockingham Hospital
Sunset Hospital
Armadale Hospital
Broome Hospital
Busselton Hospital
Carnarvon Hospital
Collie Hospital
Esperance Hospital
Katanning Hospital
Merredin Hospital
Murray Hospital
Warren Hospital
Wyndham Hospital

5. Appendix A—Asbestos Eradication: Delete paragraph (5) of this appendix and insert the following in lieu thereof:

(5) Rate of Pay

In addition to the rates prescribed in this Award, an employee engaged in asbestos eradication (as defined) shall receive \$1.16 per hour worked in lieu of Special Rates prescribed in Clause 13 with the

exception of subclauses (2), (14), (15), (24) and (37) of Clause 13 of this award.

6. Appendix D—Award Restructuring:

A. Delete paragraph (a) of subclause (8) of this appendix and insert the following in lieu thereof:

(a) Wage Rates

Level	Percentage Relativity to Level 4	Rates \$	Safety Net Adjustment \$	Total Weekly Rate \$
New Entrant	78	335.10	24.00	359.10
1	82	352.30	24.00	376.30
2	87	375.50	24.00	399.50
3	92	397.00	24.00	421.00
4	100	429.60	24.00	453.60
5	105	451.10	24.00	475.10
6	110	472.60	24.00	496.60
7	115	494.00	24.00	518.00
8	120	515.50	24.00	539.50
9	125	537.00	24.00	561.00

B. Delete paragraph (c)(i) and (ii) of subclause (8) of this appendix and insert the following in lieu thereof:

(c) The rates of pay in this appendix include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. This first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November, 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

**CHILD CARE (LADY GOWRIE CHILD CENTRE) AWARD
No. A3 of 1984.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous Workers Union, Miscellaneous Workers Division, Western Australian Branch

and

Lady Gowrie Child Centre (WA) Inc.

No. 1528B of 1990.

Child Care (Lady Gowrie Child Centre) Award.

CHIEF COMMISSIONER W.S. COLEMAN.

8 November 1996.

Order:

HAVING heard Ms M. Robinson and with her Ms G. Lannon on behalf of the Applicant and Ms B.O'Byrne on behalf of the Respondent, on application to vary the Child Care (Lady Gowrie Child Centre) Award No. 3 of 1984 to apply the Minimum Rate Adjustment under the Wage Fixing Principles to the classification of Assistant Co-Ordinator;

AND that adjustment being in line with variations to like classifications in other awards covering the child care industry (referred to as the Assistant Director in the Child Care (Subsidised Centres) Award);

AND having already considered the application of Minimum Rates Adjustments to this award (74 WAIG 277) and to

the child care industry generally in Special Case proceedings (73 WAIG 101 and 73 WAIG 1807);

NOW THEREFORE, with the consent of the parties, the Commission in Court Session, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Child Care (Lady Gowrie Child Centre) Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 17th day of April, 1996.

[L.S] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

Schedule.

Clause 23.—Wages: Delete subclause (2) of this clause and insert the following in lieu thereof:

(2) Assistant Co-ordinator Grade One	
Step I	532.90
Step II	540.40
Step III	548.00
Assistant Co-ordinator Grade Two	
Step I	540.40
Step II	548.00
Step III	555.50
Assistant Co-ordinator Grade Three	
Step I	548.00
Step II	555.50
Step III	569.50

COUNTRY HIGH SCHOOL HOSTELS AWARD, 1979
No. R 7A of 1979.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Australian Liquor, Hospitality and Miscellaneous
Workers Union, Miscellaneous Workers Division, Western
Australian Branch
and

Country High School Hostels Authority.
No. 1266 of 1996.

Country High School Hostels Award, 1979
No. R 7A of 1979.

COMMISSIONER A.R. BEECH.

30 October 1996.

Order.

HAVING heard Ms M. Robinson on behalf of the Applicant and Mr R. De Blank on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Country High School Hostels Award, 1979 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 29th day of October 1996.

[L.S] (Sgd.) A.R. BEECH,
Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete Clause 22.—Under Rate Employees and insert in lieu the following:

22. Supported Wage System

2. Clause 22.—Under Rate Employees: Delete this clause and insert in lieu the following:

22.—SUPPORTED WAGE SYSTEM

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply:

- (a) "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".
- (b) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (c) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (d) "Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

- (a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- (b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.
- (c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of, or are eligible for, a Disability Support Pension, except with respect to an organisation which has received recognition under Section 10 or under Section 12A of the Disability Services Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

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

Assessed Capacity (Sub-clause 4)	% of Prescribed Award Rate
10%	10%
20%	20%
30%	30%

Assessed Capacity (Sub-clause 4)	% of Prescribed Award Rate
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

- (b) Provided that the minimum amount payable shall not be less than \$45 per week.
- (c) Where a person's assessed capacity is 10 per cent, they shall receive a high degree of assistance and support.
- (4) **Assessment of Capacity**
For the purpose of establishing the percentage of the award rate to be paid to an employee under this award, the productive capacity of the employee will be assessed in accordance with the Supported Wage System and documented in an assessment instrument by either:
- (a) the employer and the union party to the award, in consultation with the employee or, if desired, by any of these;
- (b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.
- (5) **Lodgement of Assessment Instrument**
- (a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.
- (6) **Review of Assessment**
The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.
- (7) **Other Terms and Conditions of Employment**
Where an assessment has been made the applicable percentage shall apply to the wage rate only. Employees covered by the provisions of the clause will be entitled to the same terms and conditions of employment as all other employees covered by this award paid on a pro-rata basis.
- (8) **Workplace Adjustment**
An employer wishing to employ a person under the provisions of this clause shall take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve redesign of job duties, working time arrangements and work organisation in consultation with other employees in the area.
- (9) **Trial Period**
- (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.

- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialed.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

ENGINE DRIVERS' (GENERAL) AWARD.

No. R 21A of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy,
Timberyards, Sawmills and Woodworkers
Union of Australia, West Australian Branch
and

Coca-Cola Bottlers Perth and Others.

No. 1151 of 1996.

Engine Drivers' (General) Award.

No. R21A of 1977.

COMMISSIONER R.H. GIFFORD.

21 October 1996.

Order.

HAVING heard Ms D. MacTiernan on behalf of the Applicant and Mr D. Sproule on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Engine Drivers' (General) Award, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7th day of October 1996.

[L.S.] (Sgd.) R. H. GIFFORD,
Commissioner.

Schedule.

1. Clause 19.—Wages. Delete this clause and insert in lieu thereof the following:

19.—WAGES

The rates of pay in this Award include the three arbitrated safety net adjustments totalling \$24.00 per week available under the Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the 1994 State Wage Decision or the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991 pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

(1) Classification:	Wage Per Week	Supplementary Payments Per Week	Safety Net Adjustments	Total Per Week
	\$	\$	\$	\$
(a) Turbine Driver	345.30	16.80	24.00	386.10
(b) Steam Engine Drivers:				
(i) whose work requires 1st or 2nd class certificate	341.30	16.80	24.00	382.10
(ii) whose work requires a 3rd class certificate	333.10	10.80	24.00	367.90
(c) Internal Combustion Engine Drivers:				
(i) 180 kW brake power or over	344.20	16.80	24.00	385.00
(ii) 35 kW brake power or over but under 180 kW brake power	337.90	15.40	24.00	377.30
(iii) under 35 kW brake power	330.80	10.80	24.00	365.60
(d) Electric Motor Attendant:				
(i) on motors over 180 kW power	339.60	16.80	24.00	380.40
(ii) on motors 70 kW power to 180 kW power inclusive	329.10	9.30	24.00	362.40
(iii) on motors under 70 kW power	318.40	6.40	24.00	348.80
(e) Greaser or Oiler	318.40	6.40	24.00	348.80
(f) Fireperson:				
(i) attending one boiler	327.40	7.60	24.00	359.00
(ii) attending two or more boilers	333.20	10.80	24.00	368.00
(g) Trimmer	306.90	4.40	24.00	335.30
(h) Scotch Derrick Crane Driver	347.40	16.80	24.00	388.20
(i) Overhead electric crane driver who requires a certificate under the Inspection of Machinery Act	334.40	12.30	24.00	370.70
(j) Mobile Crane Driver				
(i) lifting capacity up to and including 5 tonnes	339.60	13.80	24.00	377.40
(ii) lifting capacity over 5 tonnes but not exceeding 10 tonnes	344.10	16.80	24.00	384.90
(iii) lifting capacity over 10 tonnes but not exceeding 20 tonnes	349.90	19.90	24.00	393.80
(iv) lifting capacity over 20 tonnes but not exceeding 40 tonnes	360.20	23.10	24.00	407.30
(v) lifting capacity over 40 tonnes but not exceeding 80 tonnes	366.30	26.00	24.00	416.30
(vi) lifting capacity in excess of 80 tonnes	373.90	28.00	24.00	425.90
(k) Excavator Driver:				
(i) up to .5m ³	350.00	19.90	24.00	393.90
(ii) over .5 m ³ and up to and including 2.25m ³	353.30	21.50	24.00	398.80
(iii) over 2.25 m ³	364.00	24.80	24.00	412.80
(l) Tractors—while using power operated attachments:				
(i) up to 35 kW brake power	337.70	12.20	24.00	373.90

Where an employee attends two or more motors he/she shall be paid at a rate calculated on the aggregate kW power of such motors.

Note: kW power shall be that shown on the maker's nameplate.

Classification:	Wage Per Week	Supplementary Payments Per Week	Safety Net Adjustments	Total Per Week
	\$	\$	\$	\$
(ii) over 35 kW brake power to 70 kW brake power	344.20	16.80	24.00	385.00
(iii) over 70 kW brake power to 110 kW brake power	350.00	19.90	24.00	393.90
(iv) over 110 kW brake power	353.30	21.50	24.00	398.80
(m) Loader, front end or overhead - Appropriate Tractor Margin				
(n) Grader self propelled				
(i) over 70 kW brake power	364.00	24.80	24.00	412.80
(ii) 35 to 70 kW brake power inclusive	353.30	21.50	24.00	398.80
(iii) under 35 kW brake power	350.00	19.90	24.00	393.90

(2) Additions to Weekly Wage Rates

- (a) An Engine Driver, Electric Motor Attendant or Fireperson engaged as hereinafter specified shall have his/her wage increase as follows:

	Per Week \$
(i) Attending to refrigerating and/or air compressor or compressors	18.90
(ii) Attending to an electric generator or dynamo exceeding 10 kw capacity	18.90
(iii) Attending to switchboard where the generating capacity is 350 kw or over	6.00
(iv) An Engine Driver who attends a boiler or boilers	18.90

- (b) Employees employed on boiler cleaning inside the boiler of flues of combustion chamber shall be paid an additional rate of **94 cents** per hour whilst so engaged.

(3) Industry Allowance

- (a) In addition to the rates prescribed in this clause an amount of **\$16.50** per week shall be paid to employees engaged under this award in rock quarries, limestone quarries and sand pits to compensate for dust and climatic conditions when working in the open and for deficiencies in general amenities and facilities. Provided that employees in the limestone quarries of Cockburn Cement Ltd shall be paid an amount of **40 cents** per hour in lieu of the **\$16.50** referred to in this subclause.

- (b) (i) In addition to the rates prescribed in this clause a driver of an overhead electric crane, mobile crane, front end loader or tractor, employed by Cockburn Cement Limited shall, subject to as hereinafter provided, be paid an allowance of **15 cents** per hour.
- (ii) The allowance prescribed in this paragraph is to compensate for the extra duties, including servicing and re-fuelling of machines, associated with the work practices of Cockburn Cement Limited and shall be paid for each hour worked in a quarry, or for each hour worked elsewhere on shifts other than day shift Monday to Friday.

**ENGINE DRIVERS (GOVERNMENT) AWARD 1983
No. A 5 of 1983.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Construction, Mining, Energy, Timberyards, Sawmills
and Woodworkers Union of Australia, West Australian
Branch

and

Fremantle Hospital and Others.

No. 1153 of 1996.

Engine Drivers (Government) Award 1983
No. A 5 of 1983.

COMMISSIONER R.H. GIFFORD.

22 October 1996.

Order.

HAVING heard Ms D. MacTiernan on behalf of the Applicant and Mr S. Majeks on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Engine Drivers (Government) Award 1983, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 7th day of October 1996.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S]

Schedule.

1. Clause 24.—Wages.

A. Delete the preamble and subclause (1) of this clause and insert in lieu thereof the following:

The rates of pay in this Award include the three arbitrated safety net adjustments totalling \$24.00 per week available under the Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the 1994 State Wage Decision or the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991 pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excluding those resulting from enterprise agreements, are not to be used to offset arbitrated safety adjustments.

(1) The total rates of wages payable to employees covered by the Award shall be as follows:

		Base Rate \$	Safety Net Adjustments \$	Special Payment \$	Total Rate \$	%
(a) Operators of Equipment, as specified—						
(i) Winch Driver	(C12)	364.60	24.00	10.15	398.75	87.4
(ii) Pumpers, Country Pumping Stations	(C11)	385.50	24.00	10.60	420.10	92.4
(b) Mobile Crane Operator (classified according to lifting capacity of crane)—						
(i) Up to 20 tonnes	(C11)	385.50	24.00	7.70	417.20	92.4
(ii) Over 20 tonnes	(C10)	417.20	24.00	-	441.20	100.0
(c) Fireperson as defined	(C11)	385.50	24.00	-	409.50	92.4
(d) Special Payment:						

The special payment referred to in paragraph (a) hereof shall not apply to employees engaged after 12 July 1996. For employees so engaged, the total rate shall comprise the base rate and safety net adjustments only.

B. Delete paragraph (a) of subclause (2) of this clause and insert in lieu thereof the following:

(a) The weekly rates of wages payable to employees defined as such shall be—

		Base Rate \$	Safety Net Adjustments \$	Total Rate \$	%
Hospital Plant Operator— Level 1	(C12a)	380.80	24.00	405.30	91.55
Hospital Plant Operator— Level 2	(C11a)	399.20	24.00	423.20	95.77
Hospital Plant Operator— Level 3	(C10)	417.20	24.00	441.20	100.00
Hospital Plant Operator— Level 4	(C9a)	449.40	24.00	472.40	107.33

C. Delete subclause (3) of this clause and insert in lieu thereof the following:

(3) Additions to Wage Rates Per Week
\$

(a) A classified employee engaged as hereinafter specified shall have his/her wage rate increased as follows:

- (i) Attending to refrigerator and/or air compressor or compressors 18.25
- (ii) Attending to an electric generator or dynamo exceeding 10 watt capacity 18.25
- (iii) Attending to a switchboard where the generating capacity is 350kw or more 5.85
- (iv) In charge of plant as defined 18.25
- (v) Leading Fireperson, where two or more Firepersons are employed on one shift (per shift) 0.40

(b) Employees employed on boiler cleaning inside the boiler or flues or combustion chambers shall be paid 88 cents per hour while so engaged. Provided that this allowance shall not be payable to employees who are in receipt of the industry allowance or construction allowance prescribed in subclause (1) of Clause 19.—Special Provisions of this Award.

FOOD INDUSTRY (FOOD MANUFACTURING OR PROCESSING) AWARD
No. A 20 of 1990.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Food Preservers Union of Western Australia Union of
Workers

and

Anchor Products Pty Ltd and Others.

No. 1168 of 1996.

Food Industry (Food Manufacturing or Processing) Award
No. A 20 of 1990.

COMMISSIONER A.R. BEECH.

22 October 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Ms J. Dowling on behalf of the Respondents members of the Chamber of Commerce and Industry of Western Australia, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Food Industry (Food Manufacturing or Processing) Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of October 1996.

[L.S] (Sgd.) A.R. BEECH,
Commissioner.

Schedule.

1. Clause 2.—Arrangement: Immediately after the number and words “32. Definitions”, insert the following:

33. Supported Wages Employees

2. Clause 32.—Definitions: Immediately after this clause, insert the following new clause:

33.—SUPPORTED WAGES EMPLOYEES

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply:

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

(b) “Accredited Assessor” means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual’s productive capacity within the Supported Wage System.

(c) “Disability Support Pension” means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.

(d) “Assessment Instrument” means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

(a) Employees covered by this clause will be those who are unable to perform the range of duties

to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.

(b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers’ compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.

(c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

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

Assessed Capacity (Sub-clause 4)	% of Prescribed Award Rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$45 per week).

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

(4) Assessment of Capacity

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

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

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

(5) Lodgement of Assessment Instrument

(a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.

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

(6) Review of Assessment

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

(7) Other Terms and Conditions of Employment

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

(8) Workplace Adjustment

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

(9) Trial Period

- (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialed.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

FOODLAND ASSOCIATED LIMITED (WESTERN AUSTRALIA) WAREHOUSE AWARD 1982.

No. A27 of 1982.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia

and

Foodland Associated Limited.

No. 1172 of 1996.

Foodland Associated Limited (Western Australia)
Warehouse Award 1982.

No. A 27 of 1982.

COMMISSIONER A.R. BEECH.

22 October 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and there being no appearance on behalf of the Respondents,

the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Foodland Associated Limited (Western Australia) Warehouse Award 1982 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of October 1996.

(Sgd.) A. R. BEECH,

[L.S]

Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete the number and words “24. Under-Rate Workers” and insert in lieu thereof the following:

24. Supported Wages Employees

2. Clause 24.—Under-Rate Workers: Delete this clause and insert in lieu thereof the following:

24.—SUPPORTED WAGES EMPLOYEES

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply:

- (a) “Supported Wage System” means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in “[Supported Wage System: Guidelines and Assessment Process]”.
- (b) “Accredited Assessor” means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (c) “Disability Support Pension” means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (d) “Assessment Instrument” means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

- (a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- (b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
- (c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed

by this award for the class of work which the person is performing according to the following schedule:

<u>Assessed Capacity</u> (Sub-clause 4)	<u>% of Prescribed Award Rate</u>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$45 per week).

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

(4) Assessment of Capacity

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

- the employer and the union, in consultation with the employee or, if desired, by any of these;
- the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

(5) Lodgement of Assessment Instrument

- All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

(6) Review of Assessment

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

(7) Other Terms and Conditions of Employment

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

(8) Workplace Adjustment

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

(9) Trial Period

- In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.

- Work trials should include induction or training as appropriate to the job being trialed.
- Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

HAIRDRESSERS AWARD 1989.

No. A32 of 1988.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The West Australian Hairdressers and Wigmakers
Employees' Union of Workers
and

The Master Ladies' Hairdressers Industrial Union of
Employers of WA and Others.

No. 1167 of 1996.

Hairdressers Award 1989.

No. A 32 of 1988.

COMMISSIONER A.R. BEECH.

22 October 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Mr D. Higham on behalf of The Master Ladies' Hairdressers Industrial Union of Employers of WA, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Hairdressers Award 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of October 1996.

(Sgd.) A. R. BEECH,
Commissioner.

[L.S]

Schedule.

1. Clause 2.—Arrangement: Delete the number and words “25. Under Rate Employees” and insert in lieu thereof the following:

25. Supported Wages Employees

2. Clause 25.—Under Rate Employees: Delete this clause and insert in lieu thereof the following:

25.—SUPPORTED WAGES EMPLOYEES

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply:

- “Supported Wage System” means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in “[Supported Wage System: Guidelines and Assessment Process]”.
- “Accredited Assessor” means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- “Disability Support Pension” means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- “Assessment Instrument” means the form provided for under the Supported Wage System that records

the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

- (a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- (b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
- (c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

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

<u>Assessed Capacity</u> (Sub-clause 4)	<u>% of Prescribed Award Rate</u>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$45 per week).

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

(4) Assessment of Capacity

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

- (a) the employer and the union, in consultation with the employee or, if desired, by any of these;
- (b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

(5) Lodgement of Assessment Instrument

- (a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

(6) Review of Assessment

The assessment of the applicable percentage should be subject to annual review or earlier on the basis of a reasonable

request for such a review. The process of review shall be in accordance with the procedures for assessing capacity under the Supported Wage System.

(7) Other Terms and Conditions of Employment

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

(8) Workplace Adjustment

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

(9) Trial Period

- (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialed.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

**HOSPITAL SALARIED OFFICERS (RED CROSS
BLOOD TRANSFUSION) AWARD 1978**

No. R17/1974.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Red Cross Blood Transfusion Service,
Western Australia

and

Hospital Salaried Officers Association of Western Australia
(Union of Workers).

No. 1282 of 1996.

Hospital Salaried Officers (Red Cross Blood Transfusion)
Award 1978.

SENIOR COMMISSIONER G.L. FIELDING.

31 October 1996.

Reasons for Decision (extempore)

THE SENIOR COMMISSIONER: The Commission has before it two applications to amend the Hospital Salaried Officers Red Cross Blood Transfusion Service Award of 1978.

The first application (No. 905 of 1996) really seeks to increase the rates of pay to give effect to what is known of as the third safety net adjustment. However, that application has been overtaken by the subsequent application (No. 1282 of 1996) and the parties are agreed that the first application should be withdrawn and, in my view, for good reason. In the circumstances, leave is granted to withdraw that application.

The substantive application has become No. 1282 of 1996. By that application, the parties seek to amend the Award in a variety of ways to give effect to what they describe as an enterprise bargaining agreement.

Clause 29 of the Award provides for the Award to be amended to reflect what has in recent years come to be known as enterprise flexibility. The parties now seek to give effect to that provision. In my view, they have done so remarkably well.

As a result of what Mr Panizza, for the Association, has described as "genuine enterprise bargaining", the parties have come up with a number of changes, perhaps the most significant of which is that there will be a reduction in the number of public holidays to the standard 10. The two extra days, which public servants once enjoyed at New Year and at Easter and which they are increasingly now enjoying in fewer areas, are to be abolished for these employees. Bereavement leave provisions are to be modernised or standardised. In the case of bereavement leave the concept of the "family" has been extended somewhat.

The agreement also provides for the Award to be amended to allow for special leave for urgent purposes even, in some cases, without pay should that be warranted in a particular case. In addition, the Award is also to be changed to modernise the parental leave provisions. The Award is also to be amended to provide for a dispute settling procedure insofar as disputes concern the operation of the Award. It should be said that this provision will operate in conjunction with the recent amendment made to the Award by General Order to reflect the dispute settling procedure requirements now imposed by force of statute.

In addition, the parties propose that the existing rates of pay be increased by 8 per cent with effect from 1 April 1996. Further, from October of this year a further minimum increase of 2 per cent is to be available to the employees, subject to the successful conclusion of negotiations leading towards further productivity and efficiency improvements. Those negotiations are to involve the question of increasing the working hours to 38 per week, extending the core hours of work, and dealing with entitlements for Sunday overtime.

Mr Robertson, in a thorough submission, has outlined the ways in which the agreement reached between the parties complies with the Principles. I am quite satisfied that the agreement in question does in fact comply with the Principles. There is, as he has said, little or no scope for flow-on. The Award is an enterprise award and the proposed changes are enterprise specific. Furthermore, the agreement provides for the implementation of measures which are clearly designed to improve efficiency and productivity. Moreover, the agreement provides for further negotiations to further increase productivity and efficiency. When seeking, as the parties are, to amend the Award to incorporate what might be said to be an enterprise bargain, the Principles impose upon them an obligation to show to the Commission that the Award should be varied rather than have their agreement reflected in an enterprise agreement which is then registered under section 41 of the Act.

Having regard to the fact that the Award is an enterprise specific award and having regard to the wishes of the parties, I consider that it is not unreasonable that the agreement between the parties be reflected in changes to the Award rather than a separate industrial instrument which would be supplementary to the Award. The nature of the changes is such that they do not readily stand alone, nor are they so radical as to warrant an entirely new industrial instrument. I therefore indicate that I am satisfied that it is proper to amend the Award rather than have an enterprise bargaining agreement registered under section 41.

In the circumstances, I now formally indicate to the parties that I will make an order amending the Award in the amended form as discussed during the course of the proceedings this afternoon. I will, as the Act requires, publish a minute later today of the order that I would propose to issue. It will be in the terms of amended Schedule A, as further amended, in the course of those discussions today.

Appearances: Mr P.G. Robertson on behalf of the Applicant.
Mr C.D. Panizza on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Australian Red Cross Blood Transfusion Service,
Western Australia

and

Hospital Salaried Officers Association of Western Australia
(Union of Workers).

No. 1282 of 1996.

Hospital Salaried Officers (Red Cross Blood Transfusion)
Award 1978.

SENIOR COMMISSIONER G.L. FIELDING.

30 October 1996.

Order:

HAVING heard Mr P.G. Robertson on behalf of the Applicant and Mr C. D. Panizza on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Hospital Salaried Officers (Red Cross Blood Transfusion) Award 1978 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date hereof.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S]

Schedule.

1. Clause 2.—Arrangement:

A. Delete the following clauses—

- 15. Compassionate Leave
- 27. Maternity Leave

B. Insert the following clauses in numerical order—

- 15. Bereavement Leave
- 16A. Family Leave
- 17A. Special Leave
- 27. Parental Leave
- 29A. Enterprise Bargaining Agreement
- 31. Dispute Settling Procedure

2. Clause 14.—Holidays and Annual Leave: Delete paragraph (a) of subclause (1) of this clause and insert the following in lieu thereof—

(1) (a)(i) From 1 January 1997, the following days, or days observed in lieu thereof, shall be allowed as holidays without deduction from pay, namely New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, State Foundation Day, Queen's Birthday, Christmas Day and Boxing Day.

(ii) Prior to 1 January 1997, the days observed in accordance with Clause 16(1) of the Hospital Salaried Officers Award No. 39 of 1968 shall be observed as public holidays without deduction of pay.

Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days referred to in that subclause.

In such cases time and one-half shall be paid during ordinary hours worked on any of the abovementioned holidays.

3. Clause 15.—Compassionate Leave: Delete this clause and insert the following in lieu thereof—

15.—BEREAVEMENT LEAVE

(1) An employee shall, upon the death of a spouse or de facto spouse, child or stepchild, parent or parent-in-law, including step-parents, brother, sister, grandparent

or any other person who immediately before that person's death lived with the employee as a member of the employee's immediate family as defined in Clause 16A, be entitled to bereavement leave of up to two days for each occasion required.

(2) Employees may access annual leave and accrued long service leave for the purpose of bereavement in addition to the entitlement under subclause (1) above.

(3) Proof of such death shall be furnished by the employee to the satisfaction of the employer if he/she so requests.

(4) Provided that this clause shall not have operation while the period of entitlement to leave under it coincides with any other period of leave.

4. Clause 16.—Sick Leave: After this clause insert the following new clause as follows—

16A.—FAMILY LEAVE

(1) This clause operates in conjunction with Clause 16 of the Award.

(2) Use of Sick Leave

(a) An employee with responsibilities in relation to either members of their immediate family or members of their household who need their care and support shall be entitled to use, in accordance with this subclause, any sick leave entitlement which accrues after the date of this order for absences to provide care and support for such persons when they are ill.

(b) The employee shall, if required, establish by production of a medical certificate or statutory declaration, the illness of the person concerned.

(c) The entitlement to use sick leave in accordance with this subclause is subject to:

(i) the employee being responsible for the care of the person concerned; and

(ii) the person concerned being either:

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

(bb) a member of the employee's household.

(iii) the term "*immediate family*" includes:

(aa) a spouse (including a former spouse, a de facto spouse and a former de facto spouse) of the employee; and

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

(d) The employee shall, wherever practicable, give the employer notice prior to the absence of the intention to take leave, the name of the person requiring care and their relationship to the employee, the reasons for taking such leave and the estimated length of absence. If it is not practicable for the employee to give prior notice of absence, the employee shall notify the employer by telephone of such absence at the first opportunity on the day of absence.

(3) Unpaid Leave for Family Purpose

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

(4) Annual Leave

(a) Notwithstanding the provisions of this clause, an employee may elect, with the consent of the employer, to take annual leave in single

day periods not exceeding five days in any calendar year at a time or times agreed between them.

(b) An employer may agree to defer payment of the annual leave loading in respect of such leave, until at least 5 consecutive annual leave days are taken.

(5) Make-up Time

An employee may elect, with the consent of their employer, to work "make-up time" under which the employee takes time off during ordinary hours, and works those hours at a later time, during the spread of ordinary hours provided in the Award.

(6) Grievance Procedures

In the event of a dispute arising in connection with any part of this clause, such a dispute shall be processed in accordance with the dispute settling provisions of this award.

5. Clause 17.—Long Service Leave: After this clause insert the following new clause as follows—

17A.—SPECIAL LEAVE

Leave without pay and/or single days of annual leave may be granted by the employer where an employee requests such special leave for urgent personal business.

6. Clause 27.—Maternity Leave: Delete this clause and insert in lieu thereof the following—

27.—PARENTAL LEAVE

Interpretation

(1) In this clause—

"adoption", in relation to a child, is a reference to a child who—

(a) is not the natural child or the step-child of the employee or the employee's spouse;

(b) is less than 5 years of age; and

(c) has not lived continuously with the employee for 6 months or longer;

"continuous service" means service under an unbroken contract of employment and includes—

(a) any period of parental leave; and

(b) any period of leave or absence authorised by the employer or this award, an employee's contract of employment or the Minimum Conditions of Employment Act, 1993;

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

"parental leave" means leave provided for by this clause;

"spouse" includes a de facto spouse.

Entitlement to parental leave

(2) (a) Subject to the provisions of this clause, an employee, other than a casual employee, is entitled to take up to 52 consecutive weeks of unpaid leave in respect of—

(i) the birth of a child to the employee or the employee's spouse; or

(ii) the placement of a child with the employee with a view to the adoption of the child by the employee.

(b) An employee is not entitled to take parental leave unless he or she—

(i) has, before the expected date of birth or placement, completed at least 12 months' continuous service with the employer; and

- (ii) has given the employer at least 10 weeks' written notice of his or her intention to take the leave.

Provided that an employee shall not be in breach of these notice requirements where failure to give such notice results from confinement or adoption occurring earlier than the expected date.

(c) An employee is not entitled to take parental leave at the same time as the employee's spouse but this paragraph does not apply to one week's parental leave—

- (i) taken by the male parent immediately after the birth of the child; or
- (ii) taken by the employee and the employee's spouse immediately after a child has been placed with them with a view to their adoption of the child.

(d) The entitlement to parental leave is reduced by any period of parental leave taken by the employee's spouse in relation to the same child, except the period of one week's leave referred to in paragraph (c) above.

Maternity leave to start 6 weeks before birth

(3) A female employee who has given notice of her intention to take parental leave, other than for an adoption, is to start the leave 6 weeks before the expected date of birth unless in respect of any period closer to the expected date of birth a medical practitioner has certified that the employee is fit to work.

Medical certificate

(4) An employee who has given notice of his or her intention to take parental leave, other than for adoption, is to provide to the employer a certificate from a medical practitioner stating that the employee or the employee's spouse, as the case may be, is pregnant and the expected date of birth.

Notice of spouse's parental leave

(5) (a) An employee who has given notice of his or her intention to take parental leave or who is actually taking parental leave is to notify the employer of particulars of any period of parental leave taken or to be taken by the employee's spouse in relation to the same child.

(b) Any notice given under paragraph (a) above is to be supported by a statement of information to the satisfaction of the employer or a statutory declaration by the employee as to the truth of the particulars notified.

Notice of parental leave details

(6) (a) An employee who has given notice of his or her intention to take parental leave is to give the employer at least four weeks' written notice of the dates on which the employee wishes to start and finish the leave.

(b) The period of leave may be varied, by the employee giving not less than four weeks' notice in writing, unless a lesser period is agreed, provided that the period may be lengthened once only, save with the agreement of the employer.

(c) An employee shall confirm his/her intention of returning to work by notice in writing to the employer given not less than four weeks' notice prior to the expiration of the period of parental leave.

Special parental leave and sick leave

(7) (a) Where the pregnancy of an employee not then on parental leave terminates after 28 weeks other than by the birth of a living child then:

- (i) she shall be entitled to such period of unpaid leave (to be known as special parental leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
- (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special parental leave, to such paid sick leave as to which she is then

entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.

(b) Where an employee not then on parental leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special parental leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special parental leave and parental leave shall not exceed 52 weeks.

(c) For the purposes of this clause, parental leave shall include special parental leave.

Transfer to a Safe Job:

(8) Where in the opinion of a duly qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of parental leave.

If the transfer to a safe job is not practicable, the employee may, or the employer may require the employee to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as parental leave for the purposes of this clause.

Return to work after parental leave

(9) (a) On finishing parental leave, an employee is entitled to the position he or she held immediately before starting parental leave.

(b) If the position referred to in paragraph (a) above is not available, the employee is entitled to an available position—

- (i) for which the employee is qualified; and
- (ii) that the employee is capable of performing, most comparable in status and pay to that of his or her former position.

(c) Where, immediately before starting parental leave, an employee was acting in, or performing on a temporary basis the duties of, the position referred to in paragraph (a) above, that paragraph applies only in respect of the position held by the employee immediately before taking the acting or temporary position.

Effect of parental leave on employment

(10) Notwithstanding any Award or other provision to the contrary, absence on parental leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of the Award.

Parental Leave and Other Leave Entitlements:

(11) Subject to subclause (2) paragraphs (c) and (d), provided the aggregate of leave including leave taken pursuant to this clause does not exceed 52 weeks:

- (a) An employee may, in lieu of or in conjunction with parental leave, take any annual leave or long service leave or any part thereof to which she is then entitled.
- (b) Subject to the provision of subclause (8) hereof, paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on parental leave.

Termination of Employment:

(12) (a) An employee on parental leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.

(b) An employer shall not terminate the employment of an employee on the ground of her pregnancy or of his or her absence on parental leave, but otherwise the rights of an employer in relation to termination of employment are not hereby affected.

Replacement Workers:

(13) (a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on parental leave.

(b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.

(c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her rights under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the worker who is being replaced.

(d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.

(e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the twelve months' qualifying period.

7. Clause 29.—Enterprise Agreements: After this clause insert a new clause as follows—

29A.—ENTERPRISE BARGAINING AGREEMENT

(1) Consistent with the provisions of Clause 29.—Enterprise Agreements, the award incorporates provisions and salary increases resulting from enterprise bargaining in 1996 at the Red Cross Blood Transfusion Service and includes commitments to further enterprise bargaining.

(2) Term

The parties undertake to commence negotiations to review the terms of the Award six months prior to 31 December 1997, unless otherwise agreed.

(3) Purpose of the Enterprise Bargain

(a) The purpose of this enterprise bargain is to enable the parties to develop and implement working arrangements that increase flexibility in the organisation and further improve productivity and efficiency at the enterprise through enhanced access to services and facilities by donors.

(b) The enterprise bargain provides salary increases that recognise and reward the contribution of staff in the achievement of past productivity improvements and the adoption of different work practices as well as future efficiencies to be delivered through the implementation of the Agreement.

(c) The parties to the Award are committed to ensuring that the organisation and staff are best placed to meet present and future operational demands.

(4) Salaries

(a) Schedule B—Minimum Salaries prescribes the salaries to apply as a result of the enterprise bargain.

(b) A further targeted minimum increase of 2% is available from October 1996, subject to successful conclusion of negotiations on further productivity and efficiency improvements. These negotiations would include:

- (i) increased working hours to 38 hours per week;
- (ii) extension of core hours; and

(iii) equality of entitlements for Saturday morning overtime.

(c) Any agreement reached under paragraph (b) above shall be processed in the Western Australian Industrial Relations Commission.

8. Clause 30.—Jobskills Trainees: After this clause insert a new clause as follows—

31.—DISPUTE SETTLING PROCEDURE

Where a dispute concerning the operation of this Award arises, the following steps shall be taken:

(1) Step 1

As soon as practicable after the issue or claim has arisen, it shall be considered jointly by the appropriate supervisor, the employee or employees concerned and where the employee(s) so request(s), the Hospital Salaried Officers Association workplace representative.

(2) Step 2

If the dispute is not resolved the issue or claim shall be considered jointly by the appropriate senior representative of the employer, the employee or employees concerned and where the employee(s) so request(s), the union workplace representative who shall attempt to settle the dispute.

(3) Step 3

If the dispute is not resolved the issue or claim shall be considered jointly by the employer, the employee or employees concerned and where the employee(s) so request(s), an official of the union who shall attempt to settle the dispute.

(4) Step 4

If the dispute is not resolved it may then be referred to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.

Provided that nothing in this procedure shall prevent an employee from calling upon the assistance of the Union or for representation by a Union Official at any time.

9. Schedule B—Minimum Salaries: Delete this schedule and insert the following in lieu thereof—

SCHEDULE B—MINIMUM SALARIES

(1) (a) From 1 April 1996, the minimum rates of salaries to be paid to employees covered by this Award shall be as set out hereunder. These minimum rates of salaries have resulted from enterprise bargaining and may be used to offset future arbitrated safety net adjustments in accordance with the relevant State Wage Principles until 31 December 1997 unless otherwise agreed.

(b) The third \$8.00 Arbitrated Safety Net Adjustment shall be absorbed into the minimum rates of salaries set out hereunder.

(2) Minimum Salaries

Level	Salary Per Annum Total Minimum Rate \$
Level 1	
Under 17 years of age	11,750
17 years of age	13,724
18 years of age	16,020
19 years of age	18,541
20 years of age	20,823
21 years of age—1st year of service	22,872
22 years of age—2nd year of service	23,579
23 years of age—3rd year of service	24,281
24 years of age—4th year of service	24,980
Level 2	
	25,683
	26,387
	27,195
	27,755
	28,581

Level	Salary Per Annum Total Minimum Rate \$
Level 3	29,557 30,317 31,115
Level 4	32,388 33,054 34,053
Level 5	35,081 36,540 37,300
Level 6	38,344 39,419 40,525
Level 7	42,655 44,236 46,482
Level 8	47,684 49,207 50,785
A 1	53,091 54,981 57,335
2	59,684
3	62,008
4	64,358
5	68,310
6	71,172
7	74,039
8	77,278
9	80,715

- (a) An employee, who is 21 years of age or older on appointment to a classification equivalent to Level 1, may be appointed to the minimum rate of pay based on years of service, not on age.
- (b) Annual increments shall be subject to the employee's satisfactory performance over the preceding twelve months.
- (c) Any dispute in relation to the payment of an annual increment shall be referred to the WA Industrial Relations Commission for determination.

(3) Salaries—Specified Callings and Other Professionals

- (a) Employees who are employed in the calling of Medical Scientist, Scientific Officer, or any other professional calling as agreed between the union and employers, shall be entitled to annual salaries as follows:

Level 3/5	29,557 31,115 33,050 35,081 38,344
Level 6	40,525 42,655 44,236 46,482
Level 7	47,684 49,207 50,785
Level 8	53,091 54,981 57,335
A 1	59,684
2	62,008
3	64,358
4	68,310
5	71,172
6	74,039
7	77,278
8	80,715

- (b) Subject to subclause (d) of this clause, on appointment or promotion to the Level 3/5 under this clause:

- (i) Employees, who have completed an approved three academic year tertiary qualification,

relevant to their calling, shall commence at the first year increment.

- (ii) Employees, who have completed an approved four academic year tertiary qualification, relevant to their calling, shall commence at the second year increment.

- (iii) Employees, who have completed an approved Masters or PhD degree relevant to their calling shall commence on the third increment.

Provided that employees who attain a higher tertiary level qualification after appointment shall not be entitled to any advanced progression through the range.

- (c) The employer and union shall be responsible for determining the relevant acceptable qualifications for appointment for the callings covered by this clause and shall maintain a manual setting out such qualifications.
- (d) The employer in allocating levels pursuant to subclause (2) of this clause may determine a commencing salary above Level 3/5 for a particular calling/s.
- (e) Annual increments shall be subject to the employee's satisfactory performance over the preceding twelve months.
- (f) Any dispute in relation to the payment of an annual increment shall be referred to the WA Industrial Relations Commission for determination.

LICENSED ESTABLISHMENTS (RETAIL AND WHOLESALE) AWARD 1979.

No. R 23 of 1977.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia

and

Burns Philp and Co Ltd

and Others.

No. 1171 of 1996.

Licensed Establishments (Retail and Wholesale)
Award 1979.

No. R 23 of 1977.

COMMISSIONER A.R. BEECH.

22 October 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and there being no appearance on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Licensed Establishments (Retail and Wholesale) Award 1979 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 21st day of October 1996.

(Sgd.) A. R. BEECH,

[L.S]

Commissioner.

Schedule.

1. Clause 2.—Arrangement: Immediately after the number and words “40. Enterprise Level Award Change Procedure” insert the following:

41. Supported Wages Employees

2. Clause 40.—Enterprise Level Award Change Procedure: Immediately after this clause insert the following new clause:

41.—SUPPORTED WAGES EMPLOYEES

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply:

- (a) “Supported Wage System” means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in “[Supported Wage System: Guidelines and Assessment Process]”.
- (b) “Accredited Assessor” means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual’s productive capacity within the Supported Wage System.
- (c) “Disability Support Pension” means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (d) “Assessment Instrument” means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

- (a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- (b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers’ compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
- (c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

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

<u>Assessed Capacity</u> (Sub-clause 4)	<u>% of Prescribed Award Rate</u>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$45 per week).

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

(4) Assessment of Capacity

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

- (a) the employer and the union, in consultation with the employee or, if desired, by any of these;
- (b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

(5) Lodgement of Assessment Instrument

- (a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

(6) Review of Assessment

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

(7) Other Terms and Conditions of Employment

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

(8) Workplace Adjustment

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

(9) Trial Period

- (a) In order for an adequate assessment of the employee’s capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialed.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

LIFT INDUSTRY (ELECTRICAL AND METAL TRADES) AWARD 1973
No. 9 of 1978.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

and

Kone Elevators (Australia) Pty Limited and Others.

No. 1036 of 1996.

Lift Industry (Electrical and Metal Trades) Award 1973

SENIOR COMMISSIONER G.L. FIELDING.

29 October 1996.

Order.

HAVING heard Mr C.F. Young on behalf of the Applicant; Mr G.C. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr D.R. Sproule on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Lift Industry (Electrical and Metal Trades) Award 1973 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the date hereof.

(Sgd.) G.L. FIELDING,
 Senior Commissioner.

[L.S]

Schedule.

First Schedule—Wages: Delete paragraphs (a) and (b) of subclause (1) of this schedule and insert in lieu thereof the following—

- (1) (a) The rate of wage payable to each employee covered by this award shall be set out hereunder and shall comprise the base rate and supplementary payment for each classification and in addition the special payment assigned to the class of work.

Classifications	Base Rate Per Week \$	Supplementary Payment Per Week \$	Additional Payment Per Week \$	1st & 2nd Safety Net Adjustment \$	Total Rate Per week \$
Lift Industry Employee Grade 5 Electrician —Special Class	389.80	52.10	15.60	16.00	473.50
Lift Industry Employee Grade 4 Fitter Erector	379.60	52.10	15.60	16.00	463.30
Lift Industry Employee Grade 3 Electrical Fitter Electrical Installer Fitter	364.80	52.10	15.60	16.00	448.50
Lift Industry Employee Grade 2 Tool and Material Storeperson	324.70	52.10	15.60	16.00	408.40
Lift Industry Employee Grade 1 Tradesperson's Assistant	310.90	52.10	15.60	16.00	394.60

- (b) The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment. Increases made under

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

METAL TRADES (GENERAL) AWARD 1966
No. 13 of 1965.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Another

and

Anodisers WA and Others.

No. 1108(A) of 1995.

Metal Trades (General) Award 1966

No. 13 of 1965.

COMMISSIONER R.H. GIFFORD.

21 October 1996.

Order.

HAVING heard Mr G. Sturman on behalf of The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Mr M. Borlase on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Metal Trades (General) Award 1966, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 11th day of October 1996.

(Sgd.) R.H. GIFFORD,

[L.S]

Commissioner.

Schedule.

1. Part I—General

Clause 31.—Wages and Supplementary Payment.

- A. Delete paragraph (a) of subclause (2) of this clause and insert in lieu thereof the following:

- (a) **Leading Hands**

In addition to the appropriate total wage prescribed in this clause a leading hand shall be paid:

- (i) if placed in charge of not less than three and not more than ten other workers \$ 17.50
- (ii) if placed in charge of more than ten and not more than twenty other workers 26.80
- (iii) if placed in charge of more than twenty other workers 34.60

- B. Delete paragraph (a) of subclause (7) of this clause and insert in lieu thereof the following:

- (a) Where an employer does not provide a tradesman or an apprentice with the tools ordinarily required by that tradesman or apprentice in the performance of work as a tradesman or as an apprentice the employer shall pay a tool allowance of:

- (i) \$9.70 per week to such tradesman; or

- (ii) in the case of an apprentice a percentage of \$9.70 being the percentage which appears against the year of apprenticeship in subclause (3) of this clause;

for the purpose of such tradesman or apprentice supplying and maintaining tools ordinarily required in the performance of work as a tradesman or apprentice.

2. Part II—Construction

Clause 4.—Shift Work. Delete paragraph (a) of subclause (2) of this clause and insert in lieu thereof the following:

- (a) Where any particular process is carried out on shifts other than day shift and less than five consecutive afternoons of five consecutive night shifts are worked on that process, then employees employed on such afternoon or night shifts shall be paid at overtime rates.

Provided that where the ordinary hours of work normally worked in an establishment are worked on less than five days then the provision of paragraph (a) shall be as if that number of consecutive shifts were substituted for five consecutive shifts.

3. Part II—Construction

Clause 10.—Wages.

- A. Delete subclause (5) of this clause and insert in lieu thereof the following:

(5) Leading Hands

In addition to the appropriate total wage prescribed in this clause a leading hand shall be paid:

	\$
(a) If placed in charge of not less than three and not more than ten other workers	17.50
(b) If placed in charge of more than ten and not more than twenty other workers	26.80
(c) If placed in charge of more than twenty other workers	34.60

- B. Delete paragraph (a) of subclause (6) of this clause and insert in lieu thereof the following:

- (a) Where an employer does not provide a tradesman or an apprentice with the tools ordinarily required by that tradesman or apprentice in the performance of his work as a tradesman or as an apprentice the employer shall pay a tool allowance of:

- (i) \$9.70 per week to such tradesman; or
- (ii) in the case of an apprentice a percentage of \$9.70 being the percentage which appears against his year of apprenticeship in subclause (4) of clause 32 of PART I (subject to clause 13 of PART II). (Note: Allowance for apprentices set out in item 2 of this schedule);

for the purpose of such tradesman or apprentice supplying and maintaining tools ordinarily required in the performance of his work as a tradesman or apprentice.

PRINTING (COMMUNITY NEWSPAPER GROUP) AWARD.

No. A21 of 1989.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Community Newspaper Group.

No. 48 of 1996.

Printing (Community Newspaper Group) Award
No. A21 of 1989.

COMMISSIONER R.N. GEORGE.

8 October 1996.

Order.

HAVING heard Mr G. Bucknall on behalf of the Applicant and Mr S. Foy on behalf of the Respondent and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Printing (Community Newspaper Group) Award No. A21 of 1989 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 14 August 1996.

(Sgd.) R. N. GEORGE,
Commissioner.

[L.S.]

Schedule.

1. Clause 2.—Arrangement:

- A. After the number and title '38. Enterprise Agreements' insert the following new number and title—

39. Redundancy

- B. Delete the title 'Schedule A—Named Union Party' and insert the following new title—

Schedule A—Named Parties

2. Clause 6.—Definitions: Delete this clause and insert in lieu the following—

"Employer" The Respondent employer to this award is the Community Newspaper Group (1985) Pty Ltd.

"Adult" shall mean any employee who has attained the age of 21 years, other than an apprentice who has not completed a period of apprenticeship, and includes a non-apprenticed junior of 18 years of age or over who is employed in other than an apprenticeship occupation specified in Clause 26.—Apprentices and who is receiving the adult wage for that occupation, or any employee who has completed an apprenticeship but has not attained the age of 21 years.

"Section" shall mean any division of a branch of the industry.

"Chapel" shall mean the Chapel of the Union.

"Union" shall mean The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers Western Australian Branch.

"House" shall mean the management of the respondent company.

"Keyboard Operator" shall mean and refer to an employee who performs limited functions of keyboard operating and who is neither a tradesperson Compositor nor an Artist/Designer (including Commercial Artist) and who does not perform the general trade skills of a Compositor.

"Artist and/or Designer" howsoever described: shall mean and refer to the work of an employee employed in or in connection with designing, sketching, drawing, tracing, colouring photographs, retouching of bromides, reproducing, writing (including ticket writing), lettering, illustrating, commercial art, or in copying art work or

layouts, or in any way preparing art work or layouts for use or prospective use within the industry as defined in Clause 1 of this award.

“General Hand” shall mean an employee whose duties do not involve trade requirements and is situated in the Composing area.

“Adult Apprentices”

- (1) An adult apprentice means a person of 21 years of age or over at the time of entering into an indenture to one of the branches of the printing industry prescribed in Clause 9 of this award.

Subject to this clause, conditions of employment of adult apprentices shall be those prescribed for apprentices indentured under the age of 21 years.

Preference of employment

- (2) Preference of employment as an adult apprentice should be given to an applicant who is employed in the printing industry.

Period of apprenticeship

- (3) (a) Subject to this clause of this award, an adult apprentice shall be indentured for a period of four years in which period shall be included the period of probation.

- (b) Notwithstanding sub-paragraph (a) hereof where a Board of Reference approves an application for adult apprenticeship by an applicant who has been employed in the printing industry for at least two consecutive years and the Board is satisfied that the applicant has sufficient theoretical and practical knowledge, it may, subject to any conditions it may determine, permit the applicant to reduce the length of the apprenticeship.

Technical School training of adult apprentices.

- (4) (a) Each adult apprentice shall from the commencement of an apprenticeship attend and not be prevented by the employer from attending during the apprentice's ordinary working hours for eight hours every week a suitable Technical School for the period of three years or, where the training facilities for apprentices at the Technical School attended by such apprentices make it impracticable for their attendance to be for eight hours every week or for a period of three years, then for the number of hours and for the period of any prescribed course (with the minimum of four hours a day a week) as is approved by the organisations party to this award or by the appropriate Board of Reference, if such school is available. Wherever a State Technical School provides instruction in an apprenticeship trade such State Technical School shall be accepted as a suitable school for the purposes of this award.

- (b) Where a State conducts in a suitable Technical School a system of block release Technical School training, each adult apprentice shall from the commencement of an apprenticeship attend and not be prevented by the employer from attending during the apprentice's ordinary working hours such block release training for maximum of eight weeks each year for a period of three years on a basis to be arranged between the organisations respondent to this award and the relevant State Technical Education authorities.

Such block release Technical School training shall be in lieu of the Technical School training prescribed in subclause (4)(a) hereof.

Wages of adult apprentices

- (5) (a) Where a person was employed by an employer in the printing industry immediately before becoming an adult apprentice with that employer, such person shall not suffer a reduction in actual rate of pay by virtue of becoming indentured.

- (b) Subject to subclause (5)(a) hereof, the wages of an adult apprentice, including the wages of probationers for apprenticeship, shall be those payable to Adult Apprentices in Table 2 of Clause 9 of this award.

Proportion of apprentices to skilled adults

- (6) Adult apprentices shall be employed as excess apprentices.

Form of indenture of adult apprenticeship

- (7) Each indenture of adult apprenticeship shall be in the form prescribed provided that:

References to parent or guardian shall be deleted.

Adult apprentices day work/shift work provisions

- (8) (a) An adult apprentice (other than an apprentice engaged on block release Technical School training) shall be employed only on day work during the period the adult apprentice is required to attend Technical School as determined in subclause (4) hereof.
- (b) An adult apprentice engaged in block release Technical School training may be employed on morning, afternoon or night shift except during periods of attendance on block release training as determined in subclause (4) hereof.

3. Clause 8.—Casuals: Immediately following subclause (3) of this clause insert the following new clause—

- (4) A casual employee when working on a public holiday or overtime or at any time for which a permanent employee is paid above his/her ordinary rate in accordance with this Award, shall receive the same Award prescription in accordance with this Award with the addition of twenty percent.

4. Clause 15.—Hours of Work: Delete this clause and insert in lieu the following—

15.—HOURS OF WORK

- (1) The maximum number of ordinary hours to be worked by a weekly employee regardless of shift and other than overtime shall be 36 per week.

- (2) (a) Day shift means a rostered work shift performed between the hours of 7.00am and 6.30pm.

- (b) Night shift means a rostered work shift performed between the hours of 6.30pm and 7.00am.

- (c) Intermediate shift means work performed during hours which include hours of both day work and night work.

- (3) All ordinary hours of work may be arranged on any day including Sunday.

- (4) The maximum number of ordinary hours to be worked in any one shift shall not exceed 10 unless mutually agreed between the House and Chapel, in which case the maximum hour will not exceed 12.

- (5) An employee shall not be rostered for work for more than four shifts in any week.

- (6) (a) An employee shall not be rostered for less than two consecutive shifts in any week.

- (b) Shift workers shall not be rostered for less than three consecutive shifts in any week.

- (7) If during the course of a working week an employee rostered for night or intermediate shift is called upon to change the employee's shift and work during the day the employee shall be paid the shift loading as if the employee had worked the employee's normal rostered shift.

- (8) In cases where any employee is absent through sickness or other causes (such as bereavement) on the employee's rostered day or night off, the employee shall not be reimbursed with an additional day or night off in lieu.

- (9) The roster of daily hours of each branch shall be prominently displayed and will remain as such until altered by at least one week's notice.

- (10) The ordinary hours of day work may commence at 6.00am on a Sunday by agreement between the employer and the majority of employees concerned.

5. Clause 32.—Computerised Typesetting: Delete this clause and insert in lieu the following—

32.—COMPUTERISED TYPESETTING

(1) Classified Advertisements

Classified advertisement takers may input all classified linage and limited (semi) display advertisements.

(2) Output of Pages

Employees covered by this Award will control all output of pages be they Display Advertising pages or Classified/Trades and Services.

(3) Other

Employees covered by this Award will control all Graphic Libraries for Display Advertising, Classified Advertising, Trades and Services Advertising and Editorial Library services.

(4) Photographic

- (a) Photographers will only scan negatives from pictures they have taken.
- (b) Any hard copy photographed will be scanned by employees covered by this Award.
- (c) That all manipulation of the scanned negatives which may include but not limited to the following cropping, signing, routing, enhancement screens, etc will be performed by employees covered by this Award.

6. Clause 36.—Part-Time Employees: Delete this clause and insert in lieu the following—

36.—PART-TIME EMPLOYEES

The number or proportion of part-time employees employed by the employer shall not exceed that agreed in writing between the employer and the union from time to time. The practical operation of this clause shall be reviewed by the employer and the union at a date six months after the date of ratification and subsequently upon request by the union, but at not less than twelve monthly intervals.

- (1) (a) The weekly hours worked by part-time employees shall not be less than 16 hours per week or more than 32 hours per week. Such hours shall be worked on any or all days of the week.
- (b) Except as agreed between the employer and the union, the parameters for the working of "ordinary hours" for permanent part-time employees shall be 7.00am to 6.30pm.
- (c) Any additional hours worked by the employee outside of the nominated spread of hours noted in subclause (1)(a) hereof shall be paid as overtime pursuant to Clause 16 of this award.
- (2) (a) The employer shall specify and agree in writing before a part-time employee commences duty on a part-time basis, the prescribed weekly and daily hours of duty for the employee including starting and finishing times each day.
- (b) The employer shall give an employee one (1) week's notice of any proposed permanent variation to the employee's starting and finishing times and/or particular days worked, provided that the employer shall confirm the employee's new permanent weekly and daily hours of duty in writing.
- (3) Notwithstanding the provisions of subclause (2)(b) hereof, and by agreement between the employee and the employer, the ordinary weekly hours for a part-time employee may be varied on a daily basis, provided that such extra hours worked fall between the agreed spread of hours noted in subclause (1)(a) hereof.
- (4) (a) An employee who for personal reasons desires and applies to the employer for permanent employment on a part-time basis may, by agreement with the employer, have their ordinary weekly hours prescribed by Clause 15 reduced. The union shall be a party to any such agreement.
- (b) An employee having been appointed part-time in accordance with paragraph (a) of this subclause, who wishes to revert to full-time employment with the employer shall, upon written application to the employer, be granted due consideration for the next available and suitable full-time position.

- (5) (a) Part-time employees shall be paid a proportion of the appropriate total wage dependent upon time worked. The wage shall be calculated in accordance with the following formula—

TOTAL WAGE

36 x Hours Worked Per Week
(incorporating weekend penalty rate)

- (b) A part-time employee shall become entitled to and shall take annual leave, bereavement leave, maternity leave, sick leave, long service leave and public holidays or be paid in lieu of such leave in the same manner and under the same conditions as a full-time employee becomes entitled to and granted such leave according to this award.
- (c) The payment or deduction of payment in lieu of termination of employment as provided in subclause (4) of Clause 7.—Terms of Employment of this award shall, in the case of a part-time employee, be an amount equal to the weekly wage payable to that part-time employee.

7. Clause 38.—Enterprise Agreements: Immediately following this clause insert the following new clause—

39.—REDUNDANCY

(1) Redundancy Payments:

- (a) For those employees deemed redundant, the following redundancy payments shall apply:
 - 4 weeks pay per year of service for each completed year.
- (b) Pro rata payments will not apply other than where an employee has completed 6 months or more in any year, in which case he/she shall be credited with payment as per a full years service.
- (c) Employees will receive payment for long service leave on a pro rata basis after the completion of seven years service.
- (d) In the application of the redundancy payment to those employees, the "weeks pay" referred to above shall be the prescribed base Award rate for the classification of the employee, plus night/intermediate shift loadings, and personal margins and shall include any weekend penalties or loadings. Such loadings, penalties and margins to be the average of those incurred by the employee during the 26 weeks period preceding the date of termination but not to include any overtime payments.

(2) Both parties recognise that this Agreement will be applicable when members of the Australian Manufacturing Worker Union are made redundant for whatever circumstances.

(3) The company shall give a minimum notice period of three weeks to the Union of the number of employees to be made redundant and the intended date of termination. Such notice to be in writing.

(4) The company shall invite applications from employees who wish to take voluntary redundancy.

(5) Applications shall be directed to the Operations Manager and he/she shall provide immediately copies to the Union who will receive all applications in confidence.

(6) In the event of any shortfall in applications from employees as per (5) above, or in the event that more of such applications are received than are required, the company will determine which employees are to be retrenched after duly considering:

- (a) Legal and occupation health and safety considerations.
- (b) Skills and knowledge of individual employees in relation to the positions and work arrangements that will remain in place in the Production Department.
- (c) Length of service.
- (d) The company reserves the right to specify that it may wish to retain the services of a particular employee(s) because of such employee(s) unique experience or training or both.

(7) Having made the determination referred to in (6) above, the company will immediately advise the redundant employees

concerned. If an employee is declared redundant and seeks to continue employment with the company they may apply to substitute for a fellow employee with the same level of experience, training and skills who is willing to take voluntary redundancy. The company in consultation with the employees concerned and the Union will determine whether the substitution should take place. In the event of any dispute in relation to this process, the procedure for settlement of disputes contained in Clause 34.—Settlement of Disputes or Claims shall apply.

(8) Employees will be advised by written advice of the termination of their services.

(9) Employees will terminate one week after receiving such notice prescribed in (8) above.

8. Schedule A—Named Union Party: Delete this Schedule and insert in lieu the following—

SCHEDULE A—NAMED PARTIES

Union Party—The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

Employer Party—Community Newspaper Group (1985) Pty Ltd.

**THE SHOP AND WAREHOUSE (WHOLESALE AND RETAIL ESTABLISHMENTS) STATE AWARD 1977
No. R 32 of 1976.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Aherns (Suburban) Pty Ltd and Others
and

The Shop, Distributive and Allied Employees' Association
of Western Australia.

No. 144 of 1995.

The Shop and Warehouse (Wholesale and Retail
Establishments) State Award 1977
No. R 32 of 1976.

COMMISSIONER R.H. GIFFORD.

15 October 1996.

Order.

HAVING heard Ms C. Brown on behalf of the Applicants and Mr W. Johnston on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 25th day of October 1996.

(Sgd.) R.H. GIFFORD.

[L.S]

Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete the number and title "38. Compassionate Leave" and insert in lieu thereof the following:

38. Bereavement Leave

2. Clause 11.—Meal Breaks and Rest Breaks. Delete this clause and insert in lieu thereof the following:

(1) Ordinary Hours Meal Breaks—Unpaid

(a) On every day that an employee works more than five ordinary hours, he or she shall be allowed a meal break of not less than 45

minutes and not more than one hour. Provided that any employee and any employer may agree that the meal break shall be not less than 30 minutes.

(b) An employee shall not take a meal break before he or she has worked at least two and a half hours and shall not work more than five hours without having a meal break.

(c) Notwithstanding paragraph (b), where an employee does work more than five hours before or after a meal break, they will be eligible for a 15 minute paid tea break in accordance with paragraph (c) of subclause (2) below.

(d) On each day that ordinary hours are worked the meal break shall be taken during the hours of 11.00am and 3.00pm.

(e) An employee who is required to work in ordinary hours on the night of late night trading shall be entitled to take a meal break between the hours of 4.30pm and 7.00pm.

(2) Ordinary Hours Tea Breaks—Paid

(a) All employees working more than four and a half but not exceeding eight ordinary hours of work on any day shall be entitled to one paid ten minute tea break. The tea break shall be taken to suit the needs of the business, provided that:

(i) the break is not taken in the first hour of work on any day, or in the first hour of work after a meal break; and

(ii) no employee is required to work more than four and a half ordinary hours without having a tea break.

(b) All employees working more than eight ordinary hours of work on any day shall be entitled to two ten minute paid tea breaks, one to be taken in the morning and one to be taken in the afternoon. The tea breaks shall be taken to suit the needs of the business, provided that:

(i) the breaks are not taken in the first hour of work on any day, or in the first hour of work after a meal break; and

(ii) no employee is required to work more than four and a half ordinary hours without having a tea break.

(c) Where an employee works more than five ordinary hours before or after a meal break in accordance with paragraph (c) of subclause (1) above, the tea break prescribed by paragraphs (a) and (b) above shall be 15 minutes in lieu of 10 minutes and the unpaid second meal break.

(3) Overtime Meal Breaks—Unpaid

(a) Where an employee is required to continue working beyond his or her normal finishing time for more than two hours he or she shall be allowed an unpaid break for a meal of not less than 30 minutes. This meal break shall be allowed to the employee during the employee's overtime work, and not before 5.00pm.

(b) If the overtime continues beyond the meal break, an additional 30 minute unpaid meal break shall be allowed after each period of overtime of not more than five hours.

(4) The meal breaks prescribed by this clause shall be granted and taken in one continuous period.

3. Clause 15.—Annual Leave:

A. Delete subclause (1) of this clause and insert in lieu thereof the following:

(1) Except as otherwise provided by this clause, a period of four consecutive weeks leave with payment of ordinary wages as prescribed shall be allowed annually by the employer to an employee who has completed twelve months' continuous employment with that employer.

B. Delete subclause (2) of this clause and insert in lieu thereof the following:

- (2) (a) During a period of annual leave an employee shall be paid a loading of 17.5% calculated on his or her ordinary wages, as prescribed by this award.
- (b) The loading prescribed by paragraph (a) above shall not apply to proportionate leave paid out on termination.

C. Delete subclause (3) of this clause and insert in lieu thereof the following:

- (3) If any holiday as prescribed by Clause 14.—Holidays of this award falls within an employee's period of annual leave and is observed on a day which would otherwise have been an ordinary working day for that employee, one day shall be added to the employee's period of annual leave for each such holiday.

D. Delete subclause (4) of this clause and insert in lieu thereof the following:

- (4) (a) Entitlement to annual leave shall accrue weekly at the rate of 2.923 hours per week.
- (b) If after one week's continuous service in any qualifying 12 month period an employee leaves his or her employment or his or her employment is terminated by the employer, then the employee shall be paid 2.923 hours' pay at his or her ordinary rate of pay for each completed week of service.
- (c) In addition to the payment to which an employee may be entitled under paragraph (a) of this subclause, an employee whose employment terminates after the completion of a twelve month qualifying period and who has not been allowed the leave or a portion of the leave prescribed under this award shall be given payment as prescribed by subclauses (1) and (2)(a) of this clause in lieu of that leave or portion of leave, unless:
- (i) the employee has justifiably been dismissed for misconduct; and
- (ii) the misconduct for which the employee has been dismissed occurred prior to the completion of that qualifying period.

4. Clause 27.—Sick Leave:

A. Delete subclause (1) of this clause and insert in lieu thereof the following:

- (1) (a) An employee who is unable to attend or remain at his or her place of employment during ordinary hours of work by reason of personal ill health or injury shall be entitled to payment for such absence in accordance with the following provisions.
- (b) Entitlement to payment for a full-time employee shall accrue weekly at the rate of 1.461 hours per week, such that an employee's maximum annual sick leave entitlement shall be 76 hours. For part-time employees the entitlement in hours to sick leave shall accrue at a rate per week calculated in the following manner:

$$\frac{\text{Hours Per week}}{38} \times 1.461$$

- (c) The rate of pay for an absence in accordance with this clause shall be the employee's ordinary wage that he/she would have received had he/she not

been on leave. For part-time employees, payment shall only be made for rostered ordinary hours he/she would have worked had he/she not been on leave in accordance with this clause.

- (d) If, in the first or successive years of service with the employer, an employee is absent on the ground of personal ill health or injury for a period longer than his/her entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

B. Delete subclauses (3) and (4) of this clause and insert in lieu thereof the following:

- (3) Employers and employees may enter into agreements with respect to the notification to the employer, within a specified period, of an employee's inability to attend work due to illness or injury. In all cases an employee shall notify the employer as soon as reasonably practicable of the absence, provided that:

- (a) the agreement is between the employer and the majority of employees covered by this award who are affected by the notification requirements;
- (b) the agreement is available for inspection in the same manner as prescribed in Clause 21.—Time and Wages Record; and
- (c) an entitlement to payment under this clause shall not be withheld if:
- (i) the employee has given notice within 24 hours of the commencement of the absence; or
- (ii) the employee demonstrates extraordinary circumstances existed which prevented notice being given.

- (4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of illness or injury that would satisfy a reasonable person. Provided that an employee shall not be required to produce a medical certificate or such other proof with respect to absences of two days or less unless after two such absences in any year of service the employer requests that the next and subsequent absences, if any, shall be accompanied by such certificate.

5. Clause 38.—Compassionate Leave:

A. Delete the number and title of this clause and insert in lieu thereof the following:

38.—BEREAVEMENT LEAVE

B. Delete subclauses (1) and (2) of this clause and insert in lieu thereof the following:

- (1) An employee shall, on the death of the spouse, de facto spouse, parent, step-parent, child or step-child of the employee or any other person who, immediately before that person's death, lived with the employee as a member of the employee's family, be entitled to paid bereavement leave for ordinary hours of up to two days.
- (2) The right to such leave shall be dependent on compliance with the following conditions.
- (a) The employee shall furnish proof such as would satisfy a reasonable person as to the death that is the subject of the leave and/or the relationship of the

employee to the deceased person should the employer so request.

- (b) The employee shall not be entitled to leave under this clause during a period of any other kind of leave.

C. Delete subclause (3) of this clause.

SHOP AND WAREHOUSE (WHOLESALE AND RETAIL ESTABLISHMENTS) STATE AWARD 1977.
No. R 32 of 1976.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and
Allied Employees' Association
of Western Australia
and

Myer Stores Limited
and Others.

No. 512 (A) of 1996.

Shop and Warehouse (Wholesale and
Retail Establishments) State Award 1977.

No. R 32 of 1976.

COMMISSIONER R.H. GIFFORD.

4 November 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Ms C. Brown on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 25th day of October 1996.

(Sgd.) R.H. GIFFORD,

[L.S]

Commissioner.

Schedule.

1. Clause 2.—Arrangement:

- A. Delete the number and title "20. Engagement" and insert in lieu thereof the following:

20. Contract of Employment and Termination

- B. Delete the number and title "42. Maternity Leave" and insert in lieu thereof the following:

42. Parental Leave

- C. Immediately following the number and title "50. Enterprise Level Award Change Procedure" insert the following:

Appendix 1 — Parental Leave Entitlements

2. Clause 6.—Definitions. Delete subclause (7) of this clause and re-number existing subclauses (8) to (17) as subclauses (7) to (16) respectively.

3. Clause 14.—Holidays. In subclause (4) of this clause, delete the reference to the number and title "20.—Engagement" and insert in lieu thereof the number and title "20.—Contract of Employment and Termination".

4. Clause 20.—Engagement. Delete this clause and insert in lieu thereof the following:

20.—CONTRACT OF EMPLOYMENT AND TERMINATION

- (1) (a) An employee will be engaged as a full time, part time or casual employee.

- (b) A full time or part time employee engaged for a period of four consecutive weeks or less shall be deemed a casual employee and be paid not less than the minimum rates of wages contained in Clause 7.—Casual Workers hereof.

This paragraph shall not apply to an employee engaged as a full time or part time employee who is justifiably dismissed or who severs his or her contract of service.

- (2) In addition to the provisions contained in Clause 31(2), an employer may direct an employee to carry out such duties as are within the limits of the employee's skill, competence and training and to use such equipment as may be required, provided that the employee has been properly trained in the use of such equipment.

(3) Termination of Employment

- (a) Full time and Part time employees

- (i) Should an Employer wish to terminate a full time or part time employee, the following period of notice shall be provided:

Period of Continuous Service	Period of Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- (ii) Employees over 45 years of age with 2 or more years continuous service at the time of termination, shall receive an additional week's notice.

- (iii) Where the relevant notice is not provided, the employee shall be entitled to payment in lieu.

Provided that employment may be terminated by part of the period of notice and part payment in lieu.

- (iv) Payment in lieu of notice shall be calculated using the employees weekly ordinary time earnings.

- (v) The period of notice in this clause shall not apply in the case of dismissal for serious misconduct, that is, misconduct of a kind such that it would be unreasonable to require the employer to continue the employment during the notice period.

- (vi) Notice of termination by employee
Except in the first 2 month's of service, 1 week's notice shall be necessary for an employee to terminate his or her engagement or the forfeiture or payment of 1 week's pay by the employee to the employer in lieu of notice.

In the first month of service, an employee may give a moment's notice to terminate his or her employment.

In the second month's service, an employee may give 1 day's notice to terminate his or her employment, or the forfeiture of 1 day's pay by the employee to the employer in lieu of notice.

- (vii) Termination by employer prior to public holiday.

An employee whose employment is terminated by the employer on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holiday or holidays.

Provided that in the event of Christmas Eve falling on a Saturday or a Sunday any employee whose employment is terminated by the employer on the preceding Friday otherwise than for misconduct, shall be paid for Christmas Day and Boxing Day.

(viii) Probation

An employee engaged under the terms of this Award may be engaged under probation for an agreed period not exceeding two months.

Notwithstanding placitum (i) above, should an employer wish to terminate an employee still on probation, the following notice shall be provided:

First month of probationary employment	A moment
Second month of probationary employment	1 day

Provided that where the relevant notice period is not provided, the employee shall be entitled to payment in lieu.

(b) Casual Employees

The employment of a casual employee may be terminated by the giving or receiving of 1 hour's notice.

5. Clause 21.—Time and Wages Record. Insert a new paragraph (g) in subclause (1) as follows:

- (g) the amount of superannuation contributions made to the superannuation fund in accordance with Clause 45.—Superannuation of this Award by the employer.

6. Clause 37.—Stand Down. In subclause (1) of this clause, delete the reference to the number and title "20.—Engagement" and insert in lieu thereof the number and title "20.—Contract of Employment and Termination".

7. Clause 42.—Maternity Leave. Delete this clause and insert in lieu thereof the following:

42.—PARENTAL LEAVE

- (1) Subject to the terms of this clause employees are entitled to unpaid maternity, paternity and adoption leave and to work part time with the approval of the employer in connection with the birth or adoption of a child in accordance with the provisions of Appendix 1 to this Award.

(2) Definitions

For the purposes of Appendix 1, the following definitions shall apply:

- (a) "Employee" includes a part time employee but does not include an employee engaged upon casual or seasonal work.
- (b) "Spouse" includes a de facto or a former spouse.
- (c) "Continuous service" means service under an unbroken contract of employment and includes:
- Any period of leave taken in accordance with this clause;
 - any period of part time employment worked in accordance with this clause; or
 - any period of leave or absence authorised by the employer or by the award.

8. Clause 50.—Enterprise Level Award Change Procedure. Immediately following this Clause, insert the following:

APPENDIX 1 — PARENTAL LEAVE ENTITLEMENTS

(1) Maternity Leave

- (a) Nature of Leave
Maternity leave is unpaid leave
- (b) Definitions

For the purposes of this subclause:

- "Paternity leave" means leave of the type provided for in subclause (2) of this Clause whether prescribed in an award or otherwise.
- "Child" means a child of the employee under the age of one year.

(c) Eligibility for Maternity Leave

An employee who becomes pregnant, upon production to the Employer of the certificate required by paragraph (d) hereof, shall be entitled to a period of up to 52 weeks maternity leave provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of paternity leave taken by the employee's spouse in relation to the same child and apart from paternity leave of up to one week at the time of confinement shall not be taken concurrently with paternity leave, specified in the relevant statutory declaration.

Subject to paragraphs (f) and (i) hereof the period of maternity leave shall be unbroken and shall, immediately following confinement include a period of six weeks compulsory leave. Notwithstanding the requirement to take compulsory leave, an employee may request to return to work at any time, subject to the agreement of the employer.

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which she proceeds upon such leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the Employer;

- A certificate from a registered medical practitioner stating that she is pregnant and the expected date of confinement;
- a statutory declaration stating particulars of any period of paternity leave sought or taken by her spouse and that for the period of maternity leave she will not engage in any conduct inconsistent with her contract of employment.

(e) Notice Requirements

- An employee shall, not less than ten weeks prior to the presumed date of confinement, produce to the employer the certification referred to in subparagraph placitum (i) of paragraph (d) above.
- An employee shall give not less than four weeks notice in writing to the Employer of the date upon which she proposes to commence maternity leave stating the period of leave to be taken and shall, at the same time, produce to the Employer the statutory declaration referred to in placitum (ii) of paragraph (d) above.
- The Employer by not less than 14 days notice in writing to the employee may require her to commence maternity leave at any time within the six weeks immediately prior to the presumed date of confinement.
- An employee shall not be in breach of this Clause as a consequence of failure to give the specified period of notice in accordance with placitum (ii) hereof if such failure is occasioned:
 - by the confinement occurring earlier than the presumed date, or

- (bb) due to compelling circumstances, it was not reasonably practicable for the employee to comply; or
- (cc) by the employee submitting the application as soon as reasonably practicable before, on or after the first day of the leave.
- (f) **Transfer to a Safe Job**
Where in the opinion of a registered medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, the employee shall, if the Employer deems it practicable, be transferred to a safe job at the rate and on the conditions attaching to that job until the commencement of maternity leave.
If the transfer to a safe job is not practicable, the employer may, or the Employer may require the worker to, take leave for such period as is certified necessary by a registered medical practitioner. Such leave shall be treated as maternity leave for the purposes of paragraphs (j), (k), (l) and (m) hereof.
- (g) **Variation of Period of Maternity Leave**
- (i) Provided the maximum period of maternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof;
- (aa) the period of maternity leave may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
- (bb) The period may be further lengthened by agreement between the employee and the Employer.
- (ii) The period of maternity leave may, with the consent of the Employer, be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (h) **Cancellation of Maternity Leave**
- (i) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a employee terminates other than by the birth of a living child.
- (ii) Where the pregnancy of an employee then on maternity leave terminates other than by the birth of a living child, it shall be the right of the employee to resume work at a time nominated by the Employer which shall not exceed four weeks from the date of notice in writing by the employee to the Employer that she desires to resume work.
- (i) **Special Maternity Leave and Sick Leave**
- (i) Where the pregnancy of an employee not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
- (aa) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a registered medical practitioner certifies as necessary before her return to work, or
- (bb) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a registered medical practitioner certifies as necessary before her return to work.
- (ii) Where an employee not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a registered practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed the period to which the employee is entitled under paragraph (c) hereof.
- (iii) For the purposes of paragraph (j), (k) and (l) hereof, maternity leave shall include special maternity leave.
- (iv) An employee returning to work after the completion of a period of leave taken pursuant to this paragraph shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f), hereof to the position she held immediately before such transfer.
Where such position no longer exists but there are other positions available, for which the employee is qualified for and is capable of performing she shall be entitled to a position as nearly comparable in status and pay to that of her former position.
- (j) **Maternity Leave and Other Leave Entitlements**
- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during her absence on maternity leave.
- (k) **Effect of Maternity Leave on Employment**
Subject to this subclause, irrespective of any award or other provision to the contrary, absence on maternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (l) **Termination of Employment**
- (i) An employee on maternity leave may terminate her employment at any time during the period of leave by notice given in accordance with this award.
- (ii) The Employer shall not terminate the employment of an employee on the ground of her pregnancy or of her absence on maternity leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.

(m) Return to Work After Maternity Leave

- (i) An employee shall confirm her intention of returning to her work by notice in writing to the Employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (ii) An employee upon returning to work after maternity leave or the expiration of the notice required by paragraph (i) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of an employee who was transferred to a safe job pursuant to paragraph (f) hereof, to the position which she held immediately before such transfer or in relation to an employee who has worked part time during the pregnancy the position she held immediately before commencing such part time work.

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

(n) Replacement Workers

- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on maternity leave.
- (ii) Before the Employer engages a replacement employee the Employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising her rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(2) Paternity Leave

(a) Nature of Leave

Paternity leave is unpaid leave

(b) Definitions

For the purposes of this subclause

- (i) "Maternity leave" means leave of the type provided for in subclause (1) of this clause and includes special maternity leave whether prescribed in an award or otherwise.
- (ii) "Child" means a child of the employee or the employee's spouse under the age of one year.
- (iii) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.

(c) Eligibility for Paternity Leave

A male employee upon production to the Employer of the certification required by paragraph (f) hereof, shall be entitled to one or two periods of paternity leave, the total of

which shall not exceed 52 weeks, in the following circumstances:

- (i) An unbroken period of up to one week at the time of confinement of his spouse;
- (ii) A further unbroken period of up to 51 weeks in order to be the primary care-giver of a child provided that such leave shall not extend beyond the child's first birthday. This entitlement shall be reduced by any period of maternity leave taken by the employee's spouse in relation to the same child and shall not be taken concurrently with that maternity leave.

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which he proceeds upon either period of leave.

(d) Certification

At the time specified in paragraph (e) the employee must produce to the Employer;

- (i) A certificate from a registered medical practitioner which names his spouse, states that she is pregnant and the expected date of confinement or states the date on which the birth took place;
- (ii) in relation to any period to be taken under placitum (ii) of paragraph (c) hereof, a statutory declaration stating:
 - (aa) He will take that period of paternity leave to become the primary care-giver of a child;
 - (bb) particulars of any period of maternity leave sought or taken by his spouse; and
 - (cc) for the period of paternity leave he will not engage in any conduct inconsistent with his contract of employment.

(e) Notice Requirements

- (i) The employee shall, not less than ten weeks prior to each proposed period of leave, give the Employer notice in writing stating the dates on which he proposes to start and finish the period or periods of leave and produce the certificate and statutory declaration required in paragraph (d) hereof.
- (ii) The employee shall not be in breach of this paragraph as a consequence of failure to give the notice required in paragraph (a) hereof if such failure is due to:

- (aa) The birth occurring earlier than the expected date; or
- (bb) the death of the mother of the child; or
- (cc) other compelling circumstances.

- (iii) The employee shall immediately notify the Employer of any change in the information provided pursuant to paragraph (d) hereof.

(f) Variation of Period of Paternity Leave

- (i) Provided the maximum period of paternity leave does not exceed the period to which the employee is entitled under paragraph (c) hereof:
 - (aa) The period of paternity leave provided by placitum (ii) of paragraph (c) may be lengthened once only by the employee giving not less than 14 days

- notice in writing stating the period by which the leave is to be lengthened;
- (bb) The period may be further lengthened by agreement between the Employer and the employee.
- (ii) The period of paternity leave taken under placitum (ii) of paragraph (c) hereof may, with the consent of the Employer be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Paternity Leave
- (i) Paternity leave, applied for under placitum (ii) of paragraph (c) hereof but not commenced, shall be cancelled when the pregnancy of the employee's spouse terminates other than by the birth of a living child.
- (ii) Paternity leave shall terminate within four weeks if the employee ceases to be the child's primary care giver, or such other period as agreed between the employee and the employer.
- (h) Paternity Leave and Other Leave Entitlements
- (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may, in lieu of or in conjunction with paternity leave, take any annual leave or long service leave or any part thereof to which he is entitled.
- (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during his absence on paternity leave.
- (i) Effect of Paternity Leave on Employment
Subject to this subclause, notwithstanding any award or other provision to the contrary, absence on paternity leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (j) Termination of Employment
- (i) An employee on paternity leave may terminate his employment at any time during the period of leave by notice given in accordance with this Award.
- (ii) The Employer shall not terminate the employment of an employee on the ground of his absence on paternity leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.
- (k) Return to Work After Paternity Leave
- (i) An employee shall confirm his intention of returning to work by notice in writing to the Employer given not less than four weeks prior to the expiration of the period of paternity leave provided by placitum (ii) of paragraph (c) hereof.
- (ii) An employee, upon returning to work after paternity leave or the expiration of the notice required by placitum (i) above, shall be entitled to the position which he held immediately before proceeding on paternity leave or, in relation to an employee who has worked part time under this clause to the position he held immediately before commencing such part time work.
- Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, he shall be entitled to a position as nearly comparable in status and pay to that of his former position.
- (l) Replacement Employees
- (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on paternity leave.
- (ii) Before the Employer engages a replacement employee the Employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iii) Before the Employer engages a person to replace an employee temporarily promoted or transferred in order to replace an employee exercising his rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.
- (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.
- (3) Adoption Leave
- (a) Nature of Leave
Adoption leave is unpaid leave
- (b) Definitions
For the purposes of this subclause
- (i) "Child" means a person under the age of five years who is placed with the employee for the purposes of adoption, other than a child or step-child of the employee or of the spouse of the employee or a child who has previously lived continuously with the employee for a period of six months or more.
- (ii) "Relative Adoption" occurs where a child, as defined, is adopted by a grandparent, brother, sister, aunt or uncle (whether of whole blood or half blood or by marriage).
- (iii) "Primary care-giver" means a person who assumes the principal role of providing care and attention to a child.
- (c) Eligibility
An employee, upon production to the Employer of the certification required by paragraph (d) hereof, shall be entitled to one or two periods of adoption leave, the total of which shall not exceed 52 weeks, in the following circumstances:
- (i) An unbroken period of up to three weeks at the time of placement of the child;
- (ii) An unbroken period of up to 52 weeks from the time of the child's placement in order to be the primary care-giver of a child. This leave shall not extend beyond one year after the placement of the child and shall not be taken concurrently with adoption leave taken by the employee's spouse in relation to the same child.

This entitlement of up to 52 weeks shall be reduced by:

- (aa) Any period of leave taken pursuant to placitum (i) above; and
 - (bb) the aggregate of any periods of adoption leave taken or to be taken by the employee's spouse;

The employee must have had at least 12 months continuous service with the Employer immediately preceding the date upon which he or she proceeds on such leave in either case.
 - (iii) The entitlement to adoption leave must not overlap with any periods of adoption leave taken by the employee's spouse, except an unbroken period of up to three weeks at the time of placement of the child.
- (d) Certification
- Before taking adoption leave the employee must produce to the Employer;
- (i) (aa) A statement from an adoption agency or other appropriate body of the presumed date of placement of the child with the employee for adoption purposes; or
 - (bb) a statement from the appropriate government authority confirming that the employee is to have custody of the child pending application for an adoption order.
 - (ii) in relation to any period to be taken under placitum (ii) of paragraph (3) hereof, a statutory declaration stating:
 - (aa) The employee is seeking adoption leave to become the primary care-giver of the child;
 - (bb) particulars of any period of adoption leave sought or taken by the employee's spouse; and
 - (cc) for the period of adoption leave the employee will not engage in any conduct inconsistent with his or her contract of employment.
- (e) Notice Requirements
- (i) Upon receiving notice of approval for adoption purposes, an employee shall notify the Employer of such approval and within two months of such approval shall further notify the Employer of the period or periods of adoption leave the employee proposes to take. In the case of a relative adoption the employee shall notify as aforesaid upon deciding to take a child into custody pending an application for an adoption order.
 - (ii) An employee who commences employment with the Employer after the date of approval for adoption purposes shall notify the Employer thereof upon commencing employment and of the period or periods of adoption leave which the employee proposes to take. Provided that such employee shall not be entitled to adoption leave unless the employee has not less than 12 months continuous service with the Employer immediately preceding the date upon which he or she proceeds upon such leave.

- (iii) An employee shall, as soon as the employee is aware of the presumed date of placement of a child for adoption purposes but no later than 14 days before such placement, give notice in writing to the employer of such date, and of the date of the commencement of any period of leave to be taken under placitum (i) of paragraph (c) hereof.
 - (iv) An employee shall, ten weeks before the proposed date of commencing any leave to be taken under placitum (ii) of paragraph (c) hereof, give notice in writing to the Employer of the date of commencing leave and the period of leave to be taken.
 - (v) An employee shall not be in breach of this subclause, as a consequence of failure to give the stipulated period of notice in accordance with placitum (iii) and (iv) hereof if such failure is occasioned by the requirement of an adoption agency to accept earlier or later placement of a child, the death of the spouse or other compelling circumstances.
 - (vi) The employee shall immediately notify the employer of any change in the information provided pursuant to this subclause.
- (f) Variation of Period of Adoption Leave
- (i) Provided the maximum period of adoption leave does not exceed the period to which the employee is entitled under paragraph (c) hereof:
 - (aa) The period of leave taken under placitum (ii) of paragraph (c) hereof may be lengthened once only by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be lengthened;
 - (bb) The period may be further lengthened by agreement between the Employer and the employee.
 - (ii) The period of adoption leave taken under placitum (ii) of paragraph (c) hereof may, with the consent of the Employer be shortened by the employee giving not less than 14 days notice in writing stating the period by which the leave is to be shortened.
- (g) Cancellation of Adoption Leave
- (i) Adoption leave, applied for but not commenced, shall be cancelled should the placement of the child not proceed.
 - (ii) Where the placement of a child for adoption purposes with an employee then on adoption leave does not proceed or continue, the employee shall notify the Employer forthwith and the Employer shall nominate a time not exceeding four weeks from receipt of notification for the employee's resumption of work.
 - (iii) Adoption leave shall terminate within a reasonable period if the employee ceases to be the child's primary care giver.
- (h) Special Leave
- The Employer shall grant to any employee who is seeking to adopt a child, such unpaid leave not exceeding two days, as is required by the employee to attend any compulsory interviews

or examinations as are necessary as part of the adoption procedure. Where paid leave is available to the employee the Employer may require the employee to take such leave in lieu of special leave.

- (i) Adoption Leave and Other Entitlements
 - (i) Provided the aggregate of any leave, including leave taken under this subclause, does not exceed the period to which the employee is entitled under paragraph (c) hereof, an employee may, in lieu of or in conjunction with adoption leave, take any annual leave or long service leave or any part thereof to which he or she is entitled.
 - (ii) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to an employee during the employee's absence on adoption leave.
- (j) Effect of Adoption Leave on Employment

Subject to this subclause, irrespective of any award or other provision to the contrary, absence on adoption leave shall not break the continuity of service of an employee but shall not be taken into account in calculating the period of service for any purpose of any relevant award or agreement.
- (k) Termination of Employment
 - (i) An employee on adoption leave may terminate the employment at any time during the period of leave by notice given in accordance with this award.
 - (ii) The Employer shall not terminate the employment of an employee on the ground of the employee's application to adopt a child or absence on adoption leave, but otherwise the rights of the Employer in relation to termination of employment are not hereby affected.
- (l) Return to Work After Adoption Leave
 - (i) An employee shall confirm the intention of returning to work by notice in writing to the Employer given not less than four weeks prior to the expiration of the period of adoption leave provided by placitum (ii) of paragraph (c) hereof.
 - (ii) An employee, upon returning to work after adoption leave shall be entitled to the position held immediately before proceeding on such leave or, in relation to an employee who has worked part time under this clause to the position held immediately before commencing such part time work.

Where such position no longer exists but there are other positions available which the employee is qualified for and is capable of performing, the employee shall be entitled to a position as nearly comparable in status and pay to that of the employee's former position.
- (m) Replacement Employees
 - (i) A replacement employee is an employee specifically engaged as a result of an employee proceeding on adoption leave.
 - (ii) Before the Employer engages a replacement employee the Employer shall inform that person of the temporary nature of the employment and of the rights of the employee who is being replaced.
 - (iii) Before the Employer engages a person to replace an employee temporarily

promoted or transferred in order to replace an employee exercising rights under this subclause, the Employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the employee who is being replaced.

- (iv) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

(4) Part Time Work

(a) Definitions

For the purpose of this subclause:

- (i) "Male employee" means a employed male who is caring for a child born of his spouse or a child placed with the employee for adoption purposes.
- (ii) "Female employee" means an employed female who is pregnant or is caring for a child she has borne or a child who has been placed with her for adoption purposes.
- (iii) "Former position" means the position held by a female or male employee immediately before proceeding on leave or part time employment under this subclause whichever first occurs or, if such position no longer exists but there are other positions available for which the employee is qualified and the duties of which he or she is capable of performing a position as nearly comparable in status and pay to that of the position first mentioned in this definition.

(b) Entitlement

With the agreement of the Employer:

- (i) A male employee may work part time in one or more periods at any time from the date of birth of the child until its second birthday or, in relation to adoption, from the date of placement of the child until the second anniversary of the placement.
- (ii) A female employee may work part time in one or more periods while she is pregnant where part time employment is, because of the pregnancy, necessary or desirable.
- (iii) A female employee may work part time in one or more periods at any time from the seventh week after the date of birth of the child until its second birthday.
- (iv) In relation to adoption a female employee may work part time in one or more periods at any time from the date of the placement of the child until the second anniversary of that date.

(c) Return to Former Position

- (i) An employee who has had at least 12 months continuous service with the Employer immediately before commencing part time employment after the birth or placement of a child has, at the expiration of the period of such part time employment or the first period, if there is more than one, the right to return to his or her former position.
- (ii) Nothing in placitum (i) hereof shall prevent the Employer from permitting the employee to return to his or her former position after a second or subsequent period of part time employment.

- (d) **Effect of Part time Employment on Continuous Service**
Commencement on part time work under this clause, and return from part time work to full time work under this clause, shall not break continuity of service or employment.
- (e) **Pro Rata Entitlements**
Subject to the provisions of this subclause and the matters agreed to in accordance with paragraph (f) hereof, part time employment shall be in accordance with the provisions of this award which shall apply pro-rata.
- (f) **Part time Work Agreement**
- (i) Before commencing a period of part time employment under this subclause the employee and the Employer shall agree:
 - (aa) That the employee may work part time; Upon the hours to be worked by the employee, the days upon which they will be worked and commencing times for the work;
 - (bb) Upon the classification applying to the work to be performed; and
 - (cc) Upon the period of part time employment.
 - (ii) The terms of this agreement may be varied by consent.
 - (iii) The terms of this agreement or any variation to it shall be reduced to writing and retained by the Employer. A copy of the agreement and any variation to it shall be provided to the employee by the Employer.
 - (iv) The terms of this agreement shall apply to the part time employment.
- (g) **Termination of Employment**
- (i) The employment of a part time employee under this clause, may be terminated in accordance with the provisions of this award but may not be terminated by the Employer because the employee has exercised or proposes to exercise any rights arising under this clause or has enjoyed or proposes to enjoy any benefits arising under this clause.
 - (ii) Any termination entitlements payable to an employee whose employment is terminated while working part time under this clause, or while working full time after transferring from part time work under this clause, shall be calculated by reference to the full time rate of pay at the time of termination and by regarding all service as a full time employment and all service as a part time employee on a pro-rata basis.
- (h) **Extension of Hours of Work**
The Employer may request, but not require, an employee working part time under this clause to work outside or in excess of the employee's ordinary hours of duty provided for in accordance with paragraph (f).
- (i) **Nature of Part Time Work**
The work to be performed part time need not be the work performed by the employee in his or her former position but shall be work otherwise performed under this award.
- (j) **Inconsistent Award Provisions**
An employee may work part time under this clause irrespective of any other provision of this award which limits or restricts the circumstances in which part time employment may

be worked or the terms upon which it may be worked including provisions prescribing a minimum or maximum number of hours a part time employee may work.

(k) **Replacement Employees**

- (i) A replacement employee is an employee specifically engaged as a result of an employee working part time under this subclause.
- (ii) A replacement employee may be employed part time. Subject to this paragraph, paragraphs (e), (f), (g) and (j) of this subclause apply to the part time employment of a replacement employee.
- (iii) Before an employer engages a replacement employee under this paragraph, the Employer shall inform the person of the temporary nature of the employment and of the rights of the employee who is being replaced.
- (iv) Unbroken service as a replacement employee shall be treated as continuous service for the purposes of placitum (v) of paragraph (a) hereof.
- (v) Nothing in this subclause shall be construed as requiring a Employer to engage a replacement employee or to continue to employ the replacement employee beyond the date of return of the employee.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia
and

Myer Stores Limited and Others
(No. 512 (A) of 1996)

Shop and Warehouse (Wholesale and Retail Establishments)
State Award 1977.
No. R 32 of 1976.

COMMISSIONER R.H. GIFFORD.

8 November 1996.

Correcting Order.

An error occurred in the issuance of Order No. 512(A) of 1996, dated 4 November 1996. The Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby Orders the following correction to be made:

1. Clause 2.—Arrangement: Delete instruction C. and insert in lieu thereof the following:

C. Immediately following the number and title "51. Redundancy" insert the following:

Appendix 1—Parental Leave Entitlements

(Sgd.) R.H. GIFFORD,

Commissioner.

[L.S]

SOFT FURNISHINGS AWARD**No. A 23 of 1982.**WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Forest Products, Furnishing and Allied Industries
Industrial Union of Workers, W.A.

and

Dubrov Pty Ltd trading as Innovation and Others.

No. 937 of 1996.

Soft Furnishings Award
No. A 23 of 1982.

COMMISSIONER P E SCOTT.

15 October 1996.

Order.

HAVING heard Mr M Lourey on behalf of the Applicant and Mr S Foy on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Soft Furnishings Award be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 2nd day of September 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1. Clause 7.—Wages: Delete this clause and insert in lieu the following:

The minimum rates of wage for employees covered by this award shall be:

(1) Classification:	Total Rate \$
(a) Workroom Supervisor	474.60
(b) Specialist Soft Furnishings Maker	441.20
(c) Installer	428.70
(d) Cutter	424.50
(e) Machinist	403.70
(f) Presser and Finisher	378.60
(g) Trainee (entry level employee)	366.10

(2) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payment since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

(3) Apprentices:

(a) The rate per week for apprentices shall be the percentages shown in paragraph (b) hereof, of the total rate for a Specialist Soft Furnishings Maker.

(b) Percentages	%
Three Year Term	42
First Year	55
Second Year	88
Third Year	88

(4) Junior Employees:

(a) The wages per week for a junior employee shall be the percentage shown in paragraph (b) hereof, of the total rate for a Machinist.

(b) Percentage:	%
Under 16 years	40
Between 16 and 17 years	48.5
Between 17 and 18 years	56
Between 18 and 19 years	77
Between 19 and 20 years	84
Between 20 and 21 years	89.5

2. Clause 7A.—Minimum Wage: Delete this clause and insert in lieu the following:

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than \$317.10 per week as his ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$317.10.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

3. Clause 9.—Leading Hands: Delete this clause and insert in lieu the following:

An employee placed in charge of—

- (1) Not less than three and not more than ten other employees shall be paid \$17.10 per week extra.
- (2) More than ten and not more than twenty other employees, shall be paid \$21.10 per week extra.
- (3) More than twenty other employees shall be paid \$27.80 per week extra.

SUPERMARKETS AND CHAIN STORES (WESTERN AUSTRALIA) WAREHOUSE AWARD 1982.**No. A 26 of 1982.**WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia

and

Coles Supermarkets Australia

and Another.

No. 1170 of 1996.

Supermarkets and Chain Stores (Western Australia)
Warehouse Award 1982.

No. A 26 of 1982.

COMMISSIONER A.R. BEECH.

22 October 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and there being no appearance on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Supermarkets and Chain Stores (Western Australia) Warehouse Award 1982 be varied in accordance with the following Schedule and that such variation

shall have effect from the beginning of the first pay period commencing on or after the 21st day of October 1996.

[L.S] (Sgd.) A. R. BEECH,
Commissioner.

Schedule.

1. Clause 2.—Arrangement: Delete the number and words “25. Under-Rate Employees” and insert in lieu thereof the following:

25. Supported Wages Employees

2. Clause 25.—Under-Rate Employees: Delete this clause and insert in lieu thereof the following:

25.—SUPPORTED WAGES EMPLOYEES

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply:

- (a) “Supported Wage System” means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in “[Supported Wage System: Guidelines and Assessment Process]”.
- (b) “Accredited Assessor” means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual’s productive capacity within the Supported Wage System.
- (c) “Disability Support Pension” means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (d) “Assessment Instrument” means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

- (a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- (b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers’ compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
- (c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

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

<u>Assessed Capacity</u> <u>(Sub-clause 4)</u>	<u>% of Prescribed Award Rate</u>
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%

<u>Assessed Capacity</u> <u>(Sub-clause 4)</u>	<u>% of Prescribed Award Rate</u>
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$45 per week).

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

(4) Assessment of Capacity

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

- (a) the employer and the union, in consultation with the employee or, if desired, by any of these;
- (b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

(5) Lodgement of Assessment Instrument

- (a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

(6) Review of Assessment

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

(7) Other Terms and Conditions of Employment

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

(8) Workplace Adjustment

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

(9) Trial Period

- (a) In order for an adequate assessment of the employee’s capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialed.
- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

**TIMBER WORKERS AWARD
No 36 of 1950.**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Forest Products, Furnishing and Allied Industries
Industrial Union of Workers, W.A.

and

Bunnings Limited and Others.

No. 936 of 1996.

Timber Workers Award
No 36 of 1950.

COMMISSIONER P E SCOTT.

15 October 1996.

Order.

HAVING heard Mr M Lourey on behalf of the Applicant and Mr S Foy on behalf of the Respondents and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Timber Workers Award No 36 of 1950 be varied in accordance with the following Schedule and that such variation shall have effect from the beginning of the first pay period commencing on or after the 2nd day of September 1996.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

Schedule.

1. Clause 52.—Rates of Pay:

A. Delete subclause (3) of this clause and insert in lieu the following:

(3) Wages

The minimum rate of wage for employees covered by this award, excluding those employees provided for in subclause (4) hereof, shall be:

	TOTAL RATE
	\$
Group 1	349.40
Group 2	366.10
Group 3	388.60
Group 4	409.50
Group 5	441.20
Group 6	462.10

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustments.

B. Delete subclause (4) of this clause and insert in lieu the following:

(4) Transport—Employee Groups

The minimum rate of wage for employees covered by this award, as defined below shall be:

(a) Timber Industry Transport Employee

	TOTAL RATE
	\$
Group 1	406.20
Group 2	417.70
Group 3	425.30
Group 4	433.00
Group 5	440.70
Group 6	459.70
Group 7	471.20
Group 8	490.30

(b) The rates of pay in this award include three arbitrated safety net adjustments totalling \$24.00 per week available under the Arbitrated Safety Net Adjustment Principle pursuant to either the December 1993 State Wage Decision, the December 1994 State Wage Decision and the March 1996 State Wage Decision. The first, second and third \$8.00 per week arbitrated safety net adjustments may be offset to the extent of any wage increase payable since 1 November 1991 pursuant to enterprise agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase or part of it has not previously been used to offset an arbitrated safety net adjustment. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreement, are not to be used to offset arbitrated safety net adjustment.

(c) Employees under this subclause shall be defined as follows:

Group 1

- (i) Driver, rigid vehicle from 4.5 to 13.9 tonnes GVM or GCM (Gross Vehicle Mass) (Gross Combination Mass)
- (ii) Driver, fork lift up to and including 5 tonnes lifting capacity
- (iii) Driver, tractor without power operated attachments

Group 2

- (i) Driver Rigid Vehicle over 13.9 tonnes GVM or GCM and up to 13 tonnes capacity
- (ii) Straddle carrier driver
- (iii) Driver of dump truck (unlicensed)
- (iv) Driver of fork lift over 5 and up to 10 tonnes lifting capacity

Group 3

- (i) Driver articulated vehicle to 22.4 tonnes GCM
- (ii) Driver rigid vehicle and heavy trailer to 22.4 tonnes GCM
- (iii) Driver rigid vehicle 4 or more axles over 13.9 tonnes GVM or GCM
- (iv) Driver of fork lift over 10 and up to 34 tonnes lifting capacity

Group 4

- (i) Driver low loader to 43 tonnes GCM

- (ii) Driver articulated vehicle over 22.4 tonnes GCM and up to 39 tonnes capacity
- (iii) Driver mobile crane up to 25 tonnes lifting capacity
- (iv) Driver rigid vehicle and heavy trailer over 22.4 tonnes GCM
- (v) Driver of fork lift over 34 tonnes lifting capacity

Group 5

- (i) Driver articulated vehicle over 22.4 tonnes GCM over 39 and up to 60 tonnes capacity
- (ii) Driver multiple articulated vehicle up to 53.4 tonnes GCM
- (iii) Driver low loader over 43 tonnes GCM (for each additional complete tonne over 43 an extra 79 cents as part of the weekly wage rate for all purposes shall be payable)

Group 6

- (i) Driver mobile crane over 25 and up to 50 tonnes lifting capacity
- (ii) Driver multiple articulated vehicle over 53.4 tonnes up to 94 tonnes GCM up to 65 tonnes capacity

Group 7

- (i) Driver multiple articulated vehicle over 94 tonnes GCM up to 75 tonnes capacity
- (ii) Driver of mobile crane over 50 tonnes lifting capacity

Group 8

- (i) Driver multiple articulated vehicle over 94 tonnes GCM over 75 and up to 95 tonnes capacity (for each additional complete tonne over 95 an extra 79 cents as part of the weekly wage rate for all purposes shall be payable)

C. Delete subclause (7) of this clause and insert in lieu the following:

- (7) Leading Hand
 - In charge of 3—10 employees—
an extra \$15.80
 - In charge of 11—20 employees—
an extra \$23.80
 - In charge of over 20 employees—
an extra \$30.90

D. Delete subclause (9) of this clause and insert in lieu the following:

(9) Minimum Adult Wage

Notwithstanding the provisions of this award, no employee (including an apprentice), twenty-one years of age or over, shall be paid less than \$317.10 per week at his/her ordinary rate of pay in respect of the ordinary hours of work prescribed by this award, but that minimum rate of pay does not apply where the ordinary rate of pay (including any part thereof payable in addition to the award rate) is not less than \$317.10.

Where the said minimum rate of pay is applicable the same rate shall be payable on holidays, during annual leave, sick leave, long service leave and any other leave prescribed by this award.

Notwithstanding the foregoing, where in this award an additional rate is prescribed for any work as a percentage, fraction or multiple of

the ordinary rate of pay, it shall be calculated upon the rate prescribed in this award for the classification in which the employee is employed.

AWARDS/AGREEMENTS— Application for variation of— No variation resulting—

HOSPITAL SALARIED OFFICERS (RED CROSS BLOOD TRANSFUSION) AWARD 1978 No. R 17 of 1974.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Hospital Salaried Officers Association of Western Australia
(Union of Workers)

and

Australian Red Cross Society.

No. 905 of 1996.

Hospital Salaried Officers (Red Cross Blood Transfusion)
Award 1978.

SENIOR COMMISSIONER G.L. FIELDING.

29 October 1996.

Order:

HAVING heard Mr C.D. Panizza on behalf of the Applicant and Mr P.G. Robertson on behalf of the Respondent, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT by leave of the Commission the application be
and is hereby withdrawn.

(Sgd.) G.L. FIELDING,
Senior Commissioner.

[L.S]

AWARDS/AGREEMENTS— Interpretation of—

ELECTRICAL AND BUILDING TRADES (WEST AUSTRALIAN NEWSPAPERS LTD) AWARD, 1988.

No. A 17 of 1988.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division,
WA Branch.

and

The West Australian Newspapers Ltd.

No. 1073 of 1994.

COMMISSIONER R.N. GEORGE.

18 October 1996.

Reasons for Decision.

THE COMMISSIONER: For some time there has existed a difference between the parties as to the interpretation of subclause (16) of Clause 10.—Overtime, of the Electrical and Building Trades (West Australian Newspapers Ltd) Award, 1988 (hereinafter referred to as the Award). The facts which

gave rise to the dispute are not in contention and were summarised briefly by Mr Fiala in evidence called on behalf of the applicant union. Those facts are that a Mr Alex Pordan, an employee of the respondent and union Shop Steward, raised with Mr Fiala his entitlements under the Award as a consequence of having worked an eight hour overtime shift from 8.00am to 4.00pm on a Sunday which was immediately followed by his normal rostered shift which commenced at 4.00pm and ended 12 midnight. In what followed, there was correspondence between Mr Fiala in his capacity as an organiser for the applicant union and Ms Hadida, in her capacity of Personnel Officer for the respondent employer (exhibits Y1 and Y2). In essence it was claimed by Mr Fiala that pursuant to subclause (16) of Clause 10.—Overtime, of the Award, Mr Pordan was entitled to an eight hour break from the conclusion of his overtime and as this had not occurred he was entitled to be paid at double time for time worked from the cessation of overtime until an eight hour break had been provided. This interpretation was not accepted by the respondent employer and the matter became the subject of a conference before the commission differently constituted in May 1994. Those proceedings were inconclusive and ended with the parties indicating that they would be making further investigations into the circumstances which led to the inclusion of the subclause in dispute in the Award and be taking advice on the matter. According to Mr Fiala nothing could be identified which was of assistance to the parties and the matter remained unresolved.

In November 1994 the application now before the Commission was filed pursuant to section 46 of the Industrial Relations Act, 1979 as amended (hereinafter referred to as the Act) seeking an interpretation of the subclause in dispute and proposing the question to be referred. In conference proceedings and correspondence which followed it was agreed by the parties to amend the question to be referred to the following:

“Where an employee works overtime before a rostered shift and does not have a break of at least eight hours between the overtime and the rostered shift, does Clause (10)(16) of the Electrical and Building Trades (West Australian Newspapers Ltd) Award, 1988 entitle the employee to be paid at double time for all time work on the rostered shift until the employee has had a break of at least eight hours?”

For convenience the text of subclause (16) of Clause 10.—Overtime, is set out below.

“(16) An employee who has worked overtime shall be informed by the employer that he/she is entitled to and shall be granted a break of at least eight (8) hours between the time of finishing work and the time when he/she next commences work, and no deductions shall be made from the employee’s pay because of any time lost by reason of such break. Where the employee is required by the employer to work before he/she has completed the break of eight (8) hours the employee shall be paid double time for all time worked by the employee until the employee has had a break of at least eight (8) hours.”

Both parties submit that the subclause in dispute is to be interpreted by considering the terms of the Award as a whole and that when this is done its terms are clear and unambiguous. In this context it is argued that it is not necessary or indeed permissible to look at intrinsic material and the words are to be given their plain and ordinary meaning (see *Norwest Beef Industries Ltd v. WA Branch, Australasian Meat Industry Employees Union* (1984) (64 WAIG 2124).

The fact that both parties take a different view as to the meaning of subclause (16) of Clause 10.—Overtime, does not of itself establish ambiguity. As authority for this proposition Mr Joyce for the respondent employer took the Commission to *Bell v. Gillen Motors Pty Ltd* (1989). In that matter Wilcox J of the Federal Court of Australia, Industrial Division, in discussing different approaches taken to this question by the courts, said—

“The problem, as it seems to me, with the view taken by Isaacs ACJ (in *Pickard v. John Heine and Son Ltd* (1924) (35 CLR 1)) is that it assumes that counsel for each of the parties has a genuine personal belief in the correctness of

the submission made by him or her. That will not necessarily be so. As with any other submission, counsel is entitled to contend for a particular interpretation of a statute regardless of any personal belief as to its correctness. Notwithstanding competing submissions there may in fact be only one personal view at the bar table as to the meaning of a particular statutory provision. In my opinion the approach of Viscount Simonds (in *Kirkness v. John Hudson and Co Ltd* (1955) (AC 696) is correct: the judge must look at the contentious words and reach a personal decision as to whether they are ambiguous. Only if the judge finds an ambiguity is it legitimate for him or her to go to extrinsic material.”

(27 IR 324 at 331)

It was also correctly acknowledged by Mr Joyce, however, that while extrinsic material can not be relied upon unless there is an ambiguity, the Commission should not be slow to admit that there is an ambiguity in the Award (see *Building Workers Industrial Union, New South Wales Branch v. Dylalo Pty Ltd t/a Alpine Erections* (1992) (ALLR 274). In that matter Einfield J also observed that the courts should not be too artificial or legalistic in the search for the meaning of an award provision. This is consistent with what was said by Kennedy J in *Robe River Iron Associates v. Amalgamated Metal Workers and Shipwrights Union* wherein he observed that in interpreting awards, allowance had to be made for the fact that “the award or industrial agreement may have been drafted by industrial, rather than necessarily by skilled draughtpersons, so that there should not be ‘too literal adherence’ placed on the strict technical meaning of the words” (67 WAIG 1097 at 1100).

Mr Young for the applicant union argued that when the well established principles relating to interpretation of awards are applied to the subclause in question, the clear and unambiguous conclusion is that if an employee works overtime then he/she is to be informed by the employer that he/she shall be granted a break of at least eight hours between the time of finishing that overtime and the time when he/she next commences work, or be paid at double time until such break is taken. It is Mr Young’s submission that the precondition to the operation of subclause (16) of clause 10.—Overtime, is the working of overtime and once that is satisfied then the reference in the subclause to the “time of finishing work” is to be read as the “time of finishing overtime”. It is artificial, in his view, to not recognise that there is a break between overtime and the normal rostered shift, even though one follows immediately upon the other. Read in that way, it is argued, the entitlement to an eight hour break occurs at the conclusion of the overtime, irrespective of whether that overtime is worked prior to the commencement or at the end of a rostered shift.

On the other hand, Mr Joyce for the respondent employer argued that when overtime is worked before a rostered shift subclause (16) of Clause 10.—Overtime is to be read by interpreting the words “time of finishing work” as meaning the time of finishing the normal rostered shift which follows on from the overtime. In this context it was said that the eight hour break is to apply to the period between the end of the rostered shift (or post shift overtime if worked), and the commencement of the next rostered shift (or the commencement of overtime if overtime is worked before that shift). To interpret the subclause in the way contended for by the union would, in Mr Joyce’s submission, result in absurd, extraordinary or inconsistent consequences.

The arguments on behalf of both parties were couched in terms which presume that the overtime in question is contiguous with the working of a rostered shift.

On my reading of the subclause in question I accept that it is capable of being interpreted by giving the words their plain and ordinary meaning and that when this is done, no ambiguity arises. The clause by its terms requires that an employee who has worked overtime shall be informed by the employer that he/she is entitled to and shall be granted a break of at least eight hours from the time of “finishing” work and the time when work next “commences”. There is nothing in the subclause which distinguishes overtime and ordinary hours for the purpose of determining when work finishes or next commences. Nor is there anything in a reading of the subclause or the award as a whole which would indicate that such a distinction should be made. In my view therefore, the time of

“finishing” work and the time when an employee next “commences” work, when these words are given their literal meaning, can only mean the finish or commencement of a shift inclusive of any overtime worked contiguously with that shift. To read subclause (16) of Clause 10.—Overtime, in any other way could lead to the absurd situation where an employee called in to work overtime for one hour before a rostered shift would have to be allowed an eight hour break at the conclusion of that one hour of overtime or be paid at double time until an eight hour break had been taken. The interpretation contended for by the applicant union would also seem to raise a conflict with the provisions of subclause (5) of Clause 10.—Overtime, which contains specific provisions to apply to an employee who is called into work before a rostered shift.

If I am wrong in finding no ambiguity, then reference to extrinsic material would also support the above finding. This is confirmed by the evidence of Mr Kleeman who in 1990 was an industrial officer with the respondent employer and was involved in award restructuring negotiations which led to the inclusion of subclause (16) in Clause 10.—Overtime, in the Award. Mr Kleeman gave evidence that the interpretation placed on the subclause in dispute by the respondent employer is that which was intended by the parties when the provision was inserted into the Award to reflect similar provisions in the Printing (Western Mail) Award No. A39 of 1982 and an interim agreement which had been operating with the PKIU and is consistent with the way in which the provision has since been consistently applied. It also was said to reflect practice applied generally in industry under other awards. In support of his evidence Mr Kleeman was referred to transcript of proceedings before the Commission on 21 September 1990 in matter number 548 of 1990 in which the parties consented to a number of award variations in giving effect to the second structural efficiency increase under the State Wage Principles, including the amendment of clause 10.—Overtime to add subclauses (15) and (16), the latter being the subclause the subject of these proceedings. Starting at page three of that transcript Ms Robinson for the then applicant union said—

“.....Point 5, Overtime, again as amended in conference, these two new subclauses—the first provides for a special situation where a print run of the newspaper is running later and provides different provisions with respect to being paid overtime and subclause 16 provides for an 8-hour break between shifts with respect to overtime.”

(exhibit J2 at pages 3 and 4)
(my emphasis)

The above explanation given by Ms Robinson was said by Mr Kleeman to be consistent with the interpretation of the respondent employer and had he thought otherwise at the time, he would have raised strong objection. Mr Kleeman also confirmed that if the interpretation contended for by the applicant union was to be accepted it would be against the concept of flexibility sought to be achieved through award variations under the Structural Efficiency Principle, would fundamentally alter the operation of the overtime provisions under the Award from that which was intended and would have unworkable and unrealistic consequences in terms of cost.

Having considered all of the submissions and evidence I have formed the view that the Application before the Commission is to be determined by a declaration that subclause (16) of Clause 10.—Overtime, of the Award is to be interpreted so as to answer the question referred in the negative.

Appearances: Mr C. Young appeared on behalf of the applicant

Mr R. Joyce appeared on behalf of the respondent

NOTICES— Award/Agreement matters—

Application No. 951 of 1996

APPLICATION FOR VARIATION OF AWARD

TITLED “BUILDING TRADES (CONSTRUCTION)
AWARD 1987 No. R 14 of 1978”.

NOTICE is given that an application has been made to the Commission by The Western Australian Builders’ Labourers, Painters and Plasterers Union of Workers and Others under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed amendment which may relate to the area of operation or scope are published hereunder.

1. Clause 7.—Definitions:—

1. In subclause (1)(a) (iii) of this clause delete the words—

“the building contractor’s contract and under his/her direct control”

where they twice appear and insert in lieu—

“any building contract”

and;

2. Add to the end of the same subclause the words—

“and in assisting the work of any building tradesperson”

So that the placitum reads as follows—

(iii) in underpinning and timbering base-ments, in the rough finishing of the surfaces for granolithic floors, in the bagging off or the broom finishing of concrete surfaces, in the preparation of granolithic surfaces but not the finishing thereof unless that work is otherwise referred to herein, in the erection of steel stanchions, girders and principals, in the erection of steel structural work when such work is part of any building contract, on furnace work and bakers’ ovens, in mixing, preparing and delivering of materials used hot such as bitumen, trinidad, and other similar patented materials, in the setting and jointing of pipes for sewerage or storm water drainage, in the timbering of shafts, pits or wells in or around buildings, in the mixing of plastic materials and the cleaning up of floors and wood-work after the application of such materials, in preparing or bending or placing into position steel reinforcements in concrete in connection with building operations, in using a jack hammer, in demolishing and removing buildings, in mixing, preparing or delivering or packing of concrete in connection with the erection of structures or buildings, in clearing, excavating or levelling off sites for buildings when such work is under any building contract, or in road construction work and in connection with approaches to buildings inside the building line (other than road construction work governed by any award of the Western Australian Industrial Relations Commission or any agreement registered with that Commission) and in assisting the work of any building tradesperson; or

3. In subclause (1)(a)(iv) of this clause delete the words—

“the building contractor’s contract and under his/her direct control”

and insert in lieu—

“any building contract”

So that the placitum reads as follows—

- (iv) in general labouring not provided for herein when such work is part of any building contract.

2. Clause 8.—Rates of Pay:—In subclause (2)(b)(iii) of this clause add the following new callings—

Trades Labourer
Brick Paver Labourer
Brick Cleaner/Labourer

A copy of the proposed amendment may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

REGISTRAR

14 November 1996.

Application No. AG 294 of 1996

APPLICATION FOR REGISTRATION OF AN INDUSTRIAL AGREEMENT TITLED "BHP DIRECT REDUCED IRON PTY LIMITED HBI—PORT HEDLAND OPERATIONS INDUSTRIAL AGREEMENT 1996"

NOTICE is given that an application has been made to the Commission by BHP Direct Reduced Iron Pty Ltd under the Industrial Relations Act 1979 for registration of the above Agreement.

As far as relevant, those parts of the Agreement which relate to area of operation or scope are published hereunder.

3.—PARTIES TO THE AGREEMENT

- The Australian Workers' Union Western Australian Branch, Industrial Union of Workers ("The Union"); and
- BHP Direct Reduced Iron Pty Ltd ("the Company")

4.—EXTENT OF AGREEMENT

1. This Agreement extends to the employees of the Company employed by it in the Company's HBI-Port Hedland operation in the State of Western Australia in the job classifications listed in clause 10—Salary of this Agreement, and to no other employer and employees.

2. It is estimated that 100 employees will be bound by this Agreement upon registration.

5.—RELATIONSHIP TO AWARDS

This Agreement applies to the employees referred to in clause 4—Extent of Agreement, and no award, either existing or future, and irrespective of whether or not provision may have been made in any such award for any item not covered by this Agreement, will apply to the Company's employment of such employees.

10.—SALARY

1. The following salary will be applicable to each of the job classifications listed below:

Area Technicians	EMP Technicians
High impact level	High impact level
Recognition level 1	Recognition level 2
Entry level	Recognition level 1 (Process base)
	Entry level (Trade base)
	Entry level (Process base)

A copy of the Agreement may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J.G. CARRIGG,
Registrar

8 November, 1996.

Application No. P 40 of 1996

APPLICATION FOR VARIATION OF AWARD TITLED "GOVERNMENT OFFICERS SALARIES, ALLOWANCES AND CONDITIONS AWARD 1989"

NOTICE is given that an application has been made to the Commission by The Civil Service Association of Western Australia Incorporated under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed amendment which relate to area of operation or scope are published hereunder.

Amend Schedule A—List of Respondents by inserting the following:

Governing Council of the Central Metropolitan College of TAFE, 25 Aberdeen Street, Perth WA 6000

Governing Council of the South Metropolitan College of TAFE, 15 Grosvenor Street, Beaconsfield WA 6162

Governing Council of the North Metropolitan College of TAFE, 35 Kendrew Crescent, Joondalup WA 6027

Governing Council of the South East Metropolitan College of TAFE, Hayman Road, Bentley WA 6101

Governing Council of the Advanced Manufacturing Technologies Centre, 140 Royal Street, East Perth WA 6004

Governing Council of the Midland College of TAFE, Lloyd Street, Midland WA 6056

Governing Council of the Kimberley College of TAFE, Cnr Ironwood and Coolibah Drive, Kununurra WA 6743

Governing Council of the Great Southern Regional College of TAFE, Anson Road, Albany WA 6330

Governing Council of the South West Regional College of TAFE, Robertson Drive, Bunbury WA 6230

Governing Council of the CYO'Connor College of TAFE, 1 Hutt Street, Northam WA 6401

Governing Council of the Geraldton Regional College of TAFE, Fitzgerald Street, Geraldton WA 6530

A copy of the proposed amendment may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J.G. CARRIGG,

Registrar.

12 November, 1996.

Application No. P 39 of 1996

APPLICATION FOR VARIATION OF AWARD TITLED "GOVERNMENT OFFICERS (SOCIAL TRAINERS) AWARD 1988

No. PSA A20 OF 1985"

NOTICE is given that an application has been made to the Commission by The Civil Service Association of Western Australia Incorporated under the Industrial Relations Act 1979 for a variation of the above Award.

As far as relevant, those parts of the proposed variation which relate to area of operation or scope are published hereunder.

Clause 4.—Scope: Delete this clause and insert in lieu:

4.—SCOPE

This Award shall apply to all employees employed by the Disability Services Commission in the following classifications or in any position the duties of which are the same or substantially similar:

Trainee Social Trainer, Social Trainer, Training Officer, Senior Social Trainer, Client Assistant (Training), Staff Educator, Social Trainer Supervisor and Social Trainer Co-ordinator.

A copy of the proposed variation may be inspected at my office at National Mutual Centre, 111 St George's Terrace, Perth.

J. CARRIGG,
Registrar.

23 October, 1996.

INDUSTRIAL MAGISTRATE— Complaints before—

IN THE INDUSTRIAL MAGISTRATES COURT

HELD AT PERTH

WESTERN AUSTRALIA

Complaint Nos. 101 of 1995/1-3

Heard: 21st June 1995

Date Re-heard: 21st August 1996

Delivered: 25th October 1996

BEFORE: MAGISTRATE MRS A.R. ROBINS S.M.

COMPLAINANT—THE METALS AND ENGINEERING
WORKERS UNION—WESTERN AUSTRALIA

and

DEFENDANT—CENTURION INDUSTRIES LTD ACN
009 133 457

Mr M Keogh appeared for the Complainant

Mr J N Uphill appeared for the Defendant

Reasons for Decision.

These complaints initially came before me for hearing on 21st June 1995. In my decision, delivered on 9th August 1995, I found that Mr Coci, an employee of the Defendant Company, was a casual employee who was paid penalty rates, and was not entitled to be paid for Public Holidays and Annual Leave pursuant to the Metal Trades (General) Award No. 13 of 1965 (to which I shall refer as "the Award".)

This decision was appealed, and on 24th April 1996 the Full Bench of the Western Australian Industrial Relations Commission held that Mr Coci was not engaged as, or employed as a casual employee by the Defendant Company. The decisions made at first instance were quashed, and the Complaints remitted back to myself, to be heard and determined according to the reasons of the Full Bench and according to law.

The matter came before me for the second time on 21st August 1996. No further evidence was called by either party. The decision of the Full Bench is binding upon this Court, therefore in compliance with the directive of the Full Bench, I find the complaints proven. The sum claimed for costs is not disputed, therefore I order costs in the sum of \$349.70 to be paid by the Defendant to the Complainant.

In making further orders, I start from the point that the Full Bench has held that Mr Coci was not employed by the Defendant Company as a casual employee. It follows that because the Defendant Company had incorrectly classified Mr Coci as a casual employee, and remunerated Mr Coci at a rate applicable to casual employees, he was remunerated at a rate which was different from the rate he would have received if classified as a permanent employee. Mr Coci's pay slips, which were tendered in evidence as Exhibit "L", show that he was remunerated at the rate of \$15.30 per hour, during the period he was classified as a casual employee.

At the time of Mr Coci's employment, the Defendant Company classified him as a casual employee for remuneration purposes, and structured his rate of pay in accordance with Clause 31 sub-clause (5) of the Award, which reads as follows:

"(5) A casual employee shall be paid 20 per cent of the ordinary rate in addition to the ordinary rate for the calling in which he/she is employed."

I refer to page 43 of the transcript of evidence taken at the initial hearing on 21st June 1995, where the evidence of Mr McManus, the payroll officer at the Defendant Company, appears as follows:

- "Q. Upon what basis did you get 15.3 for Mr Coci?
A. We took the permanent rate and added 20% to arrive at \$15.30 per hour
Q. Where did you get that permanent rate from?
A. From the permanent employees, and it came from the steel fabrication industry order
Q. For what type of employee?
A. For boilermakes, machinists and builders

Q. Is that a trademan's rate?

A. Yes"

Mr Coci's evidence at pages 21 and 22 of the transcript is that he qualified as a boilermaker in steel construction after serving an apprenticeship, and that he was employed by the Defendant Company to operate a profile machine.

The casual rate of pay was calculated by adding 20% to the basic hourly rate of \$12.75, making a total rate of \$15.30 per hour. As the Full Bench has found that Mr Coci was not a casual employee, the hourly rate of \$15.30 paid to Mr Coci must be regarded as an over-award payment, which is accepted by both parties.

The Complainant submits that the Award is a minimum rates award, therefore Mr Coci, who was not a casual employee, received an over-award payment of \$15.30 per hour, which the Court should accept as being the appropriate rate for the purposes of calculating compensation to be paid to Mr Coci.

The Defence submits that the appropriate rate to be adopted by the Court is \$12.75 per hour, the Award being a minimum rates award, and that nothing in the Award provides for inclusion of an hourly loading. The hourly loading of 20% was inserted into the Award in 1974 by the Industrial Commission by way of compensation to casual employees for not receiving benefits such as annual leave.

I refer to page 35 of the transcript of evidence taken at the initial hearing on 21st June 1995, where Mr Coci's evidence under cross-examination appears as follows:

"Q. You were paid as a casual?

A. That's right

Q. From that we can assume that the \$15.30 you were paid per hour includes some casual loading?

A. Yes it does"

On the evidence I am satisfied that both Mr Coci and the Defendant Company understood the formula by which Mr Coci's hourly rate was calculated, (albeit incorrectly), at a time when the Defendant Company believed Mr Coci to be a casual employee. I am satisfied that had the Defendant Company understood Mr Coci to be a permanent employee, and classified him as such for the purposes of remuneration, he would have been remunerated at a rate different from \$15.30 per hour, receiving what Mr McManus referred to in his evidence as the "permanent rate", without the 20% hourly loading which applies expressly to casual employees. As a permanent employee, Mr Coci would have received the additional payments prescribed in Clause 23 of the Award for Public Holidays and Annual Leave, as did other permanent employees of the Defendant Company, instead of the 20% hourly loading.

Mr Coci is entitled to be compensated for financial benefits he would have been paid if he had been correctly classified by the Defendant Company during the period of his employment, and remunerated appropriately to that classification. He is not entitled to receive a greater sum for Public Holidays, Annual Leave and correct notice than other permanent employees of the Defendant Company would have received for the same period of employment.

On Mr McManus' evidence, I am satisfied that the rate paid by the Defendant Company to permanent employees with Mr Coci's trade qualifications at the period of Mr Coci's employment was \$12.75 per hour, and on the balance of probabilities I am satisfied that this would have been the rate paid to Mr Coci if the Defendant Company had classified and remunerated him as a permanent employee. There is no dispute that Mr Coci worked for 26 weeks between 22nd September 1993 and 7th March 1994 and was entitled to receive 2.923 hours pay for each completed week of continuous service, with respect to Annual Leave, pursuant to Clause 23 (6)(b) of the Award. His annual leave entitlement calculated at the rate of \$12.75 per hour for 26 weeks x 2.923 hours is \$968.97.

There were five public holidays during the period 22nd September 1993 and 7th March 1994. I accept the calculation submitted by Defence Counsel, namely 5 PH x 7.6 hours/day x \$12.75 per hour = \$484.50 as being the appropriate calculation of the remuneration which Mr Coci would have received if classified as a permanent employee.

I also accept the Defence's calculation as to notice payable to Mr Coci, namely 37 hours x \$12.75 per hour, a total of \$471.75, one hour's notice having already been given.

I reproduce here a summary of Mr Coci's total entitlements as calculated by the Defence.

PAYABLE

1. Wages	
26 weeks x 38 hours x \$12.75 per hour (inclusive of Public Holidays)	= \$12,597.00
2. Annual Leave (see previous calculations)	= \$ 968.79
3. Notice (see previous calculations)	= \$ 471.35
TOTAL PAYABLE	<u>\$14,037.72</u>

PAID

Wages

26 weeks x 38 hours x \$15.30 per hour	
TOTAL PAID	<u>\$15,116.40</u>

As the total remuneration actually paid by the Defendant to Mr Coci exceeds the amount which would have been payable if he had been classified as a permanent employee and remunerated at the rate then paid to permanent employees, I find that no further compensation is payable to Mr Coci.

With respect to the penalty to be imposed for the breaches, I am satisfied that the incorrect classification of Mr Coci arose because of the Defendant Company's failure to implement appropriate and clear procedures for the engagement of its employees. On the evidence, the arrangement was vague and Mr Coci's terms of employment unclear from the time he commenced employment with the Defendant Company.

I refer to page 25 of the transcript of evidence taken at the initial hearing on 21st June 1995, where Mr Coci gave the following evidence in chief:

"I was called about a week later by Colin York...he was the engineer at Centurion Industries in Welshpool...he phoned me at home...he said 'We have got heaps of work coming up and we need someone reliable to operate our machine...come in on Monday and you can start'."

At page 26 Mr Coci was asked:

"What happened when you went in there?" and he replied "He said 'We have got this job coming up...we have got all this steelwork we have got to finish...there's a permanent job here for you'."

At pages 31 and 32 the following evidence appears:

"Q. When you started work, how long did you think that you would be working there?"

A. Well, the amount of steel they had there and what he told of the job coming up, indefinite, sort of thing

Q. Did you think that you would be working there more than a month?

A. Yes

.....

Q. When did you raise the issue of your payments with the employer?

A. It would have been in November

Q. What was the response of the employer?

A. Well, our guy we spoke to, the workshop manager Len Harris, he said he would have to discuss it with his superiors and he would get back to us in a couple of weeks

.....

Q. What was the response?

A. He said himself and our shop steward had negotiated with the management and they came back to us and said that the casuals would be made permanent by Christmas

Q. Did that subsequently happen?

..A. Well, we got around...to Christmas, and we said "What's happening?" and then we were told "We will get back to you in a couple of weeks"

Q. Did anything happen as a result of that?

A. Yes, came back in a couple of weeks and said the same thing, and that kept on going."

The laxity of the Company's procedures led to uncertainty on the part of the employee, and to error on the part of the payroll officer. Later, as held by the Full bench, it led to error on the part of the Court at first instance. The employee, however, did not suffer financial detriment.

A penalty of \$100.00 is imposed on each of the breaches, making a total penalty of \$300.00.

LONG SERVICE LEAVE— Boards of Reference—Special—

LONG SERVICE LEAVE—STANDARD PROVISIONS

BOARD OF REFERENCE

Mrs M. Wark

and

Jurien General Store

File No. 12 of 1995.

The Shop and Warehouse (Wholesale and Retail
Establishments State Award 1977).

MR J.G. CARRIGG (CHAIRMAN)

MR D. JONES (MEMBER)

MR W. LATTER (MEMBER)

PERTH.

30 October, 1996.

Decision.

This Special Board of Reference was convened on 23 January and 10 September 1996 as result of a request by Mrs Mary Wark, of Jurien WA 6516 which was made in a letter dated 16 October 1995 addressed to the A/Deputy Registrar of the Western Australian Industrial Relations Commission.

There are two matters which have been placed before this Special Board of Reference. Those matters are whether Mrs Wark's service is continuous as provided for in Clause 2(6) of the Long Service Leave Standard Provisions, and which employer bears the responsibility for the full entitlement of leave in accordance with 15 years service if that service is deemed to be continuous.

Mrs Wark was employed in the business known as the Jurien General Store and Post Office.

Exhibits 2 and 3 are letters from Greg Kristiansen, (J.P.), of Lot 471 Hasting Street, Jurien WA 6516 (Exhibit 2) and from Cec Holman, Postal Manager MOORA WA 6510 (Exhibit 3).

Exhibits 2 and 3 record that Mrs Wark worked at the Jurien General Store and Post Office for some 19½ years (Exhibit 2), and that she commenced work at Jurien Postal Agency on 1 July 1976 (Exhibit 3).

Exhibit 4 details changes of ownership of the Jurien General Store from 7 March 1976 to 10 October 1988 in four statutory declarations made by the proprietors of that business over that period. Also the exhibit records Mrs Wark's employment by these four owners.

Those statutory declarations in Exhibit 4 detail the changes of ownership as follows:

1. Statutory declaration made by Arnold Dickinson Haggarty, 4 Bashford Street, Jurien on 16 June 1996 states:

"The Jurien General Store was purchased by me on the 7th March 1976. It was made up of land, buildings and goodwill. Mary Wark was employed by me on recommendation from Australia Post and the previous owner.

The store and post office was sold by Arnold Haggarty on the 5th March 1979.

The sale of the Jurien General Store to the new vendors was made up of land, buildings and goodwill.

Mary Wark was recommended for employment to the new owner by myself.

We found Mary Wark to be a loyal employee.”

2. Statutory declaration made by Joan Hams, 14 Bay Road, Claremont on 8 July 1996, states:

“Mary Wark worked from 5th March 1979 until 1st Month 1984 for us.”

3. Statutory declaration made by Jean Dorothy Bunter, 9 Burrinjuck Road, Gooseberry Hill WA, states:

“Myself Jean Dorothy Bunter and partners David John Bunter and Allan David Bunter employed Mary Wark at Jurien General Store as postmistress from January 1984 to May 1987.

On the sale of the above business the new owner was notified of Mary Wark’s accrued long service leave.”

4. Statutory declaration made by William Brindley Wreford, 16 River View Terrace, Mt. Pleasant on 6 May 1996 states:

“The Jurien General Store was purchased by my wife Vicki and myself on the 1.5.87. At purchase the price was made up of land and buildings, plant and machinery and goodwill.

Mrs Mary Wark was employed by us on the purchase date. She was recommended by the previous vendors and Australia Post.

Mary Wark was a good and loyal employee.

The Jurien General Store was sold by Bill and Vicky Wreford on the 10.10.88. The purchase price to the new vendors was made up of land and buildings, plant and machinery and goodwill.

Mary Wark was recommended for employment to the new vendors.”

On 10 October 1988, the Jurien General Store was purchased by BE & BE Kelly and G & J Green from W & V Wreford

At pages 9A & 10 of the transcript of 23 January 1996, Mr Woodgate, Accountant for BE & BE Kelly and G & J Green at the time of the purchase described that transaction in the following terms.

“- the business was sold as a going concern on a walk-in walk-out basis”

“the way we actually purchased the business was at a strict cut-off point where, sort of, Mr & Mrs Wreford actually went out. As far as we understood it at that particular point in time, all liabilities for any leave that accrued whatsoever, at that time was paid for. They took their own bank account, so there was no continuous bank account, or whatever, and we actually just purchased the assets of the business, which was really the freehold land, the goodwill of the business and the plant and equipment.”

At page 48 of the transcript of 10 September 1996, Mr Kelly described the arrangements of the sale of the Jurien General Store from BE & BE Kelly and G & J Green in May 1994 to Abbey Bay Pty Ltd, Reg. No. 063715015, as follows:

“Chairman—Can you describe the arrangements that were in place when you sold the business to Mr Grolligg. What did you put in place then?”

Mr Kelly—Well, similar to when we bought it; exactly the same as—what I can recall. I think Grolligg—we dismissed all the staff and they whoever wanted to apply to Grolligg as if they wanted to be employed by him.”

Exhibit 5, an extract of the business names branch of the Ministry of Fair Trading shows Abbey Bay Pty Ltd as carrying on the business of the Jurien General Store starting on 2 May 1994.

This Special Board of Reference determines that the business of the Jurien General Store has been transmitted from one employer to another on five occasions ie: 5 March 1979, January 1984, 1 May 1987, 10 October 1988 and 2 May 1994 in accordance with Clause 2(3) of the Long Service Leave—Standard Provisions.

This Special Board of Reference also determines that Mrs Wark was an employee of both the transmitter and transmittee on each of the 5 occasions the business of the Jurien General Store was transmitted between 7 March 1976 and present, and that employment is deemed to be continuous as provided for in Clause 2(6) of the Long Service Leave—Standard Provisions.

Mrs Wark continues to be employed by the current owners of the Jurien General Store.

It is further the determination of this Special Board of Reference that as provided for in Clause 5(2) of the Long Service Leave—Standard Provisions that Mrs Wark became entitled to payment by BE & BE Kelly and G & J Green for Long Service leave for 15 years service which accrued on 6 March 1991, when she was dismissed by that employer on 2 May 1994 when the business of the Jurien General Store was transmitted to Abbey Bay Pty Ltd.

J. G. CARRIGG

Chairman.

Filed in the Office of the Registrar—30.10.96

J. CARRIGG

Registrar.

UNFAIR DISMISSAL/ CONTRACTUAL ENTITLEMENTS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Katharina Yanyan Deng

and

Sin-Aus-Bel Pty Ltd,
trading as The Ascot Inn.

No. 991 of 1995.

COMMISSIONER R.H. GIFFORD.

7 November 1996.

Reasons for Decision.

THE COMMISSIONER: By this application, Katharina Yanyan Deng, claims that she was dismissed in an unfair manner on 24 August 1995, from her position as a Graduate Accountant with Sin-Aus-Bel Pty Ltd, trading as the Ascot Inn, pursuant to s.29(1)(b)(i) of the Industrial Relations Act, 1979 (“the Act”). In consideration of that unfairness, Ms Deng does not seek reinstatement, but in lieu seeks compensation equivalent to 19 weeks wages, namely an amount of \$7,308.35.

Ms Deng also seeks two denied contractual benefits, pursuant to s.29(1)(b)(ii) of the Act. Firstly, she claims unpaid overtime, relating to the period 22 May 1995 to 5 June 1995, constituting a total of \$769.21. Secondly, she claims unpaid wages of \$131.53, being amounts inappropriately deducted.

With respect to Ms Deng’s claim relating to unfair dismissal, it is recognised at the outset that the Commission is required, pursuant to s.23AA(3) of the Act, to determine whether the dismissal was effected for a ‘valid reason’ connected with the employee’s conduct or capacity or the operational requirements of the establishment. It is also necessary to consider, even if the reason is found to be valid, whether any other elements of unfairness occurred in the process.

It is argued by Mr Robson (of Counsel), on Ms Deng’s behalf that no reason was given by Mrs Cecilia Wee, the Managing Director of the Ascot Inn, for the dismissal.

The letter of termination, of 24 August 1995, written by the Managing Director of the Ascot Inn, Mrs Wee, to Ms Deng (Exhibit R6) does not refer to any reason for the decision as such. As this letter directly followed upon what has been

described as a letter of warning to Ms Deng from Mrs Wee, dated 10 August 1995 (Exhibit R3), it is reasonable, in the Commission's view, having heard all of the evidence, to imply the statement made in that letter, into the termination letter. The former letter refers to Ms Deng's non-performance of 'all the duties that are required of your position as the Accountant'. It is put differently by Mr Jones, acting on behalf of the Ascot Inn, in his submission although, with a similar meaning, as 'incapacity to perform work for which (she was) hired'.

The relevant circumstances of events in relation to Ms Deng's employment, based upon the evidence led in these proceedings, are along the following lines.

Ms Deng commenced her employment with the Ascot Inn as a 'Graduate Accountant' on 15 May 1995. She had applied for the position in response to an advertisement (Exhibit R1), which had listed, as requirements for the position, a graduate accountant, experience not essential and computer experience preferred. An initial interview was conducted by the former Graduate Accountant, Mr Andrew Lim and this was later followed by an interview with the Managing Director together with a financial consultant, Mr Paul Wee (no relation), who at an earlier time had been employed in the same capacity. Ms Deng was advised that she was to replace Mr Lim. It is Ms Deng's evidence that she was not told the details of her duties. Mrs Wee says that she was told the content of the position by Mr Wee. It is Mr Wee's evidence that he explained her duties to her, as those of: maintaining creditors, cash book, data inputting into computer, payroll debtors, cash counting and general duties.

A salary of \$20,000 was agreed upon, in recognition that she had sought \$26,000, but was to retain a one day per week part time position with an organisation associated with Princess Margaret Hospital. With respect to weekly hours of work, it is Ms Deng's evidence that she was engaged on the basis of a 4 day week, but to work an additional half day on Saturday, in order to be taught by Mr Wee to operate the Ezi Accounting computer program, which was expected to be completed over three such Saturdays. It is Mrs Wee and Mr Wee's evidence that she was engaged on the basis of a 4.5 day week, including half a day on Saturday, for the purpose of interfacing with Mr Wee, who was to be her Supervisor or who only usually attended the hotel on a Saturday.

Mrs Wee and Mr Wee say also that Ms Deng was engaged on a trial basis. Ms Deng denies that such was the basis of her engagement.

Ms Deng was introduced to her role by Mr Lim, who assisted in that respect for four days. Although he furnished Ms Deng with a copy of a list of his duties (Exhibit J1), he gave evidence that his main duties actually involved daily cash counting and verification, cash book maintenance, data entry to Ezi Accounting, part of the creditor maintenance task (the major part being carried out by Ms J. Tenouja), food report and function report. The debtors list was prepared by Mr J. Hall, who also worked in the accounts section. Reconciliation work was not part of the Graduate Accountant role.

On 22 May 1995, Ms Deng was requested by Mrs Wee to carry out a reconciliation of the cash book for 1994-95, as the balance was incorrect. Ms Deng describes it as an audit. Ms Deng says that she explained to Mrs Wee that she would need a considerable amount of time in which to carry that out and that Mrs Wee had said to do overtime to get the job fixed. Mrs Wee denies making any such reference to overtime.

On 28 May 1995, Ms Deng claims that she was requested to take over the full function of creditors maintenance, as Ms Tenouja was finishing up.

By 3 June 1995, no data inputting into the Ezi Accounting program was being carried out by Ms Deng. Mr Wee agreed on that date to take that task over and do so until the end of June 1995. He says that Ms Deng had told him that she did not want to do the work.

Ms Deng worked no more Saturdays beyond 3 June 1995. Mrs Wee says that she confronted her over that fact but was reassured that the work would be done.

On 26 June 1995, Mrs Wee says that she convened a meeting involving herself, Ms Deng and Mr Wee, as she was not satisfied that Ms Deng's work was being done including the

food and function reports. Mrs Wee told Ms Deng that she needed to improve. Mr Wee says that he indicated that Ms Deng had no commitment. Ms Deng has no recollection of the meeting.

On 29 June 1995, a further meeting of the same parties was held. Mr Wee says that Ms Deng was resisting taking responsibility for data inputting into the Ezi Accounting system and there was still no food or function report. He says that she was defensive about everything. Ms Deng says it was agreed that Mr Bahbah, an accounting consultant, would provide training for Ms Deng in the Ezi Accounting system. She says it was also agreed that Mr Hall would take responsibility for the creditors ledger from her, whereas Bessie would take over the debtors ledger responsibility. She says the decision relating to both ledgers was later countermanded by Mrs Wee, so that she (Ms Deng) would retain the responsibility for both. Mrs Wee denies this.

It was about this time that Ms Deng completed her reconciliation of the cash book.

All parties understood that Ms Deng would be commencing the inputting of data in the Ezi Accounting system during the second week in July 1995. Mrs Wee was scheduled to leave for Singapore on 11 July 1995, with a view to returning on 4 August 1995. Prior to leaving, Mrs Wee says that she told Ms Deng that she needed to ensure that the July 1995 creditors and debtors were up to date and inputted into the Ezi Accounting system. She advised that she wanted, on return, to view the statements for July 1995, which Mr Bahbah had been contracted to provide.

Mr Bahbah confirmed that Mrs Wee, prior to leaving for Singapore had told Ms Deng that the inputting of creditors and debtors into the computer were her first priority. Because the opening balances were not finalised, he established control accounts for creditors and debtors, and started, himself to input the July 1995 information. He found a variety of errors which had been made by Ms Deng and found it necessary to refer back to the original invoices. He says he felt the standard of Ms Deng's work in this respect had been poor.

Mr Wee then says that on 15 July 1995 he, in noting that the inputting of data into Ezi Accounting was not occurring, faxed Mrs Wee in Singapore to that effect. Then, on 18 July 1995, Mrs Wee faxed Ms Deng requesting her to investigate a series of accounting matters. Ms Deng responded to these matters and advised of a number of creditors demanding immediate payment. She also confirmed that no inputting of data into Ezi Accounting had been carried out. Late that week, cheques requiring signatures were urgently sent to Mrs Wee to arrange for payment of creditors.

During the following week there were a series of faxes between Mrs Wee and Ms Deng over a range of matters, in terms which became more and more acrimonious. It culminated in a six page fax from Ms Deng to Mrs Wee dated 27 July 1995, answering a series of questions but mostly setting out her position about the various duties she was involved with, including contractual issues in dispute. In the course of this response, a number of unfavourable gratuitous remarks were made in relation to Mrs Wee, causing offence to be taken.

Mrs Wee says that upon her return from Singapore on 4 August 1995, she discovered that Ms Deng's accounts were not in a satisfactory state. From Mr Bahbah's standpoint, he reported to Mrs Wee that the debtors were finished, but that the creditors were not. He said that Mrs Wee was very upset. Mrs Wee says that she received all kinds of excuses from Ms Deng.

Mrs Wee then considered her position and on 10 August 1995 handed Ms Deng a letter which outlined the 'specific job requirements' which had not been complied with. The terms of that letter are as follows:

"Dear Katharina

I am concerned that you are not performing all the duties that are required of your position as the Accountant at Ascot Inn.

As per our interview (please see attached statement), I outlined your specific job requirements. I feel that the following areas are not being complied with:

* It was agreed that you work four full days and one half day at Ascot Inn. At present you are working

four full days only. It was agreed that you work a half day on Saturday with Paul Wee in order for figures to be available for Paul to complete monthly accounting reports.

* It was agreed that you maintain the day to day accounting work of Ascot Inn. These duties include the following:

1. Maintain full control of our Accounting System "Ezi Accounting".
2. Maintain a hand written Cash Book for Ascot Inn.
3. Maintain Debtors and Creditors Ledger.
4. Produce monthly reports from "Ezi Accounting".
5. Produce the Food Report and Function Report.
6. Supervise Accounting Staff and day to day accounting functions.

As at 5th August 1995, some of the above requirements were not complied with. These were as follows:

1. Food report not up to date. The latest food report was week ending 2 July 1995.
2. Function Report not up to date. The latest Function Report was week ending 21 May 1995.
3. No data entry in "Ezi Accounting" for the entire month of July.
4. July Cash Book, Debtors, Creditors, General Ledger entries not entered into Ezi Accounting.
5. No Bank Reconciliation for July.

In alerting you to the above issues we hope that you will know what is expected of you and we can arrange a work environment that all will be happy in. If you know what is expected of you, you will know exactly what you are doing and I will be able to see what you are capable of.

I will review the implementation of the above in two weeks time. If there is still a degree of non compliance with your duties then consideration will be given to your suitability to the position.

Yours faithfully
CECILIA WEE"

(Exhibit R3)

There then followed a meeting between Mrs Wee, Ms Deng and Mr Hall to enable discussion relating to the letter to occur. The meeting was tape recorded, with Mrs Wee's permission, and the tape was heard and tendered in these proceedings (Exhibit R10). In the course of the meeting, which was heated at times, Mrs Wee confirmed that Ms Deng was one and a half months behind with her data inputting into Ezi Accounting and that she needed to have the July accounts. Ms Deng responded that she was working in accordance with her instructions and that Mr Bahbah was not available until 5 July. She confirmed how she had worked on the manual cash book and the manual debtors and that the function report would soon be up to date. She said she would get the inputting into Ezi Accounting up to date in two weeks. Ms Deng also raised her position relating to her 4 day per week engagement and her claim relating to overtime, which was met by denial from Mrs Wee. The meeting was interspersed with accusation and counter accusation. The meeting concluded with Mrs Wee stating that she would review Ms Deng's position in two weeks and if she did not measure up, she would dismiss her.

In her evidence, Ms Deng says that the data entry into Ezi Accounting had not been completed because she had not by then received the balance carried forward and she had been maintaining the manual debtors and creditors ledgers.

Ms Deng actually re-commenced the data entry into Ezi Accounting on 15 August 1995. She then proceeded on 2 days sick leave, as a result of a stress condition. Then, on 21 August 1995 she presented to Mrs Wee her written response in the form of a six page letter (Exhibit R5) to Mrs Wee's letter of 10 August 1995.

In so far as the references in Mrs Wee's letter to the Ezi Accounting system, Ms Deng responded as follows:

Page 2:

6. "(1) Maintain full control of our Accounting System 'Ezi Accounting'.

This was not part of our agreement. Please refer to Point 2. It was a matter of fact that the outgoing Financial Administrator did not have the duty to maintain full control of the Ezi Accounting package."

Pages 4/5:

7. "(3) "No data entry in "Ezi Accounting" for the entire month of July."

On 29 June 1995, we decided—you, John Hall and me—that I would start entering data to the Ezi Accounting package in the second week of July provided that:

- (a) John would take over the manual Debtors Ledger after I had set it up and entered data for the first week of July, 1995; and;
- (b) John/Bessie would take over data entry to the manual Cash Book from 1 July, 1995.

The decision was altered by you on 10 July 1995, when you instructed me:

- (a) "You keep up with the manual Debtors Ledger; don't pass it on to John."
- (b) "Don't let Bessie do data entry to the Cash Book; it contains important information about the business."

When I queried that with such a new arrangement, how could I start on Ezi Accounting that week, you shouted at, and insulted me.

As a matter of fact, I informed you by fax on 19 July 1995, of the problem of data not being entered into Ezi Accounting because of the new arrangement, and expected your instruction to solve the problem.

I also reminded you of the problem on 27 July 1995, and once again waited for your instruction.

I would say that it is very unfair that you make me responsible for the problem caused by your own decision."

Page 5 :

7. "(4) "July Cash Book ... not entered into Ezi Accounting."

Please refer to Point 7. (3)."

(Exhibit R5).

Towards the end of the letter, Ms Deng accused Mrs Wee of seriously harassing her, since receiving the letter of 10 August 1995 and of having no genuine intention of achieving a happy work environment. She also accused Mrs Wee of making a defamatory statement about her at the meeting of 10 August 1995, and sought a written apology.

Mrs Wee says that upon receiving the letter, she realised that Ms Deng was not going to improve, rather that she was simply going to argue and create problems. Mrs Wee concluded that it would be impossible for her to work with Ms Deng.

She decided that she would terminate her employment.

Mrs Wee prepared and signed the termination letter, on 24 August 1995, which advised of Ms Deng's immediate termination, with the payment of one week's pay in lieu of notice, and arranged for it to be delivered to Ms Deng by Mr Hall.

Before dealing with the question of the validity of the reason for Ms Deng's termination, it is necessary for the Commission to resolve two issues in contention in view of their potential to impact upon later aspects of the decision.

In the first place, there is the issue of the basis of Ms Deng's engagement. Ms Deng maintains that she was engaged on the basis of working a 4 day week, with the requirement to work a half day on Saturday, solely related to the need for her to be trained by Mr Wee in the operation of the Ezi Accounting

system, involving three such Saturdays. Mrs Wee and Mr Wee maintain that Ms Deng was engaged on the basis of working a 4.5 day week, involving a regular half day on Saturday, in order that she may interface with Mr Wee, who usually only attended the hotel on that day.

The difficulty the Commission faces in this respect is that there is no contract document or letter of appointment which sets out the basic terms of Ms Deng's engagement. The job description document tendered (Exhibit J1), although relevant to Ms Deng, was actually drawn up for her predecessor.

Then, there is the evidence of Mrs Wee and Mr Wee, which corroborates. There is also the evidence, which is not contested, of the fact that Ms Deng was in effect replacing Mr Lim, her predecessor. Mr Lim, worked a 5.5 day week, including half a day on Saturday, in order to interface with Mr Wee. It was acknowledged that Mr Lim was an inexperienced Graduate Accountant, whereas Ms Deng had about 3 years experience and hence the view was taken that Ms Deng could still fulfil the role.

Having weighed all of these matters, the Commission finds that Ms Deng was engaged on a 4.5 day week, including half a day on Saturday, in order to interface with her Supervisor, Mr Wee. The Commission cannot see the logic of the hotel requiring Mr Lim to be engaged on that basis and engaging Ms Deng to carry out effectively the same role, to not require her to be so engaged, when Mr Wee was responsible for preparing monthly financial reports based upon the accounting work carried out by the Graduate Accountant. There is no doubt that the first three Saturdays were to be involved with training on the Ezi Accounting system. Ms Deng wrongly concluded, in the Commission's view that this was the end of her responsibility on the Saturdays.

Secondly, there is the issue of the trial period. Ms Deng says that her engagement as Graduate Accountant was not subject to a trial period of any kind. Mrs Wee on the other hand says that she was engaged on the basis that Ms Deng would try out in the position, on the understanding that she retain her part time position for one day a week elsewhere, so that if the employment at the hotel did not work out, Ms Deng would at least have that other employment. Mr Wee understood Ms Deng's employment to be along similar lines.

Mrs Wee concedes however, that she made no express reference to the employment being on the basis of probation. Nor is there any documentary evidence to confirm this as being a fact.

In balancing this evidence the Commission is far from convinced that such was the basis of her employment, and accordingly finds that it was not.

With respect to the duties that Ms Deng was required to perform, the Commission has noted the evidence given by Mr Wee as to the duties he explained to her at the interview, together with the evidence of Mr Lim as to the duties he explained to her, based on his own circumstances (which were confirmed, with certain omissions, in Exhibit J1), at her commencement. This evidence was put to Ms Deng in cross examination and the Commission was thereby able to find what her duties were at commencement; they being cash counting and verification, cash book maintenance, data entry into Ezi Accounting, support to creditors maintenance (carried out by another employee, Ms Tenouja), food report and function reports, together with assisting in payroll. With the exception of the reports and the payroll, the duties were carried out on a daily basis.

It was Mr Wee's assessment that these duties were capable of being carried out in less than the 4.5 days per week upon which Ms Deng was engaged.

Because of the need for Ms Deng to be trained in the Ezi Accounting system, she obviously did not commence to carry out the inputting activity into that system. It was Mr Lim's evidence that this inputting task took him one to two hours each day, once he was proficient with the system. Ultimately, it was agreed between her and Mr Wee that he take over this activity, at least until the beginning of July 1995.

It was because of this reduced workload that Mrs Wee decided to propose to Ms Deng that she carry out the cash book reconciliation task. Ms Deng saw the position differently, in that she felt that this reconciliation work would need to be done in 'overtime' hours.

Then, a week after this was arranged, there is no doubt that an additional task was placed upon Ms Deng, namely the full responsibility for the creditors maintenance function, as a result of the employee carrying out that function, leaving the hotel. This task, spread over each day, would have taken about one hour per day. It nevertheless would not have fully filled in the time made available by the inputting into Ezi Accounting being taken over by Mr Wee.

Mr Wee expressed the view that notwithstanding Ms Deng assuming this full responsibility, that she ought to still be able to cope with her workload.

Taking into account all of the evidence, whilst the Commission accepts that Ms Deng did carry out some of the cash book reconciliation work outside of her usual hours of work, the Commission is not convinced that this was necessary, having regard to the reasonable demands of the position. That view is formed after account is taken of Ms Deng, for this first phase of her engagement, up to 1 July 1995, forgoing responsibility for the inputting into Ezi Accounting and assuming full responsibility for the maintenance of the creditors.

With respect to the special task of the reconciliation of the cash book, the evidence reveals that this task took some 5 to 6 weeks. The Commission is not persuaded that it was concluded on 14 June 1995, as suggested by Ms Deng, in her written response to Mrs Wee on 20 August 1995.

Mrs Wee's reaction to the completion of the task was a strong one. It was not so much that she felt it had taken a long time, but that it made no sense to her. She complained of loose sheets, being print-outs from the Lotus 123 program used, stapled to some of its pages, together with crossings out and pieces being cut off. Mrs Wee viewed the cash book as having been vandalised.

Mr Wee gave evidence that from his observation of one month of the work carried out, that none of the balances reconciled. In addition, he would have expected to see a list of unrepresented cheques and a list of outstanding deposits. He did not believe that the task was done in accord with standard practice and he did not find it meaningful.

Mr Ravandram, the Chartered Accountant from Hall Chadwick, the hotel's chartered accounting firm who also gave evidence in these proceedings, reviewed two months of the reconciliation work carried out by Ms Deng. He maintained that the work was not satisfactorily carried out. It did not show a balance back to the bank statements, nor did it show a list of outstanding cheques or deposits. There was no explanation attached to the calculations. It caused his firm's review of the accounts to be delayed. He considered it to be unacceptable work.

From Ms Deng's standpoint she says that the reconciliation, as she carried it out, was a case of achieving a balance between total deposits and total payments, an outcome which she says she achieved. She strongly denied that it did not conform with the standard practice. She said that she did not compile the list of unrepresented cheques because it was too time consuming.

The Commission also took the opportunity of inspecting the cash book, which included the print-outs attached.

Having taken all of this evidence into account, the Commission forms the conclusion that Ms Deng's task in reconciling the cash book was carried out unsatisfactorily. In so concluding, the Commission does not attribute any excuse for the position that some of it had to be carried out in hours excess to the normal hours.

Although there was no formal confrontation between Mrs Wee and Ms Deng over this question specifically, such a situation did occur on two occasions in late June 1995, at meetings involving Mrs Wee, Mr Wee and Ms Deng. At the first meeting, Ms Deng was mainly told that she was not getting her work done and needed to improve. The Commission accepts that such a meeting took place, bearing in mind the evidence of Mrs Wee and Mr Wee, and notwithstanding that Ms Deng's personal diary had no record of it. At the second of these meetings, Ms Deng was mainly confronted over her lack of commitment to assuming responsibility of inputting data into the Ezi Accounting system.

By the end of June 1995 therefore, Ms Deng had been told, in a formal setting, by her employer, that there were concerns over aspects of her commitment and performance.

There was initially a clear understanding that Ms Deng would be taking over the responsibility of the data inputting into Ezi Accounting from Mr Wee from 1 July 1995. Arising out of the second of the two meetings in late June 1995, that date was extended into the second week of July, to enable Ms Deng to undertake training in the operation of Ezi Accounting with Mr Bahbah.

Then, prior to Mrs Wee leaving for Singapore on 11 July 1995, she told Ms Deng that she needed to ensure that the July creditors and debtors were up to date and inputted into Ezi Accounting. Mr Bahbah corroborated this evidence; indeed his recollection was that Mrs Wee referred to it as her first priority.

Notwithstanding Ms Deng's lack of acknowledgment of receiving such a direction, the Commission accepts that this direction was given by Mrs Wee in the context of it needing to be given first priority.

But then, it seems it was not able to be given such priority because of a series of issues that arose, especially the need for certain creditors to be paid urgently, that caused Mrs Wee from Singapore, to instruct Ms Deng on several occasions for over the period from 18 July to 27 July 1995, to carry out a series of tasks for her. Noting what most of those tasks were, the Commission has a concern as to why all this was necessary. If the usual practice had been followed prior to Mrs Wee going to Singapore, that is, to have her deal, in advance, with issues such as cheque signing, there would not have been a need for this to be carried out while she was away. Having regard to Ms Deng's responsibilities, the Commission is left wondering whether Ms Deng omitted to bring these matters to Mrs Wee's attention when they ought to have been.

Upon Mrs Wee's return on 4 August 1995, the inputting of data into Ezi Accounting had not been completed. Specifically, the debtors had been completed but the creditors had not been. The implication is that the work was carried out shortly before that date. In any event, Ms Deng had not fully responded to the task of first priority she had been given more than three weeks previously. It is not surprising, in the Commission's view, that Mrs Wee was upset.

Nor was it surprising that Mrs Wee chose to formally confront Ms Deng, as to her specific concerns, as reflected by the letter of 10 August 1995. The reference in the letter, at point 3 on page 2 to no data entry into Ezi Accounting occurring for the entire month of July relates, as the Commission understands it, to that not occurring during the month of July 1995. The Commission also understands, in relation to point 4 on page 2, that the debtors inputting had been completed but not the creditors inputting.

Then, following the receipt of this letter, further inputting did not take place until 15 August 1995. At the interview on 10 August 1995, Ms Deng indicated it would be completed within two weeks.

Mrs Deng's explanations, in her letter of 20 August 1995, presented to Mrs Wee on 21 August, point to the fact that she could not complete the work, as she was unable to secure Mrs Wee's permission to delegate the tasks relating to the manual debtors ledger and the manual cash book. The presumption is that she actually carried out these tasks.

What is critical, from a consideration of all of this evidence, is that in the end, Ms Deng, already (from late June 1995) aware of Mrs Wee's concern over her lack of commitment to the Ezi Accounting system, did not properly comply with an express instruction to give the inputting work into Ezi Accounting first priority.

With that being the context, and furthermore with Mr Bahbah to assist her (and to correct her mistakes himself), the Commission has difficulty in accepting her explanation as to why the direction was not carried out, to the full. The fact that it was not, causes the Commission to conclude that Ms Deng's performance was less than satisfactory. It was symptomatic of a lack of commitment to the process.

Referring back to the letter of 10 August 1995, it can be seen that one other task, namely that of completing the function report, was not completed at all.

That letter then refers to a review in two weeks, as to whether there has been compliance in relation to the nominated tasks, being conducted by Mrs Wee; and that in the event of a degree

of non-compliance being found, consideration would be given to her 'suitability to the position'. In the interview that was consequent upon the delivery of the letter, Mrs Wee made the position even clearer when she said to Ms Deng, that if she did not measure up, Mrs Wee would dismiss her. Ms Deng, in the Commission's view knew exactly where she stood.

Ms Deng sought to defend her position, as was her right, by forwarding to Mrs Wee the letter of 20 August 1995. Mrs Wee read it as an attempt to argue through the issues again and concluded that Ms Deng was not going to improve. This was seen as cause enough to bring the relationship to an end.

Clearly, the review spoken of 11 days earlier was not, in a formal sense, instituted. This is seen by Ms Deng as being procedurally unfair. But was Ms Deng seeking, in defending her position, to pre-empt the review?

Whilst it may be open to see her response in that light, even if it were not, there is still a clear indication from the letter that Ms Deng was taking a totally defensive position. Certainly no one, especially the Commission, would wish to see an employee being inhibited from presenting a proper defence to a statement from the employer relating to inadequate performance, each response has to be seen in its context. In this case, the letter itself, the response from Ms Deng at the interview on 10 August 1995, the response from Ms Deng reflected in her faxes to Mrs Wee between 18 and 27 July 1995, the response from Ms Deng at the meetings on 26 and 29 June 1995, are all reflective of the adoption of a defensive position. So too, in the Commission's view, is the detailed recording of duties performed and conversations held in her personal diary.

In the end the Commission is convinced that the letter of 20 August 1995 is a continuation of the trend. Further, it is a trend which is a reflection of an absence of commitment to succeed at the task. The Commission therefore is prepared to accept the assessment by Mrs Wee, following her receipt of the letter, that it was not possible for both to work with each other.

It cannot be denied though that Mrs Wee bears some responsibility for that outcome. The Commission has gained the impression that Mrs Wee demands a full contribution from employees and where it is not forthcoming, will forcefully confront the employee, as to her concerns. Such an approach may be intimidating to the likes of Ms Deng, but from the Commission's standpoint, its focus is only upon the question of fairness arising from processes that ultimately lead to termination.

Ms Deng accuses Mrs Wee of harassment. The Commission is not convinced that the level of Mrs Wee's forcefulness reached that degree. Much reference was made by Ms Deng to detrimental remarks made by Mrs Wee over Ms Deng's pregnancy, which came to light during the course of her employment. The Commission has taken note of the evidence led in this respect, and whilst again, Mrs Wee may have made some forceful remarks on this subject, the Commission is not convinced that those remarks were harmful or detrimental. The Commission is not prepared to accept that Mrs Wee spoke on the subject of abortion, in the manner described by Ms Deng. The Commission, in the end has placed little weight on these considerations. So too has it in relation to the claim that Ms Deng's ethnicity was detrimentally dealt with by Mrs Wee. This is simply out of the question, when regard is had of the fact that Mrs Wee has similar ethnic origins herself.

Ever since the series of faxes in July 1995, to and from Singapore, the personal relationship of both has soured, largely as a result of accusations made by each to the other. This reached its peak at the interview on 10 August 1995. The Commission gained the impression, on hearing the recorded tape of the interview, that a breakdown in the relationship between the two was at an advanced stage. The final outcome was really inevitable.

As to whether the Commission has been able to conclude whether a 'valid reason' for the dismissal of Ms Deng, the Commission states that it is satisfied that such reasons, connected to capacity, do exist. The Commission therefore, from that standpoint is not able to find any unfairness in the dismissal.

With respect to any other element of the process of dismissal, the Commission would observe that the review which was undertaken to take place following the letter of 10 August

1995, never actually took place. The Commission is not however, prepared to attribute unfairness to this because of that which interceded in the process, namely Ms Deng's letter of 20 August 1995.

In so far as the explanation in this letter is concerned, relating to the Ezi Accounting system, the Commission has already observed that it was defensive in character. The explanation in this respect concludes with the statement that, as at 27 July, she was still awaiting further instructions on the matter from Mrs Wee.

Mrs Wee's response to that kind of explanation, namely that she viewed Ms Deng as still wanting to argue about the issue, was a reasonable response, in the Commission's view, especially bearing in mind the context, namely that Mrs Wee had given express instructions to Ms Deng, prior to leaving for Singapore, to give first priority to the inputting of data into Ezi Accounting.

In this explanation by Ms Deng, as in a number of others, there is no sign of demonstrating a preparedness to commit herself to get the job done, let alone properly done. That preparedness in the case of the Ezi Accounting was in the Commission's view, absent from the beginning of her engagement until the date she wrote the letter. The Commission would therefore not be prepared to find that there was any unfairness in the process of Mrs Wee choosing to not proceed with the review she originally proposed, in light of the receipt of Ms Deng's letter.

The Commission will accordingly dismiss this part of the claim.

Contractual Benefit—Overtime

Ms Deng claims that she was not paid overtime, over the course of the period 22 May 1995 to 5 June 1995. The claim is for \$769.21, and the basis of its calculation is set out in Exhibit R11.

It is Ms Deng's evidence that when, on 22 May 1995, she was asked by Mrs Wee to carry out the reconciliation of the cash book, she (Ms Deng) told Mrs Wee that it could only be done on weekends or after hours. She says that she told Mrs Wee that she would expect to be paid overtime, to which Mrs Wee agreed. Then Ms Deng says that on 6 June 1995, when Mrs Wee asked how the job was going, she (Ms Deng) indicated that there had been so much overtime, Mrs Wee had then responded that she did not pay overtime.

Mrs Wee in her evidence denies making the statement to Ms Deng on 22 May 1995.

It is necessary, in determining this matter, for the Commission to be satisfied that an additional contractual benefit was being conceded by Mrs Wee in this conversation, and this is solely dependant upon preferring one person over the other. The context is also important; and this simply was that Mrs Wee, on 22 May 1995, was asking Ms Deng to carry out an additional task, in the knowledge that Ms Deng was not carrying out the Ezi Accounting task.

Notwithstanding that Mrs Wee did not challenge Ms Deng's statement as to the working of additional hours, the Commission, having regard to the context of the discussions, would consider it most improbable that Mrs Wee would have been of the mind to concede an overtime payment. Indeed, two weeks later, when confronted with the prospect, she made her position abundantly clear.

The Commission chooses to prefer the evidence of Mrs Wee and therefore finds that no contractual benefit relating to overtime payment existed. This part of the application will accordingly be dismissed.

Contractual Benefit—Unpaid Wages

The claim for unpaid wages of \$131.53, relates to wages deducted in respect of the last three Saturday mornings of Ms Deng's employment, which were not worked.

It is the case that the Commission, in these proceedings, has already found that Ms Deng's engagement was on the basis of a 4.5 day week, including Saturday morning.

The evidence is clear that Ms Deng did work on the first three Saturday mornings, but not beyond that. This would mean as a consequence that she did not work on the following eleven Saturdays.

Because the issue of the basis of Ms Deng's engagement was an issue that arose in the course of the faxes sent to Mrs Wee whilst she was in Singapore in July 1995, it caused Mrs Wee, upon her return, to reassert her position in the matter, by causing wages to be deducted for the Saturday mornings which were not worked.

The difficulty, as the Commission sees it with that position, is that it takes no account of the fact that for the preceding eight Saturdays, no issue was taken over the fact that they were not worked. During all of this period Mrs Wee still held the same view, that is, that Ms Deng was contracted to work a 4.5 day week, including the half day on Saturday. There was therefore a tacit acceptance of the position.

In that context, the Commission does not consider that the deductions were validly made. It will order therefore that the amount deducted, namely \$131.53, be paid.

It follows from all of the above that the Commission will order that the above amount be paid to Ms Deng, but that in all other respects, the application will be dismissed.

Appearances: Mr A. Robson (of Counsel) on behalf of the Applicant.

Mr D. Jones on behalf of the Respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Katharina Yanyan Deng
and

Sin-Aus-Bel Pty Ltd,
trading as The Ascot Inn.

No. 991 of 1995.

COMMISSIONER R.H. GIFFORD.

8 November 1996.

Order:

HAVING heard Mr A. Robson (of Counsel) on behalf of the Applicant and Mr D. Jones on behalf of the Respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

- (1) THAT Katharina Yanyan Deng be paid an amount of \$131.53 by Sin-Aus-Bel Pty Ltd, trading as The Ascot Inn, in consideration of a denied contractual benefit, namely wages;
- (2) THAT such amount be paid within 7 days of the date of this Order; and
- (3) THAT in all other respects the application be dismissed.

[L.S] (Sgd.) R.H. GIFFORD,
Commissioner.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James Christopher Hill
and

Quirk Corporate Cleaning Australia Pty Ltd.
No. 953 of 1996.

COMMISSIONER P E SCOTT.

25 October 1996.

Reasons for Decision.

THE COMMISSIONER: This is a claim that the Applicant has been unfairly dismissed from his employment with the Respondent. He was employed on 13 May 1996 and his employment terminated on 3 July 1996. He was engaged to un-

dertake cleaning duties at the Kalamunda Central Shopping Centre ("the Centre") where the Respondent was contracted to provide cleaning services by Peet and Company Winthrop. His hours of duty were from 6.00am to 8.30am and from 5.00pm to 7.30pm. By the terms of Exhibit A which set out the conditions of employment, the Applicant was to provide a police clearance to his supervisor who was Raymond Tissington. He was also required by those conditions of employment to be punctual when commencing his shift and not to remain on the premises any longer than necessary.

I have observed the witnesses and make the following comments in that regard:

- The Applicant was not a credible or reliable witness. This was demonstrated by the Applicant's demeanour and attitude during his evidence, and further confirmed by his evidence regarding the non disclosure, in his job application, of his most recent worker's compensation claim.
- Raymond Tissington impressed me as a most credible and reliable witness.

Where there is conflict in the evidence of these two witnesses, I have no hesitation in accepting as true the evidence of Mr Tissington.

The Applicant says that he sought and gained Mr Tissington's approval to commence work half an hour later than his scheduled starting time for each shift on the basis that in the morning it was too dark to work efficiently, and in the evening, at the beginning of his shift there were people about making it harder for him to work. Mr Tissington says that he provided no such approval, and that it was not within his authority to do so. This was a matter for Carol Howells who was his manager. Mr Tissington says that Mr Hill was often late. He said that there was no good reason for the later start and that he is not aware that anyone gave authority to the Applicant to be late. He also gave evidence as to the events prior to 3 July 1996 when the Applicant displayed aggressiveness towards him and he described the Applicant as volatile.

On 8th or 9th of June, the Applicant says that he had an argument with Mr Tissington about scrubbing the floors as the batteries on the machine had gone flat. Mr Tissington says that this was the Applicant's responsibility and he elaborated on the Applicant's attitude in this respect.

On 24 June 1996 the Applicant received from Carol Howells a hand written note. This said:

"James could you please start scrubbing the floor from tonight I have brought 3 brown pads for you to start. I want you on the floor by 5PM—7.30. You have to be here on time (as) I have had reports about (sic) from Pam. So I would like to see you prompt on your job no coming in half hour late (as) that is no good to us.

Thanks
Carol"

(Exhibit 6)

The Applicant says that in a response to this he contacted Carol Howells on 27 June 1996 to advise her that he had arranged with Raymond Tissington for him to start later. She is said by the Applicant to have indicated that she would check this out with Mr Tissington.

He heard nothing further from her until 3 July. Raymond Tissington handed him the official warning which is Exhibit 5. This stated:

"OFFICIAL WARNING

Date: 3rd July, 1996

Employee: James Hill

Contract: (1126) Kalamunda Shopping City

Dear Sir/Madam

Recent investigation has revealed that your work performance is not up to the standard required by Quirk Corporate Cleaning Australia Pty Ltd. This letter is to advise you that unless there is a marked improvement in our performance, your services will be terminated under the conditions of the Award.

AREAS OF CONCERN—

1. For arriving late to work frequently.
2. _____
3. _____

We look forward to your co-operation.

Your faithfully

QUIRK CORPORATE CLEANING AUSTRALIA PTY LTD.

(signed)

Customer Service Manager/Group Operation Manager/
State Manager.

Carol Howells

Sign

Date 3/7/96

Signature of Employee acknowledging receipt of this letter."

(Exhibit 5)

Upon reading this, the Applicant became angry saying that Raymond Tissington had betrayed him, he called Mr Tissington a "judas" and raised his fist at him indicating that he wanted to hit Mr Tissington, who responded that this would not solve any problems. Raymond Tissington then turned and walked away. The Applicant then left the premises without advising anyone that he intended to do so. He had with him the only master key which unlocks all of the doors at the Centre including those of tenants of the Centre. The Applicant says that he had a panic attack and simply needed to get home quickly. He says that he contacted Carol Howells by telephone when he felt that he was able. This appears to have been almost an hour after he arrived home.

Raymond Tissington discussed with the Centre manager what had occurred, and following this discussion he looked for the Applicant. Not being able to find him and noting that the Applicant's bike was gone, assumed that he had left. I am satisfied from the evidence from Dianne Melody Rowe, the Respondent's State Manager, that the Applicant's aggressive behaviour and departure had been reported to her by the Centre manager and that Ms Rowe arranged for another employee of the Company, a Mr Rodder, to attend the Applicant's home to retrieve the key and terminate the Applicant's employment advising him that he was not to go back to the site. I am also satisfied of the security implications and the costs incurred by the Respondent as a result of the Applicant's actions. This included the notice of termination of contract to clean the Centre, in the following terms:

"4 July 1996

The Directors
Quirk Corporate Cleaning Australia Pty Ltd
P O Box 824
WEST PERTH WA 6005

Dear Sirs

It is with some regret that we hereby give notice, of our intention to terminate our contract with your organisation.

We consider the most recent incident, wherein an unsuitable employee of Quirk was given a master key and alarm access to this Centre without prior Police clearance being acquired, represents a serious breach of our Centre security.

A new contractor will assume responsibility for Kalamunda Central Shopping Centre on 1 August 1996, and we trust you will hand over at that time in a professional manner.

We await your acknowledgment of this notice.

Yours faithfully

PEET AND COMPANY WINTHROP

(Signed)

PAM PICKETT

Retail Management"

(Exhibit B)

I am entirely satisfied that the Applicant's conduct brought about the termination of his employment. He denies that he was advised by Mr Rodder that his employment was terminated, however, considering the Applicant's credibility and the instruction given to Mr Rodder by Ms Rowe, I am satisfied that on the balance of probabilities, that this occurred, and was justified. The Applicant's official warning appears to have been entirely justified and his reaction was unreasonable. He has not complied with his obligations to his employer in a number of respects including the provision of a security clearance, attendance to his duties, his attitude and manner towards his supervisor, and his departure from work without advising anyone in authority, taking with him keys which jeopardised the security of the Centre, and threatened part of the business of his employer.

This is a case where I can see no merit in the Applicant's claim. There were clear and justified reasons connected with the Applicant's conduct, for his dismissal. It is most unfortunate that the Respondent has had to go to the time and trouble to defend this application as well as to incur the costs and damage to its reputation through the Applicant's actions during his employment.

On this basis the application is dismissed.

APPEARANCES: The Applicant appeared on his own behalf
Mr S N Newman appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

James Christopher Hill
and

Quirk Corporate Cleaning Australia Pty Ltd.

No. 953 of 1996.

COMMISSIONER P E SCOTT.

25 October 1996.

Order.

HAVING heard Mr J C Hill on his own behalf and Mr S N Newman on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this application be and is hereby dismissed.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Davyn George Howard
and

Minister for Education.

No. 1103 of 1996.

COMMISSIONER A.R. BEECH.

16 October 1996.

Reasons for Decision.

THE COMMISSIONER: On the 18th December 1992 Mr Howard was dismissed by the Minister of Education from his position as a teacher. On the 15th January 1993 Mr Howard lodged an appeal against that decision. However he did not serve the appeal on the Minister until August 1996, at which time he called the appeal on for hearing. The issue before the Commission is the submission of the Minister that, due to the time that has elapsed between the dismissal and this matter coming before the Commission, the Commission ought exercise its powers pursuant to s.27 of the Act and refrain from dealing with the matter as it is no longer in the public interest.

Mr Howard complains about the Minister's action in making this submission. He states that there is no time limit for the serving of his appeal upon the Minister and no requirement in either the Act or the Regulations that the appeal be dealt with within a certain period of time. He accuses the Minister of delay in dismissing him and that this balances out any delay on his part. He sees no reason why the appeal should not now be dealt with.

While Mr Howard is accurate in stating that neither the Act nor the Regulations impose a time limit on the serving of the appeal, nor on the time by which an appeal must be dealt with, that does not mean that the interval of three years and eight months between the lodging and the hearing of an appeal against that dismissal will have no consequences. It should be apparent that the appeal may not be able to be dealt with now on the same basis as it would have been had it been served and called on promptly after its filing. It is not the case, as Mr Howard apparently believes, that there is an "unwritten law" of which he was unaware penalising those who delay their application. If, as is the case here, an applicant lodges an application in the Commission alleging that he has been unfairly dismissed and then, without good reason does nothing in relation to the application for over three and one half years, it should come as no surprise if the ex-employer submits that things have happened during the interval which mean that it is not fair to him or her for the application to be dealt with now. Whether the submission will be made out will depend upon the facts.

The Commission has the discretion in s.27 (1) of the Act to:

- (a) at any stage of the proceedings dismiss the matter or any part thereof or refrain from further hearing or determining the matter or part if it is satisfied—
 - (i) that the matter or part thereof is trivial;
 - (ii) that further proceedings are not necessary or desirable in the public interest;
 - (iii) that the person who referred the matter to the Commission does not have a sufficient interest in the matter; or
 - (iv) that for any other reason the matter or part should be dismissed or the hearing thereof discontinued, as the case may be;

In the exercise of the discretion it is always important to consider the length of the delay and the nature of acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other so far as it relates to the application.

It is not the case that an application such as this will be automatically dismissed due to the lapse of time. Each case will be looked at on its merits. On a previous occasion where a school teacher lodged an appeal against a punishment imposed on him a delay of over two years occurred between the lodging of his appeal and the serving of it on the Minister. When that matter was listed for hearing the Minister submitted that the appeal should be dismissed due to the lapse of time. However, in all of the circumstances the Commission decided that the appeal would, indeed, be heard notwithstanding the two year delay (*Antoniak v Hon Minister for Education* (1995) 75 WAIG 2610). In that case the circumstances which were in Mr Antoniak's favour were that, although the appeal had not been served, the Minister for Education was aware of the appeal during that period of time and the issues surrounding his appeal were kept live by the fairness of Mr Antoniak's transfer being pursued before the Government School Teachers Tribunal. His appeal was dealt with reasonably promptly after that matter had been concluded. Further, the relief sought by Mr Antoniak for his suspension was effectively the payment of a sum of money, a remedy which would be able to be awarded by the Commission notwithstanding the lapse of time that would not cause disruption to the school concerned. The Commission found that those circumstances outweighed that fact that the passage of time will have dimmed the memories of the persons involved in Mr Antoniak's suspension and the Minister's submission was rejected.

The circumstances in this matter, however, do not fall in Mr Howard's favour. The Minister was, at least formally, unaware of the appeal. Although, to the Minister's credit, a

temporary teaching arrangement had initially been put in place in the event that Mr Howard successfully appealed, the position occupied by Mr Howard has been filled on a permanent basis now for almost three years. The Minister submits that, in those circumstances, it would be unfair for the Department to now be placed in the position where it could be required to place Mr Howard back into his previous school. I tend to agree that this is the case. I would be less inclined to do so had the Minister permanently filled the position in the knowledge of the appeal with the possibility of Mr Howard's reinstatement but that is not the case here.

Further, the Minister points to other events which have occurred in the interval. One of the previous school principals Mr Gatti, the then District Superintendent Mr Lyons and the then Director of Operations Mr Graham have all retired. The then Chief Executive Officer and Acting Chief Executive Officer, who each participated in the decision to dismiss Mr Howard, are no longer in the Ministry and the then Chief Executive Officer is no longer resident in this state. The Commission was informed that Mr Lyons' personal notes have been lost and although Mr Howard indicated that he did not believe that to be the case, I am prepared to accept that the Minister understands that to be the case from Mr Lyons. The Minister therefore submits that it is now going to be more difficult as well as unfair for it to defend the appeal lodged by Mr Howard. I accept that that must be the case when compared with the lack of such difficulty if the appeal had been dealt with promptly.

The length of the interval is important. It seems clear from Mr Howard's submission that he believes his dismissal was contrived and in no way deserved by him. An appeal such as Mr Howard's is an appeal which re-hears all of the facts and circumstances from the very beginning. Mr Howard's appeal would therefore require the parties to canvas events which occurred, or which may be alleged to have occurred, as far back as February and March 1990. I do not agree with Mr Howard's assertion that "memory is not an issue" in this case. The longer a case takes to be heard, whether it be in the Industrial Relations Commission or some other jurisdiction, the ability of the Tribunal to deal properly with a matter where the facts are to be argued lessens significantly with the passage of time. That appears to be the case here and I have grave doubts that the Commission could do justice to Mr Howard's claim in that circumstance.

I think it should also be said that the Commission was keen to find out why there had been a delay of over three and one half years in this matter. If dismissal does lead to the unfortunate consequences cited in the book referred to by Mr Howard it is reasonable to expect him to take prompt action in his appeal in an attempt to avoid them. As I understood Mr Howard's answer to my question, he had not been in "the right state of mind" until now to deal with his appeal. If Mr Howard's answer is meant to mean that he has been either unwell or incapable of proceeding with his appeal then he sought to produce no medical evidence to that effect. If the answer is taken to mean that he was not prepared to deal with the appeal until he was ready for it himself then he is unable to avoid any consequences of his decision which manifest itself. And although Mr Howard argued that a delay may increase the knowledge that is able to be known about a particular event, Mr Howard admitted that he has no other information or material now after three years and eight months which was not available to him when he lodged his appeal.

I am also unable to find any action on Mr Howard's part which has kept the issue of his dismissal current. Indeed, the lack of any action on the part of Mr Howard would also be consistent with him having abandoned his appeal. I do not find the one article about him in the Sunday press in August last year, which was only in response to an earlier article about the performance of teachers generally, to have kept the issue alive in the context of three years and eight months' inactivity.

In considering all of the facts as I have found them above I am of the view that the disadvantage to the Minister in being required to defend the appeal, the inevitable difficulties associated with attempting to re-visit controversial events in 1990 and 1991 and the eventual permanent filling of the position held by Mr Howard outweighs the reasons advanced by Mr Howard for the delay. I conclude that it would not be in the public interest for the matter to proceed.

For those reasons the submission of the Minister is upheld and Mr Howard's claim will be dismissed as being no longer in the public interest.

Order accordingly.

Appearances: Mr D.G. Howard on his own behalf.

Mr G. Edwards and with him Ms J. Stone on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Davyn George Howard

and

Minister for Education.

No. 1103 of 1996.

COMMISSIONER A.R. BEECH.

16 October 1996.

Order.

HAVING heard Mr D.G. Howard on his own behalf as the applicant and Mr G. Edwards and with him Ms J. Stone on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act 1979 hereby orders:

THAT the application be dismissed.

(Sgd.) A.R. BEECH,

[L.S]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Melissa Jaggard

and

Tranby Pty Ltd trading as The Court Hotel.

No. 608 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

7 October 1996.

Reasons for Decision.

SENIOR COMMISSIONER: The Applicant has applied to the Commission for relief pursuant to section 29(1)(b) of the Industrial Relations Act 1979. In short, she claims to have been unfairly dismissed from her employment with the Respondent and seeks remedial action in the form of compensation.

The undisputed facts are as follows. The Respondent owns and operates The Court Hotel. The Applicant was employed by the Respondent from January 1995 until on or about 9 April last. She was initially employed as a waiter working principally in the restaurant at the hotel, but from and after 1 January last she was employed as a cook. At that time the restaurant was permanently closed and the Respondent confined its activities, insofar as the provision of meals was concerned, to the provision of light meals or bar snacks. The Applicant was employed on a casual basis. At all material times she normally worked a split shift from midday to 2.00 p.m. and from 6.30 p.m. to 8.30 p.m. from Tuesday until Saturday inclusive. In general her duties involved cooking, cleaning kitchen and eating utensils, and ordering food provisions.

It is common ground that the Applicant tendered her resignation to the Respondent's hotel manager late on the evening of 9 April last. She did so after having received a written warning earlier that day alleging that she had failed to perform adequately her duties and, as well, had stolen some fruit. This followed a previous warning four days earlier alleging that she had been derelict in her duties and that she was otherwise lacking in responsibility. The Applicant

contends, however, that she did not want to resign, but considered that she had no option. She says that the allegations in each of the written warnings were baseless and that the warnings were simply a device designed to force her to resign. Indeed, she says that on being given the second warning by the hotel manager she was told by him that it would be best if she started to look for another job.

On the other hand, the Respondent denies that the warnings were baseless and, moreover, denies that they were part of a plot to rid itself of the Applicant. The hotel manager denies having ever said to the Applicant that she should look for alternative employment. Rather, he says that the Applicant refused to allow him to discuss with her with the Respondent's concerns raised in each of the warnings. The Respondent, through its officers, says that it genuinely held the belief that the Applicant failed to perform her duties adequately and that she had an unsatisfactory attitude to her work. The Respondent's principal shareholder, Mr Kelly, testified that he inspected the kitchen on a number of occasions and found it to be filthy, as a result of which the Applicant was instructed by the then hotel manager to clean the kitchen, but failed to do so. Indeed, he says that on her departure the Respondent had to engage professional cleaners to put the kitchen into a satisfactory state of cleanliness and as a result of which it was necessary to throw away some items of kitchen equipment as being too dirty to clean. Furthermore, he contends that the Applicant's attitude to her work was less than satisfactory. He testified that on two occasions she refused to provide him and others with a meal at or near the normal closing time for the kitchen and was frequently dressed in a manner which was inappropriate for the tasks she was required to perform. Both he and the manager of the hotel deny having been part of any plot to get the Applicant to resign. They were, however, anxious that she should improve both the standard of, and her attitude towards, her work.

A vast amount of the evidence adduced in these proceedings was conflicting, particularly in relation to the state of cleanliness of the kitchen and the circumstances surrounding the termination of the Applicant's employment. Even the evidence relating to the structure of the stove in the kitchen was conflicting. In my assessment, there is little to be gained from reciting in any detail the evidence of the various witnesses. On the basis of the evidence before me, I am satisfied, at least on balance, that the events occurred substantially as the Applicant says they occurred. She impressed me as being an honest and reliable witness. Furthermore, what she said was largely corroborated by the evidence of Mr Stacey, the former manager of the hotel who likewise impressed me as being a reliable, if somewhat cautious, witness, but nonetheless a witness concerned only to see that the facts were accurately recorded. In addition, her evidence is supported in material particular by the evidence of Mr Manuel, the former public relations manager for the hotel. Although he too has apparently instituted proceedings against the Respondent seeking relief for a dismissal alleged to be unfair and thus may have reason to be hostile towards the Respondent, he did not leave me with the impression that his testimony in these proceedings was unreliable. Likewise, I see no reason to reject the testimony of Miss Balladeros, who took over from the Respondent as the hotel's cook, but who had worked previously as a kitchen hand alongside the Applicant and her predecessor. Equally, I am satisfied that the evidence of Miss Arbuckle, a fellow employee of the Applicant, who resigned her employment in apparent protest at the treatment meted out to the Applicant by the Respondent, is reliable. Similarly, the testimony of Mr Smith, a bar manager employed at the hotel who was called by the Respondent, impressed me as being reliable. On the other hand, Mr Kelly was so strident in his criticism of the Applicant that he left me with the impression that he was embellishing the truth somewhat in an effort to shore up the Respondent's case. In the face of the testimony of many of the other witnesses I have reservations as to its accuracy. Likewise, I have grave misgivings about the accuracy of the evidence of Mr Ingraham, the hotel manager at the time the Applicant's employment was terminated. He had not been employed in the hotel for long at the time of the termination and in the face of contradictory evidence from a number of other witnesses, his testimony did not sound convincing. I must confess to being somewhat

troubled by the evidence of Mr White, the principal of the cleaning contractor which cleaned the kitchen after the Applicant's employment finished. He too was strident in his criticism of the cleanliness of the kitchen and attendant equipment and described it as amongst the filthiest he had seen. He was not reticent in laying the blame for that on the Applicant, although there was no evidence to suggest that he had any knowledge of the cleaning arrangements in the kitchen. In light of the evidence of other witnesses, I am reluctant to accept his evidence where it conflicts with the testimony of others.

I am satisfied, and find on balance, that Mr Ingraham, the hotel manager did indeed indicate to the Applicant, when handing her the second written warning, that she should look for alternative employment because, in his view, there was a personality conflict between her and Mr Kelly. Not only is that the evidence of the Applicant, but it is consistent with the evidence of Messrs Stacey and Manuel. Mr Stacey testified, and I accept it to be a fact, that Mr Kelly asked him how the Respondent could get rid of the Applicant "without being sued" on four or five occasions. Mr Stacey testified that Mr Kelly indicated that he did not like the Applicant, a fact which was patently obvious during the course of these proceedings. Likewise, Mr Manuel testified that Mr Kelly asked him to get rid of the Applicant because he did not like her. Moreover, he testified, and I accept it to be a fact, that he wrote each of the letters of warning and gave them to the hotel manager to sign and to give to the Applicant. Furthermore, he testified, and I accept it to be a fact, that on giving the second letter of warning to Mr Ingraham, Mr Ingraham said to him words to the effect that he (Mr Ingraham) had better get rid of the Applicant because she and Mr Kelly did not get on. Furthermore, I am satisfied and find that the letters of warning were little more than a device calculated to cause the Applicant to resign. Mr Manuel testified, and I accept it to be a fact, that he wrote the two letters because he was instructed by Mr Kelly to do so after he told Mr Kelly that he could not get rid of the Applicant without three written warnings and that, furthermore, Mr Kelly instructed him to give the third warning as soon as possible. Consistent with this, the two notices of warning were issued barely one working day apart and the second notice foreshadows that a third and final warning "which will result in your dismissal" will be issued if she continued in the same vein. If there was a genuine desire on the part of the Respondent to see her improve, it is odd that she should be given such little time to in fact improve.

In addition, the Applicant was, on the facts as I find, falsely accused of stealing. That allegation was made without inquiry by or on behalf of the Respondent. As I find, the Applicant was carrying the fruit in question for Ms Arbuckle, as they both testified, and in the belief that Ms Arbuckle had the authority to take the fruit. There was ample justification for that belief in view of the evidence of Mr Smith, who testified that it was not unusual for the bar staff working on Sunday evening, the time when the Applicant was seen to be carrying the fruit, to have authority to take the fruit. The decided authorities make it abundantly clear that an employee falsely accused of stealing without adequate inquiry is entitled to treat the employment as at an end (*see: Robinson v. Crompton Parkinson Ltd [1978] IRLR 61*).

In all the circumstances, quite apart from the fact that the Applicant was as I find, wrongly accused of stealing, I am satisfied and find that it was, in effect, the Respondent who terminated the Applicant's employment and thus, for the purposes of seeking relief under the Act, she is taken to have been dismissed from her employment. It is now well settled that an employee who resigns may nonetheless, for these purposes, be taken to have been dismissed from his or her employment if as suggested in *Mohazab v. Dick Smith Electronics Pty Ltd (No.2) (1995) 62 IR 200, 207* "the employee did not resign willingly and, in effect, was forced to do so by the conduct of the employer"; *see also: The Attorney-General v. Western Australian Prison Officers' Union of Workers (1995) 75 WAIG 3166; Gunnedah Shire Council v. Grout (1996) AILR 3-305*. I am satisfied and find that that is what occurred in this instance. The Applicant did not simply resign in a fit pique or protest, as did her bar attendant friend, but only after she had been given two notices requiring her to improve her performance with little or no opportunity to meet those

requirements and moreover, after having been told that she should look for alternative employment. The position, although not identical, has some similarities with that considered by the Industrial Appeal Court in the *Prison Officers Case (supra)*. There the affected employee resigned but was found to have been dismissed for the purposes of the Act. In that case, like this, agents of the employer were instructed to obtain the resignation of the employee, although in this case there is no evidence of threats of the kind which occurred on that occasion. Nonetheless, as I find, the Applicant was told that she should look for alternative employment. The position is quite different from that recently considered by the decision of the Full Bench of the Commission in *Stankovski and Stankovska v. Quirk Corporate Cleaning Australia (1996) 76 WAIG 1667* where there appears to have been no suggestion on the part of the employer that the employee should resign, or that considered by the Industrial Relations Court of Australia in *Avery v. Air Design Pty Limited (1996) AIR 3-305* where the employee resigned in a fit of pique after wrongly accusing the employer of having forced him to do work which he was unable to do.

It follows that, in my opinion, the Commission does have jurisdiction to entertain the claim. In the circumstances, by reason of section 23AA of the Act, it falls to the Respondent to establish that "there is a ground or are grounds on which the Commission could find that the dismissal was justified". For these purposes, a dismissal is justified if there was a valid reason, or were valid reasons, connected with the employee's capacity or conduct, or based on the operational requirements of the undertaking, establishment or service for the dismissal.

The Act does not require that the employer act upon grounds which are justifiable, but that the employer establish that there is or are grounds on which the dismissal could be justified, whether or not the employer acted on those grounds. As pointed out by the Industrial Relations Court of Australia in *Willcocks v. Makfren Holdings Pty Ltd t/a as Circuit Technology (1995) 61 IR 420, 428*, these provisions appear to be somewhat less onerous than those which apply under the comparable Federal legislation. In essence, the Act requires only that the employer prove, on the balance of probabilities, the possible existence of justifiable grounds for dismissal, not the actual existence of those grounds. It has been said of the Federal legislation that what is required for there to be a justifiable ground is that there be a "sound defensible or well founded" reason for the termination of the employment by the employer (see: *Sangwin v. Imogen Pty Ltd t/a Carleton Custom Upholstery (Unreported: Industrial Relations Court of Australia—No. SA 95/1161R—8 March 1996)*). The existence, or otherwise, of such a reason is to be determined by an objectively practical assessment of the facts as found by the Commission. Thus, it has been held that it is sufficient if the reason is based on an honest, but reasonable, mistaken belief as to the existence of a given state of affairs (see: *Sangwin v. Imogen Pty Ltd trading as Carleton Custom Upholstery (supra)*). In my view, the same considerations apply in respect of the provisions of section 23AA of the Act.

On the basis of the facts as I find them, it is very difficult to see how the Respondent has discharged the onus which the Act imposes on it. There can be no doubt that if the Respondent had a genuine belief reasonably held that the Applicant had stolen the fruit, those circumstances would have provided a valid reason for the termination. However, for the reasons already advanced, I have grave doubts as to whether the Respondent's officers genuinely held the belief that the Applicant stole the fruit in question, and still less that the belief was reasonably held in view of the absence of any inquiry. Likewise, if the Applicant had been less than satisfactory in the performance of her duties, that too may well have constituted a valid reason for terminating her employment, but again for the reasons already advanced, I am not satisfied that her performance was less than satisfactory. Furthermore, I am far from convinced that the Respondent held a genuine belief that the Applicant had failed to perform her duties adequately, rather, it was because the Respondent's principal, Mr Kelly, did not like the Applicant, that he wanted to be rid of her.

Even if it can be said that the Respondent has discharged the onus imposed upon it, I am satisfied, on balance, that the dismissal was indeed either harsh, oppressive or unfair. The manner of her dismissal was so unjust as to render the dismissal

itself unjust. Even if, which I do not accept, the Applicant's performance was as deficient as the Respondent would have me believe, the deficiency was not such as to warrant dismissal without proper warning to remedy those deficiencies. In this instance, the letters of warning given by the Respondent simply did not give the Applicant a reasonable opportunity to make good those deficiencies.

In any event, I do not accept that the deficiencies were as bad as made out by the Respondent's witnesses. To some extent the inadequacies of which the Respondent claims were beyond the Applicant's control. The evidence of Ms Balladeros and of Mr Stacey supports the evidence of the Applicant that far from allowing the state of cleanliness in and around the kitchen to deteriorate after November, the Applicant improved that state, so far as the structure of the kitchen allowed. Although Mr Kelly claims to have inspected the kitchen often in the presence of the then hotel manager, Mr Stacey, and instructed him to have the Applicant clean up the kitchen, both Mr Stacey and the Applicant deny that state of affairs to be the fact. I prefer the evidence of Mr Stacey and the Applicant. If, as Mr Kelly suggests, he frequently inspected the kitchen and its surrounds and found it to be in a filthy state, I find it odd that he should not take steps to have it thoroughly cleaned professionally until after the Applicant's employment had ended. That is particularly the case in view of the fact that the Respondent had already once, in November, faced a very real threat of having the hotel closed by reason of the lack of cleanliness in the kitchen and elsewhere in the hotel. Insofar as the kitchen was found to be in a filthy state after the Applicant's employment had terminated, it may not be without significance that Ms Balladeros, who took over as the cook from the Applicant, admitted that she let the kitchen run down somewhat and was not as particular in maintaining its cleanliness as had the Applicant. Furthermore, it is worthy of note that despite the claim that the kitchen was so filthy that it required to be professionally cleaned and required some of the equipment in it to be discarded, that was not a matter mentioned in the Respondent's Notice of Answer, which was detailed enough to make reference to the appalling state of the kitchen following a food fight in which the Applicant acknowledges to have been a participant.

It seems clear that the Applicant's attitude towards Mr Kelly was, as he claims, less than ideal. Certainly that is borne out by the evidence of Mr Stacey. Nonetheless, as Mr Stacey testified, it does not appear to have been such as to warrant dismissal, at least without adequate warning, and there is nothing in the evidence to suggest that she disobeyed that warning. Indeed, the evidence indicates that she had little or no time to make good any of the matters raised in the letters of warning.

Insofar as the allegation of stealing is concerned, I am satisfied, as previously indicated, that the Applicant was wrongly accused of that misdeed. In any event, the allegation was made without any inquiry being made of either the Applicant or Ms Arbuckle, which can hardly be said to be consistent with the obligation imposed by the Act for employers to act fairly towards their employees.

The Applicant does not seek reinstatement but, rather, seeks compensation for the unfair dismissal. Nonetheless, the primary remedy under the Act is reinstatement and only if the Commission is satisfied that reinstatement, or re-employment, is "impracticable" or if an employer fails to comply with an order for reinstatement can the Commission make an order for compensation (cf: section 23A(1a)). It is not enough for the Applicant to say that she does not want her job back, nor is it sufficient for the Respondent to say that it does not want to re-employ the Applicant, rather it is for the Commission to be satisfied in all the circumstances that reinstatement or re-employment is impracticable. I take the view the Act requires for these purposes that the Commission make an evaluation, of the practicalities based on common sense in the workplace (see: *Nicolson v. Heaven & Earth Gallery Pty Ltd (1994) 57 IR 50*; see too: *Moreno v. Serco (Australia) Pty Ltd (1996) 76 WAIG 2855*). Because the Act is concerned with preventing and settling disputes in the workplace it should not be interpreted as confining the inquiry to the physical impracticalities, but should be taken as requiring an inquiry of the environment within the workplace.

On the facts as I find them, it is abundantly clear that it would be impracticable to reinstate the Applicant in her former employment. It is patently obvious that the Respondent's principal, Mr Kelly, had little or no regard for her as a person. Indeed, he described her as "surly and grubby". Equally, it is clear that the Applicant has little regard for Mr Kelly and considered the hotel to have been operated in an unprofessional manner. Those respective attitudes are hardly a satisfactory basis upon which to re-establish an employment relationship in an enterprise such as the Respondent's hotel. In my assessment, the employment relationship has irretrievably broken down and it is thus impracticable to reinstate the Applicant in her former employment (see: *Round v. Truth Newspaper Pty Ltd* (1996) AILR 7-023).

In the circumstances, the Commission is authorised to order the Respondent to pay compensation to the Applicant "for loss or injury caused by the dismissal" as the Applicant claims. It has been said of the comparable provisions under the Federal legislation that they are not intended to punish the employer but to compensate the employee (see: *Bean v. Milstern Retirement Services Pty Ltd* (Unreported: Industrial Relations Court of Australia—No. NI 423/94—2 June 1995). In my opinion the same considerations apply to the State Act. Thus the focus is on the consequences to the employee of the dismissal rather than on the deeds of the employer. The Act provides very few guidelines for assessing compensation. In the final analysis it is a matter of considering what the likely position of the former employee would have been had the employment not been terminated against the current position of the former employee. Although, as has been suggested repeatedly, the determination of compensation is not and cannot be an "exact science" in assessing compensation, the Commission should primarily, though not exclusively, have regard to the potential for ongoing employment and its associated benefits, the length of service and any earnings received by the Applicant following the termination of her employment. In my view it is doubtful that the authority to award compensation extends to compensation for disappointment, anguish, stress and the like arising out of the dismissal, but rather is principally confined to economic loss. The same view has recently been taken in respect of the comparable Federal legislation, although that legislation is in different terms from the State Act (see: *Brackenridge v. Toyota Motor Corporation Australia Ltd* (1996) 64 IR 77; and see too: *Burazin v. The Blacktown City Guardian* (1996) AILR 3-314; *Clunne v. Nambucca Shire Council* (1995) AILR 3-182; but cf: *Moreno v. Serco (Australia) Pty Ltd* (supra); and *Aitken v. Construction, Mining, Energy, Timberyards Sawmills and Woodworkers Union of Australia Western Australian Branch* (1995) AILR 3-187(75); *Hurskin v. Australian Jewish Press Pty Ltd* (1996) AILR 3-333). As pointed out in *Brackenridge* (supra) if the provisions of the Act were wide enough to encompass compensation for disappointment, anguish and stress, it would mean that the entitlement to such compensation would be dependent upon the determination as to whether reinstatement was practicable or not. Thus despite the fact that the primary relief under the Act is reinstatement, compensation for disappointment, anguish and stress resulting from the dismissal would only be recoverable where reinstatement was not awarded. As a general rule the common law has not allowed damages for disappointment or stress associated with the breach of contract except where actual physical injury or illness results (see: *Ballie Shipping Company v. Dillon* [1992-3] 176 CLR 344). In the absence of a clear legislative provision to the contrary that rule should apply in cases of this nature, especially as relief is available under that Act even where there is no breach of contract. Indeed, it could be said that the Act by referring to the compensatory matters as being "loss and injury" intended to limit the Commission's power in much the same way as it applies for common law for breach of contract. It ought not be overlooked that the Commission is essentially an employment tribunal concerned, in this context, with the repair of employment relationships rather than with broader social relationships. In any event, in this case there was no evidence of the Applicant having suffered any significant mental stress or anguish by reason of her dismissal. Indeed, she impressed me as being a rather robust individual, unlikely to be greatly affected in this way by her misfortune.

The Applicant was, by her own admission, employed as a casual employee, although in fact she had been employed, as I understand it, continuously albeit on a part-time basis for at least 15 months. The Hotel and Tavern Workers Award 1978, which apparently regulated her employment, makes special provision for long term casual employment and, indeed, provides special rates of pay. The Award provides that employment may be terminated by the giving of one hour's notice on either side or the forfeiture of one hour's pay, and by any measure there is little security in employment of that kind (see: Clause 11). In the present case, having regard to the attitude of the respective principal players in this dispute towards each other and in the case of the Applicant to her criticism of the manner in which the hotel was run, to suggest that the Applicant had good prospects of continuing employment seems with the Respondent, to me to be ignoring realities. The evidence clearly reveals that there were growing tensions between the Applicant and the Respondent and my impression is that it would not have been long before the Applicant either voluntarily ended her employment, or the Respondent terminated it in a proper and lawful manner. The evidence is that the Applicant was employed at an hourly rate of \$13.50 per hour, which the evidence suggests, translated into approximately \$270.00 nett per week. Since her dismissal she claims to have unsuccessfully sought alternative employment, both as a cook and as a waiter, although she was not keen to work in the former capacity. She was more interested in working as a security guard. For the last 2½ months she says she has worked part-time as a "bouncer", as a result of which she receives in the order of \$140.00 per week, together with approximately \$120.00 per fortnight by way of social service benefits. She is also studying part-time at a University. I find it odd that she was unable to find at least some work as a waiter. Listening to her evidence about the matter, little though there was, left me with the impression that she was more concerned to be retrained as a security officer and attend to her University studies.

Doing the best I can on the basis of the scant evidence adduced in these proceedings, I am of the view that the Applicant ought to be entitled to compensation in the order of four weeks' pay. I assess compensation at \$1,000.

Appearances: Mr T.C. Crossley on behalf of the Applicant
Mr D.M. Jones on behalf of the Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Melissa Jaggard

and

Tranby Pty Ltd trading as The Court Hotel.

No. 608 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

8 October 1996.

Order.

HAVING heard Mr T.C. Crossley on behalf of the Applicant and Mr D.M. Jones on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby:

1. DECLARES that the Applicant was harshly, oppressively and unfairly dismissed by the Respondent on or about 9 April 1996.
2. ORDERS that the Respondent pay the Applicant the sum of \$1000 as and by way of compensation for the dismissal within 14 days of the day hereof.

(Sgd.) G. L. FIELDING,
Senior Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sarah Lee

and

Scalisi Fine Upholstery Pty Ltd.

No. 952 of 1996.

COMMISSIONER P E SCOTT.

28 October 1996.

Reasons for Decision.

THE COMMISSIONER: This application by Sarah Lee, claiming that she has been unfairly dismissed from her employment with the Respondent, is said to be on the basis that there was a constructive dismissal, in that the Applicant had no option but to resign. The documents before the Commission includes a document prepared in conciliation proceedings which the parties agree sets out certain details. These are:

- “(1) The Applicant was employed by Scalisi Fine Upholstery as a sewing machinist.
- (2) The business of the Respondent is furniture upholstery and is owned and managed by Mr Vince Scalisi.
- (3) The employment commenced on 8 June 1981.
- (4) On or about 8 June 1996 the Applicant became entitled to 13 weeks long service leave under the Long Service Leave Act and the relevant award.
- (5) The employment terminated on 1 July 1996.
- (6) The Applicant has received payment for the long service leave entitlement.

Relevant Award

Furniture Trades Industry Award (Award No. A 6 of 1984)

Summary of Dispute

- (1) The Applicant claims that she was forced to resign because the Respondent refused to pay her for the whole 13 weeks long service entitlement due her.
The Respondent denies that the Applicant was forced to resign. It says that she resigned when she was told by the Respondent that it could not pay all the long service leave at once as it was contrary to the relevant award and that the only way she could be paid out the whole entitlement was if she resigned.
- (2) The Applicant's claim of harsh, oppressive and unfair dismissal is based on—
 - (a) the allegation of forced resignation;
 - (b) the allegation of unfair treatment by the Respondent in relation to the question of long service leave up to the termination of the contract; and
 - (c) unfair treatment of the Applicant subsequently in relation to the payment of the entitlement.

The Respondent denies that the Applicant was treated unfairly as alleged and at all.”

Although this matter relates to the Applicant, communication between her and the Respondent was conducted through third parties, due to the Applicant's language difficulties. Those third parties included Dawn Hill, a fellow employee, the Applicant's son, Simon Lee, and her husband, Ronald Lee. Ronald and Simon Lee, and the Applicant gave evidence before the Commission. This evidence was at times difficult to follow, partly due to language difficulties, but also because on a number of occasions each of these witnesses did not address the questions asked of them. I also found the evidence of Ronald Lee to be unreliable, and he was evasive and defensive during cross examination. There was also some conflict in the evidence, including that the Applicant said when I asked her specifically to clarify the situation, that she resigned because she needed the money and was told that she could only obtain her long service leave pay if she resigned. On the other hand, Simon Lee said that his mother resigned because Mr Scalisi went back on his word. It seems too, that the interpretation of issues and discussions between third parties and the Respondent as conveyed to the Applicant had a strong bearing

on her views of the circumstances of the termination of her employment.

Having said that, I have attempted to set out the events leading up to the termination of employment.

The evidence for the Applicant was that she, through Dawn Hill, had asked about being paid for her long service leave. There was no evidence as to whether Dawn Hill conveyed each request to the Respondent, or whether the Respondent made any reply. After her third enquiry through this employee, she was advised that she would need to take leave to receive payment. She indicated that she then wished to take the three months leave, but this was not convenient for the Respondent. On Thursday, 28 June 1996, Vince Scalisi approached the Applicant at her sewing machine and advised her that he needed her to work as they were busy, but that he could arrange a portion of the long service leave to be taken, and payment in lieu of some annual leave, to total about 6 weeks pay.

The Applicant later asked her husband, Ronald Lee, to telephone Vince Scalisi and ask if she could be paid 8 weeks pay instead of the 6 which had been suggested. Ronald Lee says that he did so and that Vince Scalisi said that he would make the payment available the next day.

On Friday 29 June 1996, the Applicant checked her bank account and found that the money had not been deposited. Upon her return home, she asked her son, Simon, to telephone her work to enquire why the money was not available. Simon Lee says that he was told by a woman he thought was the receptionist or Mr Scalisi's daughter that she was not authorised to make the money available until the following week. Ronald Lee was present during this telephone conversation and he asked Simon to allow him to speak to Vince Scalisi. Mr Scalisi then came onto the telephone. Ronald Lee says that during this conversation Vince Scalisi said the money would be paid on Monday but then appeared to change his mind.

It is unclear as to exactly the course of the telephone conversation between Vince Scalisi and Ronald Lee but at some stage Mr Scalisi appears to have advised Ronald Lee that if the Applicant wished to be paid for the thirteen weeks long service leave then she would need to resign to receive that payment. Mr Lee asked what would happen if the Applicant sought to return in 3 months time. Mr Scalisi said that she would need to commence a new contract of employment. Ronald Lee discussed the matter with the Applicant who took the attitude that the relationship between herself and the Respondent had broken down and that she couldn't work with Mr Scalisi any more. I am not sure whether this comment arose on the Friday or on the following Monday. In any event, Ronald Lee spoke to Vince Scalisi advising him of the Applicant's attitude.

Ronald Lee assisted the Applicant by drafting a letter of resignation which was faxed to the Respondent at approximately 3.00pm on Friday 29 June 1996. The relevant parts of this letter state:

“Dear Vince,

As per your conversation with my ex- husband of today. Inwhich (sic) you requested that I must tender my resignation on Monday July 1, 1996, inorder (sic) to receive my long service payment in full.

I hereby in form you that, as per your request, I wish to tender my resignation as of Tuesday July 2, 1996. Upon this I expect to receive my long service monies in full, wages and holiday paid in full up to, the evening of Monday July 1, 1996 by Tuesday July 2, 1996. Please note that I have applied and requested for my long service three weeks ago and have been ignored by you and your office.

I furthermore state that as per your request I will no longer be a servant of Vince Upholstery as of Tuesday July 2, 1996 and thereof.

Your Faithfully,

(signed)

Sarah Lee”

(Exhibit 1)

The Respondent sent the following letter in reply, although it is unclear as to when the Applicant received it:

"Dear Sarah

In response to your fax of today I wish to clarify the following.

At no time did I request from you or your husband, your termination of employment with this firm. If you wish to take Long Service Leave and continue in our employment you are at liberty to do so.

Your request to take 2 weeks off as part of your long service leave from the 29-July 96 as been noted and agreed to. However your request that we pay you for all the Long Service Leave due to you when in effect you are only using up two weeks of such leave could not be agreed to as I tried to explain to you. The Furniture Industry Award states that we cannot pay you long service leave unless you are actually taking such leave.

As stated above we agreed for you to take two weeks off as from the 29-July 96 If you wish to remain in our employment we would need to negotiate a suitable time for you to take the balance of long service due to you. I wish to make it clear that if you wish to resign in order to get all the money due for Long Service, it is entirely your decision and not one made at my request.

If you wish to resign as you indicated in your fax, I will accept your resignation after you have read this letter and signed it in acknowledgment that you have read and understood its contents.

Yours sincerely

(signed)

Vince Scalisi"

(Exhibit 2)

On Monday 1 July 1996, Simon Lee escorted the Applicant, his mother, to the workplace apparently to ensure that she was not asked to sign anything she did not understand. Simon Lee and the Applicant were on the premises of the Respondent for about an hour and a half during which time Simon Lee and Vince Scalisi discussed the letter of resignation. Vince Scalisi had said that he could not accept the letter of resignation sent to him and said that "if she wants to resign, she must resign from (sic) her free will" (transcript page 69). Vince Scalisi made some suggestions as to the terms of the letter of resignation and Simon Lee said that she would like to consider that matter further at home and send it back, properly typed, to Vince Scalisi.

It seems that in this hour and a half long discussion, Simon Lee and Vince Scalisi discussed possible arrangements for the Applicant to take leave and to be paid some monies, however nothing was resolved between them. Simon Lee said that Mr Scalisi had said "if my mother needs the money she resign then. She can apply a (sic) job, but in the meanwhile he tried to find someone else and he mentioned that, or get his wife to do it and then she could apply for the job again. If it is still available, she could have the job back." (transcript page 71).

The final letter of resignation sent to the Respondent by the Applicant was in very similar terms to that originally dispatched on Friday 28 June, except to the extent that this final letter of resignation demanded payment in full that day (Exhibit 3). The Respondent deposited the money into the Applicant's account on Monday afternoon, however, when she went to the bank on Tuesday she was told that she was unable to withdraw the money. She said that she told the bank that she needed the money and they telephoned the factory. She alleges that "the daughter of the employer told the bank staff that the reason I had resigned, so that I could only get \$500.00 to live on." (transcript page 44-45). This appears to have upset the Applicant, who alleges that this demonstrated that the Respondent was discussing her private business with the bank, and restricting how much money she should be given by the bank.

Conclusion

It is clear from the evidence that the Applicant sought to receive payment for her long service leave, that she raised this through another employee due to her language difficulties, and did not receive a satisfactory response for some time. When

she did receive a response it appears to have been a response which is in accordance with the terms of the General Order relating to long service leave (59 WAIG 1). These are the long service leave provisions which the Furniture Trades Industry Award prescribes. Those long service leave conditions provide that the taking of leave must be at a time which is agreed between the employer and the employee, or in the absence of such agreement, at a time or times determined by a special board of reference, having regard to the needs of the employer's establishment and the employee's circumstances. The Applicant was not, at this stage, seeking to take her leave. However, it was negotiated between them that she take some leave and some pay in lieu of or in advance of her annual leave entitlements, although that is not entirely clear. But, nonetheless, it was inconvenient for the employer that all of her long service leave be taken at that time.

The Applicant was seeking to be paid for the leave, and the terms of the long service leave provisions do not provide for an employee to receive payment for long service leave, other than by taking the leave or at termination of employment.

I am satisfied that the parties attempted to come to other arrangements which would provide the Applicant with some moneys which would assist her need at the time but it appears that they were unable to resolve the matter between them. The Respondent's advice to the Applicant that she could receive payment by resignation would appear to be simply a statement of fact and not an urging of her to leave. There has not been evidence which would indicate that the employee was left with no alternative but to resign. In her own personal circumstances, that may have been an imperative for her, but that was not a matter within the control of the employer. It would seem, too, that the employer indicated that, should the Applicant wish to resign and receive payment, that there may be a position available to her upon her return. But, of course, it was inconvenient for the employer to release her at that time, and it is not unreasonable for an employer to seek to arrange the taking of leave to suit its requirements. There were some difficulties associated with the Applicant receiving payment, but not of such a nature as to constitute a significant breach of the contract between them.

I am satisfied, from the exhibits tendered and the evidence of Simon Lee in particular, that the Applicant had resigned, by her letter dated 28 June, 1996, that the terms of that letter were unacceptable to the employer and were discussed between the employer and Simon Lee at their Monday morning meeting. The parties still attempted to resolve the issue during that meeting. This was unsuccessful, and the Applicant submitted her second letter of resignation later that day.

Whilst I accept that the Applicant may have felt that she had no alternative in terms of obtaining some money to deal with the situation she may have found herself in, there is no evidence that this was a resignation brought about in such a way as to be characterised as a constructive dismissal.

Constructive dismissal is defined by the Industrial Appeal Court in *Cargill Australia Limited, Leslie Salt Division and the Federated Clerks Union of Workers WA Branch (72 WAIG 1495)* at page 1497, where reference is made to *Western Excavating (EEC) Ltd v Sharp [1978] QB 761*. The Industrial Appeal Court noted:

"Lord Denning MR, with whom the other members of the court agreed, considered the relevant provisions of the Act which defined "dismissal" in terms which had been spoken of as "constructive dismissal" and the learned Master of the rolls dealt with the common law position and he said at 769:

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance. If he does so then he terminates the contract by reason of the employer's conduct. He is constructively dismissed. The employee is entitled in those circumstances to leave at the instant without giving any notice at all or alternatively he may give notice and say he is leaving at the end of the notice. But the conduct must in either case be

sufficiently serious to entitle him to leave at once. Moreover, he must make up his mind soon after the conduct of which he complains; for, if he continues for any length of time with out leaving, he will lose his right to treat himself as discharged. He will be regarded as having elected to affirm the contract."

The Industrial Appeal Court then commented on the particular circumstances before it indicating that "if (the abovementioned) be the correct test..." However, at page 1498, it clearly confirms this as being the appropriate consideration, saying:

"To be a constructive dismissal the employer had to be "guilty of conduct which is a significant breach going to the root of the contract" which entitles the employee to accept the breach and leave."

There is nothing in the conduct of the Respondent which constitutes a significant breach going to the root of its contract with the Applicant. As to the letter, which is the reference provided to the Applicant by the Respondent, (Exhibit 8) it contains nothing which would demonstrate any criticism of the employee by the employer. It is merely a statement of service—nothing more nor less. Furthermore, in the circumstances, the Respondent would be unlikely to have provided more, particularly in light of the terms of Exhibit 4 in which the Applicant wrote to the Respondent:

"I have received advice from the Industrial Relations Commission who have suggested that I am entitled to receive details of my long service leave payments, superannuation and annual holiday. I hereby request you to supply me with these information. Failure to do so will result in legal action against you.

Let me forewarn you that your office in telling my Bank the reason why your cheque was not cleared is because I resigned negligently, is a breach of confidentiality between former employer and former employee. Should this happen again I will take legal action to preserve my interest.

Let me also remind you that you refused many times to pay my long service leave unless I resigned, leaving me no choice but to do so."

In terms of the issue of the discussions with the bank, there is no evidence before me, of a first-hand nature, as to the conversation which took place between the bank officer and a representative of the Respondent which might be other than the normal inquiries which a bank might make when a customer is seeking to have a payment cleared quickly.

In conclusion, it seems a most unfortunate misunderstanding has resulted in the termination of what appears to have been a long and fruitful relationship between the parties. It also involved further misunderstandings regarding payments, and accusations against the employer which are not substantiated. The misunderstanding between the parties was not helped by the involvement of the third parties, notwithstanding that they may have been well intentioned. I am not satisfied that there has been a dismissal, be it constructive or otherwise. It would appear that the Respondent has attempted to assist the Applicant, but without bringing itself into jeopardy by complying with her request for payment in lieu of her full entitlement to long service leave without taking the leave.

On that basis, the application will be dismissed.

Order accordingly.

APPEARANCES: Mr P Lee on behalf of the Applicant
Mr A Randles on behalf of Respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Sarah Lee

and

Scalisi Fine Upholstery Pty Ltd.

No. 952 of 1996.

COMMISSIONER P E SCOTT.

28 October 1996.

Order.

HAVING heard Mr P Lee on behalf of the Applicant and Mr A Randles on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this application be, and is hereby dismissed.

(Sgd.) P. E. SCOTT,

Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Susan Peta Milton

and

Leon Tal & Myra Tal trading as Caltex Malaga.

No. 37 of 1996.

COMMISSIONER P E SCOTT.

10 September 1996.

Reasons for Decision.

(given extemporaneously at the conclusion of proceedings—as edited by the Commissioner)

THE COMMISSIONER: The applicant says, pursuant to Section 29 of the Industrial Relations Act that she has been unfairly dismissed from her employment with the respondent. That employment was for a period of approximately 6 months and commenced on the 16th of July 1995. She was given notice of termination of employment on the 18th of December 1995 by letter, (Exhibit 7) which says:

"As by the requirement, I am giving you one week notice to inform you about ceasing your employment in Caltex Malaga.

This decision was made because of operational reasons of the business."

The applicant challenges that this was the genuine reason for termination. She says that very soon prior to the notice of termination, she had queried with her employer the appropriate rate of pay. This had arisen because she had been advised that she was not being paid the correct rate and had made inquiries with the Department of Productivity and Labour Relations. As a result, she wrote to the respondent querying those rates of pay and further sought to clarify them without success. She says, in effect, that the reason for dismissal was because she challenged the rate of pay she was receiving.

The respondent, on the other hand, says that the reason for dismissal related to the operational requirements of the business in that there was a continuing decline in petrol sales and with the reduction in petrol sales goes a reduction in other stock turnover, and that this resulted in a decrease in profitability which needed to be addressed. He also says that he had come to an arrangement with his supplier that they would provide assistance to the business on the basis of the lack of profitability of the business.

The Industrial Relations Act in Section 23AA says:

"(1) On a claim of harsh, oppressive or unfair dismissal, the onus is on the employer to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified.

- (2) If,
- (a) the employer does not show that there is a ground or are grounds on which the Commission could find that the dismissal was justified; or
- (b) the employee establishes that whether or not it was justified, the dismissal was harsh, oppressive or unfair;

the claim is taken to have been established.”

There are a couple of matters about which it is appropriate to comment. Firstly, as to the credibility of witnesses. I was most satisfied with the evidence given by Mr Brazier, that he had seen the letter provided to the employer by the applicant prior to it being given to the employer. This provides a conflict with the evidence of the applicant. To that extent, there is a question as to the applicant's credibility. However, of itself that particular evidence is not material other than in respect of credibility.

I am satisfied with the evidence given for the respondent that there was a continuing decline in the profitability of the business. From a very brief analysis of the figures provided in Exhibit 9, it would appear that there is an approximately 10 per cent reduction in fuel sales during that period of time set out within that exhibit, and I am satisfied with the respondent's evidence that with a reduction in petrol sales, goes a reduction in stock turnover. In that regard, I am satisfied that there is a decline in the business of the respondent, and that the respondent felt a need to address the issue. So, in terms of the onus being discharged by the employer to demonstrate that there are grounds upon which the dismissal was justified, I am satisfied that that has been established.

The next question that the Commission must deal with is whether or not there are any other circumstances which need to be taken into account. The Industrial Relations Act 1979 does not simply limit the situation to being that if there are grounds upon which the employer could justify the dismissal, that that is the end of it. The Act, in fact, provides that if the employee establishes, whether or not it is justified, that the dismissal was harsh, oppressive or unfair, then the claim is taken to have been established. On its face, it may well appear that the respondent's decision to terminate the applicant's employment was a result of the applicant raising with Mr Tal the question of the appropriate rate of pay.

There is also the question of whether or not in the circumstances of terminating employment, that the employer has been harsh, even if the decision to dismiss is fair. I am not satisfied in all of the circumstances that the employee has established that the reason for dismissal was the raising by her of the question of rates of pay. Whether the process undertaken by the employer to terminate the employee's employment could be said to be a fair process, accepting that the grounds for dismissal relate to operational reasons, then I must say that the employer's approach left something to be desired.

It is now common place for employers making decisions in the nature of this decision, and to terminate the employment of an employee, to generally do so with reluctance and regret, and it's not been suggested that that is not the case here. However, the employer's approach appears to have been not with a great deal of consideration, which would otherwise normally be shown in the circumstances of redundancy, so that it is only in respect of that process of termination, where I find that the dismissal has in any respect been unfair. The question then arises as to the appropriate remedy.

I am not satisfied that reinstatement would be appropriate, bearing in mind that I am satisfied that there was reason for the termination. On that basis, the question of compensation arises. In all of the circumstances, the issue of the process and the way it was conducted on this occasion is not such as to justify a substantial amount of compensation. On that basis, I am satisfied that an amount equal to one week's pay is an appropriate amount for compensation. An Order will be issued that the respondent pay to the applicant within 28 days of today's date, an amount of one week's pay.

APPEARANCES: Ms V J Totino (of Counsel) appeared on behalf of the Applicant

Mr L Tal appeared on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Susan Peta Milton

and

Leon Tal and Myra Tal trading as Caltex Malaga.

No. 37 of 1996.

COMMISSIONER P E SCOTT.

24 September 1996.

Order.

HAVING heard Ms V J Totino (of Counsel) on behalf of the Applicant and Mr L Tal on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Respondent shall pay to the Applicant an amount equal to one weeks pay. Such payment shall be made no later than 23 September 1996.

(Sgd.) P. E. SCOTT,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bonnie Judith Radley

and

Anther Pty Ltd trading as

T.S.A. and Relocatables W.A.

No. 295 of 1996.

Australian Municipal, Administrative, Clerical and Services
Union of Employees, WA Clerical and Administrative
Branch

and

Anther Pty Ltd trading as
T.S.A. and Relocatables W.A.

No. CR 340 of 1995.

COMMISSIONER R. H. GIFFORD.

25 October 1996.

Reasons for Decision.

THE COMMISSIONER: The Commission has before it two matters which arise from the dismissal of Bonnie Judith Radley from her position as a Clerical Officer/Bookkeeper with Anther Pty Ltd, trading as T.S.A. and Relocatables W.A., a company which manufactures and sells transportable homes and site accommodation.

Application No. CR 340 of 1995, with Australian Municipal, Administrative, Clerical and Services Union of Employees, WA Clerical and Administrative Branch as applicant, deals with a matter referred for hearing and determination in accordance with s.44 of the Industrial Relations Act, 1979 ("the Act"), namely a claim by Ms Radley that she was unfairly dismissed from her employment. The relief sought is that of compensation in an amount equal to 4 months pay. Such relief is made upon the premise that re-employment is not practicable.

The other application, No. 295 of 1996, is an application by Ms Radley herself for contractual benefits, pursuant to s.29(1)(b)(ii) of the Act, seeking the following:

- 1 weeks wages based on a period of suspension;
- 3 weeks wages, as pay in lieu of notice; and
- 10.86 weeks wages, as annual leave entitlement.

The total claim of 14.86 weeks wages totals a sum of \$6,315.50.

There is a significant degree of relationship between the two applications, as the company's decision not to consider payment of a weeks pay in lieu of notice and of annual leave arises from the nature of the dismissal itself, namely it being effected on account of misconduct.

It will therefore be necessary for the Commission to determine whether the circumstances affecting Ms Radley, leading up to the dismissal, were such as to justify action of dismissal for misconduct. Then, whether or not that is the case, it will be a question of the Commission needing to determine whether a valid reason existed for the dismissal, and additionally, as to whether any other elements of unfairness arose.

Unfair Dismissal

The focus of this claim is upon Ms Radley's dismissal for misconduct effected on 8 November 1995, by the General Manager of the company. The reasons for such action were confirmed in a Termination Notice, dated the previous day, which referred amongst other matters, to incidents which can be broadly described as an alleged breach of trust on her part.

As a first step however, it is necessary to review the background to the dismissal, to establish its context and then to review all relevant circumstances leading to the assessment as to the alleged misconduct of Ms Radley. From the evidence, the Commission finds that background to be as follows.

Mr Dennis Martin, the Managing Director of the company, trading as T.S.A. and Relocatables W.A., had established the company during the early 1980's, and after a lengthy period when it did not trade, he sought to reactivate it in 1991. At that point both he and Ms Radley were employed by another company in the industry fabricating transportable buildings and homes. Mr Martin invited Ms Radley to join the company, to establish and operate the office administration including the accounts. Ms Radley commenced on or about 14 April 1991 in a part-time capacity and became full time during the course of August 1991.

The company operated as a small family business under Mr and Mrs Martin's control, growing gradually in size until by the middle of 1995 it employed up to twenty employees, including up to three in the office. At that point Mr Martin decided to engage a Consultant, Mr Jamile Abuothman, to deal with overseas contracts and with major projects. After a further period, Mr Martin decided to engage Mr Abuothman as General Manager and entered into an Employment Contract to that effect on 10 August 1995.

Mr Martin's evidence is that on that day, he advised all staff, by memorandum, that Mr Abuothman had been engaged as Acting General Manager. No copy of that memorandum was tendered. He actually recalled advising Ms Radley to that effect. He viewed Mr Abuothman's responsibilities as embracing a review of the company's finances, contract procedures, office and banking procedures.

Ms Radley's evidence is that no such memorandum was sent. She does recall a meeting held on 25 August 1995, involving her and the then Manager, together with Mr Martin and Mr Abuothman, convened for the purpose of discussing Mr Abuothman's role. The meeting became heated however, between the Marketing Manager and Mr Abuothman, so she excused herself from it. She did learn though that Mr Abuothman would be working from his own office at all times understood him to be operating as a Consultant. By the end of October 1995, she had had few dealings with Mr Abuothman.

Ms Radley maintains that up to then she had no idea of Mr Abuothman's role. Mr Martin, on the other hand, says that she was aware of his role but that she simply refused to work with him.

On Monday, 30 October 1995, Mr Abuothman, together with an assistant, were at the office, and a meeting was convened of the subcontractors to the company for the purpose of him explaining his role in the company to them.

At the same time, the assistant to Mr Abuothman spoke to Ms Radley about her duties and referred to a document headed 'Job Description'. That document (Exhibit D6) set out amongst other matters, a job description relating to a position referred to as 'Receptionist/Telephonist/ General Bookkeeping'. Ms Radley then sought to photocopy the document, but was unable to do so as she was pushed aside from the machine by Mr Abuothman, who stated that she had no right to obtain a copy. It is actually Mr Abuothman's evidence that she pushed him and yelled at him and that all he did was place his hand on the photocopier.

Ms Radley then sought clarification from Mr Martin relating to Mr Abuothman's role in the company. She was

provided with a document by Mr Martin which stated as follows:

"Until further notice I hereby authorise Jamile Abuothman to exercise any powers necessary for the effective management of human resources at T.S.A." (Exhibit D3).

At the same time, because of the altercation that had occurred between Ms Radley and Mr Abuothman, a Human Resource Management Consultant from the Chamber of Commerce and Industry of Western Australia was invited to advise the company upon the altercation and related matters. This involvement led, on Wednesday, 1 November 1995, to a notice being issued to all staff, under the signature of Mr Martin, with the intention of clarifying the new management structure at T.S.A.

The terms of that notice, were as follows:

NOTICE TO ALL STAFF

"I would like to take this opportunity to clarify the new management structure at T.S.A.

Effective from Monday 30 October 1995 Mr Jamile Abuothman has taken over the role of General Manager of the company and has full authority to perform the responsibilities of this position.

In particular, I would like to make it clear that Jamile has full responsibility for all matters relating to the management of employees. I have no further involvement in any of these matters.

His responsibility as General Manager is to ensure that all employees perform their duties to an acceptable standard of performance and that all employees maintain high standards of honesty, diligence, competence and care in carrying out their duties.

I welcome Jamile to this senior position and ask that we all work together for the success of the company.

Dennis Martin
Managing Director"
(Exhibit D2).

Ms Radley received a copy of that notice.

In the intervening period, namely on Tuesday, 31 October 1995, Ms Radley attended her doctor, with what was claimed to be a stress related illness, and was advised to take the day off work, which she did.

She returned the following day and carried out a range of her normal duties, including the collation of accounts and invoices and in the course of that day, discussed her duties with Mr Abuothman. She learnt that day that her authority to sign cheques, as an alternative signatory to either of the Directors, had been revoked.

On the following day, Thursday, 2 November 1995, her main duties were concerned with the preparation of the wages. She visited the bank, the Maddington Branch of the ANZ, later in the afternoon to obtain the necessary cash to make up the wages. She also took the opportunity of asking the Relieving Manager of the Branch, Ms Fry, as to whether she knew the reason for her (Ms Radley's) name being removed, as cheque signatory. It is her evidence that Ms Fry told her that she (Ms Fry) had received a phone call advising that "something shifty was going on".

It is Ms Fry's evidence that Ms Radley, during a phone call to the bank earlier that day, asked advice as to the procedure for having her signature reinstated, on the basis of Mr Abuothman having requested that this occur. Ms Fry then recalls that when Ms Radley visited the bank she asked what was happening, and after telling her that she had been removed as a signatory, she confirmed that the bank was in the dark and confused by it all. She also handed Ms Radley a new authority form, to be filled out.

Mr Abuothman, in his evidence, denies that he asked Ms Radley to seek reinstatement as a cheque signatory.

After Ms Radley returned to the office from the bank, she confronted Mr Martin over the matter who told her to go home and that it would be sorted out in the morning. On her way out however, she was confronted by Mr Abuothman, who handed her a letter from him, temporarily suspending her employment.

The letter was in the following terms:

"As you are aware, there have been a number of issues and accusations which have interfered with a productive and trusting relationship between yourself and management of TSA.

I have overall responsibility for the management of staff with TSA and believe that it is now necessary to fully review your performance with the firm.

In order to do this in the best and fairest way, I have decided that you should now be suspended, on full pay, pending the outcome of my investigations and review.

I anticipate that I will be better able to talk to you about your performance and related issues on Wednesday, 8 November and now ask that you recommence at work at the normal time on that day.

I direct you to have no further communication with any member of the staff or management of TSA (except Albi, of course) until further notice. Failure to abide by this condition could result in your summary dismissal.

Jamile Abuothman

General Manager"

(Exhibit D8).

Ms Radley says that after reading the letter she felt surprised and upset and actually asked Mr Martin, who was also there, whether he was happy with the letter, to which she received no response. She then collected her personal items from the office and went home.

On arrival at her home, she realised that she still had the petty cash tin in her possession. She had taken it with her to the bank that afternoon in order to top up the level of cash and had left it in the car. She then made arrangements for her sister-in-law to ring Mrs Martin (having been told by Mr Abuothman not to communicate with any member of staff or management) and advise her that she would have the tin dropped off at the office the following day by her mother.

Ms Radley says that she then realised when she opened her pay packet, that she had neglected to deduct tax of \$77.00 from her wages. She says that she placed this amount in an envelope, ready to be returned with the petty cash tin.

The next step in the process was that the local police visited her at 8.15 pm that evening, to enquire about an allegation concerning the theft of the petty cash tin. Ms Radley says that the tin was actually on a table, with a note on it, ready to be taken the following day. The police saw this and left.

At 12.30 am that night however they returned, having apparently been told that Ms Radley had not made contact with the company over the tin. They took the tin, together with the undeducted tax payment.

Ms Radley says that she was devastated by these visits from the police.

Ms Radley then says that consistent with the request in the letter temporarily suspending her employment, she reported for work on Wednesday, 8 November 1995, at Mr Abuothman's office. Upon arrival, she was handed a letter of termination, dated the previous day, and not referring correctly to her name. After being told that there was nothing more to be said, she left the office.

The terms of the letter were as follows:

"I have given a great deal of consideration to your position vis-a-vis T.S.A. and have come to the conclusion that the company has no alternative but to advise you that your services are terminated effective immediately.

Since I joined the company in August of this year, I have had a number of problems in dealing with you.

As an example of these problems I list the following.

In the early stages of my employment you have created misunderstandings with clients and business contacts by refusing to acknowledge to them that I had been appointed to a management position with T.S.A.

Contrary to good management practices, you have left important instruments of the company in places where great harm could have occurred. As an example, you left pre-signed blank cheques lying in the open.

You have falsely accused me of assaulting you while you were attempting to photocopy a document (which I told you you were not permitted to photocopy). Not only was this untrue, but a witness to the event is prepared to provide a statutory declaration which would indicate that your behaviour was very provocative, to say the least.

Despite those problems, and despite having the authority to dismiss you at any stage, I had, until last week, believed that you had the company's best interests at heart and I have lived with the other problems. However, two events last week have strongly indicated to the management of T.S.A. that your continued employment would represent a significant threat to the company.

In the first instance, despite being given notice of a temporary suspension, and contrary to normal procedures, you removed from the premises of T.S.A. the petty cash box containing a sizeable sum of money. I have a signed statement of the directors of the company that they routinely managed the petty cash and that you were not authorised to take the petty cash home. While the police may not wish to press charges, T.S.A. considers this to be a very serious matter.

You were given a notice in writing on 31 October 1995 that you were no longer to write cheques on behalf of T.S.A. I have a signed statement from the ANZ bank that you attempted to rescind that situation directly with the bank without any authorisation from T.S.A. I can only imagine what your intention was. However, we are left with clear evidence that you attempted to controvert a substantive direction of your general manager. In the circumstances, T.S.A. has no alternative but to terminate your services effective immediately. Our investigations are continuing.

Your pay record covering 20/10/95 to 3/11/95 shows that you failed to deduct taxation from your own wages. This means that you have overpaid yourself by \$77.45 and the company was to bear this loss in paying the Australian Taxation Office.

There are more concerning allegations, which if proven, could result in your criminal prosecution, but, as they have not yet been fully investigated, I cannot rely upon them as grounds for your dismissal.

As soon as practicable, your accrued entitlements will be sent to you.

Given the circumstances of this dismissal, you are requested not to enter the premises or grounds of T.S.A. after leaving today. Should you do so, we will seek an enforceable court order restraining you from entering these premises. In addition, and in a similar vein, you are requested not to discuss any matters related to T.S.A. with any staff or personnel of the company.

Yours sincerely

Jamile

General Manager"

(Exhibit D9).

It is clear from the letter that the dismissal was as a result of two incidents arising during the period of temporary suspension, namely the taking of the petty cash tin home and the attempt to rescind the revocation of her company cheque signing authority. These matters were described as a 'threat' to the company. It is more a case the Commission would have thought, of an alleged breach of trust.

In any event, the Commission's role, in dealing with a claim for harsh and unfair dismissal is, at the outset, to assess as to whether the dismissal has occurred for a 'valid reason' directed to the employee's capacity or conduct, in accordance with the terms of s.23AA(3) of the Act. At the same time, the Commission is to be mindful of the fact that the dismissal was summary in its terms, and as a consequence, although it was not referred to in the letter, was on account of misconduct, and that no pay in lieu of notice or annual leave payments were made. The Commission therefore, in the course of assessing whether a valid reason(s) was given, also needs to assess whether such reason(s) constituted a sufficiently serious breach of trust as to warrant summary dismissal.

With respect to the matter concerning the petty cash tin, the first issue to consider is as to whether Ms Radley was authorised to take the tin to her home. In this respect there are some differences in the evidence. Ms Radley says that she had been the only person who used the tin, and therefore saw herself as responsible for it. She says she never left it at work, and therefore always took it home, because it was not able to be locked. Mr Martin says that she was not given authority to take the petty cash tin home with her, although he understood that on occasions she did so. He was therefore not aware that she took it home everyday. Mr Abuothman says that she had no right to take the petty cash home without permission to do so.

In terms of the events of Thursday, 2 November 1995, however, the evidence of Ms Radley refers to the realisation on her part that when she discovered she had accidentally taken the petty cash tin home, and that in the knowledge that she would not be at work until the following Wednesday, there was a need to make plans to arrange for the tin to be returned. Recognising that, such a plan was put in place, by virtue of her arranging for her sister-in-law to ring Mrs Martin to that effect (although Mrs Martin in her evidence did not recognise the caller as her sister-in-law) is sufficient confirmation, in the Commission's view, that Ms Radley's evidence as to the sequence of events, ought to be accepted.

The Commission also notes that it is readily understandable why she drove off from work on the evening of Thursday, 2 November 1995, without thinking of the petty cash tin being in her car. She had just been handed a letter temporarily suspending her employment to enable certain 'issues and accusations' to be reviewed. Ms Radley says she was devastated by this; a response which the Commission considers to be entirely understandable in the circumstances of where this was the first occasion upon which she had been apprised of such matters and in any event, these matters were unspecified in their nature. In light of this, one could even understand if she had not put a plan immediately in place, for the return of the petty cash tin, when she discovered it.

With respect to the question of authorisation, the Commission has no difficulty in accepting Ms Radley's explanation that as she was the only person that accessed the tin, she was the person responsible for it. The clear impression the Commission has therefore, is that Ms Radley, who had held such responsibility for the petty cash tin for over four years, was allowed the discretion to manage it in the manner she saw fit.

It may well be that the practice of an employee, with authority to sign cheques to replenish the petty cash, taking that petty cash home, is an inappropriate one, but in a situation of where that employee was allowed that discretion from the outset in the context of the operation of a small (initially business), such inappropriateness needs to be assessed in that light. As businesses grow however, such practices may well require review.

With respect to the response that was forthcoming from the company, on Thursday, 2 November 1995, after learning that Ms Radley had taken the petty cash tin home, the Commission notes, from the evidence of Mr Abuothman and Mr Martin, that their concern was that Ms Radley was intending to retain the funds. Their choice to call in the police, in the circumstances of this matter, whilst certainly within their rights to do, was quite an extraordinary way to deal with an employee who had been with the company from the outset and who up until that point, had been trusted. The Commission fails to see why it would have not been appropriate for either Mr Martin or Mr Abuothman, or both, to have visited her house personally and sought an explanation. Especially, when they had been made aware, from Mrs Martin, of Ms Radley's plan to have the tin returned the following day. Then, after having the police call on Ms Radley, and after learning that the police saw no reason to actually collect the tin, to require them to return to collect it, was a gross overreaction, in the Commission's view, on both Mr Martin and Mr Abuothman's part. Whilst saying both, the Commission has the sense that Mr Martin was influenced by Mr Abuothman, to be party to such action.

The Commission is therefore not prepared to find that the incident relating to the petty cash tin constituted a valid reason for Ms Radley's dismissal. Nor did it constitute a breach of trust on Ms Radley's part anywhere near sufficient to warrant

dismissal for misconduct. The incident, seen in the context of the discretion that Ms Radley exercised, constituted carelessness on her part. However, it arose in circumstances that were, to say the least, extenuating, and, in any event, the problem was sought to be rectified, as soon as it became apparent.

With respect to the second incident, namely Ms Radley's attempt to rescind the revocation of her authority to sign company cheques, it is to be appreciated that this authority had been extended to Ms Radley from the outset of the company's (re-activated) operations, when she was engaged. The authority meant that she could sign a company cheque as an alternative to either Mr Martin, or his wife, being the Directors. Such a situation represents, in the Commission's view, the placing of considerable trust in an employee not holding a management position within the company.

With respect to the evidence led in relation to the telephone call on Wednesday, 1 November 1995 between Ms Radley and Ms Fry, the Assistant Manager of the ANZ Bank Maddington Branch, there is a significantly different recollection between both on one important question. It concerned whether or not Ms Radley had stated to Ms Fry, that the action in seeking to rescind the decision to remove her as a cheque signatory, was on the basis of Mr Abuothman's request for such action to be taken.

Ms Radley, as already indicated, denies that any such statement was made. Ms Fry, as indicated, recalls differently. She says, in her examination in chief, that Ms Radley told her that Mr Abuothman had asked to have her authority reinstated. That statement was also repeated in her cross examination.

It is also Ms Radley's evidence that Mr Martin was in the office when she made the call to the bank, the inference being that he overheard her conversation. She says though that the bank rang back after her conversation, and spoke with Mr Martin about the situation, with the inference being that he was aware that she had sought the reinstatement of her authority to sign.

Mr Martin however, initially had no recollection of either of the telephone calls, but under cross examination, admitted that he was aware of Ms Radley's inquiry about reinstatement of her signing authority. It seems though that he did not respond to it in any way. Indeed, later that day, at least by Ms Radley's recollection, she confronted Mr Martin seeking his support in gaining reinstatement of her authority, only to be told to go home and that he would sort it out in the morning. The inference is, if Ms Radley's evidence is accepted, that Mr Martin did not consider the matter was sufficiently serious enough to deal with it at the time.

The initial question is though, whose evidence of the telephone conversation is to be preferred? Certainly, if Ms Radley's evidence is placed in the context of the developments occurring within the company at the time, it is clear that the advice which she received from Mr Abuothman over the revoking of her authority, would have come as a surprise to her. She had held that authority for over four years, and suddenly, without any explanation as to the reason or reasons, it was revoked. In such circumstances, it is entirely reasonable, in the Commission's view, for Ms Radley to have felt both shocked and puzzled. At the time therefore that she rang Ms Fry at the bank, on the day following which she learnt of Mr Abuothman's decision, it is reasonable to believe that she was still in the same frame of mind.

Ms Fry, as a witness in these proceedings, has the standing of an independent person, reasonably detached from the dispute between the instant parties. Furthermore, recollection of the telephone conversation with Ms Radley, is clear and was confirmed in cross examination. The Commission chooses in the circumstances to prefer the evidence of Ms Fry.

In so doing, the focus then returns to Ms Radley's evidence, as to whether she knowingly sought to misrepresent her position to the bank, so as to improperly secure the reinstatement of her signing authority. The allegation of misrepresentation, needs to be judged according to the circumstances of the events. Whilst some account needs to be taken of the finding about her state of mind at the time, the critical factor that arises from the evidence, and that of Mr Martin in particular, is that Mr Martin was aware of her conversation with the bank. The inference is that he was aware

of what was said about Mr Abuothman requesting her to seek the reinstatement of her authority. Even if he was not, the significance to be drawn from his knowledge of the telephone conversation, is that he did not respond by interceding in the process to put a halt to it. The fact that he did not is all the more surprising when it is recognised that the advice to the bank, to revoke Ms Radley's authority, was provided by letter signed by Mr Martin, together with his wife. What is even more surprising is that even later that day when he was confronted by Ms Radley, which the Commission accepts did occur, over the reinstatement of her authority, he did not seek to bring a halt to her actions even then; he merely postponed consideration of the issue. Although, of course, Mr Abuothman had in the meantime arranged for Ms Radley's suspension, effecting it shortly after the confrontation with Mr Martin, there is no clear evidence that his actions then were directly motivated by her actions in seeking reinstatement of her authority.

Although it was the case that Mr Abuothman was assuming general management responsibility at this time, there was no evidence that Mr Martin was ceding authority in respect of cheque signatories to him. The Commission is satisfied that he retained authority to determine who would be the cheque signatories for the company, including in respect of any reinstatement of Ms Radley's authority.

The Commission accordingly finds that Mr Martin tacitly allowed Ms Radley to proceed with her attempt to secure a reinstatement of her authority. It may have been that he did not act because he knew that she was on the threshold of being suspended, but there is nothing in the evidence to suggest so.

In so finding, the Commission does not conclude that it was appropriate for Ms Radley to act in the way she did. Whilst the Commission does give credence to the fact that her response to the advice of her authority being revoked was understandable, it does not detract from the observation that it would have been wise not to seek to overturn the decision in the manner in which she did, that is, by indicating that Mr Abuothman had requested her to secure the reinstatement of her authority. It showed signs of desperation, which, in the Commission's view, were unfortunate and indeed, inappropriate.

The question the Commission has to address however, is whether the company's reliance upon this incident as a reason for her dismissal, constituted a valid reason? In this respect therefore, whilst it is the case that the Commission finds Ms Radley's conduct to be inappropriate, against that must be measured the fact that Mr Martin did not find it as action warranting confronting or chastisement, but rather tacit acceptance, or at least tacit disregard.

In such circumstance, the Commission finds that this incident did not constitute a valid reason for Ms Radley's dismissal.

With respect to the other matters referred to in the 'Termination Notice', namely the circumstances identified as 'problems', that is the generating of misunderstandings with clients over Mr Abuothman's appointment, the leaving of pre-signed blank cheques lying around and the false allegation of assault, it is not expressly stated that these matters formed part of the decision to dismiss. In fact, it is acknowledged that Mr Abuothman was prepared to 'live with' these matters.

The Commission therefore views these as matters which constitute cause for concern on Mr Abuothman's part, rather than matters which constituted part of the reasons for the dismissal. This being the case, it is not necessary for the Commission to review whether each of these matters properly constitute a valid reason for the dismissal or not.

This notwithstanding, the Commission would observe that in respect of the generating of misunderstandings with clients over Mr Abuothman's appointment, whilst it is clear that Mr Abuothman sensed a level of antagonism, from both Ms Radley and the former Manager, there is really no evidence that she, nor the former Manager for that matter, promoted misunderstandings as to Mr Abuothman's appointment. Indeed, the Commission forms the view that upon Mr Abuothman's appointment as General Manager, in August 1995, that Ms Radley knew nothing of it. It was not until the notice of 1 November 1995 that she and other employees did become aware. The fault for the absence of adequate communication lay with Mr Martin, who it seems did secure

feedback of some sense of antagonism over Mr Abuothman's appointment.

In relation to the pre-signed cheques, there is certainly evidence that the practice was followed to a degree, for a number of reasons, but the evidence about these cheques lying all over the place was quite unspecific. It was certainly denied in unequivocal terms by Ms Radley, which evidence is accepted.

With respect to the allegation of assault in relation to the incident at the photocopier, each accuses the other of being pushed. The independent witness to the incident was not called to give evidence, so it is difficult for the Commission to be definitive. Certainly, Ms Radley saw fit, after the incident, to speak with the Chamber of Commerce and Industry of Western Australia about the incident itself and also spoke with the Manager (who by that stage had just been dismissed) and actually tried to contact the Directors. There is no evidence as to what was said to any of them, but the taking of such action would hardly be consistent with a person responsible for the act of pushing. The Commission is certainly not persuaded that if allegations were made, that they were necessarily false.

Returning to the Commission's assessment of the two incidents above, the Commission accordingly reaches the conclusion that the basis of the decision by Mr Abuothman to dismiss Ms Radley, both individually and collectively, does not constitute a 'valid reason' as s.23AA(3) of the Act requires. Accordingly, the Commission, by virtue of s.23AA(2), must find that the dismissal of Ms Radley was harsh and unfair.

This notwithstanding, it is necessary to acknowledge that the company at the point of the dismissal was in the process of investigating another incident that arose in relation to Ms Radley, which by the time of the commencement of the hearing had reached the status of an allegation of misappropriation of company funds. It was a matter that was the subject of investigation by the police at the time. It remained that way until the latter part of the proceedings of this case, when the Commission was advised that the police had concluded that they did not intend laying any charges.

Detailed evidence was led as to the circumstances in which it was alleged that the misappropriation took place. In essence, it concerned the receipt by Ms Radley of final payments in relation to the purchase of a transportable home and their conveyance to Mr Martin. Ms Radley denies any misappropriation; Mr Martin claims that he never received the funds.

Intertwined into all this, on the company's side, are issues of personal trust, which are directly related to Mr Martin.

The Commission, whilst not the least fearful of becoming involved in sensitive issues of both a commercial and personal kind, is simply not convinced that this is a relevant issue. Whilst there is no doubt that incidents of misconduct that come to light following a dismissal, can be relied upon to justify the dismissal, the Commission recognises that there was no acknowledgment of any kind in the Termination Notice, of this incident being investigated, when such was actually occurring, and nor was there any verbal acknowledgment at the point of dismissal.

Where this incident was known about at the point of dismissal, notwithstanding that investigations were still underway, the Commission believes it was open for the company to have foreshadowed the possibility of such incident being taken into account, in the context of the dismissal. The fact that the company did not, in the Commission's view, serves to illustrate the real possibility that it is being relied upon to simply support the other incidents that did form the basis of the dismissal.

The Commission will therefore take no further account of this matter.

In addition to finding that a valid reason has not been given by the company relating to Ms Radley's dismissal, the Commission further concludes that there had not been a breach of trust between Ms Radley and the company, sufficient to warrant summary dismissal for misconduct.

In this respect, the Commission observes that for over a four year period Ms Radley had the confidence and trust of the Directors of the Company. As it turned out, very soon after

Mr Abuothman assumed the full responsibilities of General Manager, that confidence and trust in Ms Radley suddenly vanished. A similar state of affairs apparently arose in the case of the company's former Manager, who was dismissed on 30 October 1995. There is more than a suggestion from the evidence, particularly from the demeanour of Mr Abuothman himself, that the allegations of breach of trust were founded in his assessment, which in turn unduly influenced the assessment of the Directors.

Be that as it may, the Commission, after making the finding as to an absence of a valid reason, is obliged to consider and determine upon the relief sought, namely, an amount of compensation equivalent to four months' pay.

It is submitted by Mr Dhue, acting on behalf of Ms Radley, that compensation is the only relief sought, as there has been a total breakdown in the relationship between Ms Radley and Mr Abuothman and the Directors. Having observed the evidence of each of the parties, the Commission is convinced that the relationship has broken down, to the extent of not being able to be resurrected. The Commission accordingly believes that reinstatement or re-employment would be impracticable, as such is referred to in s.23A(1a) of the Act.

The relevant compensation is to be assessed according to the 'loss and injury' caused by the dismissal, in accordance with s.23A(1)(ba) of the Act. Mr Dhue submitted that account needed to be taken in such assessment, not only of the unfounded reasons for the dismissal, but also of the lack of procedural fairness, in the sense of Ms Radley being unable to defend herself, and that this needed to be considered in the context of the length and quality of her service.

In the latter respect the Commission notes that Ms Radley's employment extended back to the commencement of the company's (reactivated) operations and that she was instrumental in establishing the office administration procedures. It may have been, as was Mr Abuothman's position, that the growth of the company required alterations in procedures to be affected, but save for his perception of lack of trust in relation to her, which has been found in these proceedings not to be justified, she could have been part of the process of change. If there had been opposition from her to any reasonable ongoing changes, then there may not have been the prospect of ongoing employment. Her actions in seeking the reinstatement of herself as a company cheque signatory had some elements of an unwillingness to accept change. There was nothing else though, of which the Commission was made aware, which served to indicate that she would have been resistant to change, had it been put to her in a consultative fashion.

Prior to Mr Abuothman's involvement with the Company, there had been no suggestion that there was any aspect of Ms Radley's employment that was found wanting. Indeed the Commission gained the impression that she had been very supportive of the Directors. All of these matters lead the Commission in the direction of believing that there would have been a reasonable prospect of ongoing employment, for the foreseeable future, had the dismissal not occurred.

As a result of the investigations leading to her dismissal however, there is the belief on the part of Mr Abuothman and both of the Directors that there has been misappropriation of company funds in respect of the incident referred to above. Whether that belief has any basis is not a matter which the Commission has chosen to assess; but the refusal by the police to lay charges is certainly indicative of an absence of proof. The Commission however, needs to be mindful that even if there were a finding, based on the balance of probabilities, that there had not been misappropriation, as to whether it may nevertheless be a matter that has impacted detrimentally upon the relationship between the Directors and Ms Radley, because of there being a question of personal trust between the Directors intertwined as an issue. Rightly or wrongly, this would, in the Commission's view, without question, have influenced the prospect of ongoing employment. It may be thought by Ms Radley that she had become the innocent victim of the incident. It seems though, that Ms Radley could have reasonably refused to have been a party to the procedure arranged for the payment of the monies in question, but chose not to. Had Mr Abuothman not been involved, it may well be that the matter would not have come to light. The reality is that it did, and whatever the

outcome, it would have effected the employment relationship for the future. The Commission thus forms the view that the prospect of ongoing employment would have been compromised by this incident, irrespective of whether Ms Radley was the innocent party or not.

With respect to consideration to be given to 'injury', the Commission has no difficulty in accepting Ms Radley's evidence that following upon her dismissal she was diagnosed as suffering from acute shock and was placed on heavy medication as a consequence. In the course of this period, her father died in the United Kingdom, and because of her state of health and her financial position, she was unable to attend the funeral. The Commission believes these circumstances constitute a detriment directly faced as a result of the dismissal, and properly fit within the description of 'injury' as referred to in s.23(1)(ba) of the Act. Accordingly the Commission is prepared to extend some weight to these matters in its consideration of compensation.

Taking into account the various factors relevant to the loss faced as a result of the dismissal, particularly viewed in the context of the prospect of ongoing employment for the foreseeable future, and further, taking into account the injury suffered as a result of the dismissal, the Commission considers that compensation equivalent to 3 months pay would be appropriate. Such would constitute an amount of \$5,525. An Order for such amount will issue.

Suspension

Ms Radley's claim in this respect is for one week's pay for the period during which she was placed under suspension by Mr Abuothman, namely from the afternoon of Thursday, 2 November 1995 to Wednesday, 8 November 1995.

The question as to whether payment of wages was to occur during the period of suspension, is a matter directly dealt with by the letter of temporary suspension itself (Exhibit D8). Within the third paragraph of the letter, it is stated that: "..... you should now be suspended, on full pay,".

In the Commission's view, the meaning of that statement could not be more unequivocal. It represents a contractual commitment to pay Ms Radley's wages while she was absent from work on temporary suspension.

There is no need to analyse whether the company, in effecting a temporary suspension, was or was not acting in accordance with its inherent rights as an employer or within the bounds of an implied right within the contract, as this authority was not challenged.

Accordingly, the Commission concludes that Ms Radley was entitled to receive her ordinary pay during the period of suspension, namely three working days, consistent with the terms of the letter of 2 November 1995, effecting temporary suspension of employment (Exhibit D8).

The Commission will order that three days pay, constituting \$255, be paid to Ms Radley.

Pay in Lieu of Notice

The claim by Ms Radley, as noted at the commencement of this decision, is for 3 weeks wages to be paid in lieu of notice not provided at dismissal.

Obviously, the question of pay in lieu of notice, is a matter directly linked to the nature of the dismissal, that is whether the employee has been dismissed for misconduct or not. If that is the case, it is then a matter of determining whether the misconduct justified the dismissal being effected.

It having already been determined above that the misconduct which was alleged in this case was not such as to justify dismissal for misconduct, the Commission is left to conclude that termination ought to have been by notice, or payment in lieu, if provided for by the contract.

In the context of this contract, where there were no express terms relating to its termination by notice, the provisions of s.170DB of the Commonwealth Industrial Relations Act, 1988 come into play. That provision requires that an employee, for a period of continuous service between 3 years but no more than 5 years, ought to receive a period of notice of 3 weeks, or an equal amount of 'compensation instead of notice'.

That entitlement, was, in the Commission's view, implied into Ms Radley's contract. She is entitled to receive therefore such level of 'compensation', which in her case constitutes an

amount of \$1,275. The Commission will so order.

Annual Leave

The claim by Ms Radley is for an outstanding amount of payment for untaken annual leave, equivalent to 10.86 weeks wages.

The records of the company relating to annual leave were in the form of diary notations in Mr Martin's diary and as entries in the wages book. The first notation in relation to annual leave, constituted a notice to Ms Radley (which she denies ever noting) that in the event of misconduct on her part she would lose all her entitlements from the company. This presumably would include payment for untaken annual leave.

It is not necessary for the Commission to address this initial diary notation as to its authenticity in view of the determination above that Ms Radley's dismissal on account of misconduct not being justified.

Although there is no notation in the diary as to the quantum of leave agreed upon by the parties, or as to whether any untaken amount would be paid for, there is no dispute between the parties that such entitlements impliedly formed part of the contract of employment.

An analysis of the leave record in the diary and the wages book was carried out by Mrs Martin, in late 1995, and was tendered in these proceedings, as Exhibit D11. That analysis reveals that there were no records kept of annual leave up to June 1992, but that from that date to July 1995, Ms Radley had taken a period of 34.5 days, out of a total entitlement of 60 days. This leaves an untaken amount of 25.5 days.

Ms Radley, who did not refer to any record that she maintained of her annual leave taken, did not dispute the analysis reflected in Exhibit D11.

With respect to the period since July 1995 to the date of termination, there is no record or recollection of annual leave having been taken. This would accordingly constitute an untaken amount of 17/52 of 20 days (based upon weekly accrual), namely 6.5 days.

With respect to the period prior to June 1992, although there is no record, it is the case that both Ms Radley and Mr Martin have no recollection of annual leave being taken during this period. It is reasonable to conclude, in the Commission's view, particularly bearing in mind that during this period the company was at a critical phase of being reactivated, that leave was not taken during this period.

Although Ms Radley commenced her employment in April 1991, the evidence is that her engagement in a permanent position did not occur until August 1991. As a consequence, no consideration of untaken leave could be given to the period up to that date. Accordingly, the calculation of untaken leave would amount to 42/52 of 20 days, namely 16.15 days.

The company dispute there was an entitlement at all, based upon the initial diary note relating to misconduct, although they acknowledge that an entitlement to payment of 16 days untaken leave, would otherwise be available. Although the basis of that calculation was tendered (Exhibit P3), there was no evidence led as to such basis. In weighing this calculation against that carried out by Mrs Martin, which was the subject of evidence, and was cross examined upon, the Commission chooses to accept the latter.

The Commission accepts therefore that there were periods of untaken leave and that there was a contractual obligation upon the company to make payment of those untaken periods. This amounts to 48.15 days, or a period of 9.63 weeks, constituting an amount of \$4,092.75. The Commission will order that such accordingly be paid.

Viewing these proceedings in their totality, the Commission will order that a total sum, comprising \$11,147.75 be paid by the company to Ms Radley. A Minute of Proposed Order to that effect will issue.

Appearances: Mr R. Dhue on behalf of the applicant
Mr S. Phillips (of Counsel) on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bonnie Judith Radley

and

Anther Pty Ltd trading as

T.S.A. and Relocatables W.A.

No. 295 of 1996.

Australian Municipal, Administrative, Clerical and Services
Union of Employees, WA Clerical and Administrative
Branch

and

Anther Pty Ltd trading as

T.S.A. and Relocatables W.A.

No. CR 340 of 1995.

COMMISSIONER R. H. GIFFORD.

30 October 1996.

Order.

HAVING heard Mr R. Dhue on behalf of the applicant and Mr S. Phillips (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby—

DECLARES that Bonnie Judith Radley was dismissed on 8 November 1995 in a harsh and unfair manner; and

ORDERS that Bonnie Judith Radley:

- (1) be paid an amount of \$5,525.00 as compensation for the dismissal; and
- (2) be paid a total amount of \$5,622.75 in consideration of contractual entitlements arising in respect of:
 - (a) suspension on full pay for 3 days (\$255),
 - (b) 3 weeks 'compensation' in lieu of notice (\$1,275), and
 - (c) 9.74 weeks untaken annual leave (\$4,092.75); and
- (3) Such payments are to be paid within 14 days of the date hereof.

(Sgd.) R. H. GIFFORD,

[L.S.]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Steven Stanik

and

Wonwalls Pty Ltd

trading as Wonder Walls.

No. 474 of 1996.

COMMISSIONER R.H. GIFFORD.

10 October 1996.

Reasons for Decision.

THE COMMISSIONER: By this application, Steven Stanik claims, in the first instance, in accordance with s.29(1)(b)(i) of the Industrial Relations Act, 1979 ("the Act"), that he was dismissed on 8 March 1996, by his former employer, Wonwalls Pty Ltd, trading as Wonder Walls, in a harsh and unfair manner. Mr Stanik does not seek re-instatement. Instead, he seeks compensation, equivalent to 12 weeks wages, namely the sum of \$4,788.00.

Additionally, Mr Stanik seeks contractual benefits, in accordance with s.29(1)(b)(ii) of the Act: firstly, an additional week's pay, in lieu of notice, and secondly, four weeks pay, as a workers compensation payment, for the period outstanding up to the point of the signing of his final clearance certificate, concerning a disorder he had contracted, namely cement dermatitis.

With respect to the claim alleging dismissal in a harsh and unfair manner, it became clear from the evidence presented in these proceedings that a threshold question is required to be determined by the Commission, namely as to whether Mr Stanik was dismissed on 8 March 1996 by the company, or whether he resigned. If it was a case of dismissal, then the Commission would proceed to determine whether a valid reason was given for the dismissal or in turn whether there was any other basis to the dismissal being effected in a harsh and unfair manner. If, on the other hand, it was a case of resignation, then the Commission has no jurisdiction to deal with the matter and the application would be required to be dismissed.

From the evidence led, the Commission finds the relevant sequence of events, to be as follows.

Mr Stanik was engaged by the company in June 1994, as a labourer and was for the period of his employment, involved in the production, in a factory situation, of concrete retaining walls. His duties were mainly involved with the stripping of panels and moulds, concrete mixing and fork lift driving. He was actually engaged by the company's Supervisor, Mr Ed Gambrell, who was responsible for the factory operation. Mr Stanik was one of a team of five employees involved in the factory.

The Managing Director of the company was and is, Mr Graham Luck. He maintained limited, but regular, contact with the employees in the factory, including Mr Stanik.

In the context of the lead up to Mr Stanik's dismissal or resignation, as the case may be, the significant development which arose in mid February 1996, was that Mr Stanik contracted cement dermatitis, after having initially contracted that disorder for a period in February 1995. As result of a visit to his own doctor on 19 February 1996, he was initially advised to take one week off work as a result. The next day he completed an application form for workers compensation payments, which became the basis of payment to him.

On 23 February 1996, according to Mr Luck's evidence, Mr Stanik attended at work and showed him the effects of the dermatitis. Mr Luck was aware that he had contracted the disorder previously in his employment with the company, and had sighted it at the time. In the course of his discussion with Mr Stanik, on 23 February 1996, Mr Luck says that he indicated to Mr Stanik, that because the disorder has re-occurred, it might be appropriate for him to look for a job in a different industry.

Mr Luck says that the reply from Mr Stanik was to the effect that: 'If you want me to leave, it will cost the insurance company a lot of money'; and the conversation concluded on that basis. It was later learned by Mr Luck, from the insurance company, that they would not make a cash payment, in the circumstances of such a case as this.

Mr Stanik in his evidence says that he has no recollection of this particular conversation; indeed, he does not recall attending at work.

The next step in the sequence of events, is that on Wednesday, 6 March 1996, Mr Stanik telephoned Mr Luck to advise that he had received a medical clearance from his doctor and that he would be starting work on the following day. Mr Luck says that the only statement he made in the conversation was to the effect that if the cement dermatitis troubled him (on returning), he ought to consider getting a job in a different industry. By way of contrast, Mr Stanik says that after he advised of his intention to attend work on the following day, Mr Luck said to him to the effect that he hoped he had been looking for a job in the last two weeks. Mr Stanik says he then asked why, to which Mr Luck responded by saying: 'Because I'm going to sack you'. This was then followed by a statement that he (Mr Luck) would give him another couple of days of work. As to the only statement Mr Luck recalls making, Mr Stanik says that Mr Luck never made the statement.

As a result of that telephone conversation, it is Mr Stanik's position that he knew that he was going to 'get the bullet' on the Friday.

Upon Mr Stanik's return to work on Thursday, 7 March 1996, there was not any direct contact between Mr Stanik and Mr Luck. Mr Stanik recalls however, asking the Foreman, Mr Ed Gambrell, before commencing work that day, as to what was behind he being sacked on the Friday. He says that Mr Gambrell stated that he did not know anything about the matter.

Mr Gambrell, in his evidence, had no recollection of making such a statement.

On Friday, 8 March 1996, Mr Luck says that following a visit to the factory by him early in the day, he decided that there was a need to 'resolve' Mr Stanik's situation. He accordingly invited Mr Stanik to his office. Mr Luck says that he asked Mr Stanik as to whether he remembered a conversation they had had six months previously about he (Mr Stanik) being unhappy and further asked him as to whether he (Mr Luck) could do something about it. Mr Luck recollects that Mr Stanik replied in the following manner: "I don't care, you can do what you like"; and then: "it doesn't matter because I've got another job and I can start tomorrow".

With this being Mr Stanik's response, Mr Luck says he understood he (Mr Stanik) had resigned. Mr Luck's recollection is that he then said that this would be the best solution for both; that he would prefer him to leave straight away; and that he should come back for his pay.

Mr Stanik has an entirely different recollection of the meeting. He says the meeting, which began at 8.30 am, commenced with Mr Luck saying that he: 'was going to sack me'. This was followed by the statement from Mr Luck that he (Mr Stanik) had not been happy there over the last six months and that he (Mr Luck) had not been happy with him. Mr Stanik recalls that he was then asked by Mr Luck if he had anything to say about it. Mr Stanik says that he responded by saying: "Well, obviously I'm not going to change your mind". Mr Luck responded in turn by stating: "No, you're not." Mr Luck then said that he could pick his wages up at 1.00 pm.

It is Mr Stanik's position, based on his recollection of events, that he was sacked; and that he did not resign.

As it turns out, and quite coincidentally, another company official Mr Thomas, the company's Sales Operations Manager, was at work in the adjoining office to the office in which the meeting between Mr Luck and Mr Stanik took place. Mr Thomas, in his evidence, admits that he only heard bits and pieces of the conversation, which can be partly explained from the fact that he could only hear Mr Luck's side of the conversation, and not Mr Stanik's, and in any event was concentrating on his own work. He does recall the meeting commencing with Mr Luck saying to Mr Stanik to the effect that he (Mr Stanik) had not been happy, and was there anything he (Mr Luck) could do to help. He does also recall hearing comments to the effect that it would suit both of us. He says he heard no direct reference to dismissal.

More particularly however, Mr Thomas recalls Mr Luck saying to him, after Mr Stanik had left, that Mr Stanik had another job and that by mutual agreement he left, having been given a week's pay in lieu of notice.

In assessing whether Mr Thomas' evidence should be given weight as evidence corroborating the evidence of Mr Luck, as to the terms of the conversation between Mr Luck and Mr Stanik, the Commission recognises that Mr Thomas was only potentially able to hear half of the conversation and in relation to that which he did hear, there are only excerpts of which he has a recollection. The Commission is therefore reluctant to place any weight upon the evidence of Mr Thomas, as corroborating Mr Luck's evidence relating to the terms of the conversation between he and Mr Stanik.

On the other hand, the Commission is prepared to give weight to the statement made by Mr Luck to Mr Thomas, following the interview, as being contemporaneous confirmation of Mr Luck's understanding of the outcome of the interview.

First and foremost though, the Commission has to weigh the evidence of Mr Stanik against that of Mr Luck, to determine whether there is a reasonable basis for preferring one's recollection of events over the other.

If consideration is given to the evidence relating to the discussion between the parties on 23 February 1996, it can be seen that the first clear gulf in recollection between Mr Stanik and Mr Luck arises. The essence of Mr Luck's evidence is that because of the re-occurrence of cement dermatitis, he saw fit to indicate that it might have been appropriate for Mr Stanik to look for a job outside of the industry.

According to Mr Luck's evidence, it is at this point that Mr Stanik responded by saying that if he (Mr Luck) wanted him to leave, it would cost the insurance company a lot of money. Mr Stanik has no recollection of such a statement being made.

Was Mr Stanik gaining the impression from this discussion that he was, in effect, being dismissed? Certainly, on the evidence of Mr Luck, the statement which he made, was not intended to have such effect; its implication appeared to be to confront Mr Stanik with the possibility that continued contact with cement, in this industry, was having a detrimental effect upon him and gave cause for him to find more suitable employment outside of the industry.

There was enough of a suggestion, in the Commission's view however, to cause Mr Stanik to consider termination by the company as a clear option.

It follows that for the remainder of the time Mr Stanik had off work, as a result of the cement dermatitis, he had, in the Commission's view, significant time to dwell upon the conclusion that he appeared to reach, namely that it was likely that he was going to be terminated by the company.

It thus comes as no surprise that his recollection of the events of the telephone discussion of 6 March 1996, between he and Mr Luck, was that he was going to be receiving the 'sack'. Mr Luck, on the other hand recollects putting nothing stronger than that which he put to him at the earlier meeting on 23 February 1996, namely that he (Mr Stanik) ought to look for another job in a different industry.

It causes the question to be raised, as to whether Mr Stanik, who by this stage, would have been reflecting upon Mr Luck's earlier comment about looking for a job outside the industry, for about a week and a half, commenced the telephone discussion with the expectation in his mind that he was to be terminated. Did he then interpret Mr Luck's actual words used, as meaning that he would be terminated? There is no doubt that he did, in the Commission's view, as he admits that following that telephone conversation, he considered he was going to 'get the bullet'.

So, when he entered Mr Luck's office on Friday, 8 March 1996, he would have been convinced, in the Commission's view, as to the outcome of the meeting, namely that he was to be terminated.

The question that the Commission has to address, is as to whether Mr Stanik's recollection of the conversations between he and Mr Luck, on 6 March and 8 March 1996, is coloured or influenced in any way by his interpretation of that which was said to him on 23 February 1996? In answering this, it is appropriate to also take into account the context in which those conversations were conducted.

The initial case of Mr Stanik contracting cement dermatitis arose in February 1995. At that time he was advised by Mr Luck that if the problem persisted, it would be appropriate that he look for a job in a different industry. This statement constituted a foretaste of the position conveyed at the meeting on 23 February 1996.

Mr Luck believes that from the middle of 1995, Mr Stanik's behaviour at work worsened, in that he provoked arguments and was uncooperative. This position is largely confirmed by Mr Gambrell, who says that Mr Stanik was provocative towards fellow employees.

Mr Luck's evidence then is that from the middle of 1995, Mr Stanik's behaviour worsened. When, after visiting a dermatologist, on 4 August 1995, and taking the full day off, but after receiving a sick leave payment for half a day, Mr Stanik became upset. Later on, in late September 1995, Mr Luck approached him over his unhappiness and asked if there was something he (Mr Luck) could do about it, but was told that there was no problem. Mr Gambrell similarly, did not think he was 'too happy' in his job. What then followed in October and November 1995, was a series of absences, some of which were paid as sick leave; others as annual leave. Mr Stanik's demeanour was unchanged up to the point that he proceeded on workers compensation leave in February 1996.

Mr Stanik's evidence is that he never considered himself to be unhappy. He did concede though that when he was not paid for all of a three day absence he had in November 1995 (as a full entitlement was not due to him), he became annoyed.

On the evidence of these earlier events, like the position in relation to the later events, there is a significantly different recollection between the parties. Whilst there is some common ground on the question of Mr Stanik's annoyance at not receiving the full payment for his absences on sick leave, there

is no such common ground in relation to his unhappiness in the job. On the other hand, the evidence of Mr Luck, in respect of Mr Stanik's provocative behaviour toward work mates and his unhappiness is corroborated by his Supervisor, Mr Gambrell, who really was in the best position to observe his behaviour in these respects.

In the end, it is this corroboration that causes the Commission to prefer Mr Luck's evidence over that of Mr Stanik, in relation to these earlier events, namely those from the middle of 1995 to February 1996. The Commission therefore finds that during this period Mr Stanik did act in a provocative manner towards his workmates; that he was uncooperative; that he was unhappy in his work; and that he was annoyed with the company when it did not pay a full sick leave payment, with all absences that occurred.

Such attitudes therefore, in the Commission's view, formed the context in which the conversations between Mr Stanik and Mr Luck took place on 23 February, 6 March and 8 March 1996. In particular, the Commission finds it not the least surprising, with respect to the conversation between the two on 23 February 1996, that Mr Stanik formed the impression, from what had been said to him by Mr Luck, that he was about to be terminated. Whether it was a reasonable impression in the circumstances, is another matter.

In terms of these conversations however, the question becomes as to whose evidence is to be preferred, bearing in mind that there is virtually no common ground between them, in terms of what was said by each to the other. It is open for the Commission, having chosen to prefer Mr Luck's evidence in relation to the earlier events, to similarly prefer Mr Luck's evidence in relation to the conversations. Certainly there is not the corroboration as there was in the case of the other evidence, save the evidence of Mr Thomas concerning Mr Luck's statement made at the end of the interview on Friday, 8 March 1996. Is there any basis upon which the Commission would not prefer Mr Luck's evidence in relation to these events? In the Commission's view there is not. Accordingly, Mr Luck's recollection of the conversations of 23 February, 6 March and 8 March 1996, will be preferred.

The essence of the 8 March 1996 conversation, at the meeting held in Mr Luck's office, was Mr Stanik's response to Mr Luck's question about what action he (Mr Stanik) would take about his unhappiness with the job, namely that he (Mr Luck) could do what he liked and that he (Mr Stanik) had another job, which he could start the following day.

Mr Luck's interpretation of the actual words used was that Mr Stanik was resigning. Was this a reasonable interpretation, in the circumstances?

It is to be acknowledged in the first instance that Mr Luck was keen for Mr Stanik, because of he being faced with the onset of cement dermatitis, on the second occasion, to review whether he wanted to consider working in another industry, meaning of course, an industry which would not cause him to be in contact with cement, and in turn, concrete. There can be no suggestion, in the Commission's view, that such a position being put in this instance was necessarily the precursor to a termination of employment. Rather, it was a case of confronting an employee with the implication of an inherent disability from working in a particular industry, but leaving the option of any action to the employee. In this case, it was raised on more than one occasion, simply because there was no response one way or the other from Mr Stanik. He chose not to deal with the question.

At the meeting on 8 March 1996, Mr Luck was actually seeking to confront the wider question of Mr Stanik's unhappiness with the job. Again, not in the context of presenting Mr Stanik with no option; rather to try to clear up an issue that had been outstanding for a long period of time.

The response Mr Luck received may have been unexpected, but, in the Commission's view, it was reasonable for Mr Luck to treat that response as constituting an act of resignation by Mr Stanik from his position at the company.

By way of confirmation, Mr Luck, following upon a request from Mr Stanik, issued a Separation Certificate which stated, as the reason for voluntary termination, that the: 'Employee cannot continue in concrete industry because of allergy—ie. cement dermatitis'. Mr Luck did not actually tick the box on the form which asks: 'Did the employee cease work

voluntarily?'; but with hindsight treats that as a mistake. The Commission accepts his evidence that he ticked none of the boxes on the form.

The Commission therefore finds that Mr Luck did not terminate Mr Stanik's employment or dismiss him from that employment. Such being the case, the Commission is without authority to deal with the matter (per s.29(1)(b)(i), as it refers to '..... dismissed from his employment').

Such being the Commission's determination, the Commission has no ability to investigate any further aspects of alleged unfairness, or any matters arising from a positive finding in that respect, such as the claim for compensation. Nor can the Commission deal with the contractual benefit claim of an additional weeks pay in lieu of notice, as such is dependant upon the Commission first concluding that there has been a termination or dismissal effected by the company.

With respect to the claim for workers compensation payments, the Commission notes that the difference between the parties relates to whether or not there was an obligation for payments to be made up to the point of the signing of the final clearance certificate. The Commission, in short, cannot entertain such a claim, as a contractual benefit claim, as the question as to whether an obligation to pay arises or not, is a matter dependant upon the legislation under which the payment is made, namely the Workers Compensation and Rehabilitation Act, 1981. This Commission is unable to enforce that Act; the claim must therefore be refused.

Accordingly, an Order of dismissal will issue in respect of the totality of the claims.

Appearances: Mr T. Crossley on behalf of the applicant
Mr G. Luck on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Steven Stanik

and

Wonwalls Pty Ltd

trading as Wonder Walls.

No. 474 of 1996.

COMMISSIONER R.H. GIFFORD.

10 October 1996.

Order.

HAVING heard Mr T. Crossley on behalf of the Applicant and Mr G. Luck on behalf of the Respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

THAT the application be and is hereby, dismissed.

(Sgd.) R. H. GIFFORD,

[L.S.] Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tania Caren Stewart

and

Bentley Centre Lunch Bar.

No. 763 of 1996.

COMMISSIONER R. H. GIFFORD.

1 November 1996.

Reasons for Decision.

THE COMMISSIONER : Tania Caren Stewart, by this application, claims that she was dismissed in a harsh and unfair manner from her employment as a casual Counterhand with the Bentley Centre Lunch Bar, on 10 May 1996, in

accordance with s.29(1)(b)(i) of the Industrial Relations Act, 1979 ("the Act").

Her application also sought outstanding contractual benefits, pursuant to s.29(1)(b)(ii) of the Act, but these were not proceeded with once she recognised that, as they were based upon the terms of the Restaurant, Tearoom and Catering Workers' Award 1979, (No. R48 of 1978), they were not able to be dealt with in proceedings under that section before the Commission.

In terms of the claim concerning harsh and unfair dismissal, Ms Stewart does not seek reinstatement as relief. Instead she seeks compensation equivalent to 10 weeks wages.

Ms Stewart had been employed at the lunch bar, in the capacity of a Counterhand, for a two year period, but the present proprietors of the business, Thithuy Hang Ding and Quang Thanh Nguyen, have owned and operated the business since March 1995. She merely continued with the present proprietors on the same basis as her previous employment, which was in accordance with a regular roster, namely from 9.00 am to 2.00 pm on Wednesday, Thursday and Friday, each week. Her duties mainly involved serving customers, making sandwiches and rolls, stacking fridges and assisting in the kitchen at times.

Ms Stewart explained in her evidence that a month before her dismissal, she had raised with the proprietors that she had not been receiving the correct award rate of wage. The proprietors investigated the matter and learnt that this was the case, but no adjustment was made. Ms Stewart felt though that from the time she raised the matter, the atmosphere between her and the proprietors changed.

The relevant circumstances on the date of dismissal, Friday, 10 May 1996, were, according to Ms Stewart's evidence, as follows: During the course of the afternoon, Mr Nguyen asked her to come out the back of the store so that they could talk. He said to her: "Business really bad; we have to let you go". Ms Stewart says that she took this as being a dismissal and was horrified on being so told. She asked why it had to be her. Mr Nguyen proceeded to apologise and then went on to explain that he only wanted to keep one senior on (there were three at the time including Ms Stewart) as he could not afford seniors, and intended to employ juniors in their place. Ms Stewart asked why it was that she was not being kept on as she was the longest serving of the three. Mr Nguyen responded that the senior he had decided to retain, namely Faye, was more flexible, particularly in terms of being able to assist in the kitchen. He then asked if Ms Stewart required anything, to which she responded that she required a reference.

As to this same discussion, Mr Nguyen's evidence is that he stated to Ms Stewart: 'Thank you for helping; Sorry'. Ms Stewart then responded by asking why it was her. He then responded by saying: 'Please understand you know my business downturn already, especially in the winter, so I need to be organised, otherwise I cannot afford it'. He then explained that (one senior) Caroline was flexible and that (the other senior) Faye helped him the most when he asked. He says that Ms Stewart did not ask for a reference; except that at a later date when she advised him that she did not require the Separation Certificate he had sent, but instead wanted a reference. He undertook to provide it, and this occurred on the following Monday week.

Ms Stewart then says that on the Sunday following her discussion with Mr Nguyen, an advertisement appeared in the Sunday newspaper seeking two experienced workers. It did not refer directly to juniors. Ms Stewart says that she learnt on the following Monday that a senior named Phyllis had commenced. She was aware that Caroline in the meantime, had resigned with effect from that day.

Ms Stewart says that it was this action on Mr Nguyen's part that caused his actions in dismissing her, to be unfair.

With respect to the two positions advertised, Mr Nguyen says that he in fact held interviews with two juniors on the Monday, but that they did not meet his requirements and were not employed. Then, on learning that Caroline had resigned, he appointed Phyllis (who was a senior) that day. He says that Phyllis was willing to work Caroline's shifts, totalling 25 hours per week, and that she worked well in the kitchen.

In considering the evidence, there is, to begin with, some suggestion from Mr Nguyen that his approach to Ms Stewart

was in the nature of a request for her to stand down for a period, in order that he may re-engage her at a later date. Although in this respect it is recognised that there is the capacity for Mr Nguyen, being a Vietnamese with broken English, to be misunderstood, there does not appear to be any doubt, in the Commission's view, as to his meaning during the conversation in question. Ms Stewart saw herself as being dismissed, on the basis of her recollection of his words used. Even on the basis of Mr Nguyen's own evidence, whilst the word dismissal was not used, words which clearly implied that were used. The Commission therefore has no difficulty in finding that a dismissal was effected.

The question then to consider is whether Ms Stewart was dismissed for a 'valid reason', consistent with the requirements of s.23AA(3) of the Act. Such reason is required to bear a connection with specified matters, including the operational requirements of the establishment.

Although there are some differences in recollection of the discussion of 10 May 1996, the Commission notes that there are common elements. Bearing this in mind but also the need for Mr Nguyen to have explained the full basis of his decision to terminate Ms Stewart, to the Commission, the Commission accordingly finds that reason to be on the following basis.

Mr Nguyen, discovering that a downturn in trade was developing in his lunch bar, with the onset of the winter season, decided that two of the three casual seniors he employed, needed to be replaced by juniors. He decided that Ms Stewart would be one of the two and dismissed her on Friday, 10 May 1996, explaining to her that the reason for retaining the one senior, namely Faye, was that she was more flexible, particularly with respect to assisting in the kitchen. He then advertised for two experienced staff on the following Sunday. On the Monday he interviewed two juniors, but they proved to be unsuitable.

In the meantime, the other senior, Caroline, advised of her intention not to continue with the lunch bar and in response, Mr Nguyen employed a senior, who was willing to work the same hours as Caroline.

The end result of this process is that, in response to the downturn that Mr Nguyen's business was experiencing, he was employing two casual seniors instead of three, whereas his original expectation was that he would only employ one casual senior and two juniors. In the process of effecting the new staffing structure, his expectations changed when the juniors he intended to employ proved unsuitable, and he then decided to replace the other senior (Caroline) with another senior. He chose not to invite Ms Stewart to return.

There is no challenge by Ms Stewart as to Mr Nguyen's reliance upon a downturn in his business, as warranting a change in his staffing structure. The Commission, having heard Mr Nguyen's evidence on this matter, has no cause to doubt it as being a bone fide reason for needing to take action to reduce the operating costs of his business. In any service business, it is not at all unusual for staffing structures to be adjusted, in response to a downturn in business. That is what occurred here. The difficulty here however, was that Mr Nguyen expected to follow one course but altered that in the process of making the adjustment. It ended however, with him retaining two seniors, when it was originally intended that he retain one.

The Commission has no difficulty in accepting that this action on his part, although perhaps seen as a little convoluted to the outside observer, is nevertheless legitimate action on his part in the circumstance of his business facing a downturn, and constitutes a valid reason directly associated with the operational requirements of the business. As such, no unfairness in Mr Nguyen's actions can be found in this respect.

Considering whether any unfairness can be found in any other respect, the Commission recognises that Ms Stewart's claim relates squarely upon the basis of her unsuitability, compared with the senior who was retained and the senior who was newly engaged. From Mr Nguyen's standpoint, there were reasons given, namely that one senior (Faye) was more flexible to his needs than Ms Stewart and the other (new) senior (Phyllis) was able to work the same hours as the senior she replaced, which were, in the knowledge of Mr Nguyen, a greater number of hours than those which Ms Stewart was able to work.

Ms Stewart suggested, consistent with her response to Mr Nguyen, that his decision ought to have been based on seniority. The presumption is that a dismissal based upon economic grounds, ought to have been so based. Whilst there is no evidence that account was taken of this factor by Mr Nguyen, what is important in this circumstance, is that there was some other reason. In any event, seniority implies permanency, and such was not a characteristic of any of the seniors' employment. This factor is therefore not relevant to the consideration.

So, in the end, there were reasons, in Mr Nguyen's mind, for choosing not to retain Ms Stewart. Although these reasons may not seem to be matters of great substance, they were necessarily legitimate reasons, in the Commission's view, to use as the basis of distinction, namely task flexibility and availability to work longer hours.

There were no other reasons of any significance referred to that would have gone to distinguishing the seniors concerned. Ms Stewart could rightly believe that the dismissal did not arise as a result of matters affecting her performance. How could it arise anyhow, when Mr Nguyen, at dismissal, extended an offer to re-engage her at a later time when his business improved. The fact that this offer was declined means that this will not occur however. As to whether it ought to have been taken up, is another matter.

It accordingly follows that the Commission is unable to detect any unfairness on Mr Nguyen's part, in choosing to dismiss Ms Stewart in preference to the other seniors, or to employ another senior in one of the latter's places.

Nor is the Commission able to detect anything in Mr Nguyen's actions which suggested a link between Ms Stewart's claim concerning underpayment and the dismissal. This is notwithstanding that, it was a matter on his mind when he effected the dismissal, when he paid her an additional week's pay, in consideration of that underpayment, which was later claimed to be an amount of \$88.20.

It needs also to be appreciated that Ms Stewart was engaged as a casual employee, under the terms of the Restaurant, Tea-room And Catering Workers' Award, 1979, (No. R 48 of 1978), and as such did not have permanency of employment as a full-time employee would have. It is even open to argue that her engagement was by the hour, as it was subject to an hour's notice on either side. In other words, if there was an expectation of ongoing employment on Ms Stewart's part, there are serious doubts as to whether such expectation was reasonable, having regard to the nature of her engagement. This matter however, does not need to be definitively determined, in view of the conclusion reached above.

It thus follows that the Commission does not consider there to be any elements of harshness or unfairness in Ms Stewart's dismissal, effected by Mr Nguyen.

An Order dismissing the application will therefore issue.

Appearances: Ms T. Stewart on her own behalf.

Mr R. Spiegl (of Counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Tania Caren Stewart

and

Bentley Centre Lunch Bar.

No. 763 of 1996.

COMMISSIONER R.H. GIFFORD.

1 November 1996.

Order:

HAVING heard Ms T. Stewart on her own behalf and Mr R. Spiegl (of Counsel) on behalf of the Respondent, the

Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

THAT the application be, and is hereby, dismissed.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lawrence Trumino

and

Blazeaway Pty Ltd trading as Orbit Amusements.

No. 819 of 1996.

Daniel Ribback

and

Blazeaway Pty Ltd trading as Orbit Amusements.

No. 938 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

7 October 1996.

Reasons for Decision.

SENIOR COMMISSIONER: The Respondent in each of these matters operates an amusement or games parlour in the city. It commenced to operate that business in November 1994. As time went by the Respondent faced financial difficulties. Furthermore, it seems that there was a disagreement between the shareholders of the Respondent company as to how best to deal with this problem. In an effort to overcome this problem and to avoid the Respondent going into liquidation, two of the shareholders, Mr and Mrs Stanley, purchased the shares they did not own and thereby obtained control of the Respondent company.

Mr and Mrs Stanley became the sole shareholders of the Respondent on or about 30 May 1996. From that time on Mr Stanley and members of "extended family" worked in the business to try and improve its financial fortunes. In particular, Mr Stanley took over the role as manager. In consequence, the staff employed by the Respondent were dismissed from their employment. Included amongst those employees were the respective Applicants in these proceedings. Mr Ribback had been employed as the manager of the business and Mr Trumino as a part-time duty manager.

Each Applicant alleges that the termination of their respective employment was unfair. They now seek relief in the form of compensation. In essence they contend that their dismissal was unfair because there was little or no prior discussion regarding it and because they were not given the same opportunity as members of Mr Stanley's family to help the Respondent recover from its difficulties. The Respondent, while admitting that the dismissals were effected in a somewhat "abrupt manner", denies that they were unfair. It contends that the dismissals were in any event inevitable and the manner by which they were effected was not sufficient to make them unfair.

Each of the Applicants was dismissed in slightly different circumstances and the evidence of the respective Applicants and of the Respondent regarding those circumstances is not entirely consistent, at least in respect of the dismissal of Mr Ribback. In each case where the evidence of Mr Stanley conflicts with that of the Applicants I prefer the evidence of the Applicants as being more reliable. They presented as being more definite and precise in the recitation of the events. Each impressed me as having a better recollection of the events than Mr Stanley.

As I find, the circumstances surrounding the dismissal of Mr Ribback are as follows. He was instructed by Mr Stanley on or about 29 May 1996 to make a reconciliation on the 30 May 1996 of the earnings of the business and to do the banking that day. He was aware that Mr and Mrs Stanley were to

assume ownership of the Respondent and moreover, aware as he says, that the Respondent was in some financial difficulty. Mr Ribback dutifully carried out the instructions of Mr Stanley. After completing the banking he was told by Mr Stanley to take his accrued annual leave because Mr Stanley wanted to be directly involved with the Respondent's day to day operations and because the company was in financial difficulties. Mr Ribback took leave from that date. As I find, Mr Stanley told Mr Ribback at that time that he did not want full-time employees any longer and that he would contact him regarding the shifts he was able to offer him. At that time Mr Ribback knew, as he acknowledges, that he would not be the manager any longer and was prepared "to step down" as manager. Furthermore, as I find, he was happy with these arrangements, because as he said, he had already contemplated working on a part-time basis.

It is common ground that he was not offered any further work. Approximately two weeks after going on leave he was advised by Mr Stanley that he was owed money by the Respondent and invited to come and collect it. As it turned out that money was termination pay consisting of two weeks pay. He had previously been paid his holiday pay. However, before Mr Stanley would hand over this pay he insisted that Mr Ribback sign a form of Release discharging both Mr Stanley and the company from all actions and claims whatsoever which he may have or at any time thereafter may acquire. Mr Ribback signed that Release without reading it but in the belief, he says, that it related to the change in ownership of the Respondent's shareholders. Subsequently, Mr Ribback sought to obtain unemployment benefits from the Department of Social Security. This apparently necessitated that he produced an Employment Separation Certificate, which Mr Stanley gave him following a request for the same on or about 4 July 1996. On the same day he instituted these proceedings.

Mr Ribback now takes the view that his employment was not terminated until 4 July 1996, when the Separation Certificate was signed. Mr Stanley however, says that his employment was terminated on 30 May 1996. On the evidence of both Mr Ribback and of Mr Stanley there seems little doubt that his employment as the Respondent's manager was indeed terminated on 30 May 1996. As previously indicated, Mr Ribback says he knew from then on that he would not be the manager. In those circumstances it is at least arguable that the Commission is without jurisdiction to entertain the claim, it not having been instituted until well after the 28 day time limit imposed by section 29(2) of the Act. However, that was not a matter put in issue by the Respondent either at the hearing or by its Notice of Answer. At the latest his employment was terminated on or about 13 June 1996 when he was given his termination pay. As well as being given a cheque in payment of that money he was, as he admits, then given a statement that indicated how the "severance pay" was calculated. Furthermore in his Notice of Application the Applicant contends that his employment was terminated on that date.

In claims of this nature section 23AA of the Act requires that the Respondent satisfy the Commission that there was a ground on which the dismissal could be justified. A valid reason for these purposes is one connected with the operational requirements of the Respondent. There is no suggestion that Mr Ribback's employment was terminated other than because of the financial plight of the Respondent company. I am satisfied and find that the Respondent has discharged the onus imposed on it in this respect.

It is then for the Applicant to establish that the dismissal was in all the circumstances unfair. Despite legislative changes introduced in recent years the test for ascertaining whether a dismissal is harsh, oppressive or unfair remains that outlined by the Industrial Appeal Court in *Undercliffe Nursing Home v. Federated Miscellaneous Workers Union (1985) 65 WAIG 385* (see too: *Nydeggen v. Tredways Shoe Store (1990) 70 WAIG 3383, 3387*).

Essentially the question is whether the right of the employer to terminate the employment has been exercised so harshly oppressively or unfairly against the employee as to amount to an abuse of that right. A dismissal effected for valid reason within the meaning of the Act may nonetheless be unfair if for example, it is effected in a manner which is unfair. However, the mere fact that employment has been terminated in a

manner which is procedurally irregular will not of itself necessarily render the dismissal unfair (see: *Shire of Esperance v. Mouritz* (1991)71 WAIG 891; see too: *Byrne v. Australian Airlines* (1995) 61 IR 32). All of the circumstances surrounding the dismissal including the reasons for the dismissal need to be considered. In this respect the law under the State Act may be different from that which applies under the comparable Federal legislation. The Federal legislation is concerned more with termination of employment which is unlawful rather than unfair (cf. Industrial Relations Act 1988 (Cth) s.170DE).

Although it must be conceded that the manner by which Mr Ribback's employment was terminated was less than ideal, taken overall I am not satisfied on balance, that the dismissal was either harsh, oppressive or unfair. It has been said of the comparable provisions under the Industrial Relations Act 1988 (Cth) that they "are intended to operate in the practical arena of commercial activity, and that in the endeavour to achieve industrial fairness it is necessary to balance the interests and well being of an individual employee against the interests of the employer, and also to have regard to matters of wider public interest which may be involved. The construction of the Act is not to be considered only from the viewpoint of the employee." (see: *Sangwin v. Imogen Pty Ltd (trading as Carleton Custom Upholstery* (Unreported: Industrial Relations Court of Australia—No. SA95/1161R—8 March 1996 per Von Doussa at p.15). In my opinion the same considerations apply in respect of the State legislation.

There is no question but that at or about the time dismissal occurred the Respondent was in financial difficulties. I accept the evidence of Mr Stanley that there was considerable doubt as to whether the Respondent could continue to pay its rent at or about the time Mr Ribback's employment was terminated. Moreover, I accept Mr Stanley's evidence that the principal reason he went to work in the centre was in an endeavour to overcome the Respondent's financial predicament by saving money which would otherwise be paid as wages and to see if additional moneys could be saved. There was no criticism of Mr Ribback's performance but there was plainly no room for two managers as indeed Mr Ribback appears to have accepted. Although Mr Stanley thereafter engaged members of his extended family to work in the business those persons were engaged more as voluntary helpers than as employees. I accept that they were engaged on a needs basis and on the basis that they were only to be paid if there was money to pay them. That type of arrangement might be satisfactory for a family member but is not satisfactory for a person who is a stranger and who has hitherto worked as the manager. As events turned out there was sufficient money to pay them, although at what rate of pay was not disclosed by the evidence. However, as I find, when they were engaged there was good reason to believe they might not have been paid at least in the initial stages of their employment. In any event, I question the wisdom of having someone who was once the full-time manager working as a part-time subordinate.

Mr Ribback was dismissed with two weeks pay. That is the minimum requirement imposed under the Industrial Relations Act 1988 (Cth) (see: s.170DB). On Mr Ribback's evidence he had been employed by the Respondent for 17 months, although the Respondent's evidence suggests it was more like 2½ years. In the circumstances the Respondent cannot be commended for its generosity. Nonetheless, I am not satisfied that the payment was so insufficient as to render the dismissal unfair.

In any event, if the dismissal was unfair the loss suffered by Mr Ribback appears to have been insignificant. He was in effect remunerated for approximately nine weeks (taking into account annual leave) after 30 May 1996 when he last worked for the Respondent. Within approximately seven weeks he was gainfully employed in the same industry earning as much, if not more than he was earning when he was working for the Respondent. He has successfully obtained alternative employment and described himself as "doing quite well". Taking this into account and taking into account the fact that he was on his own admission contemplating working part-time and that he has received unemployment benefits, I am not convinced that the circumstances of his dismissal, even if unfair, warrant compensation. The authority to award compensation even where it is impracticable to reinstate is discretionary and in appropriate cases it might be proper not to award any compensation (see: *Bechara v. Gregory Hanson Healey and Co*

(1996) AILR 3-312). To award compensation where the employee has in fact suffered no loss or injury is in effect to impose compensation as a punishment for the employer. It is now well settled that that is not the basis upon which compensation is to be awarded. Instead, it is to be awarded simply to compensate the employee for loss or injury resulting from the dismissal (see: *Bean v. Milstern Retirement Services Pty Ltd* (Unreported: Industrial Relations Court of Australia—248/95; *Slifka v. J.W. Sanders Pty Limited* (Unreported: Industrial Relations Court of Australia: V194/274 IR—19 December 1995). As presently advised I consider it doubtful that the Commission's authority to award compensation extends to compensate for disappointment, anguish or distress as a result of the dismissal. In any event, there was no evidence to indicate that Mr Ribback suffered in this respect. It is perhaps also necessary to observe that by reason of section 23A of the Act the authority to award compensation is dependent upon the Commission being satisfied that it is impracticable to award reinstatement or re-employment. There was little or no evidence which would admit safely of such a conclusion. Indeed, such evidence as there is suggests that there might be scope to re-employ the Applicant on a part-time basis.

The position in respect of Mr Trumino is little different. As I find, and indeed it is not in dispute, his employment was terminated on or about 1 June 1996. He was informed by Mr Stanley on 30 May 1996 not to come to work on that day but to come and see him the following day. He did that and was told by Mr Stanley that he, Mr Stanley, would be working his shifts and that the Respondent could not keep him in employment because of financial hardship. At that time Mr Trumino was paid nothing. Mr Stanley was under the erroneous impression that Mr Trumino was engaged as a casual. Mr Trumino had been engaged by Mr Ribback in his capacity as the Respondent's then manager. Approximately two weeks after being dismissed Mr Trumino contacted Mr Stanley querying whether he was owed more money. Mr Stanley contacted the Respondent's accountant and was advised that Mr Trumino was indeed owed more money—one weeks termination pay and accrued holiday pay. Shortly afterwards he was paid moneys but on the condition that he sign a Release in much the same terms as that required of Mr Ribback. Mr Trumino signed the Release because he was chronically in need of the money to support his family.

As with Mr Ribback and for the same reasons I am satisfied and find that Mr Trumino was dismissed on justifiable grounds. I am thus satisfied that the Respondent has discharged the onus it is required to bear in this respect.

Again, the manner by which Mr Trumino's employment was terminated was less than ideal in that it was effected without notice or payment in lieu. However, again taken overall I am not convinced that the dismissal was either harsh, oppressive or unfair. Mr Trumino had been employed for approximately four months (the first month of which was as a casual) at the time of his dismissal. Having regard to the reason for the termination of his employment and the relatively short period of his employment with the Respondent had he been given one weeks' notice of the pending termination I am not convinced that he could have said that his dismissal was harsh, oppressive or unfair. He was paid the equivalent of that notice not long after his dismissal. While a subsequent payment might not render a dismissal which was unfair fair is a matter to be taken into account in fixing compensation.

I have no doubt that the dismissal has caused financial hardship to Mr Trumino. However, as Von Doussa J. observed in *Sangwin v. Imogen Pty Ltd (trading as the Carleton Custom Upholstery)*(supra) at p.15 "in virtually every situation of termination of employment, hardship to a greater or lesser degree is likely to come to the employee. Often economic and personal hardship to the employee and to his family will be considerable" (see too: *Leddicoat v. Sohivello Commercial Interiors (SA)* (1995) AILR 3-255). Nonetheless, as previously indicated in applying the relevant provisions of the Act the interests of the employee have to be balanced against those of the employer. In the present case no one disputes that the Respondent was in financial difficulties and the steps taken by Mr and Mrs Stanley as the shareholders to overcome these difficulties cannot be said to be unreasonable. Indeed, they were prudent. There are all too many instances in modern industrial relations of employees being kept in employment

without the resources to pay them wages and with drastic consequences. It should not be overlooked that Mr Stanley indicated to Mr Trumino at the time of his dismissal that he would offer him work once he "got a handle on the situation". Before that time arose Mr Trumino instituted these proceedings. Although it would have been preferable if the Respondent had discussed its financial predicament with Mr Trumino, as was probably required by the Minimum Conditions of Employment Act 1993, in retrospect it is difficult to see what difference it would have made. In any event the uncontradicted evidence is that Mr Stanley at least, was not in a position to discuss the Respondent's affairs before he in fact did.

In each case I have ignored the form of Discharge signed by the Applicants. Neither Discharge was signed under seal. The consideration for the Discharge was expressed to be moneys which were due to them by force of law, under the Industrial Relations Act 1988 (Cth). In those circumstances the validity of each Discharge is at best questionable. In those circumstances I consider they should not be allowed to be relied upon to deny the Applicants claiming relief from the Respondent. That is especially the case in respect to Mr Trumino who signed his release in desperation.

Mrs V. Moss (of Counsel) on behalf of the Applicants.

Mr D.M. Jones on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Lawrence Trumino

and

Blazeaway Pty Ltd trading as Orbit Amusements.

No. 819 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

7 October 1996.

Order.

HAVING heard Mrs V. Moss (of Counsel) on behalf of the Applicant and Mr D.M. Jones on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be and is hereby dismissed.

[L.S] (Sgd.) G.L. FIELDING,
Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Daniel Ribback

and

Blazeaway Pty Ltd trading as Orbit Amusements.

No. 938 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

7 October 1996.

Order.

HAVING heard Mrs V. Moss (of Counsel) on behalf of the Applicant and Mr D.M. Jones on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be and is hereby dismissed.

[L.S] (Sgd.) G.L. FIELDING,
Senior Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bradley Wilkins

and

B & R Concrete Products Pty Ltd.

No. 220 of 1996.

COMMISSIONER A.R. BEECH.

5 September 1996.

Reasons for Decision.

THE COMMISSIONER: The background to this matter is as follows. Mr Wilkins was employed by B & R Concrete Products as a labourer. B & R Concrete Products make number of different concrete products and Mr Wilkins would assist in the yard, drive trucks, and assist in on-site work. On 5th November 1996 he drove one of the company's trucks from Geraldton to Badgingarra. It was not a new truck and it was loaded. At Eneabba a brake line blew and affected the braking capacity of the vehicle. He rang his employer, Mr Bolton, who advised him to have it repaired at a garage in Eneabba. This was done. Later, about 5 kms from Badgingarra the vehicle overheated. Mr Bolton drove to repair the vehicle and he arranged for Mr Steve Peaker, who is, amongst other things a mechanic, to help him. The truck made it into Badgingarra and Mr Peaker and Mr Bolton worked on it overnight.

What happened the next morning is not agreed. Mr Wilkins gave evidence that he climbed into the truck, started it and it began to roll backwards. He believed the brakes were not working and had not been fixed. He refused to drive the vehicle any more. Mr Bolton told him to put his gear into the utility and go home. He believed he had been dismissed. He did so and drove to Mr Bolton's farm to collect his own car. At the farm he collected his car and also spoke to Ms Hayley who is the company secretary and a co-director of it. He said something like "that's it for me" and asked for his wages to be paid to him on the Friday. He did not return to work and later filed this claim alleging that he has been unfairly dismissed.

But according to Mr Bolton there was no dismissal. He says that Mr Wilkins was in a temper. He was yelling and screaming and slammed the truck door. Mr Bolton wanted to defuse the situation so he told Mr Wilkins to put his stuff into the ute and go home. Mr Bolton wanted to remove Mr Wilkins from his client's worksite so that he could deal with the issue later.

After reflecting on the evidence as a whole I generally prefer the evidence of Mr Wilkins. I think he gave his evidence truthfully and generally the evidence as a whole has shown him to be accurate. Mr Peaker stated that he never doubted Mr Wilkins' honesty. I therefore accept Mr Wilkins' evidence when he stated that the truck was unsafe and that he had often told his wife of worries in driving it. His wife supported that evidence and I accept it. In my view the company's own evidence supports that view. The truck was about 20 years old. It was unreliable. Mr Malone very properly conceded that much. Mr Bolton admits that the truck was not reliable. I tend to believe Mr Wilkins when he says that he spent more time under it than driving it.

I also accept Mr Wilkins' evidence that the brakes made it unsafe. I accept that the brakes were reconditioned prior to Mr Wilkins' employment but Mr Bolton himself admitted that it was not a good job. In fact Mr Bolton admitted that shortly after the reconditioning he had isolated one brake on a rear wheel because it leaked fluid. Mr Bolton states that it was one of six brakes and the other five were working and it did not affect the stopping power of the vehicle. I am not convinced that that is so. If the vehicle is made with six brakes by the manufacturer then it obviously needs all six to be operated safely. Even Mr Peaker, who was called by the company to give evidence, said that the braking ability of the truck could be affected by the isolation of one brake and that he "would not isolate a truck's brakes at all". I am therefore not inclined to accept Mr Bolton's statement that when he drove the vehicle himself back to Geraldton the brakes were fine, especially if he had to "nurse it back" as he admits. I suspect Mr Wilkins may be right when he said that the truck "wasn't using the back brakes". I therefore find that the brakes were indeed less

effective than they should have been and that Mr Wilkins is correct in his evidence. I also accept that Mr Wilkins spoke to the Police about the safety of the truck a few days after the he left and although nothing seems to have happened as a result, I accept it as evidence of his genuine concern. I believe that he did complain about the truck to Mr Bolton several times. The brakes would be bled and the same thing would happen again. In the circumstances, I do not regard his complaints as "whingeing" but Mr Bolton did so.

As to the eventful drive to Badgingarra, the truck blew a brake line and although I acknowledge that a repair costing only \$10 does not suggest a major fault it is significant that it blew given the earlier expensive reconditioning of the brakes. The fact that it happened at all again supports Mr Wilkins' evidence about the state of the truck. The overheating resulted in a further breakdown outside Badgingarra and is another indication of the state of the truck generally. As to the events the following morning it follows that I prefer Mr Wilkins' evidence that he climbed into the truck, it started rolling backwards downhill and that he realised the brakes were not working. Given the evidence of the state of the truck thus far I consider it more likely than not, I consider it reasonable that he refused to drive it. Although Mr Peaker states that the brakes were not mentioned to him at the time I thought his evidence was a bit guarded on this point. I understood his evidence to also confirm that the truck was on an incline and it started to roll back. I think that ties in with Mr Wilkins' evidence.

Upon his refusal, Mr Bolton then told Mr Wilkins to "go home" as set out above. I think it did constitute dismissal. The words used by Mr Bolton have to be seen in the context of the events overall and I note that the relationship between the two was heated at the time the words were said. It was a dismissal because firstly, I believe Mr Wilkins when he said that he needed the job and I find that he would not willingly have given it up. Indeed his evidence is that he only kept working because he had been unemployed for a while and he needed the job. Even though he complained to his wife about it, he continued because he "needed the work bad" and didn't want to upset things. I think he was in no doubt about the meaning of Mr Bolton's instruction. Secondly, although Ms Hayley said Mr Bolton was "surprised" when later she told him what Mr Wilkins had said to her, Mr Bolton's response was to wait and see whether Mr Wilkins in fact turned up for work the next day. He did not turn up. If indeed Mr Bolton had not dismissed Mr Wilkins then I would have expected him to have contacted Mr Wilkins to find out what had happened. This did not happen. In my view this is supported by Ms Hayley's evidence that when Mrs Wilkins rang her to enquire about Mr Wilkins' holiday pay and pay in lieu of notice, Ms Hayley refused to talk to her about it saying the company had employed her husband and not her. I find this curious and it tends to make me think that there is more to the manner in which the company in fact viewed Mr Wilkins than came out in the evidence. Otherwise I find there was no reason to react to Mrs Wilkins' enquiry in that way.

It follows that I do not accept Mr Peaker's opinion that the words he heard did not amount to dismissal. He may not have been aware of the background and I think the conclusion I have reached on all of the evidence outweighs Mr Peaker's evidence in this regard.

I find that Mr Bolton did dismiss Mr Wilkins for refusing to drive the truck. It was the result of Mr Bolton seeing Mr Wilkins as whingeing. I also find that it was unfair because Mr Wilkins was quite justified in his criticism.

Reinstatement is not claimed and on the evidence it would be impractical. In assessing compensation I note Mr Wilkins had been employed for approximately 4 months. Mr Wilkins found alternative employment within a few weeks of the dismissal although he gave no real detail about the comparability of the job. However I am satisfied that he made an effort to find work and that is to his credit. Mr Wilkins claims that he should have been paid one week's pay in lieu of notice. I suspect that is right. It appears that he was employed by the week and although there is no direct evidence on the point it is reasonable that one week's notice was necessary to terminate the employment relationship. I am not so certain of the claim of one week's holiday pay which was not pressed on the applicant's behalf in these proceedings. In the circumstances I

order that the company pay to Mr Wilkins the sum of \$1200 being \$600 compensation for the dismissal which occurred and the one week's pay in lieu of notice. A minute of proposed order now issues.

It remains to note that the evidence of the company is that at the beginning of Mr Wilkins' employment it paid him cash in the hand without deducting tax and Mr Wilkins stated under oath that at times he had been paid cash in hand whilst receiving unemployment benefits. That evidence suggests a breach of legislation relating to income tax and social security both parties. While such matters are not matters for this Commission they ought be referred to the appropriate authorities and I will be doing so.

Appearances: Mr R.W. Clohessy on behalf of the applicant.
Mr T. Malone (of counsel) on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bradley Wilkins

and

B & R Concrete Products Pty Ltd.

No. 220 of 1996.

COMMISSIONER A.R. BEECH.

5 September 1996.

Order.

HAVING heard Mr R.W. Clohessy on behalf of the applicant and Mr T. Malone (of counsel) on behalf of the respondent the Commission, pursuant to the powers contained in the Industrial Relations Act, 1979 hereby orders:

THAT B & R Concrete Products Pty Ltd forthwith pay Mr Bradley Wilkins the sum of \$1200.

[L.S] (Sgd.) A.R. BEECH,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr G.C. Williams

and

Cadnet (Perth) Pty Ltd.

No. 812 of 1996.

COMMISSIONER A.R. BEECH.

23 October 1996.

Reasons for Decision.

(Given extemporaneously at the conclusion of the proceedings, taken from the transcript as edited by the Commissioner.)

THE COMMISSIONER: Mr George Cyril Williams has lodged an application in the Commission alleging that he was unfairly dismissed. His application is brought pursuant to s.29 of the *Industrial Relations Act 1979* whereby an employee is able to bring a claim that he has been harshly, oppressively or unfairly dismissed from his employment. One of the issues raised by the respondent is the allegation that, in fact, there was a resignation rather than a dismissal. That is a point that has been in contention in these proceedings.

Mr Williams (I will refer to him as the applicant so there is no confusion with the gentleman of that name who gave evidence as a witness) is of the contrary view and states that, although he did resign, he subsequently withdrew his resignation. The evidence that has been brought by the company goes to address that point from the other direction. The material facts of this matter are that, on the 22nd March, the applicant resigned. That seems to be without any doubt and is admitted

by the applicant. Furthermore, it is clear that his resignation was accepted. I accept without difficulty the evidence of Mrs Gibbings that, indeed, his position had been advertised and there were interviews taking place for the filling of his position.

The applicant says that, although he did resign, he withdrew his notice of resignation at a meeting that I will refer to as the "superannuation meeting". I have no need, for my purposes, to decide whether it was held on the Friday or the Monday because it is quite clear that such a meeting did take place. The applicant says that he withdrew his notice at that meeting. On the evidence, Mr Brian Williams did hear such a comment at that meeting, although he treated it as jocular. There is no evidence other than the evidence of the applicant himself that the comment was made in any other way. I accept that such a comment must have been made because I do accept Mr Brian Williams' evidence.

The applicant states that Mrs Gibbings was present at the time he withdrew his resignation and that, furthermore, she either induced him to withdraw his resignation or alternatively, she accepted his withdrawal of resignation.

Mrs Gibbings denies that. I might say that, having observed Mrs Gibbings in the witness box, I am inclined to accept her evidence and that is because the applicant himself is not quite sure. He says he cannot recall exactly the words that Mrs Gibbings used. For her part, Mrs Gibbings denies asking the applicant to withdraw his resignation. She denies hearing him making the comment and certainly she did not accept the withdrawal of the resignation.

Although she was cross-examined I did not understand her evidence to be broken down on these issues and I do therefore accept it. I do accept unreservedly the evidence of Mr Brian Williams who I found to be quite impartial in the matter. Thus, on other minor issues, I find that the applicant's signature was not required in order to get the five names. Mr Brian Williams seemed clear on that point, and I also accept Mr Brian Williams' evidence that the applicant would still benefit from attending the superannuation meeting and what flowed from it, even after his employment with the respondent terminated, because at the time of that meeting he was in employment himself, albeit at that stage having handed in his resignation.

That does not mean that I necessarily disbelieve the applicant's evidence, but where it does conflict with Mrs Gibbings' evidence and the evidence of Mr Brian Williams, I tend to prefer their evidence, particularly as the applicant was unsure precisely of the words that Mrs Gibbings is alleged to have used.

The applicant's own evidence is primarily directed to the role of Mrs Gibbings having either induced, heard or accepted the withdrawal of resignation and he does not suggest that any other representative of the company, for example Mr Robinson, accepted the withdrawal.

I accept that there are some factors that are in the applicant's favour. For example, the question of locks and keys not being changed at the day of termination, as seen by Mrs Gibbings, would appear to be contrary to the evidence that normally locks were changed on the day of a termination. I also find that the receipt of sick leave certificates, even for an unexplained reason, might tend to support the applicant's case. I am not prepared to place a great deal of weight on the non-payment of termination payment, particularly for commissions, at the date of termination because I am prepared to accept that the health of Mr Gibbings and his role in the calculation of commissions and also some possible delay in the calculation of commissions in any event, might mean that a termination payment not be made at the date of termination.

However, on balance, it does seem to me that the facts that I have indicated tend to show that the applicant has not been able to demonstrate that, even if he did withdraw his resignation, the company accepted it.

I now turn to the law in this matter which, as I understand it, is as follows: a person in the applicant's position is not at liberty to unilaterally withdraw a resignation:

"If a resignation is withdrawn, it is, with one exception, required to be accepted by the employer concerned.

That exception is a possible situation where a unilateral withdrawal of a valid notice of resignation may be

allowed where the notice is given by a person in a high emotional state and is retracted upon recovery from that condition.

However, the ability to do so is tightly confined and that the notice must be given in the heat of the moment and withdrawn as soon as the person realises that he or she has acted in anger.

If such notice is not withdrawn as soon as the emotions subside, the invalidation circumstances would be removed and the notice thus satisfied or adopted and therefore it could not be withdrawn unilaterally." *Beardman v NZI Insurance* ((1990) 70 WAIG 3531)

On the facts as I have found them, the applicant has not demonstrated that he withdrew his resignation in front of a representative of the company, because Mr Brian Williams is not a representative of the company. Even if the applicant had done so, he has not demonstrated that his resignation was accepted either by Mrs Gibbings or any other representative of the company. That being the case, given that there was a valid resignation, then the only conclusion that is open to me on the evidence is that, whatever happened in relation to locks and keys or the applicant's attendance at the premises at particular dates four weeks after his resignation, the contract of employment did come to an end four weeks after he gave his notice of resignation because there is nothing before me that can allow me to conclude that any withdrawal of the resignation was accepted by the company.

I therefore find that there was not a dismissal and that therefore this application is not within jurisdiction and I would issue an order to that effect for those reasons.

Order accordingly.

Appearances: Mr G.C. Williams on his own behalf as the applicant.

Mr D. Jones on behalf of the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr G.C. Williams

and

Cadnet (Perth) Pty Ltd.

No. 812 of 1996.

COMMISSIONER A.R. BEECH.

24 October 1996.

Order.

HAVING heard Mr G.C. Williams on his own behalf as the Applicant and Mr D. Jones on behalf of the Respondent the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

- (1) THAT the application be dismissed for want of jurisdiction.
- (2) THAT liberty be reserved regarding costs.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Yilmaz Yahiya

and

Graphic Holdings Pty Ltd.

No. 187 of 1996.

Bridget Yahiya

and

Graphic Holdings Pty Ltd.

No. 189 of 1996.

COMMISSIONER R.H. GIFFORD.

7 November 1996.

Reasons for Decision.

THE COMMISSIONER: By these applications, Yilmaz Yahiya and Bridget Yahiya, being husband and wife, claim in each of their applications, that they were denied certain past and future contractual benefits arising from their employment with Graphic Holdings Pty Ltd ("the company"), pursuant to s.29(1)(b)(ii) of the Industrial Relations Act, 1979 ("the Act") and further, claim that they were dismissed in a harsh and unfair manner by the company, pursuant to s.29(1)(b)(i) of the Act.

The applications were dealt with jointly, by agreement, having regard to the joint nature of their contracts of employment with the company. A good deal of the evidence led in these proceedings is common to both applications in any event. The evidence led and submissions put in this case are very detailed, extending over nearly 11 days of hearing. Mr C. Edwards acted on behalf of the applicants; and Ms J. Hill (of Counsel) acted on behalf of the respondent company.

The joint claims are in the following terms.

	\$
• Future contractual benefit	
—per fixed term engagement	170,399.50
• Past contractual benefit	
—comprising petrol/telephone usage	639.98
• Bonus payment	10,473.01
• Annual leave entitlements	12,673.22
• Compensation—harsh/unfair dismissal	<u>30,070.50</u>
	<u>224,256.21</u>

The claims, subject to a concession with respect to the contractual benefit based upon reimbursement of petrol and telephone expenses, are denied.

The evidence in these proceedings reveals the following sequence of events, relevant to the claims made.

The company, the Directors of which are Mr Michael McCabe and Mrs Annie McCabe, operated two Pizza Hut stores, namely in Northbridge and Subiaco, by means of a franchise contract with the franchisor, Novell Holdings Pty Ltd. This contract commenced in April 1989, to apply for a 5 year term, which was ultimately extended for a further 5 year term. Prior to this time the company had established the 'Dial a Dinos' operation and had sold it to Novell Holdings Pty Ltd in 1989. A requirement of the consequent purchase of the franchise to the two Pizza Hut stores was that the Directors not be involved with the day to day management of the stores.

By April 1991, the then Manager of the stores, Mr Andrew Main was wishing to relinquish his responsibility. Mr McCabe sought out Mr Yahiya to take over that position. Mr Yahiya was then engaged in the position of Manager of the two stores on the basis of a 3 year fixed term on a package comprising a salary of \$36,000 per annum, a bonus based on 5% of the gross turnover of both stores and the provision of a motor vehicle.

These terms were not confirmed in any correspondence or contract document at the time when they were agreed. It was described as a 'gentlemen's agreement'. These terms however, were later confirmed in a letter dated 11 October 1991, prepared by the company's Accountant, Mr Gavin Hedges, for the purpose of Mr and Mrs Yahiya obtaining finance for the purchase of the motor vehicle (Exhibit E1).

The letter confirms that 'all running and financing expenses' of the vehicle, were to be met by the company.

Although not referred to in the letter, Mr Yahiya's role and duties were to manage the two stores, to be responsible for the supervision of staff, for customer service, marketing and for the dealings with the franchisor; as well as to carry out rostering of supervisors, ordering of supplies, maintenance of the stores and other like matters.

With respect to hours of work, Mr McCabe says that they were to be the same as those worked by Andrew Main, namely night shift on Thursday, Friday, Sunday and half a shift on Wednesday. In the case of the Saturday night shift, it was agreed that Mr Yahiya not work that shift, in deference to spending it with his family. Mr Yahiya says, on the other hand, that although an agreement was reached over the Saturday night shift, there was not a requirement that he work four shifts a week, and that the practice became that of a few shifts each week, according to the requirements of the stores. (Exhibit H3 (in substituted form) provides a record of shifts worked over the contractual period).

Although the original agreement involved Mr McCabe and Mr Yahiya, it soon developed that Mr Yahiya delegated one task, namely the making up of pays, to Mrs Yahiya and an agreement was reached with the Accountant for Mr Yahiya's income to be split with his wife. By this process, she became employed, and became in practical effect, party to the employment agreement.

The only variation to the contract between the parties during its term, was an agreement to lift the threshold for the payment of the bonus, namely to a turnover figure for both stores, of \$20,000.

For the life of the 3 year fixed term contract, the relationship between the parties was a good one and the contract worked well for both parties.

Shortly after the expiry of the terms in July 1994, Mr Yahiya and Mr McCabe held discussions as to whether Mr Yahiya would continue in the same capacity. Mr McCabe sought to persuade Mr Yahiya to assist him in an alternative business in which he was engaged, namely one trading as 'Superstars and Legends', which was a business involved in sporting and entertainment memorabilia. Initially, Mr Yahiya declined to assist with that business, but ultimately agreed to do so.

Mr Yahiya raised in those discussions the prospect of a new vehicle being provided. It was agreed that Mr Yahiya determine this matter with the Accountant, but on the understanding that there would be no additional cost incurred by the company on the purchase of the new vehicle.

Arising out of the discussions, it was agreed that Mr Yahiya would continue in the same role. It was Mr Yahiya's understanding that he would so continue, for the life of the franchise, that is until April 1999. Mr McCabe on the other hand, understood that no term was agreed upon.

In September 1994, there were further discussions between Mr McCabe and Mr Yahiya relating to Superstars and Legends, in relation to the opening of the first store at Morley, and Mr Yahiya agreed to assist with the store opening. As it turned out, he remained with Superstars and Legends, both in Western Australia and Victoria, for the ensuing twelve months. Over this time, he still retained an overall responsibility of the Pizza Hut stores, but much of his responsibility was delegated to the persons who were appointed as Store Managers.

In the course of this, namely in November 1994, to assist with the obtaining of finance, in relation to the new vehicle, a letter was prepared by the Accountant, Mr Hedges, on the advice of Mr Yahiya, for the finance company. That letter, which was signed by Mr McCabe, stated that the term of engagement of Mr and Mrs Yahiya would be 'for the balance of the franchise term on the Pizza Hut stores, which will be until April 1999'. (Exhibit E2).

In the course of February 1995, it came to light that the Accountant was allegedly unable to account for certain of the company's funds and an audit was carried out of the company's finances. It was discovered that the group tax and superannuation liabilities had not been paid.

Consequential upon this discovery and the precarious financial state in which the company found itself, Mrs McCabe chose to become involved with the administration of the

company on a day to day basis. It is claimed by the Yahiyas that from this time their relationship with the company started to sour, as they felt that they were viewed with mistrust, as in some way being complicit in the alleged misappropriation. This is denied by the McCabes.

Because of uncertainty on her part, as to the actual terms of the package of Mr and Mrs Yahiya, Mrs McCabe convened a meeting on 10 July 1995. The details of the package were set out on a white board and discussed. In the course of this discussion, Mr Yahiya indicated that he had not received a pay increase since he commenced. Mrs McCabe questioned as to why the company ought to be liable to meet the Yahiya's private petrol expenses.

It was ultimately agreed that the salary in the package would be increased by \$3,000 per annum; and that the Yahiyas would meet their private petrol expenses. With respect to term, Mrs McCabe says that she indicated that the package would 'run for 12 months'. The Yahiyas say that her statement referred solely to the salary component. Mrs McCabe undertook to set out the terms of the package, in a letter.

Later that afternoon, the Yahiyas attended at the McCabe's house and requested of them, individually, to sign a letter, setting out the terms of the package which they had prepared for presentation to their bank, for the purposes of securing a loan to extend their house. The letter was duly signed by the McCabes, although only cursorily read in both cases.

The letter (part of Exhibit E4), reflected the increased salary, but in a form such as to be split between the Yahiyas, together with the exclusion relating to petrol costs associated with the private use of the vehicle. It also referred to the term of engagement being for five years commencing from July 1994. This was a different expression from that used in the earlier letter, namely that of 18 November 1994 (Exhibit E2). Further, it referred to the 'wage agreement' continuing for a twelve month period, until 11 July 1996.

The terms of the package were not actually set out in a letter from Mrs McCabe, until 21 September 1995, which followed upon a meeting of 19 September 1995 between the McCabes and Mr Yahiya to discuss arrangements for his return to the full-time position overseeing the two Pizza Hut Stores, after the period with Superstars and Legends had come to an end. The letter, after addressing a number of matters relevant to this, including confirming his preparedness to work shifts as well as oversee, set out the details of his 'remuneration package'. It made no reference to the twelve month term, whether applicable to salary or the contract as a whole. It did however state that in the event of Mr Yahiya deciding to leave his employment, that he would be required to provide two months notice in writing (Part of Exhibit 4).

In the course of that meeting, Mr Yahiya confirmed his understanding that he was on a 5 year contract and that it was confirmed in the letter of 11 July 1995. The McCabes expressed surprise over this and sought a copy of the letter.

Mr Yahiya did not confirm his acceptance of those terms however. In his letter of reply, of 22 October 1995, he sought the McCabe's agreement to revert back to the terms confirmed in the 11 July 1995 letter.

From then on there developed a disagreement between the McCabes and Mr Yahiya as to the times he would be on duty at the stores. The McCabes sought that he work at least three night shifts that coincided with the busy periods. After some toing and froing Mr Yahiya accepted this on a without prejudice basis, but a considerable deal of alteration to those shifts was implemented by Mr Yahiya against the McCabe's wishes.

It actually led to the instant applications being filed with the Commission. The three conciliation conferences that were held did not bring a resolution to the matter. On top of this, the McCabes decided to discontinue the day time opening of the stores, with the exception of Fridays.

Then, on 10 July 1996, Mr McCabe and Mr Yahiya met and Mr McCabe put to Mr Yahiya a draft Employment Contract which he asked him to consider. The contract, which was directed solely to Mr Yahiya, sought, amongst other matters, adherence to the working of nominated night shifts. Mr Yahiya's response was that he only wanted to re-negotiate the

wage agreement and was not therefore prepared to accept its terms. Mr McCabe responded by advising him that as a result of his refusal of the new contract, the existing contract would expire the next day, and his employment was over. Mr McCabe says that there was no reference to dismissal or termination.

On 11 July 1996, Mr Yahiya's employment, and in turn that of his wife, came to an end.

Fixed Term Engagement

The question to be determined is whether Mr Yahiya, and in turn his wife, with the renewal of his contract with the company in July 1994, entered into a 5 year contract, to expire in July 1999 (actually April 1999), to run concurrent with the remaining term of the franchise agreement with Novell Holdings Pty Ltd. What is critical to the determination is the recollection of Mr McCabe and Mr Yahiya of the discussions surrounding the renewal of the contract, and whose evidence is to be preferred. Weight has to be given however to subsequent events as to whether they serve to confirm the contractual arrangements made. Reference is made here to the letter prepared by Mr Hedges of 18 November 1994 (Exhibit E2), the meeting held on 1 July 1995 between the Yahiyas and the McCabes, the letter prepared by Mr Yahiya of 11 July 1995 (Exhibit E4) and the letter prepared by Mrs McCabe of 21 September 1995 (Exhibit E4).

In his evidence, Mr Yahiya says that in the course of June 1994, he approached Mr McCabe in his office and advised him that his contract had ended and asked him if he wanted to renew the contract. Mr McCabe said that he did. Mr Yahiya then asked him if he wanted him for the life of the franchise, that of 5 years, to which Mr McCabe responded that he did. With respect to a vehicle, Mr Yahiya proposed that he secure a new vehicle of greater value to the existing one, to be purchased over the 5 year period, but at no extra cost to the company. Mr McCabe responded by asking him to 'run it past' Mr Hedges. Mr McCabe also used the opportunity to attempt to secure Mr Yahiya's involvement in Superstars and Legends.

Mrs Yahiya, in her evidence says that her husband reported to her the outcome of the discussions, and specifically recalls him telling her that he would be remaining for the life of the franchise.

Mr McCabe, in his evidence, says that in the course of June or July 1994, a discussion was held between he and Mr Yahiya, in a cafe near his Accountant's office as to Mr Yahiya continuing with the company. Mr McCabe asked Mr Yahiya whether he was happy in the job. Mr Yahiya responded that he was, although he had not had a salary increase in the three years and had had problems obtaining the bonuses. Mr McCabe recalls that Mr Yahiya raised that he wished to purchase another vehicle, at no extra expense to the company. Mr McCabe responded by asking him to 'run it past' Mr Hedges. Mr McCabe recalls that there was no discussion about the term of any contract or the term of the franchise agreement.

Mr McCabe says that his priority at the time was Superstars and Legends and that he endeavoured to persuade Mr Yahiya to become involved with them. The discussions actually concluded on the basis that he wanted Mr Yahiya to think about joining Superstars and Legends.

Mr McCabe did not recall the meeting as finalising any agreement to renew Mr Yahiya's contract.

From a consideration of this evidence, it is clear that not only is there a fundamental difference of recollection between Mr Yahiya and Mr McCabe as to whether an agreement to renew the contract was entered into at all, but also, if it was, whether there was an agreement concerning Mr Yahiya continuing for the duration of the franchise agreement.

With respect to the 18 November 1994 letter, it is clear from the evidence that it was drafted by Mr Hedges, based upon advice received from Mr Yahiya, and was signed by Mr McCabe. It was drafted for the purpose of providing confirmation of the employment terms of the Yahiyas to the finance company from whom the monies were to be acquired for the purchase of the vehicle. The letter was actually directed to CBFC Limited, the company which provided the finance for the first vehicle in 1991, although finance for the second vehicle was actually obtained on 18 November 1994, from Esanda Finance Corporation Limited.

The format of the letter was similar to that provided in 1991. Term (1) of the letter, provided as follows:

“(1) The term of the engagement is to be for the balance of the franchise term on the Pizza Hut Stores which will be until April 1999;”

The last 9 in the date however, is in the form of a handwritten figure over the top of a typed figure, which appears to be that of a 5.

Mr Hedges gave evidence that the figure typed in, was to be read as a 5.

Mr McCabe's evidence is that although he signed the letter, he never agreed with Mr Yahiya over the terms of Term (1) of the letter. Furthermore, he says it was not he that made the handwritten alteration to the figure in the date. Mr Hedges similarly is not aware as to who made the handwritten alteration.

The evidence in respect of the letter reveals that from Mr Yahiya's perspective, it confirms, under Mr McCabe's signature, the terms of the renewed contract; whereas from Mr McCabe's perspective, it is a document drawn up for a different purpose, namely to assist in the obtaining of finance, and in any event did not reflect what was discussed between them. The Commission adds to this evidence, its own query that arises from the change in the expiry date from 1995 to 1999, namely as to who was responsible for the alteration, and was the purpose of the alteration as obvious as seems to be reflected.

With respect to the meeting held on 11 July 1995, involving the McCabes and the Yahiyas, it is clear from the evidence that the meeting came about at Mrs McCabe's instigation. Mrs McCabe says, in her evidence, that she wanted to obtain a full understanding of the pay structure applicable to the Yahiyas, together with resolving the question as to who ought to be liable for the payment of private petrol costs.

At the meeting the details of the Yahiya's package were discussed and were written on a white board. Included in the details was reference to the value attributable to the provision of the vehicle. In the course of the meeting, it was agreed that the base salary be increased to \$39,000 per annum, and that the Yahiya's assume responsibility for private petrol costs.

Mrs McCabe says in her evidence that she had at all times in the meeting been of the understanding that Mr Yahiya's contract had not been renewed. On this basis, she said at the end of the meeting that the agreement would be for a year, and that she would prepare the contract herself. She indicated that because of the financially difficult circumstances of the business, they may not be able to continue into the future.

Mrs McCabe says that Mr Yahiya made no reference to being contracted on a 5 year term, and that after that, it was more than likely that they would manage the business themselves.

Mr McCabe, in his evidence, says that Mr Yahiya made no reference at the meeting to his contract continuing to the end of the franchise agreement. He also specifically recalls that he made the point that he wanted Mr Yahiya to be aware that they were then considering a 12 month term.

In relation to the question of contractual term, it is Mr Yahiya's evidence that it was he who at the meeting raised the question of term, and that it was Mrs McCabe who indicated that she intended the salary component to apply for a 12 month term. He says he still had the understanding that his contract would be continuing until 1999.

The evidence therefore in respect of this meeting of 11 July 1995, in so far as it addressed contractual term, reveals that the McCabes had understood that there had been no renewal of Mr Yahiya's contract in 1994, and that they were, at the meeting, renewing the contract for a 12 month term. Mr Yahiya, on the other hand, believed that he was already party to a contract which was to run concurrent with the life of the franchise, namely until 1999, and that that meeting had concluded with an agreement to set the salary for a 12 month term. He chose not to bring his understanding relating to the nature of the fixed term contract, to the attention of the McCabes.

In relation to the letter of 11 July 1995 (Exhibit E4), it is Mrs Yahiya's evidence that it was prepared by her, based upon the terms of the previous contract, and her understanding that it was to apply for the life of the franchise. She says that the letter was prepared for the purpose of presenting it to the bank, to assist with their application for an extension to their home

loan. The bank needed to know their income and that it was guaranteed for the next five years.

Mr Yahiya confirmed, in his evidence that his wife prepared the letter and that it reflected the terms of their contract. He says that he took the letter to the McCabe's house later that day seeking their signatures on it. He handed it to Mrs McCabe, who was at the time on her way out, in her car. She read it, raised a correction relating to Mrs Yahiya's salary, initialled the correction and then signed the letter. It was then taken to Mr McCabe, who was in the house. He read it, noted the alteration, and signed it.

Mr McCabe, in his evidence, says that Mr Yahiya put the letter to him saying that he was in a hurry. He confirms reading and signing it but says that he did not view it as a written contract between them, but merely a letter to a bank. The reference to the 5 years (in paragraph 1(a)) was of no concern to him, he says, because he read it as referring to the period over which the car was being purchased.

Mrs McCabe, in her evidence, says that Mr Yahiya, in catching her leaving her home in the car, told her of the need to get to the bank and was in a real hurry. She read it quickly, confirmed the error in Mrs Yahiya's salary, initialled it, and signed the letter. She saw the letter as a bank matter and that the reference to 5 years was in relation to the car purchase. She says that she stated to Mr Yahiya that the letter would not be their formal contract.

From the evidence in relation to the letter of 11 July 1995, it is clear that the Yahiyas viewed it as confirmation of their contractual terms. The McCabes, on the other hand, viewed it simply as a letter to a bank and that the reference to a 5 year term was only in connection with the purchase of the vehicle.

With respect to the letter of 21 September 1995, from Mrs McCabe to Mr Yahiya, Mrs McCabe gave evidence that it was intended to confirm that which was agreed at the meeting of 11 July 1995. Whilst the letter made reference to Mr Yahiya's 'remuneration package', it did not make reference to the 12 month term. Mrs McCabe says that was an oversight on her part, but that it was her presumption that a 12 month term was still applicable. The letter also addressed what was described as Mr Yahiya's 'changing role', that is as a hands-on Manager, working shifts as well as overseeing. It had in fact been preceded two days earlier by a meeting between the McCabes and Mr Yahiya to discuss his return to the Pizza Hut Stores, following the conclusion of his involvement with Superstars and Legends.

Mrs McCabe says the delay in writing the letter was as a result of other priorities. Mrs McCabe requested Mr Yahiya to sign the letter confirming the accuracy of the meeting, but he declined to do so.

Mr Yahiya says, in his evidence, however, that in the course of the meeting, which he viewed as a tense meeting, Mrs McCabe stated to him that when she had found out about the missing monies, alleged to be attributable to the Accountant, she had contemplated terminating Mr Yahiya, at the end of his 12 month term. Mr Yahiya says his response was to the effect that he had a 5 year contract, with a letter to confirm that. He says that the McCabes expressed surprise and asked him to fax them a copy of the (11 July 1995) letter.

The McCabes say however, that no reference was made to the 5 year contract at that meeting. Mrs McCabe says the first time she heard it mentioned by him was at a meeting with Mr Yahiya in December 1995. It was referred to in the manner recollected by Mr Yahiya. Mrs McCabe says she responded by asking what July (the meeting of the 11th) was all about. The December meeting had taken place to follow up upon their request, in a letter dated 30 November 1995, for Mr Yahiya to work 40 hours of shifts per week, including at least three night shifts. Mr Yahiya had actually responded to the letter, on 5 December 1995, expressing concerns about the McCabe's direction as being outside his employment terms. He also made reference to his existing contract expiring in July 1999.

Mr McCabe recalls the reference by Mr Yahiya to the 5 year contract, in similar terms. He says he stated that the letter was not a contract and proceeded to deny that they had ever had a 5 year contract.

From this evidence, Mr Yahiya and the McCabe's have quite divergent recollections as to when and in what context the reference to the 5 year contract was raised.

In assessing the totality of the evidence in respect of the claim based upon a fixed term engagement, it is appropriate to recognise that the concept of a fixed term engagement was known about by Mr McCabe and Mr Yahiya, and as such formed the basis of the initial contract between the parties, that is, for a 3 year term. Although the contract as such was not the subject of documentation when it was entered into, there was no dispute between the parties that it constituted a 3 year fixed term engagement. Some months later, this and other terms were set out in a letter compiled by the Accountant for a finance company for the purpose of the Yahiya's purchasing a vehicle. (Letter of 11 October 1991—Exhibit E1).

With the expiry of that contract there is no doubt that there were further discussions between Mr Yahiya and Mr McCabe and again there was no documentation arising out of those discussions. Was this because no renewal of the contract was entered into? Mr McCabe believes this to be the case. Mr Yahiya recalls to the contrary. The Commission is faced with direct contradiction.

Then, once again, there is a letter drawn up for a financial institution, that is, the letter of 18 November 1994 drawn up by the Accountant and signed by Mr McCabe. On its face it implies that there had been a renewal of the contract and for a fixed term, namely for the balance of the franchise, until April 1999. Did this letter accurately confirm any renewal of a contractual relationship and of a fixed term associated with that? Certainly the letter was compiled on Mr Yahiya's instructions and its structure is very similar to the 11 October 1991 letter. The terms of the letter are consistent with Mr Yahiya's understanding of the contract renewal and the terms related to that. There is no explanation from him however, for the handwritten alteration to the expiry date referred to. The letter however, was signed by Mr McCabe, although he does not recall having read it. Despite this confirmation however, there is a denial as to its accuracy.

On its face, the letter has some persuasive influence. The signing of the letter by Mr McCabe makes this so. The inference is, in other words, that if he had been asked to sign a letter, albeit for some purpose external to the employment relationship, which purported to describe contractual terms, and his belief was that there had been no renewal of the contract, let alone on the basis of another fixed term engagement, he would have refused to sign. The unexplained alteration to a vital part of the letter would cause that persuasive influence to be diminished.

In the case of the meeting of 11 July 1995, it is clear that it concluded on the basis of a contractual fixed term of 12 months being set. The parties however, disagree as to what the term was directed to; the McCabes believe it related to the whole contract; Mr Yahiya believes it related to the salary component. Mr Yahiya believed that the 5 year term, to run concurrent with the term of the franchise, was already in place, as a result of the meeting a year previously between he and Mr McCabe. He did not raise this in the discussions though. Was it because he was convinced it was unchallengeable? Or was it because he became uncertain as to whether it was clearly in place? Although there is no admission to either motivation in Mr Yahiya's evidence, it is significant that a short time following the meeting, namely the same day, he is hurriedly endeavouring to secure the McCabe's signatures on yet another letter to be presented to a financial institution; and once again a letter prepared on Mr Yahiya's instruction (by his wife, in this case). It begs the further question that if the signing of the letter was as urgent as it seemed, why was it not raised at the conclusion of the meeting? Especially as Mrs McCabe had concluded the meeting by indicating she would set out the contractual terms in a document.

The other consideration about the meeting of 11 July 1995 is that the McCabe's evidence concerning a contractual term of 12 months relating to the contract as a whole, is corroborated each with the other. Both had no understanding that the 12 month term was not intended to solely apply to the salary component. This factor adds strength to their evidence that they had no understanding of a 5 year fixed term contract having been established, as a renewed contract, the previous year.

So far as the letter of 11 July 1995 is concerned, it can be seen that the formatting of its terms is different from the letter of 18 November 1994. In particular, the term of engagement provision does not stand alone, but rather forms part of the term (as a separate paragraph) dealing with the motor vehicle. Additionally, reference is made to the 'wage agreement' applying for a 12 month term. It was read and signed by both the McCabes, admittedly in somewhat hurried circumstances. Although both of them qualified their interpretation of the reference to a 5 year term, as relating to the motor vehicle provision, there was no such qualification in respect of the 12 month term relating to the 'wage agreement'. The presumption is that they accepted this. This is curious to say the least.

Then, as if to add more confusion to a situation that has already become confused, the confirming document undertaken to be written by Mrs McCabe did not come to be written within a reasonable period of the meeting. In fact, it was only written after a further meeting, more than two months later, dealing with another issue, and then when it was written, it was silent in respect of the 12 month term. How relevant is that letter in terms clarifying the term of engagement question? Barely so, in the Commission's view.

According to Mr Yahiya's evidence however, the reference to the 5 year term of the contract, was made by him in the course of the meeting that preceded the 21 September 1995 letter. The McCabe's have no such recollection; however, both recall the matter being raised to their considerable surprise, in their December 1995 meeting. Their evidence, once again, corroborates.

Where the McCabe's evidence corroborates in this respect, and is against the evidence of Mr Yahiya alone, the Commission is prepared to prefer their evidence. The Commission therefore accepts that it was not until the December 1995 meeting between Mr Yahiya and the McCabes, that the question of the 5 year fixed term contract was raised. The implication in Mr Yahiya's evidence is that there was no need to raise it because it had been confirmed in the letter of 11 July 1995. It is the case though, that the term of engagement provision was written differently from how it was written on the 18 November 1994 letter.

The Commission however, has difficulty in understanding why the question of the 5 year fixed term contract was not raised by Mr Yahiya at the 11 July 1995 meeting. Especially as the meeting was convened in an attempt to provide clarification upon Mr Yahiya's (and his wife's) remuneration package. The Commission observes that critical to any package is the question of whether there is any fixed term of engagement associated with it. The question would clearly have been on Mr Yahiya's mind, because he had been the initiator of the 18 November 1994 letter, which set out the term so clearly.

There is the implication from the evidence that when Mr Yahiya was confronted by the McCabes proposing a 12 month term and the prospect of Mrs McCabe confirming this in a document, that there was a need to pre-empt this process by presenting his own draft for confirmation. The implication is that he was uncertain as to the status of the 5 year fixed term engagement.

Whilst the earlier letter provides considerable support to Mr Yahiya's position, it is to be appreciated that it was prepared upon his initiative. The Commission did gain the impression however that Mr McCabe signed the letter without reading it. Whilst a very careless business practice, it may go a long way to explaining the lack of any challenge on Mr McCabe's part.

At the same time, this is not to infer that Mr Yahiya sought to misrepresent his position. He held a firm view that he had a 5 year fixed term contract. Was this reasonable however?

Certainly, in the discussions between Mr McCabe and Mr Yahiya at the meeting in July 1994, Mr Yahiya would have been keen to ensure that he secured an ongoing contractual arrangement, notwithstanding that there was no suggestion from Mr McCabe that he would not consider anything beyond the original term. Indeed, the indication was to the contrary. The focus of Mr McCabe's position however, was not upon the Pizza Hut operations, but upon Superstars and Legends, in terms of endeavouring to persuade Mr Yahiya to assist him in that operation. Indeed, it is his evidence that the

meeting concluded on the basis that Mr Yahiya further consider whether he ought to take up that option. Mr Yahiya does not deny that this matter was discussed.

Such is hardly the context for the renewal of an employment contract involving a 5 year fixed term engagement.

The Commission therefore prefers the evidence of Mr McCabe over that of Mr Yahiya as to the terms of the discussions between them at the meeting held in July of 1994. It is an entirely reasonable assessment of the evidence to recognise that Mr McCabe was less interested in concluding contractual relationships with Mr Yahiya at that meeting, than he was in seeking to persuade Mr Yahiya to assist him in another of his businesses where he was focusing most of his energies. For Mr McCabe to have stated that he would be prepared to engage Mr Yahiya in Pizza Hut for the life of the franchise agreement is just not feasible.

The fact that Mr McCabe continued to focus his energies in that way, is reflected in the fact that he eventually persuaded Mr Yahiya to take up a position with Superstars and Legends, in September 1994, some two months later.

Next, it is not unreasonable to draw the inference that Mr McCabe signed the 18 November 1994 letter either without reading it, or with scant attention to it, bearing in mind that his focus at the time was not on the Pizza Hut operation. This notwithstanding, the Commission harbours reservations about placing too much weight on a document drawn up for the purpose of confirming employment terms and conditions and indications of ongoing employment for an organisation external to the employment relationship, especially one not prepared by the employer, and which contains an unexplained alteration to a vital part of its terms.

Then, the meeting of 11 July 1995, did not confirm all the elements which were contained in that letter, especially that of the 5 year fixed term engagement. That matter was most surprisingly not addressed at all, especially when account is taken of the fact of when a 12 month fixed term engagement was discussed. It is even further surprising that it was not raised until the meeting of December 1995, notwithstanding that there had been a September 1995 meeting when it could have been logically raised.

The account of that meeting, as described by the McCabes was adequately corroborated and fits the context of the development of events, where Mrs McCabe was actively participating in the management of the business, because of the discovery, in February 1995 of the alleged misappropriation, notwithstanding that it preceded Mr Yahiya actually re-commencing his role within the Pizza Hut Stores.

The letter of 11 July 1995, taking into account the reservations expressed in relation to the 18 November 1994 letter and the further reservations already expressed concerning the 11 July 1995 letter, the Commission chooses to place little weight upon it.

The Commission therefore finds from the evidence that the July 1994 discussions between Mr McCabe and Mr Yahiya did not lead to the original contract being renewed, nor did they lead to a 5 year fixed term engagement or a fixed term engagement based upon the life of the franchise, until 1999. It was merely a case of Mr Yahiya's employment continuing beyond the point of the expiry of the original fixed term engagement, on the basis of an indefinite duration subject to reasonable notice. Then, at a further meeting of the parties, on 11 July 1995, a 12 month fixed term contract, on similar terms, incorporating a salary increase of \$3,000 per annum, was entered into. Its expiry will be dealt with later.

In choosing, in particular, to prefer the evidence of Mr McCabe of the discussions at the meeting in July 1994, over that of Mr Yahiya, the Commission is conscious of the need to be reasonably satisfied as to whether both of the parties were seeking to establish a legal relationship between themselves. This of course is the essence of the creation of *bona fide* contractual terms of an employment nature. Both parties did this with the original contract, notwithstanding that it was not confirmed in writing at the time.

At the July 1994 meeting, Mr Yahiya may have had a legal relationship in mind. Mr McCabe plainly did not. His interest was in persuading Mr Yahiya to utilise his skills elsewhere in one of his businesses, Superstars and Legends. He kept

pressing the issue until Mr Yahiya relented, in September 1994, and joined with Superstars and Legends, remaining for the ensuing 12 months. This is notwithstanding retaining an involvement with Pizza Hut.

On the basis therefore of Mr McCabe's evidence as to his denials over having entered into a new fixed term engagement for a 5 year period, in July 1994, with Mr Yahiya and the fact that he (Mr McCabe), at the time, was seeking to redirect Mr Yahiya into another of his businesses, the Commission is prepared to find such as constituting the actual position.

Further, the suggestion that the 11 July 1995 meeting led to an agreement relating to a 12 month term for salary only, belies the context in which the parties were negotiating. The McCabes were declaring that the business was in serious financial difficulty, as a result of the group tax and superannuation contributions not having been paid and the associated allegations surrounding the Accountant, and that they, after 12 months may have to take over the management of the operations themselves. This would hardly have been an environment in which the McCabes were committing themselves for the remainder of a 5 year fixed term contract, or at least the non-salary component of that. In any event, their evidence corroborates on this question of possibly taking over after 12 months, together with the question of the 12 month term not applying solely to the salary component, and is preferred.

It follows from all of the above that the claim for payment of future contractual benefits, based upon a 5 year fixed term engagement, must fail. So too, in consequence, must the claim that there was a repudiation of the 5 year fixed term contract on 11 July 1996 by Mr McCabe.

Harsh and Unfair Dismissal

In view of the Commission's finding that a 12 month fixed term contract was entered into on 11 July 1995, the question that immediately arises is whether there is jurisdiction or whether it is appropriate, for the Commission to deal with such a claim. It is Ms Hill's primary argument that the contract expired on 11 July 1996 and that therefore there was no dismissal, which caused the matter to be taken beyond s.29(1)(b)(i) of the Act.

The circumstances of the ending of the employment relationship (to use a neutral term), in their essential terms, are that on 10 July 1996, Mr McCabe, in the context of his belief as to the status of their relationship, put to Mr Yahiya an 'Employment Contract' (Exhibit E5), offering him (and only him) a 12 month contract in the same role with the Pizza Hut stores, but to be rostered to work at least three night shifts per week. Mr Yahiya took the document home to consider. The next day, they spoke to each other over the telephone.

Mr McCabe says that he asked Mr Yahiya if he was happy with the contract, to which Mr Yahiya advised that he was, except for the money. When asked about the shifts, Mr Yahiya indicated that they were unacceptable. There was then a reference to this Commission deciding upon the shifts. Mr McCabe then asked Mr Yahiya if he would accept the agreement, to which Mr Yahiya replied he would not. Mr McCabe then said that it was his decision to refuse the offer of the agreement, but that the old one expired today.

Mr Yahiya has a somewhat different recollection of the discussion. Mr Yahiya says that he told Mr McCabe that he would like to discuss the wage agreement that expires today. Mr McCabe responded by saying that the employment agreement was the only way that they would continue their relationship and went on to state that if he did not accept it, his employment would be terminated. Mr Yahiya then said he would not accept it. He was then asked by Mr McCabe to confirm it in writing and was told that when it was received, he would be terminated.

These different recollections occurred notwithstanding that both Mr McCabe and Mr Yahiya put those recollections in writing the same day. What is significant in this conversation is whether Mr McCabe actually said he would terminate Mr Yahiya's employment. If he did, it would compromise the understanding he purported to have of the relationship, namely that it would simply expire on the day, 11 July 1996.

It is the case that Mrs Yahiya overheard Mr Yahiya on the telephone. This is not really of any advantage to Mr Yahiya's position, as she did not hear Mr McCabe's responses, and

therefore heard nothing of the alleged reference to termination.

In the end, the Commission has to prefer one version over the other. In so doing, the Commission prefers that of Mr McCabe. The Commission was aware of the fact that Mr McCabe, in terms of the drafting of the Employment Agreement, and in the negotiations with Mr Yahiya as to the shifts he ought to work, and associated matters, was securing legal advice. Knowing the position Mr McCabe was taking, that is that the contract was to expire on 11 July 1996, it just does not seem feasible that Mr McCabe would have used such a term. Indeed, when expressly asked that question in evidence, he denied using the term. The Commission accepts that denial.

It accordingly follows, in the Commission's view, that the 12 month fixed term contract did expire on 11 July 1996 and the Employment Agreement offered to enable an employment relationship to continue for a further 12 months, was not entered into. There was therefore no dismissal of Mr Yahiya effected. The Commission accordingly has no authority to hear and determine whether harshness or unfairness was associated with the ending of the employment relationship. An order for dismissal of that part of the applications will follow.

Whilst the Commission has so decided, it is conscious that the requirement sought to be placed upon Mr Yahiya to work in the stores on the night shifts of the highest customer demand, was a source of dispute between the parties from at least September 1995 until the end of the employment relationship. A considerable amount of evidence was therefore led in respect of this matter.

Although the Commission is not able to address the question of harshness or unfairness associated with the ending of the relationship, the Commission is aware that the parties have nevertheless weighed up the question as to whether the terms of the offer contained in the Employment Agreement, relating to the working of shifts, were reasonable.

In this respect, the Commission would observe, and no more than that, that, save as to one exception, those terms (in Clause 2.2) of the Employment Agreement, were not onerous. The exception relates to the Saturday night shift, in respect of which the McCabes had undertaken not to require it to be worked, in deference to Mr Yahiya's family obligations.

This observation is made out of recognition that the requirement is reasonably consistent with the basis of the original engagement, which the Commission has found, namely the working of 3 night shifts over the peak demand periods, consistent with the arrangement applicable to Mr Yahiya's predecessor.

Mr Yahiya is obviously of the view that subsequent to that engagement, he was able to exercise his own discretion as to which shifts he worked, depending upon the needs of the business. Further, that discretion was exercised for more than two years up to when he moved to Superstars and Legends in September 1994. Then, however, with his return to the Pizza Hut operation a year later, the context had changed; the company was in financial difficulty and the Directors were taking a much greater day to day role in the operation of the business. This was not to Mr Yahiya's liking, especially when there was the request to commit himself to working three or four night shifts per week.

The Commission observes that the McCabes, in so acting, were merely giving expression to an inherent discretion which they were always able to exercise, as employers, namely to require that the original contractual terms relating to night shift work be followed. Had they sought to proceed beyond that, it would have been a different matter.

The Commission therefore does not view the contractual terms concerning discretion as to shifts work, as having altered by implication from the McCabes to Mr Yahiya.

The Commission does not view the McCabes as having unreasonably or unlawfully exercised their discretion in this respect.

Contractual Benefit—Bonus

The claim for the payment of \$10,473.01, as being attributable to the bonus, under the contract, represents the difference between that due based on the contractual term and that actually paid, recognising that the bonus was paid, by agreement with the company's former Accountant, in a variety of

ways, namely as wages, or by means of payment of a number of domestic accounts, including insurance and telephone charges. The company challenges liability for certain charges and considers there should be a setting off of other payments against the amount due.

In the first place, Ms Hill argues that the company is not liable for a charge of \$1,182, constituting the stamp duty paid on the purchase of the Pajero motor vehicle purchased for the Yahiyas in December 1994. It is argued that as the Yahiyas were the purchasers, notwithstanding that the financing and running costs were met by the company, and as the duty was applicable to the purchasers of a vehicle, liability falls upon them. Further, it is to be seen as a capital expense, rather than a financing or running expense.

In terms of the evidence of the former Accountant, who was the company representative responsible for establishing the arrangement in relation to the provision of both vehicles for the Yahiyas, it is clear, certainly in respect of the first vehicle that the company would meet 'all financing and running costs', associated with 'all use'. There is nothing to suggest any change in this arrangement relating to the second vehicle. That was modified later, but in respect of private petrol use.

This notwithstanding, it is to be recognised that payment of the stamp duty was made by the company at the time. There is no evidence of any challenge then by the company. The implication that arises from such a position is that the company considered it at the time to be a liability for it to meet, consistent with the contractual arrangement relating to the purchase of the vehicle.

So far as the term 'financing' is concerned, whilst on its face, such term would generally relate to the obtaining of finance to purchase an item, it could be taken as meaning the equivalent of the term 'purchasing'. If it were, such a term would reasonably embrace all costs associated with the cost of purchase. Such would include the amount of stamp duty directly related to the purchase.

On balance, the Commission, particularly having regard to the broad equitable considerations that underly its determinations, pursuant to s.26 of the Act, considers that the company ought to have been liable for the stamp duty costs associated with the purchase of the vehicle in December 1994. The Commission will therefore decline to reduce any bonus payment otherwise due, by the amount of \$1,182.

In the second place, Ms Hill argues that the company ought not be liable for two \$100 insurance excesses occasioned as a result of accidents in the course of work. Again, this is a circumstance of where the charges have already been met by the company, and that as such, implications arise in respect of the company acknowledging it as a liability at the time.

Against this though, as the Commission understands it, the policy was Mr Yahiya's policy and not that of the company.

With respect to the basis upon which the vehicle was provided, according to the evidence of Mr Hedges, the Commission observes that it would be stretching the language unduly to describe the expense as a running expense.

In the circumstances, the Commission considers that such charge ought not to have been treated as a liability faced by the company, and ought not form part of any bonus payment otherwise due. Accordingly, the Commission will deduct an amount of \$200, relating to insurance excess payments arising on 10 August 1994 and 2 November 1994, from any amount otherwise due.

In relation to consideration being taken of domestic telephone accounts, as part of the payment of the bonus, the claim for \$1,901.93, is based upon the notion that 50% only of the total is relevant as to the other half, needs to be attributed to the business expense component, and that in turn is not able to be attributed to the bonus. Mr Edwards argues that this was the best estimate to make in the circumstances, bearing in mind that it covered the period when he was extensively involved with Superstars and Legends.

Ms Hill maintains that the 50% appointment is too high, and that it ought to be in the order of 15% to 20%, in the context of there being no agreement as to the payment of a business proportion.

In the context of where the full account was actually paid at the time, and the implications of acknowledgement that go

with that, the Commission is not disposed to embark on an inquiry as to an appropriate proportion relating to business expense. The Commission simply accepts Mr Edwards' position as constituting a reasonable concession in the circumstances and will accept the proportion he has proposed. There is therefore no scope for any set off.

In terms of setting off a proportion of the motor vehicle financing and running expenses as a payment attributable to the bonus in account of business use of the vehicle, Ms Hill proposed that an appropriate proportion in the circumstances would be the inverse of the private use proportion of 30%. In the alternative, she argues that account be taken of the amount related to the private use of petrol, with effect from 11 July 1995.

On the basis of the evidence of Mr Hedges, reviewed above, it is clear that at the time of the purchase of the current vehicle, there was no distinction drawn between business and private use; the company simply met all financing and running expenses. The only exception to this became private petrol expenses, following upon the agreement reached between the parties on 11 July 1995, in respect of which Mr Yahiya became responsible.

As a consequence the 30% factor has no relevance. With respect to the private use component, there is no evidence before the Commission to confirm how the payment for this petrol was made. There is an implication however that can be drawn, that not all this expense was met out of Mr Yahiya's personal funds.

Because the Commission is unable to determine the matter in a definitive manner, the Commission, relying upon the broad equity considerations underpinning its actions, chooses to attribute an amount of \$250, as constituting payment by the company of private petrol expenses for the period subsequent to 11 July 1995. The Commission will therefore set that sum off against any bonus payment otherwise due.

In relation to the setting off against the bonus of a total payment of \$3,400 to Mrs Yahiya in respect of the preparatory bookkeeping work, which she purportedly carried out for Mr Hedges in relation to the profit and loss statement, Ms Hill argues that the set off is appropriate on the basis that the work was never done. Mrs Yahiya, in her evidence claims that the work was done, whereas Mr Hedges was unable to recall seeking any monthly work completed. Then again, it seems that Mr Hedges never actually carried out his responsibility of completing a monthly profit and loss statement for the McCabes. Furthermore, Mr Hedges was aware that regular payments of \$50 per week were being made to Mrs Yahiya on this account, and never challenged the legitimacy of these payments. By implication, there seemed to be a tacit disregard of Mrs Yahiya being required to meet the terms of her commitment. In such circumstances, the Commission would be reluctant to require such payments to be set off against bonus payments and indeed chooses not to do so.

From all of these considerations, the Commission concludes that an outstanding bonus payment of \$10,023.01 is due, and will order that such payment be made.

Annual Leave Entitlements

The claim seeks the payment of accrued leave, in the case of Mr Yahiya of \$2,538.00 and in the case of Mrs Yahiya of \$3,597.00 based upon an accrual of 4 weeks leave for each year of service. In both cases some annual leave was actually taken, whereas what was understood to be the remainder was paid for as accrued leave, in consideration of the requirements of the Minimum Conditions of Employment Act 1993, at the expiry of their contact.

It is for the latter reason that Ms Hill argues that the Commission does not possess the jurisdiction to deal with the claim at all, in that the enforcement of the Act is beyond the Commission's power.

Whilst that correctly states the position, the Commission is not prevented from considerations that predated the operation of that Act, namely 1 December 1993. In this respect it is significant that when the payments of the accrued entitlements were made, that in Mr Yahiya's case an acknowledgment was made of an entitlement prior to 23 November 1993, but that in Mrs Yahiya's case, no such acknowledgment was made. This may have been in consideration of the earlier period of her employment being deemed as casual employment.

In the case of Mr Yahiya, whilst it is the case that upon his engagement in April 1991, that no express reference was made to annual leave, either to accrue and take, or be paid for in lieu. This notwithstanding, on 16 July 1996, when Mr Yahiya was advised of an adjustment to the accrued annual leave payment already made, it was acknowledged, indeed admitted, that he was entitled to 6 weeks leave for the 'period up until 23 November 1993' (the choice of that actual date is unclear to the Commission). This was an express acknowledgment that an entitlement to annual leave existed and that payment of accrued leave was due. How the 6 weeks was determined is not clear at all.

This is sufficient, in the Commission's view for a full entitlement (based upon 4 weeks per annum, as there is no suggestion to any other period as being the quantum) to the payment of accrued leave over that period, namely April 1991 to November 1993. Such a period would cause 10 1/3 weeks annual leave to accrue. In light of the 6 weeks payment already acknowledged, and the one week taken in 1992, it would leave a net entitlement to 3 1/3 weeks leave. Such amount, based on a weekly salary of \$423.00 per week, calculates as an amount of \$1,410.00. The Commission will order that such amount be paid.

Petrol and Telephone Expense Reimbursement

The claim, totalling \$639.98, is based upon a series of telephone accounts submitted (Exhibit E15) in so far as they relate to business calls, and a schedule relating to petrol usage, for business purposes (Exhibit E16). There is no dispute as to the legitimacy of these claims, being for reimbursement of expenses incurred for business purposes, except for certain minor items in the petrol usage schedule.

The Commission finds therefore that these amounts are payable by the company, save that it will vary the petrol usage schedule to a figure of \$160.00. The total will therefore be \$629.33, which the Commission will order be paid.

On the basis of the totality of the Commission's determination in these proceedings, an Order will issue directing that a sum of \$12,062.34 be paid to Mr Yahiya, in consideration of nominated contractual benefits awarded, and that in all other respects, the applications be dismissed.

Appearances: Mr C. Edwards on behalf of the Applicants.
Ms J. Hill (of Counsel) on behalf of the Respondent.

WESTERN AUSTRALIAN INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Yilmaz Yahiya

and

Graphic Holdings Pty Ltd.

No. 187 of 1996.

Bridget Yahiya

and

Graphic Holdings Pty Ltd.

No. 189 of 1996.

COMMISSIONER R.H. GIFFORD.

8 November 1996.

Order:

HAVING heard Mr C. Edwards on behalf of the Applicants and Ms J. Hill (of Counsel) on behalf of the Respondent, the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Orders—

- (1) THAT Yilmaz Yahiya be paid by Graphic Holdings Pty Ltd an amount of \$12,062.34, in consideration of contractual benefits due in respect of:
 - (a) bonus payments (\$10,023.01)
 - (b) accrued annual leave (\$1,410.00)
 - (c) telephone and petrol expense reimbursement (\$629.33);

- (2) THAT such amount be paid within 7 days of the date hereof; and
 (3) THAT in all other respects the applications are dismissed.

[L.S.]

(Sgd.) R.H. GIFFORD,
 Commissioner.

WESTERN AUSTRALIAN
 INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mrs Liu Fu Yue
 and

Victoria Gardens Holdings Pty Ltd trading as Victoria
 Garden International Food Arcade.

No. 908 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

29 October 1996.

Reasons for Decision.

SENIOR COMMISSIONER: The Respondent operates a food hall in Northbridge consisting of a number of food stalls and a drinks station. It is common ground that the Respondent employed the Applicant from 4 March last until 6 June last in its establishment as a counterhand. The Applicant commenced employment soon after arriving in Australia from China. Both she and the Respondent's principal are of Chinese origin. It is, however, material to record that the Applicant was an English teacher in China for approximately 12 years before coming to Australia.

At the time of commencing work with the Respondent she was required to sign a letter prepared by the Respondent's then manager which was in the following terms—

“RE: PART TIME COUNTERHAND

With reference to our recent discussion, I wish to work as counterhand with your coffee shop with effect from today.

My wage shall be \$7 per hours and I am prepared to work at any hour as arranged by you. I shall not claim from you an extra payment such as overtime, sundays and public holidays during my employment neither do I claim from you any amount of those nature after I have ceased to be your employee.

I do not wish to claim from you the superannuation contribution on the wage earned by me.” (sic)

The Applicant says that, in the course of the discussions which preceded the letter, she sought and was given an assurance by the Respondent's manager that she would work at least 40 hours a week. Apparently she had the prospect of obtaining another job on a full-time basis.

The Applicant worked for the Respondent without incident until 6 March last when she says she was advised by the Respondent's principal, Mr Poh, that her hours of work were to be reduced to 33 per week. She testified that up until that time she regularly worked 45 hours per week spread over four days in the week. On one day she worked from 11.00 a.m. until 10.00 p.m. and on the other three days 11.00 a.m. until 11.00 p.m. She says she protested to Mr Poh at the proposed change, but says that he replied that if she didn't like it “she could go home”. The Applicant says that she told Mr Poh that if he was going to dismiss her she would require a letter of dismissal, but she says he told her that he was “too busy” to give her such a letter. The Applicant says, further, that later that day she returned to the Respondent's premises to obtain such a letter, only to be told that the manager was not present and thus unable to meet her request. As a result of these events the Applicant instituted these proceedings seeking relief for what she alleges to have been an unfair termination of her employment. She does not seek reinstatement but, rather, seeks compensation in the order of two months' wages, together with the sum of \$3,584.46 comprising benefits, such as annual leave, superannuation and additional pay for the hours worked, to which she claims to be entitled under her contract of employment.

The Respondent, on the other hand, denies that the Applicant was dismissed from her employment. Rather, it asserts that the Applicant “walked out” and in effect abandoned her employment. Mr Poh testified that he asked the Applicant to transfer from the drinks counter to the food counter, but she refused. Furthermore, the Respondent denies that the Applicant regularly worked 45 hours per week, but instead worked varying numbers of hours each week, depending upon the needs of the business. The Respondent says that the transfer of the Applicant from the drinks counter to the food counter was necessary as part of the process of enabling it to fully utilise the services of its employees.

It is beyond question that for the Applicant to succeed she must first prove that she was dismissed from her employment by the Respondent. For these purposes it is not essential that the Respondent expressly terminate the employment. It is now well settled that an employee who resigns may nonetheless be taken to have been dismissed from his or her employment if “the employee did not resign willingly and in effect was forced to do so by the conduct of the employer” (see: *Mohazab v. Dick Smith Electronics Pty Ltd (No. 2) (1995) 62 IR 200, 207*; and see also: *The Attorney-General v. Western Australian Prison Officers' Union of Workers (1995) 75 WAIG 3166*). I am satisfied and find that that is what occurred in this instance.

As I find, the Respondent, through its agent, promised the Applicant at least 40 hours' work per week. In this, as in other respects, I accept the Applicant's evidence as being reliable. She impressed me as being an honest witness with a good recollection of events. Notably, she was able spontaneously to reply to questions put to her in cross-examination and save in one respect where her evidence conflicts with that of both Mr Poh and his son, I prefer her evidence as being the most reliable. Indeed, Mr Poh could not recall, or was otherwise unaware of many of the material events surrounding this matter. Likewise, it is fair to say that his son, who is now the manager of the business, had little involvement in and knowledge of those events. In addition, I suggest that one is entitled to at least question the credibility of a person who allows the affairs of the business to be conducted so that the time and wages book records only part of the wages actually paid. The uncontradicted evidence of the Applicant was that she was paid partly in cash and partly by cheque and that the amounts recorded in the Time and Wages Book by the Respondent were only the amounts paid to her by cheque and were the only amounts from which tax was deducted. I do, however, accept Mr Poh's evidence in preference to that of the Applicant with respect to the size of the Respondent's workforce. I find that it was in the order of six or seven employees, as Mr Poh testified, rather than in the order of 20, as the Applicant asserts.

The Applicant's evidence that she was promised at least 40 hours' work per week was also not contradicted by the testimony of others. The Respondent's manager, with whom she had the discussion, is no longer in the Respondent's employ and was not called as a witness, he apparently having gone overseas. I do not read the letter of appointment as contradicting the Applicant's claim that she was promised at least 40 hours' work per week by the Respondent's then manager. In any event, I consider it inequitable that she should be held to the terms of the letter in face of the fact, as was largely unchallenged, that she was unaware of the concept of overtime and superannuation. Moreover, when she asked the manager for information regarding the import of the letter she was, as I find, told that it was really none of her business and that she should simply sign the letter. I do not accept Mr Poh evidence that he was present when the letter was signed and did not protest at having to sign it. Furthermore, I accept that from the inception of her employment the Applicant regularly worked 45 hours per week, as she testified, except on one occasion when she arrived half an hour late for work and on another when she worked more than 45 hours to cover for an absent employee. Although the record of wages paid to her does not show a constant amount, as might be expected if she had worked for 45 hours each week, I accept the position to be, as the Applicant testified, that her wages were often inaccurately calculated by the Respondent and an adjustment made on the following pay day after she had drawn the errors to the attention of the paymaster.

In the circumstances, I am satisfied and find that it was the Respondent's conduct which effectively terminated the

Applicant's employment and thus for the purposes of the Industrial Relations Act 1979 she is to be taken as having been dismissed from her employment. The Applicant was without warning presented with an ultimatum to resign or accept a fundamental change to her contract of employment. In those circumstances was entitled to regard her employment as at an end (see: *Western Excavating (ECC Ltd) v. Sharp (1978) ICR 221, 226*). It was in reality brought to an end, not by her actions, but by the actions of the Respondent. In this regard it might not be without significance that, on the Applicant's evidence, which I find to be the most credible, Mr Poh did not deny that he was dismissing the Applicant from her employment when she asked for a letter of dismissal, but simply replied that he was too busy to provide one, and likewise when later she sought such a letter she was simply told that there was no one around to give such a letter, not that she had abandoned her employment and thus was not entitled to the same.

It follows that, by reason of section 23AA of the Industrial Relations Act 1979, it is incumbent upon the Respondent to establish that the dismissal was effected for a justifiable reason. I have no doubt that that was indeed the case. The evidence of the Applicant is that she was told that her hours were being reduced because the Respondent could not afford to keep her on a full-time basis, and it seems clear from the evidence of both the Applicant and the Respondent that the Respondent's business was not an entirely successful one. The unchallenged evidence is that a number of the stalls in the food hall were closed and that trading was indeed difficult. In the circumstances, it is fair to say that there are grounds on which the Commission could find that the dismissal was justified for the purposes of section 23AA of the Industrial Relations Act 1979.

It remains then to consider whether the dismissal was either harsh, oppressive or unfair. On balance, I consider that it was. Having entered into an agreement to employ the Applicant for at least 40 hours per week, which, as I find, was fundamental to the employment relationship, to change that condition without notice, coupled with an ultimatum that if it was not acceptable she should leave, was, by any contemporary standard, unfair. That is not to say that it was impermissible for the Respondent to reduce the Applicant's hours of work below 40 per week. However, for that to occur, proper notice is required. Furthermore, as the Minimum Conditions of Employment Act 1993 stipulates, there would, in the circumstances, need to be some discussion between the Respondent and the Applicant regarding the effect of any such reduction on the Applicant (see: *Minimum Conditions of Employment Act 1993 ss 40 and 41*).

In considering the question of relief for the unfair dismissal, it seems necessary again to point out that the entitlement to compensation is subject to the Commission being satisfied that it is impracticable to reinstate the Applicant (see: *Industrial Relations Act 1979 section 23A*). It is not the case that the Commission is authorised to award compensation simply because the Applicant requests it in preference to reinstatement or re-employment. The primary remedy is reinstatement and it is for the parties, primarily the Applicant, to establish that it is impracticable to reinstate her in her former employment before there is an entitlement to compensation. In the present case, the Respondent indicated that it was prepared to reinstate the Applicant, which would require that the Applicant be re-employed, working at least 40 hours per week. The Applicant, however, says that she does not trust the Respondent, accusing its agents of having misled her and she is fearful that it would not be long before her hours of work were reduced still further. On balance, although I confess that the matter is borderline, I conclude that it is impracticable, in the accepted sense of that term, for her to be reinstated in her former employment.

The Act provides few guidelines for assessing compensation. In the final analysis, it is a matter of comparing what the likely position of the former employee would have been had the employment not been terminated against the current position in which the former employee finds herself. That requires, amongst other things, consideration of the potential for ongoing employment with the Respondent. In this regard, there is a need to recognise, as Counsel for the Respondent submitted, that the fact that the Applicant entered into a contract of employment which provided for no less than 40 hours per

week is no guarantee that it will continue forever. Although the Respondent suggested that the Applicant was engaged as a casual employee, I do not accept that to be the case. The Restaurant, Tearoom and Catering Workers' Award, 1979, which as seems common ground, appears to govern the Applicant's employment, stipulates that to be classified as a casual employee the employee must be engaged as such. There is no evidence that that occurred on this occasion. Rather, the letter of appointment mentions only that the Applicant is to be a part-time employee. The concept of part-time employment is inconsistent with the concept of casual employment and more consistent with indefinite employment. As an employee employed on an indefinite, albeit part-time, basis, the Applicant was entitled, under and by virtue of the Award, to at least one day's notice of termination (or variation of her contract) in the first year of service. Whilst the laws relating to harsh, oppressive and unfair dismissals might require something more than one day's notice, in the circumstances of this case it is not unreasonable, however, to proceed on the basis that the Applicant's tenure was relatively insecure. The Respondent's business was trading poorly and in my assessment it is unrealistic to think that the existing arrangement would have lasted much longer than it in fact did. Taking all this into account and taking into account her relatively short length of service, it seems to me not unreasonable to fix compensation in the order of two weeks' wages. I have no doubt that the Applicant was somewhat distressed by her experience and suffered financial hardship, but to some extent that would have occurred even had the dismissal been effected with proper notice. In any event, as discussed on another occasion, I consider that the Commission's authority to award compensation for distress is at best moot. The Commission's authority is confined to compensating an employee for any "loss or injury" (see: *Trumino v. Blazeway Pty Ltd t/a Orbit Amusements (Unreported) App. 816/96—7/10/96*). It should, perhaps, also be noted that the Applicant obtained alternative employment within one month of her dismissal, which employment provides remuneration at a significantly higher level than that which was paid to her in her former employment with the Respondent.

In all the circumstances, I assess compensation at \$750.00. In so doing, I have disregarded the contractual benefits to which the Applicant claims to be entitled, other than that in relation to the entitlement to notice of termination. To the extent that she has any entitlement to those benefits, she must rely on the provisions of the relevant Award or the Minimum Conditions of Employment Act 1993. In those circumstances the recovery of any such entitlements is a matter exclusively for the Industrial Magistrate (see: *Industrial Relations Act 1979 section 83(1a)*; *Minimum Conditions of Employment Act 1993 section 7*). I therefore expressly refrain from making any judgement or comment in respect of any such entitlement.

Appearances: The Applicant in person

Mr C. Narayanan (of Counsel) on behalf of the Respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mrs Liu Fu Yue

and

Victoria Gardens Holdings Pty Ltd trading as Victoria
Garden International Food Arcade.

No. 908 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

29 October 1996.

Order:

HAVING heard the Applicant in person and Mr C. Narayanan (of Counsel) on behalf of the Respondent, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

1. DECLARES that the Applicant was harshly, oppressively and unfairly dismissed by the Respondent on or about 6 June 1996.

2. ORDERS that the Respondent pay the Applicant the sum of \$750.00 as and by way of compensation for the dismissal within 14 days.

[L.S] (Sgd.) G.L. FIELDING,
Senior Commissioner.

CONFERENCES— Matters arising out of—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ABB Engineering Construction Pty Ltd and Others
and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch AND The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch AND Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.
No. C 269 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order.

WHEREAS The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch are in dispute with ABB Engineering Construction Pty Ltd, Bains Harding Industries Pty Ltd, Grinnell Asia Pacific Pty Ltd, Total Corrosion Control Pty Ltd and Western Construction Company regarding claims for increases to travelling allowances paid to employees engaged on work on the Wagerup Alumina Refinery Site at Wagerup to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have imposed overtime bans, prevented new shifts being worked and have withdrawn their labour from time to time and more recently from midnight Wednesday 16 October on a 24 hour stoppage;

AND WHEREAS since 30 August 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter may be determined by arbitration;

AND WHEREAS the Commission has recommended that overtime bans be removed but that this recommendation was rejected;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That each of the employees members of the respective Unions employed on work by the said Companies at the Wagerup site who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later than 1200 noon on Tuesday 22 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (2) THAT each of the Unions and each of their respective officials take all reasonable steps as may be necessary to ensure that the members of their respective Unions comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
 - (a) call a meeting of the Companies employees members of each of the respective Unions at the Wagerup site for no later than 12.00 noon, on Tuesday 22 October, 1996;
 - (b) advise the employees of the terms of this Order; and
 - (c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
 - (d) A copy of this Order is to be transmitted to relevant Union officials and delegates by 12 noon Friday, 18 October, 1996.
- (3) THAT for the period of operation of this Order Application Nos. 1176 and 1177 of 1996 will not be listed for hearing and determination by the Commission;
- (4) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters and in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.
- (5) THAT all or any of the Unions or Companies may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ABB Engineering Construction Pty Ltd and Others
and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch AND The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch AND Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. C 269 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

23 October 1996.

Order.

WHEREAS The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch are in dispute with ABB Engineering Construction Pty Ltd, Bains Harding Industries Pty Ltd, Grinnell Asia Pacific Pty Ltd, Total Corrosion Control Pty Ltd and Western Construction Company regarding claims for increases to travelling allowances paid to employees engaged on work on the Wagerup Alumina Refinery Site at Wagerup to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have imposed overtime bans and other limitations on work arrangements, prevented new shifts being worked and have withdrawn their labour from time to time and more recently from midnight Wednesday, 16 October on a 24 hour stoppage and again on Monday, 21 October;

AND WHEREAS since 30 August 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter may be determined by arbitration;

AND WHEREAS the Commission has recommended that overtime bans be removed but that this recommendation was rejected;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

AND WHEREAS the Commission issued an Order dated 17 October 1996 to prevent a further deterioration in industrial relations;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) THAT upon the operation of this Order, the Order dated 17 October 1996 in this matter be cancelled.

- (2) THAT each of the employees members of the respective Unions employed on work by the said Companies at the Wagerup site who are engaged in industrial action concerning the matters the subject of these proceedings, cease all such industrial action as may be, but in any event, no later than 10.00am Thursday, 24 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (3) THAT each of the employees members of the respective Unions employed by the said Companies at the Wagerup Alumina Refinery in working in accordance with their respective contracts of employment shall be available to work reasonable overtime. And the said Companies in requiring overtime to be worked shall take into account the travel demands on employees in considering what is reasonable in the circumstances. Furthermore no individual shall be prejudiced in his/her continuing employment when it is not unreasonable for that employee not to work overtime; and
- (4) THAT as a matter of urgency the representatives of the said Companies and the Unions hold discussions to explore the possibility and practicability of arrangements being made to transport employees to the work site by buses, and
- (5) THAT each of the Unions and each of their respective officials take all reasonable steps as may be necessary to ensure that the members of their respective Unions comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
 - (a) call a meeting of the Companies employees members of each of the respective Unions at the Wagerup site for no later than 9.00am Thursday, 24 October; and
 - (b) advise the employees of the terms of this Order; and
 - (c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
 - (d) A copy of this Order is to be transmitted to relevant Union officials and delegates by 5.00pm Wednesday, 23 October.
- (6) THAT for the period of operation of this Order Application Nos. 1176 and 1177 of 1996 will not be listed for hearing and determination by the Commission;
- (7) THAT on Wednesday, 30 October 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters and in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters. At that time the Commission is to be informed on the outcome of discussions between the parties pursuant to paragraph (4) of this Order.
- (8) THAT all or any of the Unions or Companies may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S]

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

CBI Constructors Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch AND The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch.

No. C 264 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order.

WHEREAS The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch are in dispute with CBI Constructors Pty Ltd regarding claims for increases to travelling allowances paid to employees engaged on construction work on the Worsley Alumina Refinery Site at Worsley to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have imposed bans and have withdrawn their labour from time to time and more recently from midnight Wednesday 16 October on a 24 hour stoppage;

AND WHEREAS since 30 August 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter may be determined by arbitration;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That each of the employees members of the respective Unions employed on construction work by the said Company at the Worsley site who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later than 1600 hours on Monday 21 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (2) THAT each of the Unions and each of their respective officials take all reasonable steps as may be necessary to ensure that the members of their respective Unions comply with the terms of paragraph (1) of

this Order, including but without limiting the generality of that obligation, the obligation to:

- (a) call a meeting of the Company's employees members of each of the respective Unions at the Worsley site for no later than 1600 hours, on Monday, 21 October, 1996;
 - (b) advise the employees of the terms of this Order; and
 - (c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
 - (d) A copy of this Order is to be transmitted to relevant Union officials and delegates by 12 noon Friday, 18 October, 1996.
- (3) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters. And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.
 - (4) THAT the Union or the Company may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S.] (Sgd.) W. S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Fluor Daniel Australia Pty Ltd

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. C 278 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order.

WHEREAS the The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch is in dispute with Fluor Daniel Australia Pty Ltd regarding claims for increases to travelling allowances paid to employees of the Company engaged work on the Kwinana Power Station to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have withdrawn their labour from time to time and more recently from midnight Wednesday 16 October on a 24 hour stoppage;

AND WHEREAS since 5 September 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter maybe determined by arbitration;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That each of the employees members of the Union employed by the said Company at the Kwinana Power Station who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later than 1600 hours on Friday 18 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (2) THAT the Union and their officials take all reasonable steps as may be necessary to ensure that the members of the Union comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
 - (a) call a meeting of the Company's employees members of the Union at Kwinana Power Station for no later than 1600 hours, on Friday, 18 October, 1996;
 - (b) advise the employees of the terms of this Order; and
 - (c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
- (3) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters. And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.
- (4) THAT the Union or the Company may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S.]

(Sgd.) W. S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Total Corrosion and Others
and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch AND The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch AND Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. C 270 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order:

WHEREAS The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch are in dispute with Total Corrosion Control Pty Ltd, Grinnell Asia Pacific Pty Ltd, United Construction Pty Ltd and G & M Construction Pty Ltd regarding claims for increases to travelling allowances paid to employees engaged work on the Pinjarra Alumina Refinery to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have imposed overtime bans and have withdrawn their labour from time to time and more recently from midnight Wednesday 16 October on a 24 hour stoppage;

AND WHEREAS since 5 September 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter maybe determined by arbitration;

AND WHEREAS the Commission has recommended that overtime bans be removed but that this recommendation was rejected;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That each of the employees members of the respective Unions employed by the said Companies at the Pinjarra Alumina Refinery who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later than 1600 hours on Monday, 21 October and thereafter work in

accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and

- (2) THAT each of the Unions and each of their respective officials take all reasonable steps as may be necessary to ensure that the members of their respective Unions comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
- (a) call a meeting of employees members of each of the respective Unions at the Pinjarra Alumina Refinery for no later than 1600 hours, on Monday, 21 October, 1996;
 - (b) advise the employees of the terms of this Order; and
 - (c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
 - (d) A copy of this Order is to be transmitted to relevant Union officials and delegates by 12 noon Friday, 18 October, 1996.
- (3) THAT for the period of operation of this Order Application Nos. 1176 and 1177 of 1996 will not be listed for hearing and determination by the Commission;
- (4) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.
- (5) THAT all or any of the Unions or companies may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Total Corrosion and Others

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch AND The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch AND Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. C 270 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

23 October 1996.

Order.

WHEREAS The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and The Construction, Mining, Energy, Timberyards, Sawmills and Woodworkers Union of Australia—Western Australian Branch and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and

Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch are in dispute with Total Corrosion Control Pty Ltd, Grinnell Asia Pacific Pty Ltd, United Construction Pty Ltd and G & M Construction Pty Ltd regarding claims for increases to travelling allowances paid to employees engaged work on the Pinjarra Alumina Refinery to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have imposed overtime bans and other limitations on work arrangements and have withdrawn their labour from time to time and more recently from midnight Wednesday, 16 October on a 24 hour stoppage and again on Monday, 21 October;

AND WHEREAS since 5 September 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter maybe determined by arbitration;

AND WHEREAS the Commission has recommended that overtime bans be removed but that this recommendation was rejected;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

AND WHEREAS the Commission issued an Order dated 17 October 1996 to prevent a further deterioration in industrial relations;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) THAT upon the operation of this Order, the Order dated 17 October 1996 in this matter be cancelled.
- (2) THAT each of the employees members of the respective Unions employed by the said Companies at the Pinjarra Alumina Refinery who are engaged in industrial action concerning the matters the subject of these proceedings, cease all such industrial action as may be, but in any event, no later than 10.00am Thursday, 24 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (3) THAT each of the employees members of the respective Unions employed by the said Companies at the Pinjarra Alumina Refinery in working in accordance with their respective contracts of employment shall be available to work reasonable overtime. And the said Companies in requiring overtime to be worked shall take into account the travel demands on employees in considering what is reasonable in the circumstances. Furthermore no individual shall be prejudiced in his/her continuing employment when it is not unreasonable for that employee not to work overtime; and
- (4) THAT as a matter of urgency the representatives of the said Companies and the Unions hold discussions to explore the possibility and practicability of arrangements being made to transport employees to the work site by buses, and

- (5) THAT each of the Unions and each of their respective officials take all reasonable steps as may be necessary to ensure that the members of their respective Unions comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
- call a meeting of employees members of each of the respective Unions at the Pinjarra Alumina Refinery for no later than 9.00am Thursday, 24 October; and
 - advise the employees of the terms of this Order; and
 - counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
 - A copy of this Order is to be transmitted to relevant Union officials and delegates by 5.00pm Wednesday, 23 October.
- (6) THAT for the period of operation of this Order Application Nos. 1176 and 1177 of 1996 will not be listed for hearing and determination by the Commission;
- (7) THAT on Wednesday, 30 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters. At that time the Commission is to be informed on the outcome of discussions between the parties pursuant to paragraph (4) of this Order.
- (8) THAT all or any of the Unions or companies may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S.] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Construction Co and Others
and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch AND Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. C 279 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order.

WHEREAS The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch and Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch are in dispute with Western Construction Co, ABB Engineering Pty Ltd, Bains Harding Industries Pty Ltd, O'Donnell Griffin Wormald Fire Systems, and Total Corrosion Control Pty Ltd regarding claims for increases to

travelling allowances paid to employees of these contractors engaged in work on the Kwinana Alumina Refinery to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have withdrawn their labour from time to time and more recently from midnight Wednesday 16th October on a 24 hour stoppage;

AND WHEREAS since 5th September 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter maybe determined by arbitration;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That each of the employees members of the respective Unions employed by the said Companies at the Kwinana Alumina Refinery who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later than 0900 hours on Friday 18 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (2) THAT each of the Unions and each of their respective officials take all reasonable steps as may be necessary to ensure that the members of their respective Unions comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
 - call a meeting of the Companies employees members of each of the respective Unions at Kwinana Alumina Refinery for no later than 0900 hours, on Friday, 18 October, 1996;
 - advise the employees of the terms of this Order; and
 - counsel employees to return to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
- (3) THAT for the period of operation of this Order Application Nos. 1176 and 1177 of 1996 will not be listed for hearing and determination by the Commission;
- (4) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters. And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be

taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.

- (5) THAT all or any of the Unions or Companies may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Western Construction Co

and

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch.

No. C 280 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order.

WHEREAS The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch is in dispute with Western Construction Co regarding claims for increases to travelling allowances paid to employees of Western Construction Company engaged work on the CSBP plant at Kwinana to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have withdrawn their labour from time to time and more recently from midnight Wednesday 16 October on a 24 hour stoppage;

AND WHEREAS since 5 September 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter maybe determined by arbitration;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That the employees members of the Union employed by the said Company at the CSBP Plant Kwinana who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later

than 0900 hours on Monday, 21 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and

- (2) THAT the Union and the officials take all reasonable steps as may be necessary to ensure that the members of the Union comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:

(a) call a meeting of the Company's employees members of the Union at CSBP Plant Kwinana for no later than 0900 hours, on Monday, 21 October, 1996;

(b) advise the employees of the terms of this Order; and

(c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and

- (3) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters. And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.

- (4) THAT the Union or Company may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

ABB Installation and Service Pty Limited

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch.

No. C 275 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order.

WHEREAS the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch is in dispute with ABB Installation and Service Pty Limited regarding claims for increases to travelling allowances paid to employees of the Company engaged work on the Kwinana Power Station to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have withdrawn their labour from time to time and more recently from midnight Wednesday 16 October on a 24 hour stoppage;

AND WHEREAS since 5 September 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter maybe determined by arbitration;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That the employees members of the Union employed by the said Company at the Kwinana Power Station who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later than 1600 hours on Friday 18 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (2) THAT the Union and the officials take all reasonable steps as may be necessary to ensure that the members of the Union comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
 - (a) call a meeting of the Company's employees members of the Union at Kwinana Power Station for no later than 1600 hours, on Friday, 18 October, 1996;
 - (b) advise the employees of the terms of this Order; and
 - (c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
- (3) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters. And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.
- (4) THAT the Union or Company may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Ralph M. Lee (W.A) Pty Ltd and G. & S. Industries
and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch.

No. C 257 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

17 October 1996.

Order.

WHEREAS the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch are in dispute with Ralph M. Lee (W.A) Pty Ltd and G. & S. Industries regarding claims for increases to travelling allowances paid to employees engaged work on the the Kiln 6 Expansion Project at Cockburn Cement to off-set reductions in net earnings arising from the alteration to the treatment of tax on travel payments in the construction industry;

AND WHEREAS in support of their demands employees have imposed overtime bans and have withdrawn their labour from time to time and more recently from midnight Wednesday 16 October on a 24 hour stoppage;

AND WHEREAS since 5 September 1996 the Commission has convened a series of compulsory conferences;

AND WHEREAS the Commission has been informed of initiatives employed by the parties and the CCIWA to resolve the dispute by:

- approaching the Commonwealth Government to intervene to have the Australian Taxation Office reverse the decision to change the treatment of travelling allowances for tax purposes; and
- investigating the prospects and procedures for challenging the Australian Taxation Office Ruling on the tax on travel allowances;

AND WHEREAS the parties have also considered the basis upon which the matter maybe determined by arbitration;

AND WHEREAS despite further discussions at conference, there appears to be no immediate prospect of resolution of the dispute and indeed the likelihood of further industrial action.

AND WHEREAS the Commission as presently constituted considers if necessary to intervene in order to prevent a further deterioration in industrial relations in respect of the matters pending further conciliation, or if need be, arbitration and in order to encourage the parties to further exchange attitudes and information which would assist in the resolution of the dispute surrounding this claim;

NOW THEREFORE, I, the undersigned pursuant to the Industrial Relations Act, 1979 and in particular section 44(6)(ba), do hereby order—

- (1) That each of the employees members of the Union employed by the said Companies at the the Kiln 6 Expansion Project at Cockburn Cement who are engaged in industrial action concerning the matters the subject of these proceedings, cease such industrial action as may be, but in any event, no later than 0900 hours on Monday, 21 October and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action in respect of this matter until this Order is revoked; and
- (2) THAT the Union and its officials take all reasonable steps as may be necessary to ensure that the members of their respective Unions comply with the terms of paragraph (1) of this Order, including but without limiting the generality of that obligation, the obligation to:
 - (a) call a meeting of employees members of each of the respective Unions at theKiln 6 Expansion Project at Cockburn Cement for no later than 0900 hours, on Monday, 21 October, 1996;

- (b) advise the employees of the terms of this Order; and
- (c) counsel employees to return to work and continue to work in accordance with the terms of paragraph (1) of this Order and to refrain from engaging in any further industrial action in respect of the dispute the subject of these proceedings; and
- (d) A copy of this Order is to be transmitted to the relevant Union officials and delegates by 12 noon Friday, 18 October, 1996.
- (3) THAT in the week commencing Monday, 21 October, 1996 conference proceedings be resumed for the Commission to be informed on responses received by the respective parties to initiatives to progress the resolution of matters And in the light of any developments arising from the exchange of that information and advice to the Commission, for the Commission to consider what steps should be taken to involve any other companies, organisations or individuals who may assist in the settlement of matters.
- (4) THAT the Union or Companies may on giving 24 hours notice to the other, apply to the Commission to vary, revoke or otherwise set aside the terms of this Order.

[L.S] (Sgd.) W.S. COLEMAN,
Chief Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Wesfi Limited
and

The Forest Products, Furnishing and Allied Industries
Industrial Union of Workers, WA.

No. C 317 of 1996.

COMMISSIONER P E SCOTT.

10 October 1996.

Order.

WHEREAS on the 10th day of October 1996 the Applicant filed a notice of Application for a conference on the basis that employees members of or eligible to be members of the Respondent Union had undertaken industrial action associated with enterprise bargaining; and

WHEREAS the Commission convened a conference at 5.00pm on Thursday the 10th day of October 1996; and

WHEREAS the Commission is of the opinion that an Order is necessary to prevent the deterioration of industrial relations until conciliation or arbitration has resolved the matter;

NOW THEREFORE the Commission pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby orders—

THAT:

1. Employees of Wesfi Limited members of or eligible to be members of the Respondent Union engaged at the Dardanup particle board plant cease industrial action no later than 8.00pm on Thursday the 10th day of October 1996 and take no further industrial action until the resolution of the matter by conciliation or arbitration;
2. (a) No later than Wednesday the 16th day of October 1996 Wesfi Limited shall initiate a review of the WESFI Pty Ltd Particle Board and Low Pressure Melamine Manufacturing Division—Dardanup (Enterprise Bargaining) Agreement 1995, No AG 171 of 1995 with all parties to that agreement.

- (b) Such review shall take no more than seven days from the 16th day of October 1996. If the single bargaining unit is not to continue after the conclusion of such review then Wesfi Limited shall forthwith advise the Respondent Union as to whether or not it intends to negotiate separately with the Respondent Union for a new agreement.
- (c) Where Wesfi Limited does not intend to negotiate separately with the Respondent Union for such agreement, then the Commission shall be advised and a further conference shall be convened for the purpose of conciliation.

[L.S] (Sgd.) P.E. SCOTT,
Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Metro Meats International Limited
and

The Australasian Meat Industry Employees' Union,
Industrial Union of Workers, West Australian Branch, Perth
No. C 333 of 1996.

Meat Industry (State) Award, 1980.

SENIOR COMMISSIONER G.L. FIELDING.

1 November 1996.

Order.

WHEREAS following a conference held before me on 31 October 1996 regarding payment for work lost as the result of a breakdown of equipment and following a recommendation from the Commission that all bans and limitations be lifted with respect to the matter, agreement was reached;

AND HAVING heard Mr M. Darcy and Mr J. Salter on behalf of the Applicant and Mr G. Ferguson on behalf of the Respondent, and by consent of the parties, the Commission pursuant to the powers conferred on it under the Industrial Relations Act 1979, hereby orders:

- (1) THAT all bans and limitations imposed as at 1 November 1996 by the employees of the Applicant at the Linley Valley Abattoir who are eligible to be members of The Australasian Meat Industry Employees' Union, Industrial Union of Workers, Perth shall be lifted forthwith and thereafter each of the employees are to work and thereafter work in accordance with their respective contracts of employment and refrain from commencing or taking part in further industrial action until this Order is revoked or otherwise expressed.
- (2) THAT notwithstanding the provisions of the Meat Industry (State) Award, 1980 each of the slaughterers who participated in industrial action on either the 29, 30 and 31 of October 1996 are to work three hours' overtime at ordinary rates on Saturday, 2 November 1996 between the hours of 6.00 am and 11.30 am, otherwise normal Saturday overtime rates will apply after the first three hours of work for each individual employee, provided that any employee who for reason cannot make up the three hours at ordinary time on Saturday, 2 November 1996 shall do so as soon as practical thereafter.
- (3) THAT the arrangements set out in the letter of 13 November 1996 to the Assistant Secretary of the Union and as amended by the letters dated 30 November 1996 and 20 September 1996 shall form the basis of employment of small stockslaughtermen at the Linley Valley Abattoir and to the extent that those arrangements are inconsistent with the current provisions of the Meat Industry (State) Award, 1980 they shall prevail over that Award.

- (4) THAT this Order shall have force and effect until an Enterprise Bargaining Agreement between the parties covering the employees in question is registered as an industrial agreement under the Industrial Relations Act, 1979.

[L.S]

(Sgd.) G.L. FIELDING,
Senior Commissioner.

CONFERENCES— Matters referred—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers Western Australian
Branch

and

BHP Iron Ore Pty Ltd.

No. CR 263 of 1996.

COMMISSIONER A.R. BEECH.

29 October 1996.

Reasons for Decision.

THE COMMISSIONER: Mr Ivan Saab is aged 50 years and had been employed by BHP Iron Ore (the company) for eighteen years. For seventeen and one half of those years he had been employed in the ore car workshop at Nelson Point and for the last seven years had been an ore car examiner. In July 1996 he was driving a utility at night along the train examining it for visual signs of wear. The work involved driving slowly, approximately ten kilometres an hour on average, for a given length of the train using a spotlight mounted on the vehicle and also, where appropriate, a hand held spotlight. During the course of this examination the vehicle hit a light pole "ripping off" the driver's side headlight bumper and damaging the front panel. On the 25th July 1996 the company dismissed Mr Saab following a disciplinary investigation into his driving performance. The company concluded that his driving performance was unsatisfactory and that he was unsuitable for further employment with the company. He was terminated with payment of five weeks' wages in lieu of notice.

The applicant union complains that the dismissal is unfair. On a claim of harsh, oppressive or unfair dismissal, the onus is on the employer to show that there is a ground or are grounds on which the Commission could find that the dismissal was justified. If the employer does not show that there is a ground or are grounds on which the Commission could find that the dismissal was justified or, if the employee establishes that, whether or not it was justified, the dismissal was harsh, oppressive or unfair, then the claim is taken to have been established. A dismissal is justified if there was a valid reason, or were valid reasons, connected with the employee's capacity or conduct, or based on the operational requirements of the undertaking, establishment or service, for the dismissal.

The company does not argue that the accident which led to Mr Saab's dismissal is the only basis upon which the Commission could find that the dismissal was justified. Rather, the company tendered a list of incidents which had occurred during Mr Saab's employment and regards the accident which led to his dismissal as being an accumulation of such incidents which compel the conclusion that Mr Saab's driving performance was unsatisfactory and that he was unsuitable for further employment with the company. On the evidence of Mr Hayes, the Senior Industrial Relations Officer, the company did not rely on previous incidents back further than May 1995 (transcript p.153). Of the incidents since then, three involved damage of much the same nature to a vehicle as the incident

which led to the eventual dismissal. On the 8th August 1995 he drove into a fire hydrant bollard. For this he was counselled. On the 23rd January 1996 he damaged the driver's door for which he received a written reprimand. On the 4th April 1996 he stopped his vehicle over a railway crossing for a sufficient length of time that the crew of an approaching train "dumped the air" to bring the train to a stop. Following this Mr Saab was issued with a final warning on the 22nd April 1996 (exhibit 3). The final warning was regarding Mr Saab's driving performance and contained the warning that "any future incident will lead to further disciplinary action, which may include the termination of your contract of employment". The incident on the 19th July 1996 which has been detailed at the beginning of these reasons was thus a "future incident".

The union attacked the dismissal of Mr Saab on two grounds. The first of those grounds is that the previous incidents relied upon by the company were themselves inconsistently handled by the company and did not provide a firm basis for the dismissal. The difficulty faced by the union in making this submission is that the record indicates that on each previous occasion an inquiry was properly conducted pursuant to the Industrial Relations Agreement between the parties and involved the union on each occasion. It is the case that, on each occasion, the finding of the inquiry was not challenged by the union at the time that it was made and it is somewhat more difficult for the union now to try to challenge the facts and finding of each report. It did not succeed in doing so. I am satisfied from the reports and the evidence before the Commission that the previous incidents did occur as described and resulted in the damage indicated. While it is correct to say that on each occasion there was not injury involved and that the damage to the vehicle on each occasion was not significant, the incidents do reveal a frequency which the company cannot be criticised for noticing. Causing damage to the employer's property can be a valid reason connected with the employee's capacity or conduct to warrant dismissal. That is not to say that dismissal is justified on each and every occasion that the employer's property is damaged due to an accident involving the employee. It will depend upon the circumstances. This is recognised by the company's letter of final warning. It is not the case that, following the issue of the final warning on the 22nd April 1996, any future incident will lead to dismissal. It may lead to dismissal and will require an examination of the circumstances. This brings me to the union's second ground.

It is common ground that Mr Saab hit a light pole during the course of an inspection of a rake of 120 ore cars. It was night time. He drove his utility from one end of the train while a fellow ore car examiner drove towards him from the other end of the train. In accordance with an informal practice between ore car examiners, Mr Saab and the opposing driver turned their headlights off and travelled on parking lights. Further, at the time of the accident Mr Saab was using a hand held spotlight such that he was driving with one hand on the steering wheel, using the other hand to hold the spotlight, and was leaning out of the car window looking at the ore car wheels as his vehicle travelled slowly down the length of the train. I accept the evidence of Mr Saab that the vehicle passes close to the light poles. This is supported by the photograph which became exhibit 11(5). The Commission understands from the evidence that this manner of examining ore cars has been the custom at Nelson Point for approximately three years since the company reduced the number of ore car examiners on inspections to one person per vehicle. It is important also to note that the road down which Mr Saab was driving was floodlit by the lights on the poles, one of which Mr Saab hit. The evidence before the Commission, which I accept, is that the light at night is bright, not equivalent to daylight, but adequate. The reflectorised strips on the light poles work less effectively, if at all, in the absence of headlights. That was the case here.

The evidence before the Commission is that this method of examining ore cars involves an element of hope that "when you are driving along, you are driving one way and you're looking another way ..." hopefully you see the light poles (transcript p.104). The evidence is that at least one other ore car examiner has had "pings" and, according to him, so has almost every ore car examiner. Sometimes it is reported, and sometimes it is not. This evidence was given during cross-examination and not rebutted and I accept it. It is evidence which calls for an examination of the manner in which the job

of ore car examiners is performed at night. I understand that exhibits 13 and 14, which are safety related memos of September 1996, attempt to address the issue. Whether they are sufficient or not in the context of the manner in which the job of ore car examiners is performed at night is not clear. This evidence leads me to attach less weight to exhibit I which purported to be a list of car examiners' vehicle incidents from January 1995. This list is only of reported incidents and it is not known, of course, how many such incidents as the one for which Mr Saab was dismissed have actually occurred.

When the incident which led to Mr Saab's dismissal is viewed against that evidence of the way the job is now performed, it takes on somewhat less significance in my mind. I have no evidence before me that any previous incident involving Mr Saab's driving is either a common type of accident or one arising out of the way the job is actually done. This final accident however does meet both of those descriptions. If one adds to that the evidence that, Mr Saab's accident having brought the practice officially to the company's attention, the company has now instructed drivers that they must keep both hands on the wheel and not dim their headlights, then I am inclined to the view that the final accident involving Mr Saab is an accident which has occurred to most, if not all other ore car examiners, and which arises due to an informal arrangement between the examiners. Although the practice was not "authorised" by the company I do find it difficult to accept that a work practice of perhaps three years was not known to the company's supervisors, at least informally, as alleged by the union. To conclude that they did not know about the practice is to also conclude that the supervisors do not know how the ore car examiners actually perform the job at night and in the absence of evidence I am not prepared to draw such a far reaching conclusion. The company did not call evidence from any person other than Mr Hayes and I accept that Mr Hayes is not a supervisor and therefore does not have direct knowledge himself how the duties are performed at night. I find it likely from the evidence of both Mr Saab and Mr Chadwick that the supervisors did know of the practice.

Thus, while the damage caused to Mr Saab's vehicle was seen by the company as being the culmination of enough previous incidents to warrant dismissal, I am not satisfied on the evidence that it is correct to do so. From the evidence I conclude that the accident involving Mr Saab is one that has occurred to most, if not all, other ore car examiners and that needs to be taken into account. On the evidence before me, the significance of this was not taken into account by the company in it reaching its decision to dismiss Mr Saab. The evidence before the Commission regarding this manner of examining ore cars at night and the frequency with which such incidents apparently occur, but are not necessarily reported, was not necessarily before the company when it made its decision. When the circumstances are seen as a whole the previous accidents relied on by the company need to be balanced against Mr Saab's very long service and the nature of the final accident. I find on the evidence that the dismissal of Mr Saab for that accident was harsh in all of the circumstances.

A further reason why the mere occurrence of a further incident would not lead, of itself, to termination is to be found in the parties' 1989 Industrial Relations Agreement (an extract of which became exhibit 6). In the event of disciplinary action being progressed the penalties are listed as being:

- exonerate
- written reprimand
- three days' suspension
- dismissal (includes termination for other than misconduct).

The disciplinary action taken against Mr Saab is governed by the terms of this Agreement. I understand from the evidence before me that the previous disciplinary action taken against Mr Saab is in accordance with this Agreement and it appears that the parties do not consider any alternative disciplinary action other than those four penalties. The evidence before the Commission is that the four penalties are not seen as "a step procedure going from one to the other, but rather each case is dealt with on its merits and, if necessary, dismissal may be the first result" (transcript p.186). As each circumstance is to be judged on its merits, that is obviously appropriate.

However, I have found it curious that the evidence is that the three day suspension is not used in relation to "work performance issues", but rather where there has been an incident involving some form of misconduct. An example was given where, in an incident involving "horseplay" which led to the rolling of a vehicle, a three day suspension was imposed. It is not clear to me why, in the context of the Industrial Relations Agreement, a three day suspension tends to be utilised only where there is an element of misconduct, or alternatively that a three day suspension is not considered in circumstances where there is no misconduct. That is not to say that the procedure is indeed a step procedure. It is that each case is indeed to be looked at on its merits, but so are the various penalties available to the company according to the Industrial Relations Agreement. There is no reason, on the evidence before me, why a three day suspension could not have been considered as an alternative to the termination of Mr Saab. On the facts of the accident which I have outlined above, and with the ability of the company to suspend Mr Saab for three days, to regard the incident as merely another manifestation of Mr Saab's perceived driving inadequacy and thus to dismiss him is too harsh a penalty. It reinforces my conclusion that Mr Saab's dismissal was unfair.

The company urged upon me the contrary view supported by some other decisions. Those decisions are not binding on me and are really examples of other circumstances being judged on their merits. I have not found their particular facts persuasive in relation to Mr Saab's circumstances. In *Sutton v Metserv Australasia Pty Ltd*, a decision of the Industrial Relations Commission of South Australia of the 16th May 1996 (No. 18 of 1996, unreported) an employee was dismissed after approximately twelve incidents concerning careless and unsafe driving over approximately four years such that, at the request of the union delegate and the occupational health and safety representative, he was taken off all driving until such time as he had an eye test. Each case must be seen on its own facts and, in that case, the dismissed employee was seen by both the company and his fellow employees as a danger to safety because of careless and unsafe driving practices. In this case, Mr Saab has some eighteen years' service, and whilst his record is not unblemished, his greater length of service and the lack of any accusations of careless or unsafe driving from other employees distinguishes him from Mr Sutton.

Likewise, in the case of the termination of Mr Freeman by the Sons of Gwalia Limited ((1993) 73 WAIG 1623). Mr Freeman in that case had only three and one half years' service and the driving incident which caused his dismissal was the third incident of "a serious nature". His fellow employees saw him not as a defensive driver but one who had a "barging attitude". These factors contrast with the circumstances of Mr Saab's employment with the company. In *Read v Arimco Mining Pty Ltd* ((1993) 73 WAIG 1609), Mr Read had a little over one year's service as a casual and the Mine Manager thought he had an anti-authority attitude. This evidence was accepted by the Commission. The case argued by the union in the matter now before me has some similarity with the case argued by the union when it alleged the unfair dismissal of Mr Anderson (*AMWSU v Hamersley Iron Pty Ltd*, (1990) 70 WAIG 1185) but the facts of the employee's conduct, including his lack of credibility in explaining his actions before the Commission, differentiate that case from this. I also note that in none of the above cases is there evidence that the incident leading to the dismissal was one which had occurred to others in similar circumstances.

The evidence as a whole in this matter leads to the conclusion that the dismissal of Mr Saab in the circumstances was indeed harsh as the union complains, and I so find.

The union claims that Mr Saab should be re-instated and I am satisfied that that should be so. Reinstatement is the primary remedy afforded by the Act and it is not impractical for that to occur in these circumstances. There is no serious suggestion that Mr Saab is not otherwise a good employee. He struck me as conscientious and genuinely concerned at the accidents in which he has become involved. Whilst it is proper that the company, as his employer, give consideration not only to the damage to its property but also the potential risk to the safety of other employees, the evidence before the Commission does not reveal that Mr Saab's accidents have been of such an unsafe

nature that he should not be allowed to return to work. An order will issue to that effect.

The Minutes of a Proposed Order now issue.

Appearances: Mr J. Mossenton appeared for the applicant.

Mr M.C. Borlase and with him Mr M.P. Wheeler appeared for the respondent.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers Western Australian
Branch

and

BHP Iron Ore Pty Ltd.

No. CR 263 of 1996.

COMMISSIONER A.R. BEECH.

31 October 1996.

Order.

HAVING heard Mr J. Mossenton on behalf of the applicant and Mr M.C. Borlase and with him Mr M.P. Wheeler on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby:

A. DECLARES:

THAT the dismissal of Mr Ivan Saab from his employment on the 25th July 1996 was unfair; and

B. ORDERS:

- (1) THAT Mr Saab forthwith be reinstated in the position previously held by him;
- (2) THAT Mr Saab be paid for the period between his dismissal and the date of his reinstatement in accordance with this order as if he had been at work during that period;
- (3) THAT Mr Saab's service be deemed to be continuous notwithstanding his dismissal on the 25th July 1996.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and
Kindred Industries Union of Workers—Western Australian
Branch

and

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, WA Branch

and

Fluor Daniel Power Services Pty Limited.

No. CR 167 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

15 July 1996.

Reasons for Decision.

CHIEF COMMISSIONER: The parties are in dispute over the application of the terms of Order No. C 234 of 1995 Part A wherein the provision is made under paragraph (14) that:

"A shift worker whilst on afternoon or night shift shall be paid for such shift 20 per cent more than their ordinary rate."

At the conclusion of conference proceedings held in accordance with section 44 of the Act, the question as to how shift

workers' wage rates were to be calculated had not been settled. The determination of this issue is important to the industrial relationship between the parties and in this context they agreed that the Commission should hear and determine the question of the proper application of the terms of paragraph (14) of the Order pursuant to Section 44 (9) of the Act.

It is appreciated that this excites consideration of the interface between section 44 and section 46 of the Act. However, it was recognised by the parties and accepted by the Commission that the interpretation of the provisions of the Order was part of issues generally which had given rise to the dispute. The Commission is entitled to interpret the terms of the Order as a question arising under Section 44(9) of the Act in order that the disagreement between the parties can be settled (see 63 WAG 1389, 69 WAIG 1019 and 69 WAIG 2623).

The respective positions taken by the parties on the question is summarised in correspondence tendered:

"The Union submits that the percentage rate (in this case 20%) applies to the ordinary rate and should be paid for the whole shift, whether it is 7.6 hours or 10 hours. The Clause does not talk about "ordinary hours" which may mean 7.6 hours—it says "ordinary rate".

The Union believes that the percentage increase applies to the workers all-purpose rate of pay and to any other penalties which may apply from time to time".

The Company's believes that:

"...the agreement provides for employees to work thirty-eight (38) ordinary hours. where appropriate shift and other penalties are paid in addition to this, (sic) overtime rates are paid for hours in excess of thirty-eight (38 hours), however these penalties are not cumulative."

(see Exhibit C)

The parties agree that for the purpose of determining the issue of correct application of the shift provisions, the Order (and the Agreement to which it refers) stands alone. While various methods of calculating the wages of shift workers under the Metal Trades (General) Award, federal awards and various enterprise agreements operating in Western Australia and Victoria provide a history of the developments that each of the parties may have considered before settling the terms of payment for shift work under paragraph (14) of the Order now before the Commission, they do not provide an explanation as to the way this Order is to apply.

Generally, Order No. 234 of 1995 Part A operates to apply the terms of Industrial Agreement No. Ag 75 of 1995 (75 WAIG 1860) for the duration of the "Power Station Maintenance Contract" at Kwinana Power Station and Mug Power Station. However, to the extent that there is any inconsistencies between the Order and the Agreement the former prevails.

Simply stated, the union argues that ordinary hours of work (other than continuous work) for shift workers is ascertained by reference to clause 4.4.3 of the Agreement. On the terms of that clause the average of 38 per week may be varied:

"Provided that:

- (1) The ordinary hours of work prescribed herein shall not exceed 10 hours on any day except for work performed during outages.
- (2) In any arrangement of ordinary working hours where the ordinary working hours are to exceed eight on any shift the arrangement of hours shall be subject to agreement between FDPS and the majority of employees in the plant or work section or sections concerned' and
- (3) By agreement between an employer, the Union Bargaining Unit concerned and the majority of employees in the plant, work sections concerned, ordinary hours not exceeding 12 on any day may be worked subject to:

- Proper health and monitoring procedures being introduced;
- Suitable roster arrangements being made; and
- Proper supervision being provided."

(Clause 4.4.3 (75 WAIG 1860 at 1867)

The rate of pay for ordinary hours is, in the Unions' view, determined by reference to the provisions under Clause 4.4.6

“Afternoon or Night Shift Allowance” of the Agreement No. Ag 75 of 1995 (subject to the modification under Clause 14 of the Order). On this basis a shift worker’s “ordinary hours” (which may average 38 per week or 10 hours or 12 hours on any day under clause 4.4.3 of the Agreement) are to be paid at the rate of 20 per cent more than the ordinary rate. This then is said to be the new “ordinary rate” for the purpose of calculating payment in circumstances where the shift worker does not continue:

- for at least five successive afternoons or nights in a five day workshop or six successive afternoons or nights in a six day workshop; or
- for at least the number of ordinary hours prescribed by one of the alternative arrangements in subclauses 4.4.2 or 4.4.3. hereof,”

[Clause 4.4.6(b)]

In these circumstances the shift worker is to be paid for each such shift 50 per cent for the first two hours thereof and 100 per cent for the remaining hours thereof in addition to their “ordinary rate” i.e. the 50 per cent and 100 per cent loadings compound on the rate determined to be 120 per cent of the rate for an employee who is not on shift.

The nub of this argument is that the ordinary rate of pay of a shift worker is 120 per cent of the rate of an employee not on shift and in the absence a specific exclusion, the shift rate is the “ordinary rate” for the purposes of calculating that payment.

For the Company the position is that, the shift allowance of 20 per cent is “more than their ordinary rate”. From this it follows that the shift loading cannot be part of the “ordinary rate”. Payment for work beyond the ordinary hours is in accordance with clause 4.4.8 Overtime. That provides:

“Shift workers for all time worked in excess of our outside the ordinary working hours prescribed by this Agreement or on a shift other than a rostered shift shall:

- (a)
- (b) if employed on other shift work (shall be paid) at the rate of time and a half for the first two hours and double time thereafter.
- (c) ...
- (d) ...”

(Clause 4.4.8)

In support of the understanding that a rate of pay calculated in accordance with Clause 4.4.8(b) is not based on a compounding of the rate determined by the addition of a 20 per cent shift allowance, the Company points to Clause 4.4.7 Saturday Shifts. That stipulates that the extra rate under the provisions of this clause “... shall be in substitution for and not cumulative upon the shift premiums prescribed in subclause 4.4.6 hereof.”.

Payment in accordance with the Company’s understanding of the Agreement and Order is distributed to employees on commencing work on site (Refer to Exhibit D).

Although not defined as such a “shift worker” may be engaged on “continuous work shifts” or on hours “other than continuous work”. Within the latter category the ordinary hours of employment may or may not attract the identification of “afternoon shift” or “night shift” depending on the time the shift finishes (See Clause 4.4.3 and clause 4.4.1). Therefore a shift worker may work ordinary hours (other than continuous work) which is not on afternoon shift or a night shift.

Particular to the afternoon shift or night shift is the payment of an additional allowance of 20 per cent “more than the ordinary rate”. It follows that a shift worker not on a shift which can be identified as an afternoon or night shift but who works ordinary hours in accordance with Clause 4.4.3 of the Agreement does not receive the allowance under Clause 4.4.6(a) of the Agreement (as amended by paragraph 14 of the Order). Similarly, the entitlements identified under Clause 4.4.6(b) and (c) are payable only when the shift worked qualifies as an “afternoon shift” or “night shift” (as defined in 4.4.1). It follows that there must be an ordinary rate for shift work which is paid when such work is not identified as being “afternoon shift” or “night shift”. However, that rate only applies to a shift worker not working afternoon or night shift.

Clause 4.4.7 Saturday Shifts has application to all categories of shift work and because the incidents of a Saturday shift necessarily overlap “night shift”, the provision specifically address the circumstances that prevent a compounding of the entitlement which a shift worker on night shift attracts under Clause 4.4.6 of the Agreement (as amended by paragraph 14 of the Order).

Similarly, clause 4.4.8 Overtime has application to all categories of shift work. It covers situations where time is “worked in excess or outside the ordinary working hours prescribed by this Agreement or on a shift other than a rostered shift...”.

The contentious issue is whether or not the payment for shift workers whilst employed on “afternoon” or “night” shift who are “employed on other shift work (shall be paid) at the rate of time and a half for the first two hours and double time thereafter” means that payment should be calculated at their ordinary rate or the rate at which the shift work immediately prior to the “other shift work” is being paid.

I am satisfied that when read within the context of Part 4 Hours of Work, Overtime and Public Holidays, the provisions of Clause 4.4.8 (b) should be understood to be that payment is to be based on the rate determined by reference to the rate which includes afternoon and night shift allowances. I have formed this view with particular reference to the structure of Clauses 4.4.6, 4.4.7 and 4.4.8 and the terms of Clause 4.2.1 which specified the basis upon which the hourly rate is to be arrived at when computing overtime.

The terms of Clause 4.4.6(a) identify the basis upon which shift workers working afternoon or night shift are to be paid as distinct from the ordinary rate for other shift workers. The rate which includes the 20 per cent allowance is the rate of pay for a normal shift; it becomes the appropriate rate of ordinary hours. It is displaced by the particular circumstances identified in Clause 4.4.6(b) and (c).

The circumstances of a Saturday shift are specifically addressed. The overtime rate has to be determined with an appreciation of Clause 4.2.1 of the Agreement that specifically addresses the computation of overtime generally. The “appropriate weekly rate” to which reference must be made must include the shift allowance for afternoon and night shift workers. That is, the “appropriate weekly rate” which should apply for the purpose of calculating payment pursuant to Clause 4.4.8(b) of the Agreement. It is the rate ascertained by reference to Clause 4.4.6(a) when a normal shift is worked in ordinary hours.

An order will issue in the terms of this decision to answer the question pursuant to Section 44(9) of the Act in order that the parties may maintain good industrial relations on site and consult on other matters relevant to the operation.

Appearances: Mr C. Saunders on behalf of the Applicant Unions

Mr P. Ruffy on behalf of the Respondent Company

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

and

Fluor Daniel Power Services Pty Limited.

No. CR 167A of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

15 July 1996.

Order.

HAVING heard Mr C. Saunders on behalf of the Applicant Unions and Mr P. Ruffy on behalf of the Respondent the

Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

1. THAT pursuant to section 44(9) of the Act the question which arises out of the application of the Order No. 234 of 1995 Part A to shift workers, the Commission determines that Clause 4.4.6 of the Agreement No. Ag 75 of 1995 the Fluor Daniel Power Services Power Plant Maintenance Enterprise Agreement 1995 shall be understood to mean that:
 - (a) the allowance pursuant to subclause (a) of Clause 4.4.6 shall not apply for the purpose of determining the "ordinary rate" referred to in subclauses (b) and (c) of that clause; and
 - (b) where a shift worker who qualifies for payment of the allowance under clause 4.4.6(a) is entitled to the payment of overtime in accordance with Clause 4.4.8(b) the shift allowance under Clause 4.4.6(a) shall be included in the appropriate rate for the payment at time and a half for the first two hours and double time thereafter.
2. THAT this matter be divided so that outstanding issues may be discussed by the parties and conciliation proceedings reconvened if necessary under Matter No. CR 167B of the 1996.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

and

Fluor Daniel Power Services Pty Limited.

No. CR 167 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

7 August 1996.

Supplementary Reasons for Decision.

CHIEF COMMISSIONER: In the course of "Speaking to Minutes of Proposed Order" two issues were raised. The Applicant Unions addressed the question of an operative date for the Order. The Respondent Company wanted clarification on whether overtime payments for work on public holidays and weekend were to be calculated as an "additional" rather than a "multiplication" of the penalty rate.

It is important to appreciate that the matter referred for determination was a "question" pursuant to section 44(9) of the Act. It was not, and could not amount to an enforcement of the Industrial Agreement. Neither was it an interpretation within the meaning of Section 46 of the Act. The question was addressed within the limits of the operation of Clause 4.4.6 and Clause 4.4.8(b) of the Industrial Agreement. That is how I understood the submissions. It was addressed in that context to facilitate the on-going relationship between the parties and in particular to overcome difficulties which had given rise to conference proceedings before the Commission. On that basis the outcome of arbitration was to provide clarification so that discussions on a range of matters could progress.

It is apparent that this has not been achieved. Indeed, the limitation either imposed or understood by me to apply with respect to the question referred for arbitration appears to have given rise to another set of issues. The discussions that have taken place between the parties do not seem to have resulted in any better understanding of the calculation of overtime payments in all of the circumstances in which it arises.

However, I cannot now seek to interpret the application of the Industrial Agreement to meet all of the incidents of its operation nor can I enforce the terms of the Agreement by imposing an operative date for the application of the Order.

I consider that the Minutes of Proposed Order give effect to the Decision which answered the question and issues raised before the Commission. The Order will now issue. The Order will operate from the date of the Decision.

To further facilitate discussions between the parties, the matter before the Commission will be divided so that conference proceedings may be reconvened at the request of either of the parties. I would expect those discussions to have identified the range of issues that each party sees as needing to be addressed. If there is not a satisfactory conclusion either as a result of the discussions or the reconvened conference it may be that those outstanding issues which go to the operation of the Industrial Agreement should be considered under Section 46 of the Act. In view of this approach the Order which issues does not attract consideration pursuant to Section 49A(3) of the Act.

Appearances: Mr C. Saunders on behalf of the Applicant Unions.

Mr P. Ruffy on behalf of the Respondent Company

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.
Industrial Relations Act 1979.

The Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union of Workers—Western Australian Branch

and

Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, WA Branch

and

Fluor Daniel Power Services Pty Limited.

No. CR 167 of 1996.

CHIEF COMMISSIONER W.S. COLEMAN.

14 August 1996.

Order.

HAVING heard Mr C. Saunders on behalf of the Applicant Unions and Mr P. Ruffy on behalf of the Respondent subsequent to the issuance of the Order and Supplementary Reasons for Decision in Matter No. CR 167 of 1996 and being aware of the industrial issues associated with the relationship on site and having an appreciation of positions advanced by both parties with respect to that Order; NOW because the parties have different understandings of the application of that Order and that an agreed application cannot be reached by the parties, the Commission being mindful of the need for the parties to address matters relating to day to day industrial relations hereby orders:

1. THAT the Order dated 15 July 1996 in matter CR 167A of 1996 is hereby cancelled; and
2. THAT with respect to the application of Order No. 234 of 1995 Part A to shift workers, then Clause 4.4.6 of the Agreement No. AG 75 of 1995 the Fluor Daniel Power Services Power Plant Maintenance Enterprise Agreement 1995 shall be understood to mean that:

"Where a shift worker other than for public holiday(s) who qualifies for payment of the allowance under Clause 4.4.6(a) is entitled to the payment of overtime under this Agreement the shift allowance under Clause 4.4.6(a) shall be added as a flat payment to all hours worked."

3. THIS order shall have effect from the 15th day of July, 1996.

(Sgd.) W.S. COLEMAN,
Chief Commissioner.

[L.S.]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Termi Mesh (Perth) and Others.

No. CR 145 of 1996.

COMMISSIONER P E SCOTT.

17 October 1996.

Reasons for Decision.

THE COMMISSIONER: The matter referred for hearing and determination is what, if any, site allowance is appropriate to compensate for the disabilities said to be experienced by employees of the Respondents covered by the Building Trades (Construction) Award 1987, No. R 14 of 1978 ("the Award") at the Fini Group of Companies Hillarys Harbour Residential and Tourist Development site.

The progress of this matter includes:

- Application C145 of 1996 for conference was filed on 21 May 1996.
- A conference was convened by Beech C on 6 June 1996. This was adjourned to allow discussions between the parties, in particular the identification of disabilities said to arise on this site.
- A conference was convened by the Commission as presently constituted on Thursday 25 July 1996. To this point there had been no disclosure by the Applicant of the disabilities which it said would justify payment of a site allowance. This conference was adjourned on the basis that the parties were to meet during the next week to discuss the disabilities to be identified by the Applicant.
- A further conference was convened on 31 July 1996 following discussions between the parties at which the disabilities were identified, and at this meeting the Respondents rejected those disabilities. On the basis that this had occurred, and that conciliation was exhausted the Commission referred the matter for hearing and determination.
- Inspections of the site were conducted on 8 August 1996.
- The hearing of the matter was postponed on a number of occasions for various reasons and was finally heard on 23 September 1996.

Evidence before the Commission was that this development of approximately 40 residential units commenced in December 1995 and is due for completion in December 1996. It has a value of over \$10 million. The construction methods include substantial amounts of hollow core precast concrete slabs and precast panels.

The Applicant identified disabilities claimed to warrant a site allowance of \$2.10 per hour as being:

"that access has been a problem in relation to sandy soil, and the flow of large vehicles; that the site is situated right on the ocean, and is exposed to elements, and we heard from Mr Morrison, explaining the difficulties that have been encountered there, and we say that it is, particularly in relation to the ocean, but wind is a particular problem.

We also noticed on that day the use of secondhand timber; quite a lot of use of second hand timber on the site; the use of tilt-up panels and overhead cranes, and the difficulties associated with that; the fact that we say the site is a spread out site, which involves for a lot of the workers working on the far side, quite a distance to the amenities area; that with the rain and the blustery conditions that we've had on the site, and probably the level of the site, that it has been for the last part quite wet underfoot. We noticed also that there had been concrete cutting and chasing on site. We say it is generally an untidy site, and that's no reflection on the builder or any of the particular subcontractors on the site, but generally

because of the physical layout of it, it is generally an untidy site anyway. We also say because of the design of the site, and getting gear on and around the site, there is a lot of manual handling on that particular site."

The Respondents represented at the hearing submitted that the Commission is obliged to apply the Wage Fixation Principles to this matter, and not simply rely on the terms of the Award which sets out that the tests contained in the Sapri decision of the Full Bench of the Conciliation and Arbitration Commission dated 25 February 1983 (Print F1957) shall apply. This being the case, the averaging concept ought not be utilised as the Principles dealing with such allowance would require payment only when a disability is actually experienced. Should this approach fail, these Respondents say that the alleged disabilities are illusory and any disabilities which do exist are adequately compensated for within the Award. The terms of Clause 8.—Rates of Pay subclause (16) of the Award do not require recitation here. In essence they provide a mechanism for resolution of claim for a site allowance to compensate for all special factors and/or disabilities on a project. That process includes arbitration according to what is known as the Sapri decision (supra).

It also specifies that:

"A site allowance determined in accordance with this subclause shall be deemed to be prescribed by this Award."

The submission by the Respondents relies upon a series of decisions which go back to the 1988 State Wage Case Decision (68 WAIG 2412). At page 2415, the Commission in Court Session expressed these views:

"SITE ALLOWANCES

We are concerned at the ease with which those engaged in the construction industry reach agreement on site allowances, which are not only regularly in excess of those fixed in other parts of the nation, but are often for perceived disabilities, which as the New South Wales Industrial Commission pointed out in *Ermani Construction Pty Ltd v. The Australian Workers' Union, New South Wales Branch* (unreported: App. 240/87—15 March 1988), hardly fit the ordinary meaning of that term. Whilst the awards in the construction industry contain provisions for awarding a site allowance, that ought not to be taken as a licence for a wage rise under the guise of a disability allowance. To this end the Commission will not endorse site allowances which are struck on the premise that other employees on the site are in receipt of a site allowance of the same magnitude. Site allowances must bear a direct relationship to the work environment and to the disabilities experienced. It does not follow that all trades operating on a site will suffer the same level of disability for the duration of a project. We adopt the position set down by the Full Bench of the Commission in *Alcoa of Australia Ltd v. Amalgamated Metal Workers and Shipwrights Union of Western Australia and Others* [(1988) 68 WAIG 1690] with respect to site allowances generally and thereby disclaim any continuing relevance of a line of cases which were founded on "comparative allowance justice".

At this time we do not consider it necessary or practical for site allowance applications to be dealt with by the Commission in Court Session but serve notice to the parties of the rigorous test to be applied with respect to discrete groups of employees working on projects and experiencing disabilities at various stages of construction. Furthermore the position of this Commission will be subject to review upon the finalization of the National Building Industry Inquiry by the Australian Commission."

In the decision of the Full Bench in 1582 of 1991, Confederation of Western Australian Industry (Inc) and Australian Federation of Construction Contractors (Western Australia) Industrial Association of Employers and Building Trades Association of Unions of Western Australia (Association of Workers) (72 WAIG 1500 at 1508) the Full Bench noted:

"In our opinion, "site allowances" are set apart by the Commission from the Principles (see the 1988 State Wage Case Decision (68 WAIG 2412)), at least for the time being. That was a recognition that the Building Construction awards already contained a provision for awarding a

site allowance (see *supra* under the heading State Wage Case Decisions and Principles). The Building Trades (Construction) Award 1987, No R 14 of 1978 clearly does. The other two awards referred to in Mr Williams' submission, namely the Engine Drivers' (Building and Steel Construction) Award No 20 of 1973 and the Earth Moving and Construction Award No 10 of 1963 do.

The Commission also said that site allowances should not be taken as a licence for a wage rise under the guise of a disability allowance (as discussed previously in these reasons under the heading State Wage Case Decisions and Principles).

The Commission also said that site allowances must bear a direct relationship to the work environment and to the disabilities experienced.

There is nothing in the Principles which accounts "site allowances" as such as new allowances.

It is clear from what we have referred to that the Commission recognised site allowances and that it proposed to consider them anew after the National Building Industry Inquiry. There is no evidence that it has done so since, but it may do so.

Site allowances, by virtue of the Building Trades (Construction) Award 1987, No R 14 of 1978 and the Commission in Court Session's characterisation of them in the 1988 State Wage Case Decision (68 WAIG 2412), are allowances. That is what they are termed. However, they are not allowances which are subject to the specific Principles as yet, provided that, as the Commission in Court Session observed, they are not a licence for a wage rise and they bear a direct relationship to the work environment and to the disabilities experienced. The awards we have referred to above recognise that clearly too."

The Commission was referred to the decision of the Full Bench in matters numbered 25 and 26 of 1988, Alcoa of Australia Limited and Electric Power Transmission and Others and Amalgamated Metal Workers and Shipwrights Union of Western Australia and Electrical Trades Union of Workers of Australia (Western Australian Branch), Perth (68 WAIG 1690) At page 1692 the Full Bench says that:

"As indicated, the Sapri decision has particular reference to the determination of site allowances for building trades under the National Building Trades Award and it does not provide a warrant to determine rates for metal and electrical trades people under the Metal Trades (General) Award or the Electrical Contracting Industry Award in the manner which the learned Senior Commissioner concluded. He was obliged to follow the requirements of the Wage Fixing Principles and ultimately that which is referred to as the Work Value Changes Principle."

It is the decision of the Commission in Court Session of 14 March 1996 (76 WAIG 911) which causes the Respondents to say that whilst in the past the Sapri decision has been relied upon and that it was considered that that was appropriate "for the time being", that the Commission in Court Session has now dealt with the matter in a way which says that the Wage Fixation Principles ought apply. In this decision the Commission in Court Session summarises the submissions made to it, and its decision was brief:

- as they stand, the Principles are comprehensive enough to accommodate the range of issues that may be argued under claims for site allowances whether they be under allowances or enterprise bargaining." (page 922)

The Commission in Court Session in that decision noted that the Principles are to apply to site allowance matters and that is appropriate, however that must be read in the context in which it was raised and that was in respect of awards where provisions contained within the Award are not present. The Chamber of Commerce and Industry submission was made in the context of the decision of the Commission in the Australian Electrical, Electronics, Foundry and Engineering Union, Western Australian Branch v ABB Installation and Services (75 WAIG 2633) which related to work being undertaken by electrical tradespersons and electrical assistants covered by the Electrical Contracting Industry Award R 22 of 1978. This Award contains no provision similar to that contained in the Award the subject of this claim. The submission by the

Council was more relevant to the "metal and electrical construction industry". That being the case those awards must rely upon the Principles as the basis for their site allowance claims. As the reasons for decision of the Full Bench in the Alcoa case noted there is a distinction between those two circumstances. While the Award specifies the mechanism for dealing with site allowances as it does and the Sapri decision remains as the basis upon which these matters are determined then it is the appropriate test. Subclause (16) Site Allowance, of Clause 8.—Rates of Pay of the Award, provides the Applicant with a right to make the claim and pursue it in this manner.

The Commission has been urged in the past to consider the appropriateness of the Award continuing to provide the Commission with the ability to deal with site allowances when Federal awards no longer contain such provisions and where the Federal Commission no longer deals with site allowances. The Commission at that time noted that in 1991 there had been an application by the Building Trades Association to amend the Award to delete the provision however, following discussions between the parties to the Award they unanimously decided that the provisions should remain (71 WAIG 1043) therefore it is reiterated that whilst the provision remains in the Award the Applicant is entitled to rely upon it.

As noted at page 5 of the Sapri decision, the Full Bench said the then existing Guideline 3 did not preclude the establishment of new site allowances, nor do the current Wage Fixation Principles. The Full Bench in Sapri said "We agree with this as it does not involve the creation of a new type of allowance but the fixing of the amount of an allowance for which provision exists in the award and for which there is a specific procedure laid down."

The next issue to be dealt with is an assessment of this site in accordance with the Sapri decision criteria. The criteria to be used are set out at page 6 of that decision. The Commission was referred to a number of site allowance matters which demonstrate that this is a site which warrants consideration for a site allowance on the basis of the types of sites referred to at page 5 of the Sapri decision.

In respect of the disabilities said to be present on this site which warrant consideration, the Commission has inspected the site and heard evidence from the Union's organiser Mr Morrison, and the General Manager for Construction for the Fini Group, Mr Portolesi. Mr Morrison's evidence was that at the beginning of the job the site was covered with fine white beach sand which caused glare, heat reflection and was blown about in the wind. In winter the site was wet and the winds came straight off the ocean. He also says that there is a lot of fetching and carrying on the site due to the number of contractors. The use of machinery on the site causes people to be a lot more cautious and uneasy. There is a significant use of second hand timber, the site is generally untidy due to its nature and to the number of trades and contractors on the job. It is noted however that Mr Morrison also indicated that by the date of the application, the building covered most of the site so that the sand and the glare were no longer a problem. He said that after 25 May the wind was still a problem in relation to dirt and dust but said "if there is no dirt and materials and dust there from the job, it is the only job in Western Australia which has not got them on it" (transcript page 27). It was clear too from Mr Morrison's evidence that the Union did not disclose or identify to the Respondent the disabilities which it is now claiming until 30 July 1997. Mr Morrison stated that at the end of the day the Union would have been satisfied with \$1.75 on the basis that direct employees were receiving \$1.25, which he says was the "old site allowance from the city," and that one of the employees was receiving a 50 cents per hour leading hand allowance. I have also noted the evidence of Mr Portolesi as to the organisation of and the nature of the project.

I am satisfied that even though the bulk of the site was covered by buildings by the time the application for conference was filed and consequently that the glare and blowing fine sand would not have been the problem that they may have been prior to the application date, that the proximity of the site to the ocean and the exposure to the elements is a disability requiring recognition, and to a degree which goes beyond that provided for within the Award. There does not appear to be a significant amount of second hand timber used such as to

justify consideration as a disability to be compensated for in the site allowance.

As to manual handling, I am satisfied that it does warrant some recognition but is not a significant consideration. The layout of the site and the use of machines for a variety of purposes including the placement of precast panels is a factor which also requires some consideration in that the employees on site would need to go about their work with more caution thus creating an added stress. As to the area being wet underfoot the evidence was that this occurred prior to filing the application, and subsequently was not an issue. The evidence does not indicate that there is any significant amount of concrete cutting and chasing. The nature of the site, its layout and the arrangement of work means that the site tends to be unavoidably untidy. In all of these circumstances a site allowance to compensate for these disabilities of \$1.10 per hour is appropriate, taken as an average.

As to the operative date, the Commission has the power to make its order retrospective in special circumstances. It has been recognised that the nature of site allowances, the timing of projects and of claims generally justifies retrospectivity to the date of application. In this case the Respondents say that because the Applicant refused to disclose the basis of its claim in terms of the disabilities it says justify its claim until 30 July 1996, that the operative date should not be earlier than 30 July 1996. It is true that in two conferences prior to 30 July the Applicant did not disclose this information notwithstanding requests for it to do so. The Applicant was urged by the Commission constituted by Beech C and by me, at separate conferences to provide the detail to justify its claim. The Commission is obliged to pursue conciliation as its priority, and to arbitrate only where it is satisfied that conciliation will not resolve the matter in dispute. Until the Applicant disclosed the basis of its claim there was no possibility of agreement between the parties. Notwithstanding the Applicant's eventual disclosure of these matters, agreement was still not reached, however, there was no prospect of agreement prior to that disclosure. In these circumstances the Commission's usual approach to retrospectivity in site allowance matters requires reconsideration. Even though it is clear that the Applicant had for itself identified the basis of claims sometime prior to 30 July, it refused to do so to the Respondents and the Commission until it became clear that progress of its claim was dependent upon that identification. There was no delay in the process caused by the Respondents but there was delay caused by the Applicant's approach. On this basis it is not appropriate to order retrospectivity beyond the date upon which the Union identified the basis of its claim, being 30 July. An order will issue for the payment of the site allowance on and from 30 July 1996 until the completion of the project.

APPEARANCES: Mr G Giffard appeared on behalf of the Applicant

Mr K J Dwyer appeared on behalf of the Respondents

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Termi Mesh (Perth) and Others.

No. CR 145 of 1996.

Building Trades (Construction) Award 1987
No. R 14 of 1978.

COMMISSIONER P E SCOTT.

25 October 1996.

Order.

HAVING heard Mr G Giffard on behalf of the Applicant and Mr K Dwyer on behalf of the Respondents, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

1. That notwithstanding the provisions of the Building Trades (Construction) Award 1987 (No. R 14 of

1978) employees employed by the Respondents to carry out work at the Fini Group of Companies Hillarys Harbour Residential and Tourist Development site shall be paid \$1.10 per hour worked in lieu of and in substitution for all special rates and conditions described in Clause 9 Subclause (1) of the Building Trades (Construction) Award 1987.

2. The abovementioned rate shall apply on and from the 30 July 1996 until the completion of the project.

(Sgd.) P.E. SCOTT,

Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, Western
Australian Branch

and

BHP Sheet and Coil Products Division.

No. CR 86 of 1996.

COMMISSIONER R. H. GIFFORD.

6 November 1996.

Reasons for Decision.

THE COMMISSIONER : On 7 June 1996, the former Senior Commissioner issued a 'Memorandum of Matters for Hearing and Determination under s.44', relating to a claim made by the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Workers Union of Australia, Engineering and Electrical Division, Western Australian Branch, ("the union") in relation to action taken by BHP Sheet and Coil Products Division ("the company") relating to the wearing of safety helmets. The matter was then referred to the Commission as presently constituted.

The claim in the Memorandum is in the following terms:

- "1. The union claims that the compulsory wearing of safety helmets at all times throughout the workshop is not a fair and reasonable requirement, nor a lawful order and seeks an Order to that effect.
2. The respondent objects to and opposes the claim."

The union's position, as put by Mr C. Young, relied upon the evidence of Mr J. Fiala, an organiser of the union, responsible for the Sheet and Coil Products Division, together with Mr K. Lyons an operator employed within the operations and Mr Padfield, a shop steward within the operations. The company's position was argued by Mr S. Nettleton (of Counsel), whose case included evidence of Mr N. Ribbans the Manager of the Sheet and Coil Products Division or the Myaree Service Centre as it is known, together with Mr F. Randall, Chief Inspector—Workplaces, Worksafe Western Australia. The Commission in addition conducted an inspection of the factory operations of the Sheet and Coil Products Division in Myaree.

The union, in claiming that the company's requirement concerning the compulsory wearing of safety helmets was not fair and reasonable, relied upon the existence of a 'Memorandum of Understanding', as it came to be known, which predated the present Manager, and which they claimed had been breached, in the company seeking to enforce the requirement. The company denied that there had been any such breach and maintained that the requirement to compulsorily wear the safety helmets was not only lawful, but fair and reasonable.

In order to assess these positions, it is necessary, in the first place, to describe the circumstances giving rise to the dispute.

First however, it is appropriate to briefly describe the factory operations. The Sheet and Coil Products Division, or the Myaree Service Centre, is essentially concerned with converting coils of sheet steel into useable products, by means of

slitting or shearing. The primary process, that of slitting, is carried out on two machines. After the slitting has taken place, the coils are packed and dispatched onto trucks. The No. 1 slitter operates on a day and afternoon shift basis, whereas the No. 2 slitter (heavy gauge) operates on day shift only. The sheerline machine also operates only on a day shift basis.

The workforce numbers 20. The slitting machines are manned by an operator, an operator's assistant and a recorder, whereas on the sheerline, only an operator is utilised. The support employees involve crane drivers, dispatcher, forklift operator and stock receiver.

There are two overhead cranes. The primary function of the front crane is to remove coils from the slitting machine and sheerline, to place them into the packaging area and then to dispatch them onto a truck. The primary function of the back crane is to provide coils to each operating line. The ancillary functions of the cranes are to empty scrap bins and to move other equipment. There are also post cranes and a gantry crane.

The relevant circumstances giving rise to the dispute are firstly that on 22 November 1994, the Group General Manager of BHP's Sheet and Coil Products Division issued a direction in a document to each of its operations around Australia, including the Myaree operation, relating to 'Minimum Standards of Protective Equipment'. The top portion of that document is in the following terms:

"MINIMUM STANDARDS OF PROTECTIVE
EQUIPMENT

In order to prevent all injuries, whenever the risks of injury are identified, steps must be taken to safeguard all personnel and visitors on site. However in the course of normal operations our personnel and visitors, at times, may be at risk due to unforeseen or unplanned events. SCPD wants to provide all personnel and visitors on our plants with a basic minimum of protection. Therefore the following standards shall apply at all Sheet & Coil Products Division sites.

Safety Hats Work areas within and around plant process buildings involves constant work with overhead and mobile cranes, adjacent to plant and equipment above employees' heads. Where personnel and visitors go into areas of the plant where they will be exposed to the above equipment approved safety hats must be worn. Personnel within office buildings, operating cabins, amenities or driving fully enclosed vehicles on the plant are exempt from wearing safety hats whilst they remain in this environment.

....." (Exhibit N2)

This document followed upon the issuance earlier that year by the Managing Director and Chief Executive Officer of BHP of the BHP Occupational Health and Safety Policy which outlined the broad bases upon which the company was committed to 'achieving the highest performance in occupational health and safety with the aim of creating and maintaining a safe and healthy working environment'.

In the course of the early part of 1995, the former Manager of the Myaree Service Centre sought to implement the Group General Manager's direction but faced opposition from the workforce. Arising out of a meeting held on 21 April 1995, involving the former Manager, the Industrial Relations Manager of the division nationally and the union, a 'Memorandum of Understanding' was reached concerning the 'Wearing of Safety Helmets'.

The terms of that memorandum are as follows:

"WEARING OF SAFETY HELMETS

At a conference held on 21 April, 1995, the Company and Union agreed to adopt the following steps to promote the wearing of safety helmets within the factory.

- Step 1 The Company shall undertake to ensure a system is in place for the regular inspection of the cranes and light fittings to ensure they are in safe working order.
- Step 2 All employees will be issued with a safety helmet on 24/4/95. Employees may elect to

change this helmet for a different style as other styles become available.

- Step 3 All employees agree to wear their safety helmet within the factory whenever working in the following designated areas and tasks:
 - Crane driving and all crane operations.
 - Packing/recording whilst packing and strapping product coming off the end of process lines (owing to the close proximity of crane operations).
 - Any employee who is directly involved with assisting with crane operations.
 - All other employees are encouraged to volunteer to wear helmets and must do so whenever working in any of the above areas or task.
- Step 4 The procedures set out at Step 3 will be enforced through a system of self policing by fellow employees and management throughout a trial period to commence from 24/4/95. Both parties will share responsibility for reminding people of the need to wear a helmet on designated tasks and in designated areas.
- Step 5 A joint review of the trial will be carried out not later than 3 months from 24/4/95 to evaluate the success of the trial and identify opportunities to further grow compliance with the Company policy on "Minimum Standards of Protective Equipment" (copy attached).
- Step 6 The Union and the Company may each request an earlier review to raise and resolve issues of concern which emerge during the trial.

.....
A Gillis
Industrial Relations Manager
on behalf of BHP SCPD, MYAREE

.....
J. Fiala
on behalf of the
AEEFEU"

The memorandum was signed on 5 May 1995 (Exhibit N3).

It can be seen that the parties agreed to implement a step process designed to 'promote the wearing of safety helmets within the factory'. Step 3 sets out those areas and tasks in respect of which nominated employees are required to wear a safety helmet. The implication of the formulation of the provision is that operators of the slitting or sheerline machines, who generally do not operate in close proximity to the hook or load of the crane, or their assistants, are not required to wear safety helmets. Steps 4 and 5 refer to a trial period, subject to a 'joint review', that is to say, by the parties, within 3 months. The review process is also intended to "identify opportunities to further grow compliance with the company policy". It is this latter provision that has formed the basis of the different perspectives of the parties, namely as to how the matter of extending the wearing of helmets, should progress.

Immediately following the establishment of the Memorandum of Understanding, Mr Ribbans was appointed as Manager of the Myaree Service Centre.

In the course of August and September 1995, two incidents occurred in the factory which served as reminders to him of the effect of not wearing or wearing a safety helmet. In one incident an assistant operator who was not wearing a helmet hit his head on the moving beam of a gantry crane and received a laceration and bruising to the head. In the other incident, an operator at the entry to the sheerline machine, who was wearing a helmet, hit his head on a part of the machine. Although he injured his neck, his head was free of injury.

After some discussions at a 'crew meeting', he sought, by Memorandum of 15 September 1995, to institute throughout the factory the BHP policy relating to minimum standards of protective equipment, including the compulsory wearing of helmets, with effect from 18 September 1995 (Exhibit N6). The Memorandum indicated that the decision to institute the policy had followed a review of the current trial (as per the

Memorandum of Understanding) with the relevant union delegates.

Mr Fiala gave evidence to the effect that such a review had not taken place and that it was only following his intervention after the release of the Memorandum, that a review was arranged, and conducted, on 19 September 1995. Arising out of that review, the union delegate held further discussions with the factory workforce, over the compulsory wearing of helmets, with the result that the workforce maintained its opposition to the implementation of such a measure.

It then followed that Mr Ribbans determined to introduce a policy attributable solely to the Myaree Service Centre, known as the 'Head and Eye Protection policy' (Exhibit N7). This policy, which issued on 20 December 1995 was intended to be implemented with immediate effect. The date of implementation was later extended to March 1996. The policy included the following paragraphs; namely:

"..... Sheet and Coil Products, Myaree has become a workplace where the wearing of approved safety helmets and personal eye protection is mandatory for all whilst working or visiting inside the plant.

..... This means safety helmets and eye protection are mandatory requirements prior to entering the factory building"

As part of the policy, an implementation schedule was prescribed, which set out a series of 'education' steps, followed by a series of 'non-compliance' steps. These steps ranged from verbal contact with the employee, to warnings, followed by an 'industrial conference', and then concluding in dismissal.

The response from the workforce, via the union official, to Mr Ribbans, was that they would not agree to the implementation of the policy.

On 1 February 1996, Mr Ribbans sought advice from Worksafe Western Australia, as to the appropriateness of the policy (Exhibit N8) and after a visit from the Chief Inspector of the Workplace Branch, Mr F. Randall, the Chief Inspector wrote to Mr Ribbans, on 27 March 1996 (Exhibit N12), part of which letter read:

"Having carried out the assessment and reached the conclusion that a risk exists that needs to be controlled, I believe you have an obligation to implement control measures. The risk assessment process is however, quite subjective. Another workplace with no record of anything ever falling from a crane, might decide that the likelihood was so remote that it was not worthy of further consideration. Such thinking might explain why there is no requirement for the use of safety helmets in most workplaces equipped with overhead travelling cranes (although I am aware that things do fall from cranes occasionally).

I am of the view that even if the Occupational Safety and Health Committee recommended no action be taken, the employer who has the obligation to provide a safe workplace may still decide to provide control measures. We would see this as quite appropriate and would not seek to intervene."

In the meantime, the parties had met and determined that the union would refer the matter to the Commission. A Conference application was filed on 21 March 1996.

Mr Young, in his submissions on behalf of the union, submits that the essence of the dispute between the parties, stems from the meaning that each attribute to Step 5 of the Memorandum of Understanding where it refers to 'further grow compliance with the company policy 'Minimum Standards of Protective Equipment'. He claims that the workforce has adhered to it, whereas the company has not realistically consulted over the matter and simply sought to 'steamroll' its implementation.

It was submitted that in certain areas of the factory there was not the necessity on safety grounds, to compulsorily require the wearing of safety helmets all of the time. Further, the current measures in place, as to the wearing of safety helmets, set out in Step 3 of the Memorandum of Understanding, complied with all of the legal requirements of the Occupational Safety and Health Act 1984 and the common law. The union and the workforce had no difficulty with these measures.

It was put that consistent with Worksafe policy, the first step that ought to be taken in relation to hazards or potential hazards, was to engineer them out. In respect of three of these incidents referred to not involving the overhead crane, it is open to conclude that the hazards which come to light could be engineered out. Future hazards would be able to be engineered out, as a first option.

With respect to the overhead crane, it was argued that the probability of something falling off the crane was minuscule. In any event the company had an extensive maintenance programme in place. If it was insufficient, it could be made more frequent or it could be subject to a visual inspection by the company.

With respect to the Memorandum of Understanding, it was agreed by Mr Young, that it represented a compromise document and needed to be read in that light. The only ambiguity concerned the phrase in Step 3 referred to as "..... close proximity of crane operations". The union read that as referring to a distance of 5 meters either side of the load of the crane. It was conceded that the task of the emptying of scrap bins from time to time, was beyond the usual range of work carried out by the crane.

As to whether the Memorandum of Agreement constituted an interim document, the union deny that it constituted such a document.

In relation to the extent to which consultation has occurred between the parties since the making of the Agreement, the union maintain that meaningful consultation has not been forthcoming from the company.

It is argued in any event that the requirement to wear safety helmets is not fair and reasonable in summer especially, as their wearing is both hot and uncomfortable.

Mr Nettleton, on behalf of the company, in arguing that the policy sought to be implemented at the Myaree Service Centre concerning the wearing of safety helmets was both lawful and reasonable, submitted that this was underpinned by a corporate aim of achieving, in the context of safety, an incident free site. The present recorded position at the Myaree Service Centre is that of a lost time injury frequency rate of 12. This compares with a lost time injury frequency rate of 53, a year previously.

It was submitted that the policy was consistent with the terms of s.19(1) and s.20(2) of the Occupational Safety and Health Act 1984, in that where the company considers that a hazard exists, it ultimately needs to provide adequate personal protective equipment, and where it does so, there is an obligation upon employees to wear it. The policy is also seen as being consistent with the applicable award, namely the John Lysaght (Australia) Limited Award, No. 27 of 1967 (entered into by BHP's predecessor) which at subclause (9) of Clause 3.—Employment Relationship, specifies under the subheading of 'Safety Equipment', that employees will be issued with safety equipment which is appropriate to the task and that employees will wear and properly care for such safety equipment issued to them. Additionally, in the case of the AEEFEU/Sheet and Coil Products Division Myaree Performance Related Payments Scheme (Enterprise Bargaining) Agreement 1995, one of the projects nominated in the Attachment is the adoption of the Division's personal protective equipment policy, and to ensure 100% compliance.

In relation to the implementation of the policy, it was submitted that such occurred with full consultation with the workforce. Up to September 1995, the wearing of safety helmets was discussed at Occupational Health and Safety Committee meetings and informally. From then to December 1995, the Committee conducted an analysis of the risk factors associated with the non wearing of safety helmets.

It was put that the Head and Eye Protection Policy, which was sought to be implemented in December 1995, was a very fair and balanced policy and one which would not be mandatorily applied.

The involvement of the Chief Inspector of Worksafe Western Australia in the process, it was argued, was not motivated out of a doctrinaire desire to enforce the wearing of helmets, but merely to provide expertise to the process.

The Memorandum of Understanding was seen by the company as an interim step toward full compliance with the

personal protective equipment policy. In addition, in so far as the terms of the Memorandum were concerned, Step 5 was seen as unclear in respect of its implementation. It was also claimed that the provisions of Step 3 were not being complied with.

In terms of identifying areas where there was a potential for injury, reference was made to the movement of overhead cranes and the potential for items, such as rail clips or tools to fall off the crane, although it was conceded that maintenance, inspection and administrative procedures could be put in place to minimise the risk. The crane hook, loaded or unloaded was a risk to those working in close proximity. Using the crane to empty scrap bins was a risk to operators. Reference was only made to the incidents that had occurred, which were not related to the operation of the overhead crane, but in respect of which injury did occur to employees' heads. These matters had been able to be engineered away.

Having traversed the main elements of the respective arguments, it is now appropriate to canvas the contentious issues between the parties.

The starting point concerns the status and standing of the Memorandum of Understanding signed by the parties on 5 May 1995 (Exhibit N3). The company describe it as an interim step towards full compliance with the policy; that was certainly the understanding of Mr Ribbons, in terms of advice which he received in the matter. The union do not consider it to be interim in nature, although they recognise it as a compromise document. Their position is based upon the evidence of Mr Fiala, who was the only participant in the negotiations leading to the making of the Memorandum, who gave evidence in these proceedings. Additionally, Mr Fiala viewed the achievement of full (or 100%) compliance (per Step 5) as needing to occur on a consultative basis.

So far as the Memorandum itself is concerned, the Commission observes that there are no express terms of it which state or suggest that it was to be viewed as interim in character. Certainly, the procedures set out in Step 3 were to be the subject of a trial period, to commence from 24 April 1995. That trial was to be the subject of a 'joint review' no later than 3 months following the commencement of the trial. The review process was to be concerned firstly with evaluating the success of the trial, but secondly to identify opportunities to further 'grow' compliance with the company policy. (The use of the term 'grow' is unusual; the same meaning would seem to arise from the term 'develop').

The further development of compliance suggests to the Commission an ongoing process. Especially so, if Mr Fiala's evidence concerning the company's aim in achieving full, or 100% compliance, is accepted. Bearing in mind that Mr Fiala was the only direct participant in the negotiation of the Agreement, who gave evidence, the Commission is confident in accepting this evidence.

The term 'interim' suggests further steps to occur in the process. As it is, Step 6, the final step in the Memorandum, makes no such reference.

The Commission accordingly finds that the Memorandum of Understanding signed by the parties on 5 May 1995 (Exhibit N3), was not interim in character, but had ongoing effect.

In relation to the question of consultation between the parties concerning the development of compliance, it is necessary to refer back to Step 5 of the Memorandum. By its terms, the identification of opportunities to further develop compliance is to be carried out by the 'joint review' process. Such process necessarily means that the parties to the Memorandum are to jointly carry it out. This can only mean, in a consultative manner. In so concluding, the Commission notes Mr Fiala's evidence in this respect, namely that he understood it to be by means of consultation, and accepts that evidence.

It follows therefore, that the Commission finds that the further development of compliance with the company policy was intended by the parties to occur by means of consultation.

In terms of the course of events which followed the making of the Memorandum, it is clear that consultation did occur, particularly via the Occupational Health and Safety Committee. At the same time, there were difficulties being experienced with certain employees, who only occasionally worked

in the close proximity of the crane hook or load, in terms of their wearing of safety helmets. For others who were not in this category there were expressions of strong opposition to the wearing of safety helmets. Then, there were the incidents, referred to above, in August and September 1995.

The advice to employees from the Manager, in the Memorandum of 15 September 1995, in which he advised of his intention to implement the BHP policy relating to personal protective equipment, marked, in the Commission's view, a turning point in the process. It represented an attempt to bring the consultation process to a conclusion. Furthermore, by acknowledging, by implication, that it would be implemented notwithstanding the joint review of the trial, which was proposed to take place, was in effect to pre-empt the outcome of the review.

The Memorandum, as a result of the union's intervention, never came to be implemented, and the joint review was then conducted. There is no doubt, in the Commission's view, that the company had become frustrated by the consultative process and had sought to exercise its inherent management discretion or indeed its discretion under the Occupational Safety and Health Act 1984. It did not however, by, in effect, not giving proper credence to one of the terms of the Memorandum to which it was a party, namely the need for a joint review of the trial, enable an evaluation to occur. This would have to be seen, in the Commission's view, as a breach of the Memorandum.

When the joint review did take place it did lead, ultimately, to a stalemate in the consultative process. The company however later sought to exercise its discretion again, by implementing the Division's own policy, known as the 'Head and Eye Protection Policy' with effect from 20 December 1995. There had been no consultation with the workforce or the union officials concerned, in relation to its terms. Once again, a fundamental element of the Memorandum, namely the consultation process, was not complied with. It is perhaps not surprising that the position taken by the workforce hardened.

In reaching such conclusions, the Commission is not implying that a company ought, in a permanent sense, be prevented from implementing a safety policy which it seeks to implement, whether in response to its legislative obligations or for higher aims it may choose to set for itself. Ultimately, the company is able to exercise its inherent discretion to implement reasonable such policies. Where however, a company, as in this case, has committed itself to implement such a policy in a manner which invites consultation with the workforce, then it is important, in the Commission's view, for it to meet that commitment. It may mean that there is not a consensus arising out of the consultative process, but at least it would have occurred.

The Commission notes in this case that the company maintain that there has been full consultation in the process. The Commission however, is not satisfied that this has been the case, especially in relation to the formulation of the 'Head and Eye Protection Policy'. Certainly the parties have addressed the policy, subsequent to its issuance, but that has really been in the context of its implementation, rather than its formulation.

The company may feel that the actual formulation of the policy is a discretionary matter, as was the formulation of the original policy by the Group General Manager of the Division in November 1994, but the fact is, its formulation has occurred in a different context, namely a commitment to consult, as confirmed by the May 1995 Memorandum of Understanding. The Commission would observe in passing, that such a consultative approach is to be applauded, notwithstanding that it can, as it has in this case, led to delays and frustrations for the company. If the parties were operating a facility where there was a risk of fatality in the event of an accident, which is not the case here, the imperative for a speedy outcome would be different. In any event, it is important to observe that the legislation operating in this State does require there to be consultative procedures, to be dealt with primarily through health and safety committees.

It follows from the above analysis that the Commission is in accord with the union's position that the company has sought to push the process to a resolution. That having been said, the Commission hastens to add that it has occurred out of the

very best of motives on the company's part, of achieving an incident free work environment. The Commission therefore has no criticism of the Myaree Manager, in terms of his attempts to persuade that portion of the workforce not working in close proximity to the overhead crane hook or load, as to the appropriateness of wearing safety helmets.

The involvement of Chief Inspector of Workplaces of Worksafe Western Australia, was to assist that process. The essential role of Worksafe Western Australia, on the basis of the Chief Inspector's evidence, was seen as that of ensuring compliance by both employees and employers with the Occupational Health and Safety Act 1984, in the context of ensuring that where risks of injury exist in respect of hazards identified in a workplace, that appropriate control measures are implemented with a view to eliminating or minimising that risk. Those control measures have been established in the form of a hierarchy of measures. In the first place, the aim is to eliminate the hazard; next, to minimise the risk by substituting the hazard with something safer; next, to modify the plant; next, to isolate the plant or hazardous element; next, to introduce engineering controls; next, to implement administrative controls and safe work practices; and finally, to have employees wear required personal protective equipment.

The Chief Inspector made it plain that where a potential control measure is recommended by a health and safety committee, following upon its identification of a hazard, there is an obligation upon the employer to implement a control measure, based upon the hierarchy of measures. It is not for Worksafe to decide upon the measure but rather to ensure that the measure is adequate.

There is no suggestion, as the Commission understands the position, in the circumstances of this case, that the compulsory requirement to wear safety helmets is a question relating to the adequacy of the measure as it concerns compliance with the legislation. Rather, it is a question of whether the control measure that is necessary in the Service Centre operation should be taken to the extent that the company is requiring. Worksafe do not say that it is or it is not being taken too far; it is not their role to do so. Hence, this Commission's involvement in the question.

The original involvement of the Chief Inspector and the thrust of his evidence in these proceedings, is in relation to the operation of the overhead cranes at the Service Centre and the risks which are apparent in these operations. In relation to these cranes, he stated that because the cranes were of welded construction, the likelihood of something falling from the crane is 'quite small' or even 'rare'. Against that though, the consequence of such occurring and falling on the head of a person would be 'quite serious'. In relation to a measure formulated by Worksafe Australia, and adopted by the Worksafe Western Australia, known as the 'Risk Table', the risk in the instant case would be seen as a medium priority risk. This being the case, there was a need for a control measure to be put in place.

Such measures, it was suggested by the Chief Inspector, might include the provision of a net underneath those parts of the crane where it did not interfere with its operation or the construction of an elaborate roofing system under the crane or a roof over the employees who operate in a stationary work place.

The evidence of the Chief Inspector, under cross examination, focused upon the measures which could be undertaken to minimise the risk of something falling off a crane. Reference was made to a more frequent maintenance program, visual inspections, checking the torquing limits of all bolts (holding the engine, gear box and the like onto the crane), checklist of tools taken onto a crane when maintenance is carried out, and non-destructive examination of rail clips.

There is no evidence from the Chief Inspector as to whether the implementation of these latter measures would provide any different outcome, according to the risk priority associated with the 'Risk Table'.

There was also no evidence led from the Chief Inspector in relation to the ancillary operation of the overhead cranes for the purpose of periodically emptying the scrap bins, or in relation to the operation of the gantry crane or post cranes.

In considering the totality of the Chief Inspector's evidence, it is clear that it does not provide, in a direct way, an answer to the question that the Commission has before it. The evidence

in any event, was not led to achieve that purpose. Certainly the observation was made, at least impliedly, that the compulsory requirement to wear safety helmets in a factory environment, on account of employees working generally in the vicinity of an overhead crane, was seen as unusual. That observation did not of course suggest that such requirement was therefore not necessary in this situation, where a company was seeking to apply greater than usual safety standards.

The question is though, whether there are implications that can be drawn from the Chief Inspector's evidence, by the Commission, in an endeavour to bring a resolution. There is one which, in the Commission's view, is obvious. The Chief Inspector gave evidence of a range of measures that could be undertaken to minimise the possibility of any item falling from the overhead crane, onto the head of an employee under its path. Although the Commission as presently constituted does not purport to have any specialist knowledge of safety matters, the Commission was impressed with many of the suggested measures that could be implemented, such as a more frequent maintenance program, the regular checking of the torquing limits of all bolts, the use of a checklist of tools taken onto and off the crane during maintenance, and regular visual inspection by a company employee. There was no assessment sought by the Chief Inspector as to where, on the Risk Table, with these measures implemented, the risk priority would fall. The Commission suspects it would fit the 'low risk' category in the Risk Table. If it did, and the Commission cannot determine that definitively, it brings into question the need for the wearing of safety helmets for those employees who are not working in close proximity to the crane hook or load, at least in respect of minimising the risk of any item falling from the overhead crane.

The implication that is clear from this evidence, is that these kinds of control measures, having regard to Worksafe's hierarchy of control measures, ought to be put in place first, before the safety helmet option.

With respect to the use of the overhead cranes, for the ancillary function of periodically emptying scrap bins, and to the periodic use of the gantry crane and the post cranes, the position is different. In fact, it is more akin to the position of the employees involved with the overhead crane's operation in the unloading of coils and with their packaging and dispatch after slitting or shearing, with respect to contact. This is a matter of course already dealt with by the Memorandum of Understanding whereby helmets are required to be worn by employees working in close proximity to the crane hook or load.

This distinction between regular contact with the movement of the overhead crane hook or load, and only periodic contact with the movement of the crane hook or load or the operation of the gantry crane or post cranes, is a distinction which bears on the question as to whether there ought to be a permanent or occasional wearing of a safety helmet. The company's concern with the latter position, is that employees who are not required to permanently wear a helmet, frequently omit to do so when actually required to, when they are in close proximity of the crane hook or load.

Having regard to the terms of the Memorandum of Understanding, it would be difficult to argue, the Commission would have thought, that a requirement to wear a helmet, during the actual operation of the overhead crane in emptying the scrap bins and during the actual operation of the gantry crane or post cranes, was distinguishable, from the primary use of the overhead crane, in terms of the potential for head injury.

The distinction relates to frequency of contact. There was no direct evidence as to the frequency of use of the overhead crane to empty the scrap bins, or the operation of the gantry crane or post cranes, but the Commission gains the impression from the evidence that the use would be occasional. If this is the position, the Commission tends to the view that a requirement to wear a safety helmet permanently, in anticipation of providing protection for such an occasional event, would be onerous. It does mean though, that a safety helmet would need to be available at all times to enable it to be worn in the circumstances of the operation of the overhead crane in emptying scrap bins and during the actual operation of the gantry crane or post cranes. The concept of an enforcement process to achieve the wearing of the helmet, perhaps similar

to that which the company has already proposed, would need to be put in place.

With respect to any other circumstance concerning the need for protection to the head, such as to protect against knocking against higher parts of the machines, there was no evidence led by the Chief Inspector, and as such, there is no independent indication as to the risk profile associated with such hazards. Although an example of an incident was put, the Commission as presently constituted, whilst acknowledging that it is not an authority in such matters, is hard pressed to envisage the need for helmet protection, in such circumstances. This may be a matter upon which more persuasive influence needs to be brought to bear by the company, to justify the need.

Such a factor is a relevant one in the circumstances of this dispute. Whilst there is no basis for believing that the Manager pursued the question of the compulsory wearing of safety helmets, other than from a most laudable desire to achieve an incident free work environment, the element that seems to have been missing in the process is the capacity to persuade the relevant portion of the workforce as to the desirability of this position. The Commission recognises that there have been a considerable number of discussions, both formal and informal, involving the parties, including representatives of the workforce; and still these members of the workforce have not been convinced. The Commission observes that there may have been some different outcome if the company had sought to utilise the services of a specialist health and safety official, with wide experience, to persuade the workforce of the benefit or value of the wearing of helmets, in all functions in the operations.

All of the above considerations lead to the Commission not being prepared, on the basis of the evidence led in these proceedings, to now support the implementation of the Myaree Division's Head and Eye Protection Policy (Exhibit N7).

On the other hand, the Commission is not prepared to act as the union has requested the Commission to act in these proceedings, that is, to order that the compulsory wearing of safety helmets at all times is not fair and reasonable. This is because of the Commission's assessment that further steps are required to be taken, namely in terms of investigation on one part and consultation on the other. Should the Commission proceed to issue such an order notwithstanding these steps needing to be taken, it would simply be pre-empting the outcome of these processes, and that may not be in the best interests of the employees concerned, let alone the company.

The Commission therefore believes, firstly, with respect to the operation of the overhead cranes generally, in the context of those employees not required by the Memorandum of Understanding to wear helmets, that the company should further investigate the implementation of the control measures, as suggested by the Chief Inspector, with a view to determining whether the risk associated with an item falling from the cranes, constitutes a low risk, not warranting the wearing of helmets permanently, periodically or at all. Such investigation should also address the practicability of the wearing of helmets only during the actual operation of the overhead crane in the emptying of the scrap bins and during the actual operation of the gantry crane or post cranes.

Finally, with respect to the 'Head and Eye Protection Policy' the Commission believes that the company ought to consult with the union and workforce representatives, over the terms of such policy, consistent with the company's commitment to consultation in accordance with the Memorandum of Understanding.

The Commission will issue a Direction which will give effect to these matters, within a specified time frame.

Appearances: Mr C. Young on behalf of the applicant

Mr S. Nettleton (of Counsel) on behalf of the respondent

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Communications, Electrical, Electronic, Energy,
Information, Postal, Plumbing and Allied Workers Union of
Australia, Engineering and Electrical Division, Western
Australian Branch

and

BHP Sheet and Coil Products Division.

No. CR 86 of 1996.

COMMISSIONER R. H. GIFFORD.

6 November 1996.

Direction

HAVING heard Mr C. Young on behalf of the applicant Mr S. Nettleton (of Counsel) on behalf of the respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 hereby Directs THAT—

- (1) In the case of the operation of the overhead cranes generally, the company investigate the implementation of control measures, suggested by the Chief Inspector of Worksafe Western Australia, with a view to determining whether the risk associated with an item falling from the crane constitutes a low risk, not warranting the wearing of helmets permanently, periodically, or at all, other than in respect of the areas and tasks referred to in Step 3 of the Memorandum of Understanding, and subject to Direction (2);
- (2) The investigation to be held in accordance with Direction (1), be extended to investigate the practicality of the wearing of helmets only during the actual operation of the overhead crane in the emptying of the scrap bins and during the actual operation of the gantry crane or post cranes;
- (3) In the case of the proposed 'Head and Eye Protection Policy', the company consult with the union and workforce representatives, over the terms of such policy, consistent with the requirements of the Memorandum of Understanding, with a view to achieving a mutually agreeable policy; and
- (4) The investigation and consultation referred to shall commence forthwith and conclude within three months of the date of this Direction. In the event of any question remaining unresolved, either party may consider the making of a further application to the Commission to secure a final resolution.

(Sgd.) R.H. GIFFORD,

Commissioner.

[L.S]

PROCEDURAL DIRECTIONS AND ORDERS—

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia

and

Myer Stores Limited and Others.

No. 512 of 1996.

The Shop and Warehouse (Wholesale and Retail
Establishments) State Award 1977.

No. R 32 of 1976.

COMMISSIONER R.H. GIFFORD.

12 September 1996.

Order.

On 23 May 1996, a Conference, pursuant to s.32 of the Industrial Relations Act, 1979 ("the Act"), involving the parties, was conducted, in an endeavour for the Commission to conciliate in respect of the claims sought by the application. The Conference was adjourned on the basis that the parties would meet and further consider the claims.

A further Conference, pursuant to s.32 of the Act, was held on 20 August 1996. It was determined at the Conference that the claims dealing with 'Termination of Employment', 'Parental Leave' and 'Time and Wages Records' be listed for hearing and determination. The parties accepted that the claim dealing with 'Redundancy' may be required to be dealt with as a 'Special Case', under the State Wage Case Principles—August 1996, and were not opposed to the application being divided for that purpose.

NOW THEREFORE, I, the undersigned, pursuant to the powers conferred by the Industrial Relations Act, 1979, do hereby Order that application No. 512 of 1996, be divided, in the following manner:

- (1) THAT the part of the application dealing with the 'Termination of Employment', 'Parental Leave' and 'Time and Wages Record' clauses, will now constitute application no. 512(A) of 1996; and
- (2) THAT the part of the application dealing with the 'Redundancy' clause, will now constitute application no. 512(B) of 1996.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Shop, Distributive and Allied Employees' Association
of Western Australia

and

Aherns (Suburban) Pty Ltd
and Others.

No. 886 of 1996.

COMMISSIONER R.H. GIFFORD.

15 October 1996.

Order.

HAVING heard Mr W. Johnston on behalf of the Applicant and Ms C. Brown on behalf of the Respondents, and by consent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT this application be and is hereby withdrawn by leave.

(Sgd.) R.H. GIFFORD,
Commissioner.

[L.S]

Editors Note: Reasons for Decision published at 76 WAIG 3775.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Jill Elizabeth Graham

and

Comlec (WA) Pty Ltd.

No. 1020 of 1996.

COMMISSIONER A.R. BEECH.

18 October 1996.

Order.

HAVING heard Mr R. Clohessy on behalf of the Applicant, Mr D. Armstrong (of counsel) on behalf of the Respondent and Ms J. Smith (of counsel) on behalf of the Attorney-General as *amicus curae* the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the time within which Jill Elizabeth Graham may refer a claim under Section 29(1)(b)(i) of the Act against Comlec (WA) Pty Ltd be extended to and including the 22nd day of July 1996.

(Sgd.) A.R. BEECH,
Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers

and

Anderson Industries and Others.

No. 1085 of 1996.

Plaster, Plasterglass and Cement Workers'
Award No. A 29 of 1989.

COMMISSIONER P.E. SCOTT.

8 November 1996.

Order.

HAVING heard Mr G Giffard on behalf of The Western Australian Builders' Labourers, Painters and Plasterers Union of Workers and Ms J Dowling on behalf of a number of Respondents, now therefore the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979 (and specifically section 27(1)(s)), and by consent, hereby orders—

THAT Application No. 1085 of 1996 be divided into two parts, to become Application No. 1085A of 1996 which shall deal with variations to the Minimum Rates Adjustment Target Rates and Application No. 1085 of 1996 which shall deal with the remainder of the application to vary the Plaster, Plasterglass and Cement Workers' Award No. A 29 of 1989.

(Sgd.) P.E. SCOTT,
Commissioner.

[L.S]

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Mr M.J. Lapwood
and

National Mine Management Pty Ltd.

No. 1160 of 1996.

COMMISSIONER A.R. BEECH.

31 October 1996.

Order.

WHEREAS an application for an extension of time in application No. 1159 of 1996 was lodged in the Commission;

AND WHEREAS the applicant has advised the Commission that this matter is settled and this application is to be discontinued;

NOW THEREFORE, I the undersigned, Commissioner of the Western Australian Industrial Relations Commission, pursuant to the powers conferred on me under the Industrial Relations Act 1979, hereby order—

THAT this application be discontinued.

(Sgd.) A.R. BEECH,

[L.S]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Peter Guazzelli
and

International Mineral Resources.

No. 1179 of 1996.

COMMISSIONER P.E. SCOTT.

10 October 1996.

In the matter of an application for an extension of time for the filing of application No. 1131 of 1996

Order.

WHEREAS Mr P Guazzelli has on 21 August 1996 filed application No. 1131 of 1996 in the Western Australian Industrial Relations Commission alleging that on 17 July 1996 he was unfairly dismissed from his employment with International Mineral Resources; and

WHEREAS an application has been made by Mr Guazzelli for an extension of time for the filing of application No. 1131 of 1996 on the grounds that at the time of filing his application, the dismissal was the subject of an application under section 170 EA of the Industrial Relations Act 1988 of the Commonwealth by application No. U61061/96 filed on 1 August 1996; and

WHEREAS on 9 October 1996 the Commission convened a conference of the parties to consider the application for the extension of time; and

WHEREAS no grounds were submitted as to why such extension should not be granted other than grounds relating to the issue of the substance of the claim of unfair dismissal;

NOW THEREFORE, I the undersigned Commissioner pursuant to the powers conferred on me under the Industrial Relations Act, 1979 do hereby order:

THAT the time for filing of application No. 1131 of 1996 be extended to 21 August 1996.

(Sgd.) P.E. SCOTT,

[L.S]

Commissioner.

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

The Plumbers and Gasfitters Employees' Union of
Australia, West Australian Branch, Industrial Union of
Workers and Another

and

Burswood Resort Casino.

No. 1446 of 1996.

SENIOR COMMISSIONER G.L. FIELDING.

14 October 1996.

Order.

WHEREAS an application has been made to reduce the time for filing answers in Application No. 1444 of 1996 and having heard Mr W. Deakin on behalf of the Applicants and Mr L. Levine (of Counsel) on behalf of the Respondent, the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the application be dismissed.

(Sgd.) G.L. FIELDING,

[L.S]

Senior Commissioner.

**JOINDER/CONCURRENCE OF
PARTIES—
Application for—**

WESTERN AUSTRALIAN
INDUSTRIAL RELATIONS COMMISSION.

Industrial Relations Act 1979.

Bunnings Forest Products Pty Ltd and Others

and

The Western Australian Builders' Labourers, Painters and
Plasterers Union of Workers.

No. 1097 of 1996.

COMMISSIONER P.E. SCOTT.

1 November 1996.

Order.

WHEREAS this is an application pursuant to Section 27(1) of the Industrial Relations Act, 1979 that the Applicants be joined as parties in Application No. 943 of 1996; and

WHEREAS a conference was convened on Friday, the 23rd day of August 1996; and

WHEREAS there was no objection to the applicant parties of this application being joined to application 943 of 1996, the Commission granted the application, and submissions were made on their behalf at the hearing of that matter; and

WHEREAS the Order in respect of application 943 of 1996 issued on the 25th day of September 1996;

NOW THEREFORE the Commission, pursuant to the powers conferred on it under the Industrial Relations Act, 1979, hereby orders:

THAT the Applicants be joined as parties to Application No. 943 of 1996.

(Sgd.) P.E. SCOTT,

[L.S]

Commissioner.

NOTICES— Appointments—

NOTICE OF APPOINTMENTS.

RAILWAYS CLASSIFICATION BOARD.

IT is hereby notified that His Excellency the Governor in Executive Council has under Section 80N of the Industrial Relations Act 1979:

1. extended the appointment of Mr Frederick Douglas Munyard as a member of the Railways Classification Board from 13 August 1996 to 12 August 1998; and
2. appointed Mr David John Kemp as Deputy Member of the Railways Classification Board from 13 August 1996 to 12 August 1998.

J.G. CARRIGG,
Registrar.

4. That Regulation 108 be amended further by inserting "and 97T" after "65".
- Dated the 18th day of October, 1996.

P.J. SHARKEY,
President.
W.S. COLEMAN,
Chief Commissioner.
G.L. FIELDING,
Senior Commissioner.
J.F. GREGOR,
Commissioner.
S.A. CAWLEY,
Commissioner.
R.N. GEORGE,
Commissioner.
A.R. BEECH,
Commissioner.
P.E. SCOTT,
Commissioner.
R.H. GIFFORD,
Acting Commissioner.

NOTICES— General matters—

PURSUANT to Section 113 of the Industrial Relations Act, 1979 as amended the following amendments are made to the Industrial Relations Commission Regulations 1985 with effect on and from the first day of November, 1996:—

1. That Regulation 106 be revoked and the following new regulation come into effect in lieu:
 106. (1) The list of names, residential addresses and occupations of persons holding office and a record of the number of members in an organisation or association required to be filed with the Registrar pursuant to section 63 (2) and section 72B (6) of the Act shall be so filed during the month of January in each year and be current as at the first day of that month.
 - (2) The statutory declaration required by section 63 (2) and section 72B (6) of the Act may be made by the President or Secretary of the organisation or association.
 - (3) Notification of any change in the holding of office in an organisation or association pursuant to section 63 (3) and section 72B (6) of the Act shall be filed with the Registrar in writing within 14 days of the date of the change.
2. That Regulation 107 be amended by adding the following new sub-regulations:
 - (3) The statement required under section 97T of the Act shall be delivered to the Registrar within 6 months of the end of the organisation's financial year.
 - (4) If the statutory declaration required under section 97T of the Act is not made by the secretary, it may be made by the president or an officer of the organisation authorised under its rules, or in the event that the organisation's rules do not provide for by such authorisation, such person as may be delegated by the secretary of the organisation so to do.
3. That Regulation 108 be amended by deleting "and" where it appears between "63" and "65" and inserting a comma after "63".

AWARDS/AGREEMENTS— Consolidation by Registrar—

FOODLAND ASSOCIATED LIMITED (WESTERN AUSTRALIA) WAREHOUSE AWARD 1982.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 28th day of October, 1996.

J. CARRIGG,
Registrar.

Foodland Associated Limited (Western Australia)
Warehouse Award 1982
No. A 27 of 1982.

1.—TITLE

This document shall be known as the Foodland Associated Limited (Western Australia) Warehouse Award 1982.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
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3.—AREA AND SCOPE

This award shall apply to workers in the callings listed herein who are employed in the Western Australian Distribution Centres by Foodland Associated Limited of 18 Miles Road, Kewdale, and to this extent shall replace the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977, No. 32 of 1976.

4.—TERM

This award shall come into force on 1 June 1982 and shall operate until May 31, 1983.

5.—DEFINITIONS

(1) "Storeman" shall mean a worker performing one or more of the following duties:

- (a) receiving, storing, assembling, weighing and/or wrapping, branding, stacking or unpacking or distributing goods in and from a distribution centre.
- (b) the sale of goods by any means.
- (c) the recording by any means of a sale or sales.

(2) "Adult": For the purpose of this Award, the word "adult" shall mean a worker 21 years of age and over or a worker who is in receipt of the prescribed adult rate of pay.

(3) "Weekly Hand" shall mean a worker engaged by the week and whose employment shall be terminable by not less than one week's notice on either side. Such week's notice cannot be continued from week to week.

Provided that a weekly hand employed for a period of four consecutive weeks or less shall be classed as a "casual worker" and be paid not less than the minimum rates of wages herein prescribed for a casual worker. This proviso shall not apply to a worker employed as a weekly hand and who is dismissed for incompetence or any other cause referred to in Clause 20.—Engagement of this award or to a worker who severs his contract of service.

6.—CASUAL WORKERS

(1) "Casual worker" shall mean a worker engaged by the hour and who may be dismissed or leave the employer's service at any moment without notice and except as hereinafter

provided shall not be engaged for more than 32 hours per week in ordinary hours.

Notwithstanding the aforementioned, a casual worker may be engaged in ordinary hours for 38 hours per week for periods not in excess of one month for the purposes of relieving fulltime workers absent on approved leave or to assist during the peak period of Easter; or for a period not in excess of 3 months to assist during the peak period of Christmas.

Any casual worker engaged and not permitted to commence work shall receive two hours' pay at the rate of 20 per centum in addition to the appropriate rate of wages prescribed in this award.

(2) The minimum period of engagement for casual employees shall be four hours provided that the minimum engagement for casual employees who are engaged by the employer after 18th June, 1990 shall be three hours. Casual employees shall be engaged in one continuous period in any day at the rate of 20 per centum in addition to the rates prescribed in Clause 28.—Wages of this award and in addition to any shift loading prescribed in Clause 34.—Shift Work.

7.—PART TIME WORKERS

(1) Except as hereinafter provided, a part time worker shall mean a worker who may be engaged on any day Monday to Saturday inclusive for a maximum of 60 hours per fortnight with not more than 10 daily work commencements in any fortnightly period. Provided that a part time worker shall not be engaged for less than three consecutive hours nor more than eight consecutive hours exclusive of meal times on any one day.

(2) The proportion of part time workers who may be employed shall not exceed—

- (a) Where no full time worker is employed, one part time worker.
- (b) Where up to two full time workers are employed, one part time worker.
- (c) Where three or more but less than five full time workers are employed, two part time workers.
- (d) Where five or more but less than seven full time workers are employed, three part time workers.
- (e) Where seven or more but less than nine full time workers are employed, four part time workers.
- (f) Where nine or more but less than 11 full time workers are employed, five part time workers.
- (g) Where 12 or more full time workers are employed, one part time worker may be employed for each two full time workers.

(3) A part-time worker shall receive payment for wages, annual leave, holidays, sick leave and long service leave on a pro rata basis in the same proportion as the number of hours regularly worked each week bears to 40 hours.

(4) When a day, being a day when a worker would have been rostered to work, is a holiday under the provisions of Clause 14.—Holidays of this award, then that day shall be a holiday without deduction of pay to such worker.

8.—HOURS

(1) The ordinary hours of work shall be 38 per week, to be worked as 19 days of eight hours per 20 day working cycle.

24 minutes per working day shall accumulate towards a credit to be taken as a rostered day off each cycle.

The working or ordinary hours shall be as follows:

The starting time shall not be earlier than 6.00am and the finishing time not later than 6.00pm Monday to Friday provided that the starting time for employees engaged prior to 1 December 1989 shall be not earlier than 7.00am unless specific agreement exists between the employer and the employee as to an earlier starting time.

The starting time on Saturday shall not be earlier than 7.00am and the finishing time shall not be later than 12.00 noon.

(2) Where a holiday prescribed in Clause 14.—Holidays of this award falls on any day upon which a worker is required to work ordinary hours, the ordinary hours in that week shall be reduced by the number of hours ordinarily worked by that worker on the day on which the holiday occurs.

(3) (a) In the week commencing on Monday immediately preceding Easter Day the week's work in ordinary hours shall be worked Monday to Thursday inclusive.

(b) Notwithstanding the provisions of this award contained elsewhere than in this paragraph when New Year's Day, Anzac Day, Christmas Day or Boxing Day falls on a Saturday, a worker who by the operation of this subclause was rostered for duty on that Saturday and does not work on that Saturday is nevertheless entitled to be paid for each of the two weeks preceding that Saturday, his ordinary weekly wage. Provided that the Saturday may be deemed to be a rostered day off for that worker in substitution for one of the rostered days off in that roster period.

8A.—ABSENCES FROM WORK

This clause applies to all absences from work other than authorised absences prescribed by this award.

(1) Subject to subclause (2) hereof on any day that an employee fails to attend his/her place of employment to work rostered hours of duty the employee shall advise the supervisor or manager of his/her department prior to the commencement of rostered hours of duty of the absence and the expected duration of the absence from work.

(2) Where:

- (a) an employee has attended his/her place of employment to work the rostered hours of duty and subsequently leaves prior to the completion of the rostered hours; or
- (b) it is not reasonably practicable for the employee to provide the advice required by subclause (1) hereof prior to the commencement of the rostered hours of duty

the employee shall, no later than 24 hours from the commencement of any absence, advise his/her supervisor or manager of the absence and the expected duration of the absence.

9.—ROSTERED DAY OFF

(1) (a) Rostered Days Off will be scheduled and taken on either the first or last day of the working week.

(b) For employees employed after 29th April, 1985, Rostered Days Off (R.D.O.'s) will be taken on a rotating basis on each day of the week, Monday to Friday.

(c) Employees employed prior to 29th April, 1985, may elect to take Rostered days off on the basis prescribed in paragraph (b) hereof.

(2) Employees may request, in writing, an alternate day within the current cycle for personal reasons.

(3) If a public holiday falls on a R.D.O. an employee shall be compensated in one of the following methods by agreement between employer and employee—

- (a) another day shall be allowed with pay within 28 days,
- (b) payment of an additional day's wages, or
- (c) an additional day shall be added to the annual leave entitlement.

(4) A worker shall not be required to work on a day when such a day is the rostered day off for that worker unless such worker agrees to work on such day and, where a worker so agrees, all time worked shall be paid for at double time, with a minimum payment of four hours at double time.

(5) In the event of termination of employment, in circumstances where a R.D.O. has been taken in advance of full accumulation or where credit exists towards a R.D.O. the necessary adjustment of pay entitlements shall be made at ordinary time rates.

(6) Schedules of R.D.O. will be published and displayed in a place accessible to staff, six months in advance.

(7) Each employee shall be entitled to receive twelve R.D.O.'s per twelve month period. For the purpose of calculating R.D.O.'s, a cycle shall be four weeks and 12 R.D.O.'s will be arranged within a forty eight week period.

(8) An employer with the agreement of the majority of employees concerned, may substitute the day an employee is to take off in accordance with subclause (1) of this clause for another day in the case of a breakdown in machinery or a failure or shortage of electric power or some other emergency situation.

10.—ROSTERS

Every employer shall post or cause to be posted and keep posted up in a conspicuous position in each Distribution Centre so as to be easily accessible to and easily read by every worker employer therein, a roster written in the English language showing—

- (1) The name and sex of each worker bound by this award.
- (2) The times on which each worker is required to commence and finish work on each day in each week and the time of the meal period.
- (3) The particulars contained in such roster shall be in respect of the full week Monday to Saturday inclusive, during which it is posted up, and may be altered or varied only on account of the sickness or absence of a worker or by the inclusion of particulars in respect of casual workers.

11.—MEAL TIMES

(1) (a) Not less than 30 minutes nor more than one hour shall be allowed and taken for a meal. The lunch period shall be taken between 12 noon and 2.30pm; the tea interval shall start within 15 minutes after the usual finishing time. No worker shall be required to work for more than five hours without a break for a meal.

(b) Provided that permanent workers who commence at 6.00am may not be required to take their meal break until 12 noon. In addition casual employees may work up to 6 hours before a meal break is taken provided that an agreement has been fixed between the employer and the employees.

(2) Where work is performed outside the ordinary working hours, one hour's break for a meal shall be allowed between 12 midnight and 1.00 a.m. and between 7.00 a.m. and 8.00 a.m.

(3) The meal times referred to in this clause shall be taken in one continuous period.

(4) (a) The provisions of subclause (1)(a) and (b) of this clause shall not apply to a part time worker who on any day from Monday to Friday inclusive—

- (i) ceases work at or prior to 1.00 p.m. or
- (ii) commences work on or after 1.00 p.m. or
- (iii) who does not work more than five hours.

(b) A part time worker employed for 4 ½ consecutive hours on any day shall be entitled to one break of 10 minutes during that day.

12.—MEAL MONEY

(1) When a worker is required to continue working after the usual finishing time for more than one hour, he shall be paid \$3.80 from the first pay period on or after 19th April, 1985 and \$6.50 from the first pay period on or after 19th July, 1985.

(2) When a day shift worker is required to commence work before the usual starting time by more than one hour he shall be paid \$3.80 for the purchase of any meal required.

(3) Meal money shall be paid as a gross amount included with the wages payable for the week during which the overtime is worked.

13.—OVERTIME

(1) (a) Subject to the provisions of Clause 8.—Hours, all time worked outside of ordinary hours shall be deemed to be overtime, payable in accordance with this clause.

(b) Where more than 40 hours are worked in any week during a period of two consecutive weeks the provisions of this clause shall not apply unless:

- (i) more than 80 ordinary hours are worked in that two week period; or
- (ii) more than 40 ordinary hours are worked in that two week period if one week of a period of annual leave occurs in that two week period.

(2) Any worker on duty when, in accordance with the roster such worker should be off duty (except as provided by paragraph (c) of subclause (1) of Clause 10.—Rosters) shall be paid at overtime rates.

(3) All time worked before the usual starting time or after the usual finishing time in any establishment shall be paid for at overtime rates

(4) Excepting as provided hereinafter, all overtime worked shall be paid for at the rate of time and a half for the first two hours and double time thereafter. In the calculation of overtime each day shall stand alone.

(5) All overtime worked on Easter Eve by workers shall be paid for at the rate of double time.

(6) Work performed on a Sunday shall be paid for at the rate of double time.

(7) Work performed on a holiday prescribed in subclause (1) of Clause 14.—Holidays hereof shall be paid for at the rate of double time and a half.

(8) (a) Work performed on any day Monday to Saturday inclusive which is a worker's rostered day off shall be paid for at the rate of double time.

(b) Notwithstanding (a) above, work performed on Saturdays before 12 noon in establishments which work a five-day week (Monday to Friday inclusive) shall be paid for at the rate of time and a half for the first two hours and double time thereafter.

(9) Work performed on Saturday after 12 Noon shall be paid for at the rate of double time.

(10) A worker required to work overtime on any day after leaving the employer's premises and who returns home on completion of that overtime, shall be paid—

(a) For a minimum of two hours at overtime rates if notified of the requirement to work overtime before leaving the employer's premises.

(b) For a minimum of three hours at overtime rates if recalled.

(11) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that workers have at least eight consecutive hours off duty between the work of successive days. A worker (other than a casual worker) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least eight consecutive hours off duty between those times shall, subject to this paragraph, be released after completion of such overtime until he has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence. If on the instructions of his employer, such a worker resumes or continues work without having had eight consecutive hours off duty, he shall be paid at double rates until he is released from duty for such period and he shall then be entitled to be absent until he has had eight consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(12) Notwithstanding anything contained in this award—

(a) An employer may require any worker other than part-time workers to work reasonable overtime at overtime rates and such worker shall work overtime in accordance with such requirements.

(b) No organisation, party to this award or worker or workers covered by this award, shall in any way whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

14.—HOLIDAYS

(1) (a) The following days or the days observed in lieu shall, subject to this subclause and to Clause 13.—Overtime be allowed as holidays without deduction of pay, namely, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) Where—

(a) a day is proclaimed as a public holiday or as a public half-holiday under section 7 of the Public and Bank Holidays Act 1972; and

(b) that proclamation does not apply throughout the State or to the metropolitan area of the State,

that day shall be a whole holiday or, as the case may be, a half-holiday for the purposes of this award within the district or locality specified in the proclamation.

(3) A worker absent without leave on the day before or the day after any of the holidays referred to in subclause (1) shall be liable to forfeit wages for the holiday as well as for the day of absence except where an employer is satisfied that the worker's absence was caused through illness in which case wages shall not be forfeited for the holiday. Provided that a worker absent on one day only, either before or after a group of holidays, shall forfeit wages only for one holiday as well as for the period of absence.

(4) Where the services of a worker are terminated by the employer on the day preceding a holiday or holidays, refer to Clause 20.—Engagement, subclause (3).

15.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed shall be allowed annually to a worker by his employer after a period of 12 months' continuous service with such employer.

(2) (a) During a period of annual leave a worker shall be paid a loading of 17 1/2% calculated on his ordinary wage as prescribed.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) If any prescribed holiday falls within a worker's period of annual leave and is observed on a day which in the case of that worker would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(4) (a) If after one month's continuous service in any qualifying 12 monthly period a worker leaves his employment or his employment is terminated by the employer through no fault of the worker, the worker shall be paid 2.923 hours pay at his ordinary rate of pay in respect of each completed week of continuous service.

(b) In addition to any payment to which he may be entitled under paragraph (a) of this subclause, a worker whose employment terminates after he has completed a 12 monthly qualifying period and who has not been allowed the leave prescribed under this award in respect of that qualifying period shall be given payment as prescribed in subclauses (1) and (2)(a) of this subclause in lieu of that leave or, in a case to which subclause (7) or (11) of this clause applies, in lieu of so much of that leave as has not been allowed unless—

(i) he has been justifiably dismissed for misconduct; and

(ii) the misconduct for which he has been dismissed occurred prior to the completion of that qualifying period.

(5) Any time in respect of which a worker is absent from work except time for which he is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by this award shall not count for the purpose of determining his right to annual leave.

(6) In the event of a worker being employed by an employer for portion only of a year, he shall only be entitled, subject to subclause (4) of this clause to such leave on full pay as is proportionate to his length of service during that period with such employer, and if such leave is not equal to the leave given to the other workers he shall not be entitled to work or pay whilst the other workers of such employer are on leave on full pay.

(7) In special circumstances and by mutual consent of the employer, the worker and the union concerned, annual leave may be taken in not more than two periods.

(8) When a worker is entitled to annual leave under this clause, he shall receive at least two weeks' notice from his employer of the date when it will be convenient to the employer that such worker shall take his leave.

(9) Every worker shall be given and shall take annual leave within six months after the date the leave falls due.

(10) The provisions of this clause shall not apply to casual workers.

(11) Notwithstanding anything else herein contained an employer who observes a Christmas close down for the purpose of granting annual leave may require a worker to take his annual leave in not more than two periods but neither of such periods shall be less than one week.

16.—CHANGE ROOMS

Where an employer usually has more than six workers engaged at the same time under the terms of this award, he shall provide his workers with a suitable room for keeping their hats and clothing and to use as a room for taking their meals. Such room shall be situated within a reasonable distance of his place of business and shall be kept in a proper state of cleanliness and shall be equipped with coat-hangers, tables and chairs.

17.—NO REDUCTION

Nothing herein contained shall entitle an employer to reduce the wage of any worker who at the date of this award was being paid a higher rate of wage than the minimum prescribed for his or her class of work.

18.—HIGHER DUTIES

A worker who is required to do work, which is entitled to a higher rate under this award, other than that which he or she usually performs shall be entitled to payment at the higher rate while so employed. Provided that where no record is kept in the time and wages record of the actual times upon which the worker is engaged on such higher grade work, the worker shall be paid for the whole day at the rate prescribed for the highest function performed.

19.—PROPORTION OF JUNIORS

The number of juniors shall not exceed the proportion of one to one for the first five adults and thereafter one junior to every two adults or fraction thereof.

20.—ENGAGEMENT

(1) Notwithstanding any other provisions of this award, employees are to perform, as directed, the full range of duties encompassed within the award classification including work which is incidental or peripheral to the main tasks or functions, being work the duties of which are within the limits of the employee's skill, competence and training.

(2) Except in the case of casual workers one week's notice on either side shall be necessary to terminate the engagement or in the event of such notice not being given by the payment of one week's pay by the employer to the worker or the forfeiture of one week's pay by the worker to the employer. Provided that an employer at any time may dismiss a worker for refusal or neglect to obey orders or for misconduct or if after receiving one week's notice such worker does not carry out his or her duties in the same manner as he or she did prior to such notice.

(3) Notwithstanding the provisions of subclause (1) hereof a worker's engagement may be terminated by either party at any moment during the first two months of his employment: Provided that a worker whose employment is terminated by the employer after one month but less than two months' employment for reasons other than misconduct shall be paid up to his ordinary ceasing time on the day on which notice of termination is given.

(4) (a) A worker whose employment is terminated by the employer on the business day preceding a holiday or holidays, otherwise than for misconduct, shall be paid for such holiday or holidays.

(b) In the event of Christmas Eve falling on a Saturday or a Sunday any worker whose employment is terminated by the employer on the preceding Friday, otherwise than for misconduct, shall be paid for Christmas Day and Boxing Day.

21.—TIME AND WAGES RECORD

(1) Each employer bound by this award shall maintain a record containing the following information relating to each worker—

- (a) The name and address given by the worker.
- (b) The age of the worker if paid as a junior worker.

(c) The classification of the worker and whether the worker is full time, part time or casual.

(d) The commencing and finishing times of each period of work each day.

(e) The number of ordinary hours and the number of overtime hours worked each day and the totals for each pay period.

(f) The wages and any allowances paid to the worker each pay period and any deductions made therefrom.

(2) (a) At the time of payment of wages the worker may be given a pay slip showing that part of the record specified in paragraphs (e) and (f) of subclause (1) with respect to the pay period for which payment is being made.

(b) If a pay slip is not given to the worker as prescribed in paragraph (a) hereof the employer shall permit the worker to inspect the record either at the time of payment or at such other time as may be convenient to the employer. The employer shall not unreasonably withhold the record from inspection by the worker.

(3) (a) The record may be maintained in one or more parts depending on the system of recording used by the employer whether manual or mechanical provided that if the record is maintained in more than one part, those parts shall be kept in such a manner as will enable the inspection referred to in subclauses (2) and (4) to be conducted at the one establishment.

(b) The record shall be kept in date order so that the inspections referred to in subclauses (2) and (4) of this clause may be made with respect to any period in the twelve months preceding the date of inspection.

(c) The employer may, if it is part of normal business practice, periodically send the record or any part of the record to another person, provided that the provision of this paragraph shall not relieve the employer of the obligations with respect to provisions contained elsewhere in this clause with the exception of those contained in paragraph (b) of this subclause.

(d) Subject to this clause the record shall be available for inspection by a duly authorised official of the union during the normal hours of business of the employer, but excepting any time when the employer or his employees who are required to maintain the record may be absent.

(e) The union official shall be permitted reasonable time to inspect the record and, if he requires, take an extract or copy of any of the information contained therein.

(4) (a) If, for any reason, the record is not available for inspection by the union official when the request is made, the union official and the employer or his agent may fix a mutually convenient time for the inspection to take place.

(b) If a mutually convenient time cannot be fixed, the union official may advise the employer in writing that he requires to inspect the record in accordance with the provisions of this award and shall specify the period contained in the record which he requires to inspect.

(c) Within 10 days of the receipt of such advice:

(i) Employers who normally keep the record at a place more than 35 kilometres from the G.P.O. Perth shall send a copy of that part of the record specified to the office of the union and

(ii) employers who normally keep the record at a place less than 35 kilometres from the G.P.O., Perth shall make the record available to the union official at the time specified by the union official. If the record is not then made available to the union official the employer shall within three days send a copy of that part of the record specified to the office of the union.

(d) In the event of a demand made by the union which the employer considers unreasonable the employer may apply to the Industrial Commission for direction. An application to the Industrial Commission made by an employer for direction will, subject to that direction, stay the requirements contained elsewhere in this subclause.

(e) The Roster referred to in Clause 10.—Rosters shall be available for inspection by a duly authorised representative of the union during normal working hours.

22.—UNIFORMS AND OVERALLS

Should any dispute arise between the parties as to the wearing of uniforms and overalls, if such are required to be worn, the dispute, howsoever originating and any matter arising therefrom, including the matter of the laundering of uniforms and overalls, shall be determined by the Board of Reference.

23.—BOARD OF REFERENCE

(1) The Commission hereby appoints, for the purpose of this award, a Board of Reference consisting of a Chairman and two other members who shall be appointed pursuant to regulation 16 of the Industrial Arbitration Act (The Western Australian Industrial Commission) Regulations, 1980.

(2) The Board of Reference is hereby assigned the function of allowing, approving, fixing, determining or dealing with any matter of difference between the parties in relation to any matter which, under this award, may be allowed, approved, fixed, determined or dealt with by a Board of Reference.

24.—SUPPORTED WAGES EMPLOYEES

(1) The clause defines the conditions which will apply to employees who, because of the effects of a disability, are eligible for a supported wage under the terms of this award. In the context of this clause the following definitions will apply:

- (a) "Supported Wage System" means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in "[Supported Wage System: Guidelines and Assessment Process]".
- (b) "Accredited Assessor" means a person accredited by the management unit established by the Commonwealth under the Supported Wage System to perform assessments of an individual's productive capacity within the Supported Wage System.
- (c) "Disability Support Pension" means the Commonwealth pension scheme to provide income security for persons with a disability as provided under the Social Security Act 1991, as amended from time to time, or any successor to that scheme.
- (d) "Assessment Instrument" means the form provided for under the Supported Wage System that records the assessment of the productive capacity of the person to be employed under the Supported Wage System.

(2) Eligibility Criteria

- (a) Employees covered by this clause will be those who are unable to perform the range of duties to the competence level required within the class of work for which the employee is engaged under this award, because of the effects of a disability on their productive capacity and who meet the impairment criteria for receipt of a Disability Support Pension.
- (b) This clause does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers' compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their current employment.
- (c) The award does not apply to employers in respect of their facility, program, undertaking, service or the like which receives funding under the Disability Services Act 1986 and fulfils the dual role of service provider and sheltered employer to people with disabilities who are in receipt of or are eligible for a disability support pension, except with respect to an organisation which has received recognition under Section 10 or Section 12A of the Act, or if a part only has received recognition, that part.

(3) Supported Wage Rates

Employees to whom this clause applies shall be paid the applicable percentage of the minimum rate of pay prescribed

by this award for the class of work which the person is performing according to the following schedule:

Assessed Capacity (Sub-clause 4)	% of Prescribed Award Rate
10%*	10%
20%	20%
30%	30%
40%	40%
50%	50%
60%	60%
70%	70%
80%	80%
90%	90%

(Provided that the minimum amount payable shall not be less than \$45 per week).

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

(4) Assessment of Capacity

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

- (a) the employer and the union, in consultation with the employee or, if desired, by any of these;
- (b) the employer and an accredited assessor from a panel agreed by the parties to the award and the employee.

(5) Lodgement of Assessment Instrument

- (a) All assessment instruments under the conditions of this clause, including the appropriate percentage of the award wage to be paid to the employee, shall be lodged by the employer with the Registrar of the Western Australian Industrial Relations Commission.
- (b) All assessment instruments shall be agreed and signed by the parties to the assessment, provided that where a union which is party to the award is not a party to the assessment, it shall be referred by the Registrar to the union by certified mail and shall take effect unless an objection is notified to the Registrar within ten working days.

(6) Review of Assessment

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

(7) Other Terms and Conditions of Employment

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

(8) Workplace Adjustment

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

(9) Trial Period

- (a) In order for an adequate assessment of the employee's capacity to be made, an employer may employ a person under the provisions of this clause for a trial period not exceeding 12 weeks, except that in some cases additional work adjustment time (not exceeding four weeks) may be needed.
- (b) During the trial period the assessment of capacity shall be undertaken and the proposed wage rate for a continuing employment relationship shall be determined.
- (c) The minimum amount payable to the employee during the trial period shall be no less than \$45 per week.
- (d) Work trials should include induction or training as appropriate to the job being trialed.

- (e) Where the employer and employee wish to establish a continuing employment relationship following the completion of the trial period, a further contract of employment shall be entered into based on the assessment under subclause (4) of this clause.

25.—COUNTRY WORK AND TRAVELLING TIME

(1) When a worker is engaged on outside work, the employer shall pay all fares and a proper allowance at current rates shall be paid for all necessary meals. Fares shall be second class, except when travelling by coastal boat, when a saloon fare shall be paid.

(2) When a worker is engaged at such a distance that he cannot return home at night, suitable board and lodging shall be found, at the employer's expense.

(3) Travelling time outside ordinary working hours shall be paid for at ordinary rates up to a maximum of 12 hours in any 24 hour period from the time of starting on the journey. Provided that, when travelling is by boat, not more than eight hours shall be paid for in such period.

26.—JUNIOR WORKER'S CERTIFICATE

(1) Junior workers shall, if required, furnish the employer with a certificate showing the following particulars—

- (a) Name in full.
(b) Age and date of birth.

(2) The certificate shall be signed by the worker.

(3) No worker shall have any claim upon the employer for additional wages in the event of his age being wrongly stated on the certificate. If any worker mis-states his or her age in the certificate he or she alone shall be deemed guilty of a breach of this award and in the event of a worker having received a higher rate than that to which he or she was entitled, he or she shall make restitution to the employer.

27.—SICK LEAVE

(1) (a) A worker who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

The method of calculation of payment for such sick leave shall be as follows:

$$\frac{\text{duration of absence}}{\text{ordinary hours normally worked that day}} \times \frac{\text{ordinary weekly rate}}{5}$$

(b) Entitlement to payment shall accrue at the rate of one-sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer a worker is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the worker's services terminate if before the end of that year of service, to the extent that the worker has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the worker if the absence by reason of personal ill health or injury exceeds the period for which entitlement has accrued during the year at the time of the absence. Provided that a worker shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the worker shall as soon as reasonably practicable advise the employer of his inability to attend for work, the nature of his illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances, shall be given to the employer within 24 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to a worker who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may

reasonably require provided that the worker shall not be required to produce a certificate from a medical practitioner with respect to absences of two days or less unless after two such absences in any year of service the employer requests in writing that the next and subsequent absences in that year if any, shall be accompanied by such certificate.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to a worker who suffers personal ill health or injury during the time when he is absent on annual leave and a worker may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the worker was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the worker of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the worker was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the worker or, failing agreement, shall be added to the worker's next period of annual leave or, if termination occurs before then, be paid for in accordance with the provisions of Clause 15.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 15.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the worker's service has been deemed continuous in accordance with subclause (3) of Clause (2) of the Long Service Leave provisions published in volume 61 of the Western Australian Industrial Gazette at pages 22 to 27, the paid sick leave standing to the credit of the worker at the date of transmission from service with the transmittor shall stand to the credit of the worker at the commencement of service with the transmittor and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to workers who are entitled to payment under the Workers' Compensation Act nor to workers whose injury or illness is the result of the worker's own misconduct.

(8) The provisions of this clause do not apply to casual workers.

28.—WAGES

(1) PREAMBLE

- (a) The following classifications specify skill and training standards and broad areas of work at each level. Employees are to be placed at classification levels commensurate with the level and range of skills held by the employee and required to be performed by the employer.
- (b) In the event that the employer's business undergoes operational changes such that the addition or deletion of a particular skill or series of skills is required, the parties to the award shall endeavour to reach agreement, subject to endorsement by the Western Australian Industrial Relations Commission.

(2) CLASSIFICATION STRUCTURE

- (a) Storeworker Grade 1
Points of Entry
Successful completion of Probationary Period or proven and demonstrated skills to the level required of this grade.

Skills/Duties

The person in this grade is able to satisfactorily perform the following duties safely and under routine supervision, to the required Company standard.

Responsibilities/Duties may include but are not limited to:

- Maintaining the quality of their own work and required performance standards.
- Working in a team environment and/or under supervision.
- Undertaking duties in a safe and responsible manner.
- Exercising limited discretion within their level of skills and training.
- Possessing basic interpersonal and communication skills.
- Performs one or more of the following tasks/duties or a combination thereof. (Duties may include but are not limited to:)
 - (i) Picking, Selecting and/or Processing Stock
 - understanding of order selection procedures;
 - understanding warehouse layout;
 - identifying picking, labelling and assembling stock;
 - transfer of stock;
 - recording of stock.
 - (ii) Receiving Stock
 - identifying stock;
 - confirming accuracy of order;
 - completing delivery dockets/receipts etc;
 - carrying out adjustment procedures;
 - checking and applying labels to stock;
 - loading and unloading of stock;
 - sorting and transfer of stock;
 - recording of stock.
 - (iii) Despatch of Stock
 - identifying stock for despatch;
 - correct stacking and re-assembling of stock;
 - preparation of and loading of stock manually;
 - recording of despatches.
 - (iv) Sale of Stock
 - receipt and preparation for sale or display of goods;
 - prepacking, packing, weighing, assembling, pricing or preparing of goods or provisions or produce for sale;
 - displaying, shelf filling, replenishing or any other method of exposure of presentation of sale of goods;
 - the sale of goods by any means;
 - the receiving, arranging or making payments by any means;
 - the recording by any means of a sale or sales;
 - the wrapping or packing of goods for despatch.
 - (v) Housekeeping and other Functions
 - cleaning/maintaining warehouse and surrounds, equipment and stock;

- clearing damaged stock, wrapping materials and loose stock;
- assemble, remove and change racking and equipment as required;
- counting and recording stock (including stocktakes);
- sort, assemble, repair and control of pallets etc;
- customer service and customer enquiry functions.

NOTE: A person in this grade may be required to utilise skills with electronic equipment including input of data related to productivity performance measurement systems and using "menu" driven VDU screens.

(b) Storeworker Grade 2**Points of Entry**

Storeworker Grade 1 or external applicant with proven and demonstrated satisfactory performance standards and skills to the level required of this grade. Existing employees will be considered for advancement on the basis of seniority, all other things being equal.

Skills/Duties

This person has consistently achieved and maintained the required standard of storeworker Grade 1.

This person also is required to operate for the majority of his/her time, a ride-on powered operated tow motor, ride-on power operated pallet truck or walk beside power operated highlift stacker and is responsible for its basic upkeep.

Responsibilities/Duties may include but are not limited to:

- Able to work from complex instruction and procedures.
- Able to co-ordinate their own work in a team environment under limited supervision—where such storeworker is placed in charge of other employees the appropriate leading hand rate applies.
- Responsible for the quality of their own work and maintenance of required performance standards.
- Possesses sound interpersonal and communication skills.
- Use of tools and equipment within the warehouse (basic non-trades maintenance).
- All functions of a Storeworker Grade 1 as directed.
- Performs work involving electronic equipment (including problem solving) and maybe required to input data (key entry or swipe) including the use of "menu" driven VDU screens.
- Performs basic administrative tasks associated with the performance of the above tasks/duties.
- Operating all equipment listed in skills and duties safely and adhering to required safety standards and procedures.
- Involved in the training of storeworkers probationary and Grade 1 as appropriate.

(c) Storeworker Grade 3**Points of Entry**

Storeworker Grade 1, or Storeworker Grade 2 or external applicant with proven and demonstrated satisfactory performance standards and skills to the level required of this grade. Existing employees will be considered for advancement on the basis of seniority, all other things being equal.

Skills/Duties

This person has consistently achieved and maintained the performance standards as a:

Storeworker Grade 1 and/or;
Storeworker Grade 2.

This person also is required to operate for the majority of his/her time, a ride-on powered operated forklift, high lift stacker, or high lift stock picker, or a power overhead traversing hoist and is responsible for its basic upkeep.

- (i) Duties may include but are not limited to:
- Ability to work from complex instructions and procedures.
 - Ability to coordinate their own work in a team environment under limited supervision—where such storeworker is placed in charge of other employees the appropriate leading hand rate applies.
 - Responsible for the quality of their own work and maintenance of required performance standards.
 - Possesses sound interpersonal and communication skills.
 - Use of tools and equipment within the warehouse (basic non-trades maintenance).
 - All functions of Storeworkers Grade 1 and 2 as directed.
 - Performs work involving electronic equipment including problem solving.
 - Performs basic administrative tasks associated with the performance of the above tasks/duties.
 - Operating all equipment safely and adhering to required safety standards and procedures.
 - Involved in the training of storeworkers probationary, Grade 1, Grade 2 and Grade 3 as appropriate.
 - Involved in stock movement and management to include stock put away, replenishment, rotation bulk order picks etc.

- (ii) Storeworker Grade 3 also encompasses the following:

Assembly Instructor—Main Grocery Warehouse:

Responsibilities and Duties may include but are not limited to:

- Training new employees in all aspects of these following areas:

Order Assembly

- performance sheets;
- invoices;
- labels;
- selection;
- stacking;
- labelling orders (at last picking location);
- carting orders to despatch;
- restart;
- blackboard procedure;
- mark down procedure;
- temporary out of stock (TOS);
- incomplete order.

Operating a Pallet Truck

- travelling in assembly aisles;
- battery change;
- shut down procedure.

Working environment

- location of lunch rooms and amenities;
- first aid.

Safety Requirements

- accident report;
- hazard reporting;
- operation of pallet trucks.
- Perform other tasks appropriate to the classification.
- Perform all duties of Grade 1 or 2 Storeworkers as required.

- (d) Storeworker Grade 4

Points of Entry

Storeworker Grade 1, or Storeworker Grade 2, or Storeworker Grade 3 or external applicant with proven and demonstrated satisfactory performance standards and skills to the level required of this grade. Existing employees will be considered for advancement on the basis of seniority, all other things being equal.

Skills/Duties

This person has consistently achieved and maintained the performance standards as a:

Storeworker Grade 1 or;
Storeworker Grade 2 or;
Storeworker Grade 3.

This grade is designed as an advanced storeworker grade as defined by job description by each individual enterprise from time to time.

- (i) Receiver, Cash and Carry, where no Receivals Supervisor is appointed:

Points of Entry

Storeworker Grade 1 and/or;
Storeworker Grade 2 and/or;
Storeworker Grade 3 or;
Storeworker Grade 4 or;

External Applicant.

Skills/Duties

Storeworker Grade 1 and/or;
Storeworker Grade 2 and/or;
Storeworker Grade 3 or;
Storeworker Grade 4.

Responsibilities and Duties may include but are not limited to:

- Unloading and receiving goods from:
 - direct suppliers;
 - company warehouses.
- Checking deliveries and ensuring:
 - no shortages/overages;
 - no soiled/damaged stock;
 - correct date codes;
 - goods received match invoices.
- Raises documentation for goods receivals and organises for returns, discrepancies etc.
- Maintains receivals area (internal and external) and is responsible for house-keeping, safety and security standards being maintained. (Includes compactor, waste bins etc).
- Monitors the efficient output of information for the processing of stock records.
- Organises for despatch of outward goods as required.
- Storage and control of pallets, pallet movements and pallet documentation.
- Performs other tasks appropriate to the classification.
- Perform all duties of Grade 1, 2 or 3 Storeworkers as required.

- (ii) Inventory Controller, Grocery Warehouse:
Points of Entry
Storeworker Grade 1 and/or;
Storeworker Grade 2 and/or;
Storeworker Grade 3 or;
Storeworker Grade 4 or;
External Applicant.
Skills/Duties
Storeworker Grade 1 and/or;
Storeworker Grade 2 and/or;
Storeworker Grade 3 or;
Storeworker Grade 4.
Responsibilities and Duties may include but are not limited to:

- Maintaining files for the operation of the Distribution Centre computer system including the key areas of;
 - slotting of products to pick slots;
 - standard order details as per Interim Batching Report;
 - put away of Search Path Logic;
 - slot types and configurations.
- Implement higher level authority transactions into the computer system (eg stock adjustments, reprints of destroyed key documents etc).
- Conduct investigations into discrepancies (book stock records versus computer system stock records versus physical stock) and rectify errors as necessary.
- Participate in the planning and execution of physical stock takes.
- Liaison with customers and staff answering queries.
- Performs other tasks appropriate to the classifications.
- Perform all duties of Grades 1, 2 and 3 Storeworkers as required.

- (iii) Receiver, Australian Liquor Marketers, where no Receivals Supervisor is appointed:
Points of Entry
Storeworker Grade 1 and/or;
Storeworker Grade 2 and/or;
Storeworker Grade 3 or;
Storeworker Grade 4 or;
External Applicant.
Skills/Duties
Storeworker Grade 1 and/or;
Storeworker Grade 2 and/or;
Storeworker Grade 3 or;
Storeworker Grade 4.

Responsibilities and Duties may include but are not limited to:

- Unloading and received goods from suppliers and liaising with transport companies/suppliers.
- Checking deliveries and ensuring;
 - no shortages/overages;
 - no soiled/damaged stock;
 - goods received match invoices.
- Raises documentation for goods receivals and organises for returns, discrepancies, etc.
- Organises for transfer of stock to locations in aisles.

- Recording of all bonded stock and stock checks of bonded stock with Customs Agent.
- Maintains receivals area (internal and external) and is responsible for house-keeping, safety and security standards being maintained.
- Storage and control of pallets, pallet movements and pallet documentation.
- Performs other tasks appropriate to the classification.
- Perform all duties of Grade 1, 2 or 3 Storeworkers as required.

(3) Wages Rates

The minimum rates of pay payable to adult workers under this award shall be as follows—

	Base Rate \$	Arbitrated Safety Net Adjustments \$	Award Rate \$
(a) ADULTS (Classification and wage per week)			
(i) Storeworker Grade 1 (as defined)			
(aa) During first 3 months service	401.10	16.00	417.10
(bb) After 3 months service	404.90	16.00	420.90
(cc) After 12 months service	409.00	16.00	425.00
(ii) Grade 2 (as defined)			
(aa) During first 3 months service	406.50	16.00	422.50
(bb) After 3 months service	410.40	16.00	426.40
(cc) After 12 months service	414.30	16.00	430.30
(iii) Grade 3 (as defined)			
(aa) During first 3 months service	411.80	16.00	427.80
(bb) After 3 months service	415.60	16.00	431.60
(cc) After 12 months service	419.70	16.00	435.70
(iv) Grade 4 (as defined)			
(aa) During first 3 months service	424.90	16.00	440.90
(bb) After 3 months service	428.80	16.00	444.80
(cc) After 12 months service	432.80	16.00	448.80
(v) Storeworker who is required by the employer to be in charge of a store or warehouse or other employees, shall be paid the following all purpose amount in addition to the rates prescribed in sub paragraph (i) of this clause			
(aa) If placed in charge of a store or warehouse with no other workers or if placed in charge of less than three other workers		\$12.50	
(bb) If placed in charge of three or more other workers but less than ten other workers		\$22.80	
(cc) If placed in charge of ten or more other workers		\$41.30	

The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

The rates of pay in this award include the second \$8.00 per week arbitrated safety net adjustment payable under the December 1994 State Wage Decision. This second \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase payable since 1 November 1991, pursuant to enterprise agreements, enterprise flexibility agreements or consent awards or award variations to give effect to enterprise agreements, insofar as that wage increase has not previously been used to offset an arbitrated safety net adjustment.

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

- (b) The minimum rates of pay payable to junior workers covered by this award shall be the following percentage of the adult classification for such work performed.

	%
Under 16 years of age	40
At 16 years of age	50
At 17 years of age	60
At 18 years of age	70
At 19 years of age	80
At 20 years of age	90

- (c) (i) A worker shall receive an additional payment for every hour of which he/she spends 20 minutes or more in a cold chamber in accordance with the following:

In a cold chamber in which the temperature is:

	Per Hour
(aa) Below 0 degrees celsius to -20 degrees celsius	50
(bb) Below -20 degrees celsius to -25 degrees celsius	58
(cc) Below -25 degrees celsius	67

- (ii) Workers required to work in temperatures less than -18.9 degrees celsius shall be medically examined at the employer's expense.

29.—ADDITIONAL RATES FOR SATURDAY WORK

Hours of work performed before 12 Noon on Saturday (except in the case of casual workers employed on Saturday morning only in any week) shall be paid the following amounts in addition to ordinary rates—

	\$
In the case of adult workers	2.50
In the case of junior workers	2.00
or for each week of any cycle of two consecutive weeks—	
In the case of adult workers	1.25
In the case of junior workers	1.00

30.—RIGHT OF ENTRY

(1) On notifying the employer or his representative an accredited representative of the union shall be permitted to interview a worker during non-working times or the meal period on the business premises of the employer, but this permission shall not be exercised without the consent of the employer more than once in any one week.

(2) In the case of a disagreement existing or anticipated concerning any of the provisions of this award, an accredited representative of the union, on notifying the employer or his representative, shall be permitted to enter the business premises of the employer to view the work, the subject of any such disagreement, but shall not interfere in any way with the carrying out of such work.

31.—OTHER PROVISIONS

No female shall be called upon to carry or lift more than 16 kilograms at any one time.

No female worker shall be required to clean lavatories or hand scrub floors.

32.—MOTOR VEHICLE ALLOWANCE

Where a worker maintains a motor vehicle and is authorised by the employer to use the vehicle in the performance of his

duties, he shall be paid in accordance with the following schedule—

Area and Details	Engine Displacement (in cubic centimetres)	
	Over 1600 cc c/km	1600 cc and Under c/km
Distance Travelled Each Year on Employer's Business		
Metropolitan Area:		
First 8,000 kilometres	21.0	16.4
Over 8,000 kilometres	13.9	11.1
South West Land Division:		
First 8,000 kilometres	21.7	17.1
Over 8,000 kilometres	14.4	11.5
North of 23.5 degrees South Latitude:		
First 8,000 kilometres	24.5	19.3
Over 8,000 kilometres	16.0	12.8
Rest of the State:		
First 8,000 kilometres	22.7	17.8
Over 8,000 kilometres	15.1	12.1

33.—LONG SERVICE LEAVE

The long service leave provisions published in Volume 61 of the Western Australian Industrial Gazette at Pages 22 to 27, both inclusive, are hereby incorporated in and shall be deemed to be part of this award.

34.—SHIFT WORK

The provisions of this clause apply to workers employed on shift work in Bulk Warehouses and shall not apply to premises in which goods are sold retail.

(1) Hours of Shift—

- (a) The ordinary hours of work for shift workers shall not exceed 38 per week to be worked as 19 days of 8 hours per 20 days working cycle (excluding meal breaks) between 10.00pm Sundays and 1.00am Saturdays.
- (b) Such ordinary hours shall be worked continuously except for meal breaks at the discretion of the employer. A worker shall not be required to work for more than 4 ½ hours without a break for a meal of at least 30 minutes.
- (c) Except at regular changeover of shifts a worker shall not be required to work more than one shift in each 24 hours.

(2) Definitions:

“Afternoon shift” means any shift finishing after 6.00 p.m. and at or before 1.00 a.m.

“Day shift” means any shift finishing after 2.00 p.m. and at or before 6.00 p.m.

“Night shift” means any shift finishing after 1.00 a.m. and before 7.00 a.m. except on Mondays when the finishing time may be as late as 8.30 a.m.

(3) Where any particular process is carried out on shifts other than day shift and less than five consecutive afternoon or five consecutive night shifts are worked on that process the workers employed on such afternoon or night shifts shall be paid at overtime rates.

(4) The consecutive sequence of shifts referred to in subclause (3) of this clause shall not be deemed to be broken by reason of the fact that work on the process is not carried out on a Saturday, Sunday or holiday.

(5) The loading on ordinary rates of pay for each afternoon shift or night shift shall be; in the case of adult workers—fifteen per cent of one fifth of the ordinary rate prescribed in this award.

(6) The loading on the ordinary rates of pay for employees required to work permanent night shifts shall be 25 per cent of one fifth of the ordinary rate of pay prescribed by this award.

(7) The loading on the ordinary rates of pay of employees required to work permanent afternoon shifts shall be 20 per cent on one fifth of the ordinary rate of pay prescribed by this award.

Provided that where Cash & Carry employees work regular rostered afternoon shifts, they may work one or two shifts per week in night shift hours. Such employees shall be paid a composite shift allowance of 22.5 percent of one fifth of the ordinary rate of pay prescribed by this award for all shifts in such a week.

(8) For junior workers, the loading on the ordinary rate of pay for each afternoon or night shift shall be seventy five per cent of the amount prescribed for adult workers.

(9) The employer shall post in a place readily accessible to the workers a roster showing the starting and finishing times of the shifts each week.

(10) Overtime on afternoon shift or night shift shall be calculated on the rate payable for shift work.

(11) A junior worker under the age of eighteen years shall not be required to work afternoon shift or night shift without his consent.

(12) A worker shall not work continuous afternoon shift or night shift unless he elects to do so.

35.—PAYMENT OF WAGES

(1) Each employee shall be paid the appropriate rate shown in Clause 28.—Wages of this award.

(2) The 38 hour week is to be implemented so that in the first three weeks of the cycle each employee works eight ordinary hours each day Monday to Friday inclusive and in the fourth week of the cycle each employee works eight ordinary hours on four days only.

(3) From the date of implementation of the 38 hour week by the employer wages shall be paid weekly according to a weekly average of ordinary hours worked even though more or less than 38 hours may be worked in any particular week of the cycle.

In effect, under the averaging system the employee accrues a "credit" each day he works actual ordinary hours in excess of the daily average which would otherwise be seven hours 36 minutes.

This "credit" is carried forward so that in the week of the cycle that he works on only four days, his actual pay would be for an average of 38 ordinary hours even though, that week, he works a total of 32 ordinary hours.

Consequently, for each day an employee works eight ordinary hours he accrues a "credit" of 24 minutes (0.4 hours). The maximum "credit" the employee may accrue under this system of 0.4 hours on 19 days; that is, a total of seven hours 36 minutes.

(4) An employee will not accrue a "credit" for each day he is absent from duty other than on annual leave, long service, holidays prescribed under this award, paid sick leave, worker's compensation, bereavement leave or such other leave as agreed between employer and union.

(5) (a) An employee absent from duty (other than on annual leave, long service leave, holidays prescribed under the award, paid sick leave, workers compensation, bereavement leave or other such leave as agreed between employer and union) shall, for each day he is so absent, lose average pay for that day calculated by dividing his average weekly wage rate by five.

Provided when such an employee is absent from duty for a whole day he will not accrue a "credit" because he would not have worked ordinary hours that day in excess of seven hours 36 minutes from which he would otherwise have been paid. Consequently, during the week of the work cycle he is to work less than 38 ordinary hours he will not be entitled to average pay for that week. In that week, the average pay will be reduced by the amount of the "credit" he does not accrue for each whole day during the work cycle he is absent.

The amount by which an employee's average weekly pay will be reduced when he is absent from duty (other than on annual leave, long service leave, holidays prescribed under this award, paid sick leave, workers' compensation, bereavement leave or such other leave as agreed between the employer and the union) is to be calculated as follows:

$$\frac{\text{Total of "credits" not accrued during cycle}}{38} \times \text{average weekly pay}$$

OR

(b) Any other method as agreed between union and employer.

(6) When the rostered day off coincides with pay day wages shall be available after 1.00 p.m. on pay day or in the lunch break on the next working day.

(7) The ordinary rate per hour shall be calculated by dividing the ordinary weekly rate by 38.

(8) Payment of wages shall be made in the workers time.

(9) (a) The employer may elect to pay employees in cash, by cheque or by means of a credit transfer to a bank, building society or credit union account in the name of the employee. The day that the credit transfer is credited to the employee's account shall be deemed to be the date of payment.

(b) No employee shall be required to accept a change in the method of payment if such change causes genuine hardship. Any dispute concerning genuine hardship in a particular case shall be referred to a Board of Reference for determination.

(10) (a) The employer may elect to pay employees all wages earned weekly or fortnightly in accordance with subclause (9) of this clause, and shall make such payment on the Thursday immediately following close of the previous pay period.

(b) No employer shall change the method or the frequency of payment to employees without first giving them and the Union at least four weeks' notice of such change.

(c) The method of introducing a fortnightly pay system shall at the option of the employee, be by the payment of not less than an additional week's wages net of tax in the last weekly pay before the change to fortnightly pays, to be repaid by equal fortnightly deductions made from the next and subsequent pays provided the period for repayment shall not be less than 20 weeks; or some other method agreed upon by the Union and employer.

(11) For the purpose of effecting the rostering off of workers as provided by this award, such wages may be either for the actual hours worked each week, or an amount being the calculated weekly average of the wages accruing over the two or three, as the case may be, consecutive weekly periods.

36.—POSTING OF AWARD

The employer shall allow a copy of this award, if supplied by the union, to be posted in a place which is easily accessible to the workers.

37.—STAND DOWN

(1) Notwithstanding the provisions of Clause 20.—Engagement the employer may stand down without pay any worker who cannot be usefully employed because of any strike, ban, limitation or restriction on the performance of work by workers or any union, association or organisation or because of any break down or failure of the employer's machinery which the employer could not reasonably have prevented.

(2) The provisions of subclause (1) of this clause shall not be applied unless and until the ordinary hours in which the worker cannot be usefully employed because of a strike, ban, limitation or restriction on the performance of work or a break down or failure of the employer's machinery exceeds four.

38.—COMPASSIONATE LEAVE

(1) A worker shall, on the death within Australia of the wife, husband, father, mother, child or stepchild of the worker, be entitled to leave up to and including the day of the funeral of such relation and such leave for the period not exceeding the number of hours worked by the worker in two ordinary working days shall be without deduction of pay.

(2) The right to such leave shall be dependent on compliance with the following conditions—

(a) The worker shall give the employer notice of his intention to take such leave as soon as reasonably practicable after the death of such relation.

(b) The worker shall furnish proof of such death to the satisfaction of the employer.

(c) The worker shall not be entitled to leave under this clause during any period in respect of which he has been granted any other leave.

(3) For the purpose of this clause the words "wife" and "husband" shall not include a wife or husband from whom the worker is separated, but shall include a person who lives with the worker as a de-facto wife or husband.

39.—LOCATION ALLOWANCE

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

TOWN	PER WEEK \$
Agnew	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90
Coolgardie	6.10
Cue	15.10
Dampier	20.40
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(2) Except as provided in subclause (3) of this clause, an employee who has:

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee:

- (a) is provided with board and lodging by his/her employer, free of charge;
- or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid 66 2/3 per cent of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July, 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by 33 1/3%; the difference remaining on 1 January 1989 shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause:

- (a) "Dependant" shall mean—
 - (i) a spouse or defacto spouse; or
 - (ii) a child where there is no spouse or defacto spouse;

who does not receive a district or location allowance, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.

- (b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

40.—MATERNITY LEAVE

(1) Eligibility for Maternity Leave

A worker who becomes pregnant shall, upon production to her employer of a certificate from a duly qualified medical practitioner stating the presumed date of her confinement, be entitled to maternity leave provided that she has had not less than 12 months' continuous service with that employer immediately preceding the date upon which she proceeds upon such leave.

For the purposes of this clause:

- (a) A worker shall include a part-time worker but shall not include a worker engaged upon casual or seasonal work.
- (b) Maternity leave shall mean unpaid maternity leave.
- (2) Period of Leave and Commencement of Leave
 - (a) Subject to subclauses (3) and (6) hereof, the period of maternity leave shall be for an unbroken period of from 12 to 52 weeks and shall include a period of six weeks' compulsory leave to be taken immediately before the presumed date of confinement and a period of six weeks' compulsory leave to be taken immediately following confinement.
 - (b) A worker shall, not less than 10 weeks prior to the presumed date of confinement, give notice in writing to her employer stating the presumed date of confinement.
 - (c) A worker shall give not less than four weeks' notice in writing to her employer of the date upon which she proposes to commence maternity leave, stating the period of leave to be taken.
 - (d) A worker shall not be in breach of this clause as a consequence or failure to give the stipulated period of notice in accordance with paragraph (c) hereof if such failure is occasioned by the confinement occurring earlier than the presumed date.
- (3) Transfer to a Safe-Job

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

If the transfer to a safe job is not practicable, the worker may, or the employer may require the worker to, take leave for such period as is certified necessary by a duly qualified medical practitioner. Such leave shall be treated as maternity leave for the purposes of subclauses (7), (8), (9) and (10) hereof.

(4) Variation of Period of Maternity Leave

- (a) Provided the addition does not extend the maternity leave beyond 52 weeks, the period may be lengthened once only, save with the agreement of the employer, by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be lengthened.
- (b) The period of leave may, with the consent of the employer, be shortened by the worker giving not less than 14 days' notice in writing stating the period by which the leave is to be shortened.

(5) Cancellation of Maternity Leave

- (a) Maternity leave, applied for but not commenced, shall be cancelled when the pregnancy of a worker terminates other than by the birth of a living child.
- (b) Where the pregnancy of a worker then on maternity leave terminates other than by the birth of a living child, it shall be right of the worker to resume work at a time nominated by the employer which shall not exceed four weeks from the date of notice in writing by the worker to the employer that she desires to resume work.

(6) Special Maternity Leave and Sick Leave

- (a) Where the pregnancy of a worker not then on maternity leave terminates after 28 weeks other than by the birth of a living child then—
 - (i) she shall be entitled to such period of unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, or
 - (ii) for illness other than the normal consequences of confinement she shall be entitled, either in lieu of or in addition to special maternity leave, to such paid sick leave as to which she is then entitled and which a duly qualified medical practitioner certifies as necessary before her return to work.
- (b) Where a worker not then on maternity leave suffers illness related to her pregnancy, she may take such paid sick leave as to which she is then entitled and such further unpaid leave (to be known as special maternity leave) as a duly qualified medical practitioner certifies as necessary before her return to work, provided that the aggregate of paid sick leave, special maternity leave and maternity leave shall not exceed 52 weeks.
- (c) For the purposes of subclauses (7), (8) and (9) hereof, maternity leave shall include special maternity leave.
- (d) A worker returning to work after the completion of a period of leave taken pursuant to this subclause shall be entitled to the position which she held immediately before proceeding on such leave or, in the case of a worker who was transferred to a safe job pursuant to subclause (3), to the position she held immediately before such transfer.

Where such position no longer exists but there are other positions available, for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(7) Maternity Leave and Other Leave Entitlements

Provided the aggregate of leave including leave taken pursuant to subclauses (3) and (6) hereof does not exceed 52 weeks—

- (a) A worker may, in lieu of or in conjunction with maternity leave, take any annual leave or long service leave or any part thereof to which she is then entitled.
- (b) Paid sick leave or other paid authorised award absences (excluding annual leave or long service leave), shall not be available to a worker during her absence on maternity leave.

(8) Effect of Maternity Leave on Employment

Notwithstanding any agreement or other provision to the contrary, absence on maternity leave shall not break the continuity of service of a worker but shall not be taken into account in calculating the period of service for any purposes of the award.

(9) Termination of Employment

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

(10) Return to Work After Maternity Leave

- (a) A worker shall confirm her intention of returning to her work by notice in writing to the employer given not less than four weeks prior to the expiration of her period of maternity leave.
- (b) A worker, upon the expiration of the notice required by paragraph (a) hereof, shall be entitled to the position which she held immediately before proceeding on maternity leave or, in the case of a worker who

was transferred to a safe job pursuant to subclause (3), to the position which she held immediately before such transfer. Where such position no longer exists but there are other positions available for which the worker is qualified and the duties of which she is capable of performing, she shall be entitled to a position as nearly comparable in status and salary or wage to that of her former position.

(11) Replacement Workers

- (a) A replacement worker is a worker specifically engaged as a result of a worker proceeding on maternity leave.
- (b) Before an employer engages a replacement worker under this subclause, the employer shall inform that person of the temporary nature of the employment and of the rights of the worker who is being replaced.
- (c) Before an employer engages a person to replace a worker temporarily promoted or transferred in order to replace a worker exercising her right, under this clause, the employer shall inform that person of the temporary nature of the promotion or transfer and of the rights of the worker who is being replaced.
- (d) Provided that nothing in this subclause shall be construed as requiring an employer to engage a replacement worker.
- (e) A replacement worker shall not be entitled to any of the rights conferred by this clause except where her employment continues beyond the 12 months qualifying period.

41.—LIBERTY TO APPLY

Liberty is reserved to any of the parties to apply to vary this award in respect of the following provisions—

- (1) Clause 8.—Hours
- (2) Clause 28.—Wages with respect to Western Australian Wage Indexation or productivity movement.

42.—FIRST AID OFFICERS

At least one first aid officer shall be appointed by the employer on each shift and in every warehouse or site. First aid officers so appointed shall receive a First Aid Allowance of \$6.15 per week.

43.—UNION NOTICE BOARD

An employer bound by this award shall permit a shop steward or an official from The Shop, Distributive and Allied Employees' Association of Western Australia, as the case may be to post formal Union notices, authorised by the General Secretary of the Union or his nominee upon an appropriate notice board.

Any notice posted on a notice board not so signed by the General Secretary of the Union or his nominee may be removed by the employer.

44.—INTRODUCTION OF CHANGE

Employer's Duty to Notify

(1) (a) When an employer has made a definite decision to introduce major changes in production, programme, organisation, structure or technology that are likely to have significant effects on employees, the employer shall notify the employees who may be affected by the proposed changes and the Union.

(b) "Significant effects" include termination of employment, major changes in the composition, operation or size of the employer's workforce or in the skills required; the elimination or diminution of job opportunities, promotion opportunities or job tenure; the alteration of hours of work; the need for retraining or transfer of employees to other work locations and restructuring of jobs. Provided that where the award makes provision for alteration of any of the matters referred to herein an alteration shall be deemed not to have significant effect.

Employer's Duty to Discuss Change

(2) (a) The employer shall discuss with the employees affected and the Union inter alia, the introduction of the changes referred to in subclause (1) hereof, the effects the changes are likely to have on employees, measures to avert or mitigate the adverse effects of such changes on employees and shall give

prompt consideration to matters raised by the employees and/or their Union in relation to the changes.

(b) The discussion shall commence as early as practicable after a definite decision has been made by the employer to make the changes referred to in subclause (1)(a) hereof.

(c) For the purpose of such discussion, the employer shall provide to the employees concerned and their Union, all relevant information about the changes including the nature of the changes proposed; the expected effects of the changes on employees and any other matters likely to affect employees provided that any employer shall not be required to disclose confidential information the disclosure of which would be inimical to the employer's interests.

45.—DISPUTE SETTLEMENT PROCEDURE

(1) The objectives of this procedure shall be to promote the resolution of disputes by measures based on consultation, co-operation and discussion, to reduce the level of industrial confrontation and to avoid interruption to the performance of work and consequential loss of production and wages.

(2) A dispute settling procedure consisting of the following four steps will be adhered to:

- (a) Discussion between employee/s concerned (and shop steward if requested) and the immediate supervisor.
- (b) Discussions involving the employee/s concerned, the shop steward and the employer representative.
- (c) Discussions involving an official of the Union and the employer representative.
- (d) Discussions involving senior Union officials and the senior management representatives.

(3) A time limit of two working days shall apply between each of the steps in the dispute settling procedure.

(4) There shall be a commitment by the parties to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.

(5) (a) All employees in all warehouses operated by the employer shall have the opportunity to vote on final offers or recommendations concerning company-wide matters and the majority of all votes shall prevail.

(b) Offers or recommendations will be put consistently and progressively to all employees for voting. No amendments or negotiations will take place until all employees have so voted.

(6) While the dispute settling procedure is being followed, work shall continue in accordance with existing practices subject only to bona fide safety issues where work shall be deferred until the matter is determined. No party shall be prejudiced as to the final settlement by the continuance or deferment of the work in accordance with this subclause.

(7) It is open to the parties, at any time, to refer the matter to the Western Australian Industrial Relations Commission for settlement.

46.—STRUCTURAL EFFICIENCY PROVISIONS

For the purpose of structural efficiency negotiations proceeding:

- (1) No shift worker shall lose his/her job as a result of a 6.00am start being worked by some employees.
- (2) In the event that the night shift in the warehouse is discontinued, the employer shall offer all employees affected other positions on either day or afternoon shift.
- (3) The employer shall not discriminate or frivolously change job functions for any employee not volunteering for a 6.00am start.

47.—ENTERPRISE LEVEL AWARD CHANGE PROCEDURE

(1) The Union and the employers to whom this clause applies recognise that because of the variety and types of undertakings covered by this award, circumstances may exist within the employer which are appropriately regulated by single enterprise agreements or, where more than one union has coverage of employees within a workplace, a part-worksite agreement binding only on all employees eligible for membership of The Shop, Distributive and Allied Employees' Association of Western Australia.

(2) Such single employer agreements, to the extent that they are inconsistent with the provisions of this award, shall prevail over the provisions of this award, upon ratification by the Western Australian Industrial Relations Commission.

(3) Where either an employer or its employees propose a change in award conditions in relation to an enterprise, those parties shall contact the union for the purpose of negotiating such an agreement. Where the union proposes a change in award conditions in relation to an enterprise, the union shall contact the employer for the purpose of negotiating such an agreement.

(4) The employer and the union shall genuinely attempt to negotiate proposals for an agreement.

(5) It shall be open to the employer and its employees to have had prior informal discussions about the possibility of an agreement of the character contemplated in this clause. However the final agreement negotiations are to be handled by the union.

(6) By arrangement between the employer and the union, employees of the enterprise may participate in the negotiation of an agreement and, in any event, there shall be consultation with employees by the union and the employer. The union and the employer shall each have equal time to put alternative proposals to the employees during working hours.

(7) Following negotiations between the employer and the union, but before an agreement can be achieved, a majority of employees shall have agreed to it.

(8) The union and the employer may agree to adopt appropriate methods of ascertaining the views of the employees affected, such as a secret ballot, to ensure that the agreement is genuine.

(9) Any agreement must be in writing and it shall specify the employees affected, the name and address of the enterprise affected, the terms of the agreement (including any award provisions from which the said enterprise is exempt) the alternate provisions which are to apply in lieu of such award provisions, the period of operation and the method of termination of the agreement prior to its expiration.

(10) When an agreement is finalised, the parties to it shall make application to the Western Australian Industrial Relations Commission for its terms to be ratified in the appropriate manner.

(11) Where the parties are unable to reach agreement, it shall be open for the matter to be referred to the Western Australian Industrial Relations Commission for resolution.

(12) Nothing in this clause shall prevent an employer or the union from having any matter arising from this clause referred to the Western Australian Industrial Relations Commission for the purposes of conciliation and/or arbitration.

SCHEDULE A—UNION PARTY

The Union party to this award is The Shop, Distributive and Allied Employees' Association of Western Australia, 3rd Floor Rear, 22 St George's Terrace, Perth WA 6000.

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award / industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;
- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
- (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.

(12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

Dated at Perth this 1st day of September, 1982.

MATERIALS TESTING EMPLOYEES' AWARD, 1984
No. A 5 of 1982.

PURSUANT to section 93(6) of the Industrial Relations Act 1979 the following award has been consolidated and is published hereunder for general information.

Dated at Perth this 23rd day of October, 1996.

J. CARRIGG,
 Registrar.

Materials Testing Employees' Award, 1984
 No. A 5 of 1982.

1.—TITLE

This Award shall be known as the Materials Testing Employees' Award, 1984 and, to the extent that it is binding upon any respondent, it shall replace The Draughtsmen's, Tracers' Planners' and Technical Officers Award No. 11 of 1979.

1A.—STATEMENT OF PRINCIPLES—AUGUST 1996

It is a condition of this award/industrial agreement that any variation to its terms on or from the 7th day of August, 1996 including the \$8.00 per week Arbitrated Safety Net Adjustments, shall not be made except in compliance with the Statement of Principles set down by the Commission in the Reasons for Decision in matters No. 1164 of 1995 and No. 915 of 1996.

2.—ARRANGEMENT

1. Title
- 1A. Statement of Principles—August 1996
2. Arrangement
3. Area
4. Scope
5. Term
6. Definitions
7. Contract of Service
8. Lower and Higher Grade Duties
9. Wages
10. Existing Contracts of Employment
11. Payment of Wages
12. Location Allowances
13. Vehicle Allowances
14. Hours of Work
15. Extra Rates For Ordinary Hours of Work
16. Meal Break
17. Overtime
18. Fares and Travelling Time
19. Distant Work and Camping Allowances
20. Holidays
21. Annual Leave
22. Absence Through Sickness
23. Bereavement Leave
24. Long Service Leave
25. Miscellaneous Provisions
26. Right of Entry
27. Record
28. Liberty to Apply
29. Superannuation
30. Avoidance of Industrial Disputes

Appendix—Resolution of Disputes Requirements
 Schedule 1—Schedule of Respondents
 Appendix—S.49B—Inspection Of Records Requirements

3.—AREA

This Award shall operate throughout the State of Western Australia.

4.—SCOPE

This Award shall apply to all employees employed in the classifications defined in Clause 6.—Definitions of this Award, and employed by employers who are engaged in an industry named in the Schedule of Respondents to this Award.

5.—TERM

The term of this Award shall be for a period of two years from the beginning of the first pay period commencing on or after October 1, 1984.

6.—DEFINITIONS

(1) "Trainee Technical Assistant"—shall mean an employee undergoing training in destructive or non-destructive testing or metallurgical analytical techniques and who is engaged in and restricted to Level I duties.

(2) "Technical Assistant"—shall mean an employee engaged in technical activities involving metallurgical analyses, destructive or non-destructive testing techniques at a level included in Level II duties as defined.

Notwithstanding any of the foregoing, an employee who is required to undertake the aforementioned duties shall be classified by the employer as a Technical Assistant provided that the first six months of such employment is considered probationary without counting as experience and any necessary Governmental permits or authorisations have been obtained.

(3) "Technician"—shall mean an adult employee engaged in technical activities involving analytical and testing tasks who has sufficient knowledge, judgement and skill to perform with limited supervision Level II and Level III duties, and/or others of similar scientific complexity, under the general guidance of a higher officer. In addition, the employee shall satisfy the following conditions:

- (a) To be classified as a Technician, an employee shall have attained a grade 6 or better in at least a mathematic and a science subject and has had two years' experience as a Technical Assistant (or other appropriate industry experience which enables the required duties to be undertaken).
- (b) Shall hold an Australian Institute of Non-Destructive Testing approved qualification or A.I.N.D.T. Qualifying Board accepted equivalent in an NDT method discipline.
- (c) Notwithstanding any of the provisions of paragraph (a) and (b), an employee who is required to undertake the duties of a Technician as defined shall be classified by the employer as such after having carried out those technical tasks for a period of six months.

(4) "Technical Officer"—shall mean an adult employee with independent proficiency in Level III type duties and who can satisfy the following conditions:

- (a) To be classified as a Technical Officer the employee shall be qualified in more than two NDT method disciplines and capable of carrying out those duties related to each discipline.
- (b) Notwithstanding any of the provisions of paragraph (a), an employee who is required to undertake the duties of a Technical Officer shall be classified by the employer as such after having carried out those technical tasks for a period of six months.

(5) LEVEL I duties shall consist of the following type:

- (a) Collection and initial preparation of samples and items to be tested.
- (b) Routine maintenance of equipment.
- (c) Maintaining cleanliness of equipment and working areas.
- (d) Provide assistance via processing films, loading/unloading cassettes, preparing magnetic inks, couplants etc. under supervision.
- (e) Assist in other duties for the purpose of instruction under constant supervision.

(6) LEVEL II duties shall consist of the following type:

- (a) Performance of routine tests, analyses or metallurgical monitoring using standard methods under limited supervision e.g., wall thickness testing, ultrasonic testing of repetitive items, repetitive radiography and magnetic particle/dye penetrant and eddy current testing, dimensional checking of mechanical test pieces, spectrophotometric analysis without interpretation, simple metallurgical changes induced by heat, chemical reactions, etc.
- (b) Routine equipment calibrating and set up.

- (c) Ensuring safe working practices are followed.
 - (d) Correlating test data for evaluation by a higher classified person and prepare basic reports.
 - (e) Supervision of Trainees or Technical Assistants.
- (7) LEVEL III duties shall consist of the following type:
- (a) Non-routine non-destructive and destructive testing or metallurgical analyses.
 - (b) Interpretation of routine results to codes and standards.
 - (c) Preparing final reports, checking and being signatory to reports of tests or treatment carried out by Technical Assistants or Technicians.
 - (d) Ensuring all equipment used is safe and operational.
 - (e) Responsibility for preparations being made for and checking of testing methods or monitoring being utilised, ultimate responsibility for equipment calibrations, the parameters and the techniques to be used in routine testing or metallurgical change monitoring.
 - (f) Supervision of Technicians, Technical Assistants and Trainees.
 - (g) Technical guidance of Technicians.
 - (h) Maintaining accreditation signatory standards.
 - (i) Participation in research and development programmes.

(8) "Casual Employee"—A casual employee shall mean an employee other than one engaged as a full time employee or part time employee, who is employed for sixteen consecutive weeks or less. Such employee shall be paid by the hour and the hourly rate shall be calculated pro-rata to the weekly rate for the class of work performed plus twenty per cent in addition to the ordinary rate prescribed in this Award.

(9) "Part-time Employee"—A part time employee shall mean an employee who regularly works less than the ordinary hours of work prescribed in Clause 14.—Hours of Work of this Award for the establishment in which he is employed.

7.—CONTRACT OF SERVICE

(1) Except in the case of a casual, whose engagement shall be by the hour, the contract of service of every employee shall be terminable by one week's notice on either side given on any day or, in the event of such notice not being given, by the payment of one week's pay by the employer, or the forfeiture or payment of one week's pay by the employee.

(2) The employer shall be under no obligation to pay for any day not worked upon which the employee is required to present himself for duty, except where such absence from work is due to illness and comes within the provisions of Clause 22.— Absence Through Sickness or such absence is on account of holidays to which the employee is entitled under the provisions of this Award.

(3) The employer shall be entitled to deduct payment for any day or portion of a day upon which the employee cannot be usefully employed because of any strike by the union or unions affiliated with it or by any other association or union or through the breakdown of the employer's machinery or any stoppage of work for any cause which the employer cannot reasonably prevent.

(4) An employer may direct an employee to carry out such duties as are within the limits of the employees skill, competence and training.

8.—LOWER AND HIGHER GRADE DUTIES

(1) An employee who is called upon to perform work of a lower grade than that in which he is normally engaged shall suffer no reduction in his wage on that account.

(2) An employee who, on any day, is called upon to perform work at a higher grade than that in which he/she is normally engaged shall be paid at the rate of the first year of continuous service prescribed for the classification and level of duties he/she is performing, provided that if the work performed in the higher grade is of more than four hours duration, he/she shall be paid at the higher rate for the whole of that day.

Provided that these provisions shall not apply where an employee is performing duties for the sole purpose of training

in accordance with a training programme acceptable to the employer, employee and Union.

(3) This clause shall not apply to a Trainee Technical Assistant or to a Junior Employee.

9.—WAGES

The minimum weekly rate of wage payable to employees covered by this Award shall be:

- (1) Trainee Technical Assistants and Junior Employees

(Expressed as a percentage of the "First Year of Continuous Service" rate of wage provided in paragraph (a) of subclause 2 of this clause, and calculated to the nearest ten cents).

	%
17 years of age and under	45
18 years of age	62
19 years of age	75
20 years of age	88

- (2) Adult Employees

Classification	Years of Continuous Service within Industry	Base Rate	First Safety Net Adjustment	Total Weekly Wage
		\$	\$	\$
(a) Technical Assistant	First	378.50	8.00	386.50
	Second	391.30	8.00	399.30
	Third	402.90	8.00	410.90
	Fourth	415.80	8.00	423.80
	Fifth	427.50	8.00	435.50
An adult "Trainee Technical Assistant" shall, during the first six months of his/her employment, be paid at the rate of 88 per cent of the first year rate provided herein for a "Technical Assistant".				
(b) Technician	First	436.30	8.00	444.30
	Second	452.00	8.00	460.00
	Third	467.00	8.00	475.00
(c) Technical Officer	First	480.00	8.00	488.00
	Second	499.90	8.00	507.90
	Third	522.90	8.00	530.90

- (3) The rates of pay in this award include the first \$8.00 per week arbitrated safety net adjustment payable under the December, 1994 State Wage Decision. This first \$8.00 per week arbitrated safety net adjustment may be offset to the extent of any wage increase as a result of agreements reached at enterprise level since 1 November, 1991. Increases made under previous State Wage Case Principles or under the current Statement of Principles, excepting those resulting from enterprise agreements, are not to be used to offset arbitrated safety net adjustments.

10.—EXISTING CONTRACTS OF EMPLOYMENT

Nothing contained in this Award shall entitle an employer to reduce the rate of wage of any employee who, at the date of this Award, is being paid a higher rate of wage than the minimum prescribed for his or her class of work. Provided however, that upon the commencement of this Award an employer shall have the right to vary, or cancel, any other provision of an employee's contract of employment which is not provided by, or is inconsistent with the provisions of this Award.

11.—PAYMENT OF WAGES

Wages may be paid weekly or fortnightly at the discretion of the employer in cash, by cheque, or by direct bank transfer into an account nominated by the employee. Provided that any other arrangement as to payment of wages may be agreed between the employer and the employee.

12.—LOCATION ALLOWANCES

(1) Subject to the provisions of this clause, in addition to the rates prescribed in the wages clause of this award, an employee shall be paid the following weekly allowances when employed in the towns prescribed hereunder. Provided that where the wages are prescribed as fortnightly rates of pay, these allowances shall be shown as fortnightly allowances.

	\$
Agnew	14.80
Argyle (see subclause (12))	38.50
Balladonia	14.60
Barrow Island	25.10
Boulder	6.10
Broome	23.60
Bullfinch	7.00
Carnarvon	12.00
Cockatoo Island	25.90
Coolgardie	6.10
Cue	15.10
Dampier	20.40
Denham	12.00
Derby	24.50
Esperance	4.50
Eucla	16.50
Exmouth	21.10
Fitzroy Crossing	29.60
Goldsworthy	13.50
Halls Creek	33.70
Kalbarri	5.00
Kalgoorlie	6.10
Kambalda	6.10
Karratha	24.20
Koolan Island	25.90
Koolyanobbing	7.00
Kununurra	38.50
Laverton	15.00
Learmonth	21.10
Leinster	14.80
Leonora	15.00
Madura	15.60
Marble Bar	36.70
Meekatharra	13.00
Mt Magnet	16.10
Mundrabilla	16.10
Newman	14.20
Norseman	12.50
Nullagine	36.60
Onslow	25.10
Pannawonica	19.10
Paraburdoo	19.00
Port Hedland	20.30
Ravensthorpe	7.90
Roebourne	27.80
Sandstone	14.80
Shark Bay	12.00
Shay Gap	13.50
Southern Cross	7.00
Telfer	34.10
Teutonic Bore	14.80
Tom Price	19.00
Whim Creek	24.00
Wickham	23.40
Wiluna	15.10
Wittenoom	32.50
Wyndham	36.40

(2) Except as provided in subclause (3) of this clause, an employee who has:

- (a) a dependant shall be paid double the allowance prescribed in subclause (1) of this clause;
- (b) a partial dependant shall be paid the allowance prescribed in subclause (1) of this clause plus the difference between that rate and the amount such partial dependant is receiving by way of a district or location allowance.

(3) Where an employee:

- (a) is provided with board and lodging by his/her employer, free of charge;
or
- (b) is provided with an allowance in lieu of board and lodging by virtue of the award or an Order or Agreement made pursuant to the Act;

such employee shall be paid 66 2/3 per cent of the allowances prescribed in subclause (1) of this clause.

The provisions of paragraph (b) of this subclause shall have effect on and from the 24th day of July, 1990.

(4) Except where an employee is eligible for payment of an additional allowance under subclause (2) of this clause, but on 31 December 1987 was in receipt of an amount in excess of that under General Order 603 of 1987, that employee shall continue to receive the allowance at the higher rate until 1 July 1988 when the difference between the rate being paid and that due under subclause (2) of this clause shall be reduced by 33 1/3%; the difference remaining on 1 January 1989 shall be reduced by 50% from that date and payment in accordance with subclause (2) of this clause will be implemented on 1 July 1989.

(5) Subject to subclause (2) of this clause, junior employees, casual employees, part-time employees, apprentices receiving less than adult rate and employees employed for less than a full week shall receive that proportion of the location allowance as equates with the proportion that their wage for ordinary hours that week is to the adult rate for the work performed.

(6) Where an employee is on annual leave or receives payment in lieu of annual leave he/she shall be paid for the period of such leave the location allowance to which he/she would ordinarily be entitled.

(7) Where an employee is on long service leave or other approved leave with pay (other than annual leave) he/she shall only be paid location allowance for the period of such leave he/she remains in the location in which he/she is employed.

(8) For the purposes of this clause:

(a) "Dependant" shall mean—

- (i) a spouse or defacto spouse; or
- (ii) a child where there is no spouse or defacto spouse;

who does not receive a district or location allowance, but shall exclude a dependant whose salary/wage package includes a consideration of the purposes for which the location allowance is payable pursuant to the provisions of this clause.

(b) "Partial Dependant" shall mean a "dependant" as prescribed in paragraph (a) of this subclause who receives a district or location allowance which is less than the location allowance prescribed in subclause (1) of this clause.

(9) Where an employee is employed in a town or location not specified in this clause the allowance payable for the purpose of subclause (1) of this clause shall be such amount as may be agreed between Australian Mines and Metals Association, the Chamber of Commerce and Industry of Western Australia and the Trades and Labor Council of Western Australia or, failing such agreement, as may be determined by the Commission. Provided that, pending any such agreement or determination, the allowance payable for that purpose shall be an amount equivalent to the district allowance in force under this Award for that town or location on 1 June 1980.

(10) Nothing herein contained shall have the effect of reducing any 'district allowance' payable to any employee subject to the provision of this Award whilst that employee as at 1 June 1980 remains employed by his/her present employer.

(11) Subject to the making of a General Order pursuant to s.50 of the Act, that part of each location allowance representing prices shall be varied from the beginning of the first pay period commencing on or after the 1st day in July of each year in accordance with the annual percentage change in the Consumer Price Index (excluding housing), for Perth measured to the end of the immediately preceding March quarter, the calculation to be taken to the nearest ten cents.

(12) The allowance prescribed for Argyle is equated to that at Kununurra as an interim allowance. Liberty is reserved to the parties to apply for a review of the allowance for Argyle in the light of changed circumstances occurring after the date of this Order.

13.—VEHICLE ALLOWANCES

(1) Where an employee is required and authorised to use his own motor vehicle in the course of his duties he shall be paid an allowance not less than that provided for in the table set out hereunder. Notwithstanding anything contained in this subclause the employer and the employee may make any other

arrangement as to car allowance not less favourable to the employee.

(2) Where the employee in the course of a journey travels through two or more of the separate areas, payment at the rates prescribed herein shall be made at the appropriate rate applicable to each of the separate areas traversed.

(3) A year for the purpose of this clause shall commence on the 1st day of July and end on the 30th day of June next following.

RATES OF ALLOWANCE FOR USE OF EMPLOYEE'S OWN VEHICLE ON EMPLOYER'S BUSINESS

Area and Details	Engine Displacement (in Cubic Centimetres)	
	Over 1600 cc c/km	1600 cc & Under c/km
Distance Travelled during a Year on Official Business		
Metropolitan Area:		
First 8,000 kilometres	30.8	22.4
Over 8,000 kilometres	19.9	15.0
South West District:		
First 8,000 kilometres	31.5	23.1
Over 8,000 kilometres	20.4	15.4
North of 23.5 degrees South Latitude		
First 8,000 kilometres	35.3	26.1
Over 8,000 kilometres	22.6	17.1
Rest of the State:		
First 8,000 kilometres	32.8	24.0
Over 8,000 kilometres	21.2	16.0

(4) "Metropolitan Area" means that area within a radius of fifty kilometres from the G.P.O. Perth.

"South West District" means the area defined by that term in Clause 11.—District Allowances of this Award, but excluding the area contained within the Metropolitan Area.

14.—HOURS OF WORK

(1) (a) The ordinary hours of work shall not exceed thirty eight hours per week or 7.6 hours per day, to be worked between the hours of 6.00am and 7.00pm, Monday to Friday inclusive.

(b) Notwithstanding the provisions of paragraph (a) hereof, the ordinary hours of work may be worked in accordance with any other flexible working hours arrangement as agreed between the employer and the employee.

(2) Tea breaks shall be taken in one of the following manners:

(a) Subject to paragraph (b) hereof a break, not exceeding ten minutes duration, shall be allowed to each employee during the first period of work on any day. Such break shall be at a time, and in a manner, to suit the convenience of the employer.

OR

(b) In establishments where refreshment facilities are provided by the employer for use by employees throughout the day, the employee may use such facilities at any time and such an arrangement shall be in lieu of that provided for in paragraph (a) hereof; provided that this provision shall not be deemed to dispose of the right of a break of up to ten minutes.

(3) (a) Notwithstanding the provisions of subclause (1) hereof, an employer may place an employee on a special roster providing for the ordinary hours of work to be worked at any time, and upon any five consecutive days of the week. Before implementing such a roster, the employer shall give each employee at least 24 hours notice of his intention to do so.

(b) The sequence of work shall not be deemed to be broken under the preceding paragraph by reason of the fact that work is not carried out on Saturday or Sunday or on any holiday.

15.—EXTRA RATES FOR ORDINARY HOURS OF WORK

(1) All ordinary hours of work performed between 7.00pm and 6.00am Monday to Friday inclusive shall be paid at the rate of 15 percent more than the employee's ordinary rate prescribed by this award.

(2) All ordinary hours of work performed on a Saturday or a Sunday shall be paid at the rate of 50 percent more than the employee's ordinary rate prescribed by this award.

16.—MEAL BREAK

(1) Not less than thirty minutes nor more than one hour shall be allowed for a meal each day.

(2) The time of taking a scheduled meal break or rest break by one or more employees may be altered by the employer if it is necessary to do so in order to meet a requirement for continuity of operations.

(3) An employer may stagger the time of taking a meal or rest break to meet operational requirements.

(4) When an employee is required for duty during any meal time whereby the employee's meal time is postponed for more than one hour, the employee shall be paid at overtime rates until the meal is taken.

(5) An employee shall not be compelled to work for more than five hours without a break for a meal.

17.—OVERTIME

(1) Overtime shall mean all work performed in excess of, or outside, the ordinary hours of work worked in accordance with the provisions of Clause 14.—Hours of Work of this Award.

(2) (a) Overtime worked on any day, Monday to Friday inclusive, shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

(b) Overtime worked on a Saturday prior to 12.00 noon shall be paid for at the rate of time and one half for the first two hours and double time thereafter.

(c) Overtime worked on a Saturday after 12.00 noon, or on a Sunday, shall be paid for at the rate of double time.

(d) Overtime worked on any day prescribed as a holiday under this Award shall be paid for at the rate of double time and one half.

(3) In computing overtime each day shall stand alone, but when an employee works overtime which continues beyond midnight on any day, the time worked after midnight shall be deemed to be part of the previous day's work.

(4) (a) When overtime work is necessary it shall, wherever reasonably practicable, be so arranged that employees have at least ten consecutive hours off duty between the work of successive days.

(b) An employee (other than a casual employee) who works so much overtime between the termination of his ordinary work on one day and the commencement of his ordinary work on the next day that he has not had at least ten consecutive hours off duty between those times shall, subject to this subclause, be released after completion of such overtime until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(c) If, on the instructions of his employer, such an employee resumes or continues work without having had such ten consecutive hours off duty, he shall be paid at double time until he is released from duty for such period and he shall then be entitled to be absent until he has had ten consecutive hours off duty without loss of pay for ordinary working time occurring during such absence.

(5) When an employee is recalled to work after leaving the job he shall be paid for at least two hours at overtime rates.

(6) (a) An employee required to work overtime for more than two hours without being notified on the previous day or earlier that he will be so required to work shall be supplied with a meal by the employer or paid six dollars and thirty cents for a meal.

(b) If the amount of overtime required to be worked necessitates a second or subsequent meal the employer shall provide such meals or pay an amount of four dollars and thirty cents for each second or subsequent meal unless he has notified the employee concerned on the previous day or earlier that such second or subsequent meal will also be required.

(c) No meal need be provided or payment made to an employee living in the same locality as his usual place of work who can reasonably return home for any such meal.

(d) If an employee in consequence of receiving such notice has provided himself with a meal or meals and is not required to work overtime or is required to work less overtime than notified, he shall be paid the amounts prescribed in respect of the meals not then required.

(7) (a) An employer may require any employee to work reasonable overtime at overtime rates and such employee shall work overtime in accordance with such requirements.

(b) No organisation, party to this Award or employee or employees covered by this Award, shall in any way, whether directly or indirectly be a party to or concerned in any ban, limitation or restriction upon the working of overtime in accordance with the requirements of this subclause.

(8) Notwithstanding anything contained in this clause, an employer and employee may agree that time off shall be allowed in lieu of payment of such overtime. Such time off is to be equivalent to the rate that otherwise would have been paid.

18.—FARES AND TRAVELLING TIME

(1) (a) An employee who, on any day, or from day to day is required to work at a job away from his accustomed office shall, at the direction of his employer, present himself for work at such job at the usual starting time.

(b) An employee to whom paragraph (a) of this subclause applies shall be paid at ordinary rates for time spent in travelling between his home and the job and shall be reimbursed for any fares incurred in such travelling, but only to the extent that the time so spent and the fares so incurred exceed the time normally spent and the fares normally incurred in travelling between his home and his accustomed office.

(c) An employee who with the approval of his employer uses his own means of transport for travelling to or from outside jobs shall be paid the amount of excess fares and travelling time which he would have incurred in using public transport unless he has an arrangement with his employer for a regular allowance.

(2) For travelling during working hours from and to the employer's place of business or from one job to another, an employee shall be paid by the employer at ordinary rates. The employer shall pay all fares and reasonable expenses in connection with such travelling.

19.—DISTANT WORK AND CAMPING ALLOWANCES

(1) (a) Where an employee is directed by his employer to proceed to work at such a distance that he cannot return to his home each night and the employee does so, the employer shall provide the employee with suitable board and lodging or shall pay the expenses reasonably incurred by the employee for board and lodging.

(b) Suitable board and lodging, for the purpose of this subclause, shall mean full board and lodging at a hotel, motel, guest house or construction camp.

(2) (a) Notwithstanding the provisions of subclause (1) hereof, the employer may provide caravan or camping accommodation when the work exceeds fourteen calendar days on the one site, or when the job site is located in excess of half an hour's travelling time or is in excess of fifty kilometres from suitable board and lodging (as defined in subparagraph (b) of subclause (1) of this clause). Provided that in such circumstances the employer shall be under no obligation to provide a cook or a camp attendant.

(b) In the event that an employee is required to be accommodated in accordance with subparagraph (a) he shall be paid a camping allowance of \$5.00 per day.

(3) (a) The employer shall pay all reasonable expenses including fares, transport of tools, meals and, if necessary, suitable overnight accommodation incurred by an employee who is directed by his employer to proceed to work pursuant to subclause (1) of this clause and who complies with such direction.

(b) The employee shall be paid at ordinary rate of payment for the time up to a maximum of eight hours in any one day incurred in travelling pursuant to the employer's direction.

(4) The provisions of this clause do not apply with respect to any period during which the employee is absent from work without reasonable excuse and in such a case, where the board and lodging is supplied by the employer, he may deduct from moneys owing or which may become owing to the employee an amount equivalent to the value of that board and lodging for the period of absence.

20.—HOLIDAYS

(1) (a) The following days or the days observed in lieu shall, subject to this clause and to Clause 17.—Overtime, be allowed as holidays without deduction of ordinary pay, namely, New Year's Day, Australia Day, Good Friday, Easter Monday, Anzac Day, Labour Day, Foundation Day, Sovereign's Birthday, Christmas Day and Boxing Day. Provided that another day may be taken as a holiday by arrangement between the parties in lieu of any of the days named in this subclause.

(b) When any of the days mentioned in paragraph (a) hereof falls on a Saturday or a Sunday the holiday shall be observed on the next succeeding Monday and when Boxing Day falls on a Sunday or a Monday the holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a holiday without deduction of pay and the day for which it is substituted shall not be a holiday.

(2) On any public holiday not prescribed as a holiday under this award, the employer's establishment or place of business may be closed, in which case an employee need not present himself for duty and payment may be deducted, but if work be done, ordinary rates of pay shall apply.

(3) All work performed within the ordinary hours of work on any holiday provided in subclause (1) hereof shall be paid for at the rate of double time and one half.

(4) The provisions of this clause shall not apply to a casual employee except that, and subject to subclause (3) hereof, if such an employee performs work on any of the holidays mentioned herein, he shall be paid at the rate of double time and one half.

(5) The provisions of this clause shall not apply where an employee has not worked as required by his/her employer the working day immediately before or the working day immediately after such a holiday or is absent without the permission of his/her employer or is absent without reasonable cause.

Absence arising by termination of employment by the employee shall not be reasonable cause.

21.—ANNUAL LEAVE

(1) Except as hereinafter provided a period of four consecutive weeks' leave with payment of ordinary wages as prescribed by this Award for his classification shall be allowed annually to an employee by his employer after a period of twelve months' continuous service with such employer.

(2) (a) During a period of annual leave an employee shall be paid a loading of 17 1/2% calculated on his ordinary wages for that period of leave.

(b) The loading prescribed by this subclause shall not apply to proportionate leave on termination.

(3) If any award holiday falls within an employee's period of annual leave and is observed on a day which in the case of that employee would have been an ordinary working day there shall be added to that period one day being an ordinary working day for each such holiday observed as aforesaid.

(4) (a) If after one month's continuous service in any qualifying period an employee leaves his employment or his employment is terminated by the employer through no fault of the employee, the employee shall be paid one thirteenth of a week's pay at his ordinary rate of wages in respect of each completed week of continuous service.

(b) In addition to any payment to which he may be entitled under paragraph (a) of this subclause, an employee whose employment terminates after he has completed a twelve monthly qualifying period and who has not been allowed the leave prescribed under this Award in respect of that qualifying period shall be given payment in lieu of that leave or, in a case to which subclauses (7) and (8) of this clause apply, in lieu of so much of that leave as has not been allowed unless—

- (i) he has been justifiably dismissed for misconduct; and
- (ii) the misconduct for which he has been dismissed occurred prior to the completion of the qualifying period.

(5) Any time in respect of which an employee is absent from work except time for which he is entitled to claim sick pay or time spent on holidays or annual leave as prescribed by the Award shall not count for the purpose of determining his right to annual leave.

(6) In the event of an employee being employed by an employer for portion only of a year, he shall only be entitled, subject to paragraph (a) of subclause (4) of this clause to such leave on full pay as is proportionate to his length of service during that period with such employer, and if such leave is not equal to the leave given to the other employees he shall not be entitled to work or pay whilst the other employees of such employer are on leave on full pay.

(7) In special circumstances and by mutual consent of the employer and the employee, annual leave may be taken in not more than three periods.

Provided that an employee may, with the consent of an employer, take short term annual leave not exceeding five days in any year, at a time or times separate from any of the periods determined in accordance with this subclause.

(8) Notwithstanding anything else herein contained an employer who observes a Christmas closedown for the purpose of granting annual leave may require an employee to take his annual leave in not more than two periods but neither of such periods shall be less than one week.

(9) No employee shall be required to take his annual leave unless two weeks' prior notice is given.

(10) The provisions of this clause shall not apply to a casual employee.

(11) Notwithstanding any other provision of this clause, an employee, who has an entitlement to annual leave whether a fully accrued or pro-rata annual leave entitlement—under a contract of service existing prior to the date of operation of this Award, shall receive payment for such accrued leave, when taken, at the rate of salary existing under that contract of service. Such entitlement shall not attract the payment of the annual leave loading provided by subclause (2) of this clause.

(12) (a) At the request of an employee, and with the consent of the employer, annual leave prescribed by this clause may be given and taken before the completion of 12 months' continuous service as prescribed by subclause (1) of this clause.

(b) If the service of an employee terminates and the employee has taken a period of leave in accordance with this subclause and if the period of leave so taken exceeds that which would become due pursuant to subclause (4) of this clause the employee shall be liable to pay the amount representing the difference between the amount received by him/her for the period of leave taken in accordance with this subclause and the amount which would have accrued in accordance with subclause (4) of this clause. The employer may deduct this amount from monies due to the employee by reason of the other provisions of this award at the time of termination.

(c) The annual leave loading provided by subclause (2) of this clause, shall not be payable when annual leave is taken in advance pursuant to the provisions of this subclause. The loading not paid for the period of leave taken in advance, shall be payable to the employee at the end of the first pay period following the completion by the employee of the qualifying period of continuous service provided in subclause (1) of this clause.

22.—ABSENCE THROUGH SICKNESS

(1) (a) An employee who is unable to attend or remain at his place of employment during the ordinary hours of work by reason of personal ill health or injury shall be entitled to payment during such absence in accordance with the following provisions.

(b) Entitlement to payment shall accrue at the rate of one sixth of a week for each completed month of service with the employer.

(c) If in the first or successive years of service with the employer an employee is absent on the ground of personal ill health or injury for a period longer than his entitlement to paid sick leave, payment may be adjusted at the end of that year of service, or at the time the employee's services terminate, if before the end of that year of service, to the extent that the employee has become entitled to further paid sick leave during that year of service.

(2) The unused portions of the entitlement to paid sick leave in any one year shall accumulate from year to year and subject to this clause may be claimed by the employee if the absence by reason of personal ill health or injury exceeds the period

for which entitlement has accrued during the year at the time of the absence. Provided that an employee shall not be entitled to claim payment for any period exceeding ten weeks in any one year of service.

(3) To be entitled to payment in accordance with this clause the employee shall as soon as reasonably practicable advise the employer of his/her inability to attend for work, the nature of the illness or injury and the estimated duration of the absence. Provided that such advice, other than in extraordinary circumstances shall be given to the employer within 4 hours of the commencement of the absence.

(4) The provisions of this clause do not apply to an employee who fails to produce a certificate from a medical practitioner dated at the time of the absence or who fails to supply such other proof of the illness or injury as the employer may reasonably require.

(5) (a) Subject to the provisions of this subclause, the provisions of this clause apply to an employee who suffers personal ill health or injury during the time when he is absent on annual leave and an employee may apply for and the employer shall grant paid sick leave in place of paid annual leave.

(b) Application for replacement shall be made within seven days of resuming work and then only if the employee was confined to his place of residence or a hospital as a result of his personal ill health or injury for a period of seven consecutive days or more and he produces a certificate from a registered medical practitioner that he was so confined. Provided that the provisions of this paragraph do not relieve the employee of the obligation to advise the employer in accordance with subclause (3) of this clause if he is unable to attend for work on the working day next following his annual leave.

(c) Replacement of paid annual leave by paid sick leave shall not exceed the period of paid sick leave to which the employee was entitled at the time he proceeded on annual leave and shall not be made with respect to fractions of a day.

(d) Where paid sick leave has been granted by the employer in accordance with paragraphs (a), (b) and (c) of this subclause, that portion of the annual leave equivalent to the paid sick leave is hereby replaced by the paid sick leave and the replaced annual leave may be taken at another time mutually agreed to by the employer and the employee or, failing agreement, shall be added to the employee's next period of annual leave or, if termination occurs before then, be paid in accordance with the provisions of Clause 21.—Annual Leave.

(e) Payment for replaced annual leave shall be at the rate of wage applicable at the time the leave is subsequently taken provided that the annual leave loading prescribed in Clause 21.—Annual Leave shall be deemed to have been paid with respect to the replaced annual leave.

(6) Where a business has been transmitted from one employer to another and the employee's service has been deemed continuous in accordance with subclause (3) of Clause 2 of the Long Service Leave provisions published in Volume 63 of the Western Australian Industrial Gazette at pages 1-5, the paid sick leave standing to the credit of the employee at the date of transmission from service with the transmitter shall stand to the credit of the employee at the commencement of service with the transmittee and may be claimed in accordance with the provisions of this clause.

(7) The provisions of this clause with respect to payment do not apply to employees who are entitled to payment under the Workers' Compensation Act nor to employees whose injury or illness is the result of the employee's own misconduct.

(8) The provisions of this clause do not apply to casual employees.

23.—BEREAVEMENT LEAVE

(1) An employee, other than a casual employee, shall, on the death within Australia of a wife, husband, father, mother, brother, sister, child or stepchild, be entitled on notice of leave up to and including the day of the funeral of such relation and such leave shall be without deduction of ordinary pay for a period not exceeding the number of hours worked by the employee in two ordinary working days. Proof of such death shall be furnished by the employee to the satisfaction of his employer.

(2) Payment in respect of compassionate leave is to be made only where the employee otherwise would have been on duty and shall not be granted in any case where the employee concerned would have been off duty in accordance with any work roster, or on long service leave, annual leave, sick leave, worker's compensation, leave without pay or on a public holiday.

24.—LONG SERVICE LEAVE

The Long Service Leave provisions published in Volume 63 of the Western Australian Industrial Gazette at pages 1 to 5 both inclusive, are hereby incorporated in and shall be deemed to be part of this Award.

25.—MISCELLANEOUS PROVISIONS

(1) (a) The employer shall have available a sufficient supply of protective equipment (as, for example, glasses, ear protectors, gumboots, helmets, overalls, dust coats or other efficient substitutes thereof) for use by his employees when employed on work for which protective equipment is reasonably necessary.

(b) An employee shall sign an acknowledgement when he receives any article of protective equipment and shall return that article to the employer when he has finished using it or on leaving his employment.

(2) The employer shall, wherever practicable, provide a notice board for the posting of union notices.

26.—RIGHT OF ENTRY

(1) A duly accredited representative of the Association of Draughting, Supervisory and Technical Employees, Western Australian Branch, shall be permitted to interview any employee covered by this Award on legitimate union business during the recognised meal break of the employee, or other non-working times. Provided that this permission shall not be exercised more than once in any one week without the consent of the employer. Provided further that the duly accredited representative shall give the employer reasonable notice of his intention to exercise his rights under this subclause.

(2) In the event of a dispute arising between the union and the employer, an accredited representative of the union, upon giving prior notification to the employer, shall be permitted to inspect work places and related equipment, and interview employees covered by this Award, during the usual business hours of the employer. The permission granted by this subclause may be withdrawn by the employer, if the union representative unduly interferes with the progress of work.

27.—RECORD

(1) A record, or records, shall be kept in each establishment by the employer wherein shall be entered—

- (a) The name of each employee.
- (b) The age of each employee under the age of twenty one years.
- (c) The nature of the work performed by each employee.
- (d) The classification of each employee.
- (e) The daily hours, including overtime (if any), worked by each employee.
- (f) The rate of wage paid, including overtime (if any), to each employee and the employee's signature acknowledging such payment, if correct.

Such record, or records, shall be open to a duly accredited representative of the union during the usual business hours for the purpose of inspecting and recording such information.

(2) Where, notwithstanding the provisions of Clause 26.—Right of Entry of this Award, a duly accredited representative of the union has not been able to interview an employee covered by this Award the employer, on request and on being satisfied that the said representative has attempted on at least two occasions to conduct such an interview, shall inform the union representative of the employee's last known place of residence.

28.—LIBERTY TO APPLY

(1) Either party shall have liberty to apply in respect of shift work provisions should the need for such provisions arise in the industry.

(2) Liberty to apply is reserved to either party in respect of the appropriate rate of wage to be paid to employees who perform underwater diving work as part of their duties.

(3) Liberty to apply is reserved to either party in respect of the use of private vehicles on the employer's business.

29.—SUPERANNUATION

(1) Definitions

In this clause:

- (a) "Approved Occupational Superannuation Fund" means a superannuation fund which complies with the Occupational Superannuation Standards Act, 1987.
- (b) "Ordinary Time Earnings" means the base classification rate, including supplementary payments where appropriate, in charge rates, shift penalties and any over award payments, together with any other all purpose allowance or penalty payments for work in ordinary time but shall exclude any payments for overtime worked, vehicle allowance, fares or travelling time allowances (including payments for travelling relating to distant work), commission or bonus.
- (c) "Eligible Employee" means a weekly employee whose employment is regulated by this Award who has completed one month's continuous service with the employer and who is or becomes a member of a fund.
- (d) "Trustees" means the trustee of the relevant funds.

(2) Choice of Fund

- (a) (i) The employer shall make the superannuation contribution or improvements to any fund agreed between the employer and the employees, provided that such fund complies with the Occupational Superannuation Act, 1987.
- (ii) Provided that an employer shall not be compelled to contribute to more than one fund in respect of eligible employees employed under this award.

- (b) In any circumstances in which a union respondent to this Award is concerned about a fund selected pursuant to this subclause, such union may challenge before the Western Australian Industrial Relations Commission, the suitability of the fund within six months of the date of operation of this clause or the date of fund selection, whichever is the latter.

(3) Contributions

- (a) An employer shall, subject to subclause (9) of this clause contribute to a fund chosen in accordance with subclause (2) of this clause in respect of each eligible employee an amount equal to 3% of each employee's ordinary time earnings with effect from the first pay period on or after 24 March 1992 or the date upon which an employee becomes an "eligible" employee.
- (b) Employer contributions together with any employee contributions shall be paid in accordance with fund rules for pay periods completed provided that payments may be made at such other times and in such other manner as may be agreed in writing between the Trustees of the fund and the employer from time to time.

(c) Absence from work:

- (i) Paid Leave
Contributions shall continue whilst a member of a fund is absent on paid leave such as annual leave, long service leave, public holidays, sick leave and bereavement leave.

- (ii) Unpaid Leave
Contributions shall not be required to be made in respect of any absence from work without pay.

(d) Sickness and Work Related Injury

In the event of an eligible employee's absence from work due to sickness or a work related injury, contributions shall continue for the period of the absence provided that:

- (i) the member of the fund is receiving regular payments directly from the employer in accordance with statutory requirements or the provisions of this Award;

- (ii) the duration of the absence does not exceed 52 weeks in total for each injury or sickness;
- (iii) the person remains an employee of the employer.

(4) Employer to Continue Participation

An employer who participates in the fund shall not cease participation in the fund whilst employing any eligible employee but the obligation of the employer to contribute to the fund in respect of an eligible employee shall cease on the last day of an eligible employee's employment with the employer.

(5) Employer's Failure To Participate In Funds

- (a) Where an employer has failed to make application to participate in a fund or has failed to make payments to a fund, the employer shall be required to make application to participate in a fund or to make payments to a fund within seven days of the failure being brought to the employer's attention by an employee of the employer or the Association of Draughting, Supervisory and Technical Employees Western Australian Branch.
- (b) Where there has been a failure to make application to participate in a fund, upon acceptance by the Trustee the employer shall make a once only contribution to a fund in respect of each eligible employee equivalent to the contributions which would otherwise have been payable in accordance with this clause.

(6) Employee's Additional Voluntary Contributions

Where the rules of the fund allow an eligible employee to make additional contributions to the fund and the employer shall, where an election is made upon the direction of the employee, deduct contributions from the employee's wages and pay them to the fund in accordance with the direction of the employee and the rules of the fund.

(7) Suspension

- (a) Where, pursuant to paragraph (b) of subclause (2) of this clause, the union challenges an employer's choice of fund, the employer shall not make contributions to that fund until the dispute has been resolved by the Western Australian Industrial Relations Commission.
- (b) The contributions not made pursuant to paragraph (a) above shall be made to the appropriate fund in accordance with paragraph (a) of subclause (3) of this clause following the resolution of the dispute by the Western Australian Industrial Relations Commission.

(8) Employee Entry Into Fund

- (a) The employer must provide an employee with an application to join the fund within one month of the operative date of this clause or within one month of an employee commencing employment, whichever is the later.
- (b) The employer is not eligible to make contributions to a fund:
 - (i) where an employee has completed a letter of denial; or
 - (ii) in the event the employee elects not to join the fund, the employee shall remind the employer, in writing, of his/her entitlements, within a period of a further six months. Should an employee subsequently complete the necessary forms and become a member of the fund, the contributions prescribed shall commence from the pay period commencing after the employee has become an eligible employee.
- (c) If the employer fails to provide the employee with the application form referred to in paragraph (a) above within the time prescribed in that paragraph the employer shall be obliged to make contributions as if the application had been provided within the prescribed time, provided that the employee returns the application within three months of being provided with the application by the employer.

- (d) In the event that an employee terminates employment with one employer and commences employment with another employer, the latter employer being a participating employer in the same fund as the former employer then the provisions of this subclause do not apply to the latter employer.

- (e) The letter of denial shall be in the following form: "To (employer)

I have received an application for membership of the non-contributory Superannuation Fund and understand:

- (1) that should I sign such form you will make contributions on my behalf; and
- (2) that I am not required to make contributions of my own; and
- (3) that no deductions will be made from my wages for superannuation without my consent.

However, I do not wish to be a member of the fund or have any contributions made on my behalf.

(Signature)

(Name)

(Address)

(Classification)

(Date)"

- (f) A copy of this letter of denial shall be forwarded to the union and the Trustees.

(9) Exemption

- (a) This clause shall be deemed to be satisfied by any employer who, as at the date of becoming respondent to this Award, is already satisfying and continues to satisfy the requirements of subclause (3) of this clause by providing new or improved superannuation benefits or contributions equivalent to 3% of ordinary time earnings and in accordance with the Act and Regulations.
- (b) Leave is reserved to any employer to apply for exemption from this clause on the grounds of the standard of existing superannuation arrangements provided by the employer, or the employer's financial capacity to pay.
- (c) This clause shall not apply to:

The Broken Hill Proprietary Company Limited, Tubemakers of Australia Limited or Alcoa of Australia Limited or any corporation which is a related corporation (within the meaning of the Companies Act 1981) of any of the aforementioned companies.
- (d) The provisions of this clause shall not apply to any employer who has entered into an arrangement to pay superannuation contributions into any other approved occupational superannuation fund and such arrangement has been ratified by the Western Australian Industrial Relations Commission.

30.—AVOIDANCE OF INDUSTRIAL DISPUTES

(1) A procedure for the avoidance of industrial disputes may apply in establishments covered by this award.

The objectives of the procedure shall be to promote the resolution of disputes by measures based on consultation, co-operation and discussion; to reduce the level of industrial confrontation; and to avoid interruption to the performance of work and the consequential loss of production and wages.

It is acknowledged that in some companies or sectors of the industry, disputes avoidance/settlement procedures are either now in place or in the process of being negotiated and it may be the desire of the immediate parties concerned to pursue those mutually agreed procedures.

(2) In other cases, the following principles may apply:

- (a) Depending on the issues involved, the size and function of the plant or enterprise and the union

membership of the employees concerned, a procedure involving up to four stages of discussion may apply. These are:

- (i) discussions between the employee/s concerned (and shop steward if requested) and the immediate supervisors;
 - (ii) discussions involving the employee/s concerned, the shop steward and the employer representative;
 - (iii) discussions involving representatives from the state branch of the union(s) concerned and the employer representatives;
 - (iv) discussions involving senior union officials (state secretary) and the senior management representative(s);
 - (v) there shall be an opportunity for any party to raise the issue to a higher stage.
- (b) There shall be a commitment by the employer and employees to achieve adherence to this procedure. This should be facilitated by the earliest possible advice by one party to the other of any issue or problem which may give rise to a grievance or dispute.
 - (c) Throughout all stages of the procedure all relevant facts shall be clearly identified and recorded.
 - (d) Sensible time limits shall be allowed for the completion of the various stages of the discussions. At least seven days should be allowed for all stages of the discussions to be finalised.
 - (e) Emphasis shall be placed on a negotiated settlement. However, if the negotiation process is exhausted without the dispute being resolved, the parties shall jointly or individually refer the matter to the Western Australian Industrial Relations Commission for assistance in resolving the dispute.
 - (f) In order to allow for the peaceful resolution of grievances the parties shall be committed to avoid stoppages of work, lock-outs or any other bans or limitation on the performance of work while the procedures of negotiation and conciliation are being followed.
 - (g) The employer shall ensure that all practices applied during the operation of the procedure are in accordance with safe working practices and consistent with established custom and practices at the work place.

APPENDIX—RESOLUTION OF DISPUTES REQUIREMENTS

(1) This Appendix is inserted into the award/industrial agreement as a result of legislation which came into effect on 16 January 1996.

(2) Any dispute or grievance procedure in this award/industrial agreement shall also apply to any questions, disputes or difficulties which may arise under it.

(3) This Appendix shall come into effect on and from 16 August 1996.

SCHEDULE 1

SCHEDULE OF RESPONDENTS

Materials Testing Laboratories and Services

Metlab Mapel (W.A.) Pty. Ltd.,
McDowell Street, Kewdale.

Oilfield Inspection Services (Australia) Pty. Ltd.,
Russell Road, Coogee.

Engineering Testing & Research Services (W.A.) Pty. Ltd.,
Russell Road, Coogee.

Ultrasound Technical Services Pty. Ltd.,
65 Kingsmill Street, Port Hedland.

Tomlinson Steel Ltd.,
239 Planet Street, Welshpool.

Engineering Fabrication
Tomlinson Steel Ltd.,
239 Planet Street, Welshpool.

International Combustion Australia Ltd.,
368 Rokeby Road, Subiaco.

Foundry and Casting Engineering

Johns Perry Castings (A Division of
Johns Perry Industries Pty. Ltd.),
John Street, Bentley.

Exploration Drilling Services and/or Equipment Manufacturers and/or Consultants
Drilco Industrial,
26 Cooper Road, Jandakot.

Layton and Associates,
196 Adelaide Terrace, Perth.

Automotive and Agricultural Machinery
Orbital Engine Co. Pty. Ltd.,
4 Whipple Street, Balcatta.

Chamberlain John Deere Pty. Ltd.,
82 Welshpool Road, Welshpool.

Constructional and/or Structural Engineering
CBI Constructors Pty. Ltd.,
84 St Georges Terrace, Perth.

Metallurgical Technical Services
Cooperheat of Australia Pty. Ltd.,
459b Rockingham Road, Munster.

APPENDIX—S.49B—INSPECTION OF RECORDS REQUIREMENTS

(1) This appendix is inserted into this award / industrial agreement / order as a result of legislation which came into effect on 16 January 1996.

(2) Each employer bound by this award / industrial agreement / order shall maintain a time and wages record for each employee.

(3) The entries in the time and wages records for each employee shall include the employee's name and details of the employee's job classification or description, and any other detail required by this award/ industrial agreement / order.

(4) The employer must ensure that each entry in the time and wages record is retained for not less than seven (7) years after it is made.

(5) A representative of an organisation of employees shall have the power to inspect the time and wages records of an employee or former employee.

(6) The power of inspection may not be exercised for the purpose of inspecting the time and wages records of an employee or former employee who—

- (a) is not a member of the organisation; and
- (b) has notified the employer in writing that the employee or former employee does not consent to a representative of an organisation of employees having access to those records.

(7) The power of inspection may only be exercised by a representative of an organisation of employees authorised in accordance with the rules of the organisation to exercise the power.

(8) The representative is empowered to inspect any notification that an employee or former employee does not consent to a representative having access to time and wages records.

(9) A person who has given a notification referred to in paragraph (b) of subclause (6) hereof may, by notice in writing to the employer, withdraw the notification and, upon that withdrawal, the notification ceases to be of effect.

(10) Before exercising a power of inspection the representative shall give reasonable notice of not less than 24 hours to an employer.

(11) An employer shall endeavour to—

- (a) maintain the time and wages records of employees in such a manner that access by a representative of an organisation to the records of employees does not give access to records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records;

- (b) ensure that a representative of an organisation does not obtain access to the records of employees who are not members of the organisation and have notified the employer that they do not consent to a representative of an organisation of employees having access to the records; and
 - (c) ascertain whether an employee or prospective employee does not consent to a representative of an organisation of employees having access to the time and wages records of the employee or prospective employee.
- (12) A person shall not by threats or intimidation persuade or attempt to persuade an employee or prospective employee to give, or refuse to give, written notification that the employee or prospective employee does not consent to a representative of an organisation of employees having access to

the time and wages records of that employee or prospective employee.

(13) An employer must ensure that any notification from an employee or former employee in accordance with this appendix shall be retained for not less than seven (7) years.

(14) There shall be a liberty to apply to amend this appendix at any time.

(15) This appendix shall come into effect on and from 16 July 1996.

(16) Any employer or organisation bound by or party to this award/order/industrial agreement may apply to the Western Australian Industrial Relations Commission at any time in relation to this clause.

DATED at Perth this 30th day of August, 1984.
